



County of Fairfax, Virginia

October 12, 2016

STAFF REPORT

VARIANCE VC 2016-MA-009

MASON DISTRICT

APPLICANT/OWNER: Deyi S. Awadallah

STREET ADDRESS: 6453 Holyoke Drive, Annandale, 22003

SUBDIVISION: Mount Pleasant

TAX MAP REFERENCE: 61-3 ((6)) 33

LOT SIZE: 9,504 square feet

ZONING DISTRICT: R-2, HC

ZONING ORDINANCE PROVISIONS: 18-401

VARIANCE PROPOSAL: To permit the construction of a dwelling located 13.0 feet from the eastern side lot line and 11.0 feet from the western side lot line.

STAFF RECOMMENDATION:

Staff recommends approval of VC 2016-MA-009 for the construction of a single family dwelling subject to the proposed development conditions contained in Appendix 1.

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

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

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

Sharon E. Williams

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**



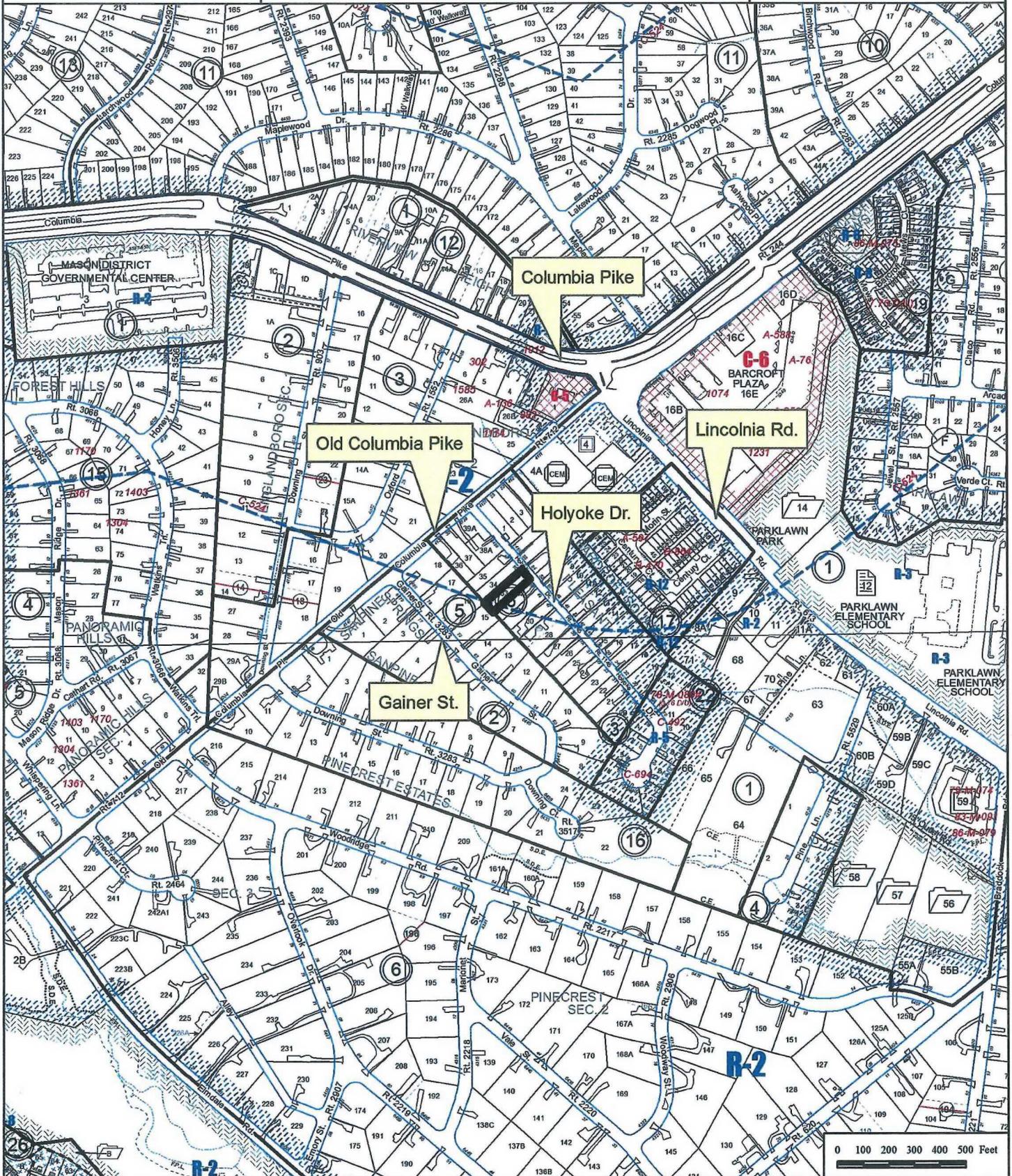
Americans with Disabilities Act (ADA): Reasonable accommodation is available upon 48 hours advance notice. For additional information on ADA call (703) 324-1334 or TTY 711 (Virginia Relay Center).



Variance Application

VC 2016-MA-009

DEYI S. AWADALLAH



NOTES:

1. THE PLAT HAS BEEN PREPARED WITHOUT THE BENEFIT OF A TITLE REPORT AND DOES NOT NECESSARILY INDICATE ALL ENCUMBRANCES ON THE PROPERTY.
2. THE SURVEY WAS NOT PREPARED FOR CONSTRUCTION PURPOSES (INCLUDING FENCES).
3. THE LOCATION OF FENCES ARE APPROXIMATE AND DO NOT CERTIFY TO OWNERSHIP.
4. THE PROPERTY SHOWN ON THIS PLAT IS LOCATED ON TAX MAP # 61-3-((03))-33.
PROPERTY CORNERS NOT SET.
5. NO KNOWN GRAVE SITE OR BURIAL SITE EXIST ON THE LOT.
6. THE PROPERTY IS SERVED BY PUBLIC WATER AND SANITARY SEWER SYSTEM.
7. THERE ARE NO KNOWN UTILITY EASEMENTS HAVING A WIDTH OF 25 FEET OR MORE ON SITE.
8. THERE ARE NO KNOWN MAJOR UTILITY EASEMENTS ON SITE.

PROPERTY OWNER:

DEYI AWADALLAH
6453 HOLYOKE DR.
ANNANDALE, VA 22003
PHONE NUMBER: 703-501-5252

FRONT YARD SURFACING LIMIT:

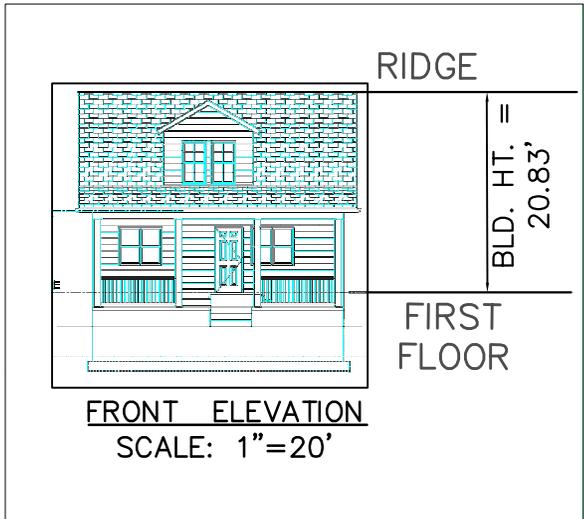
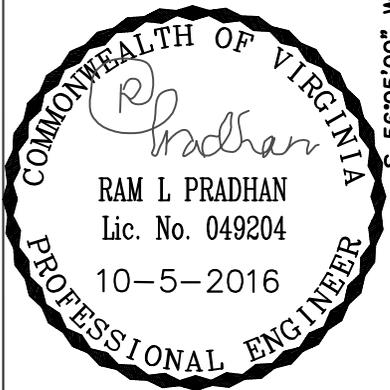
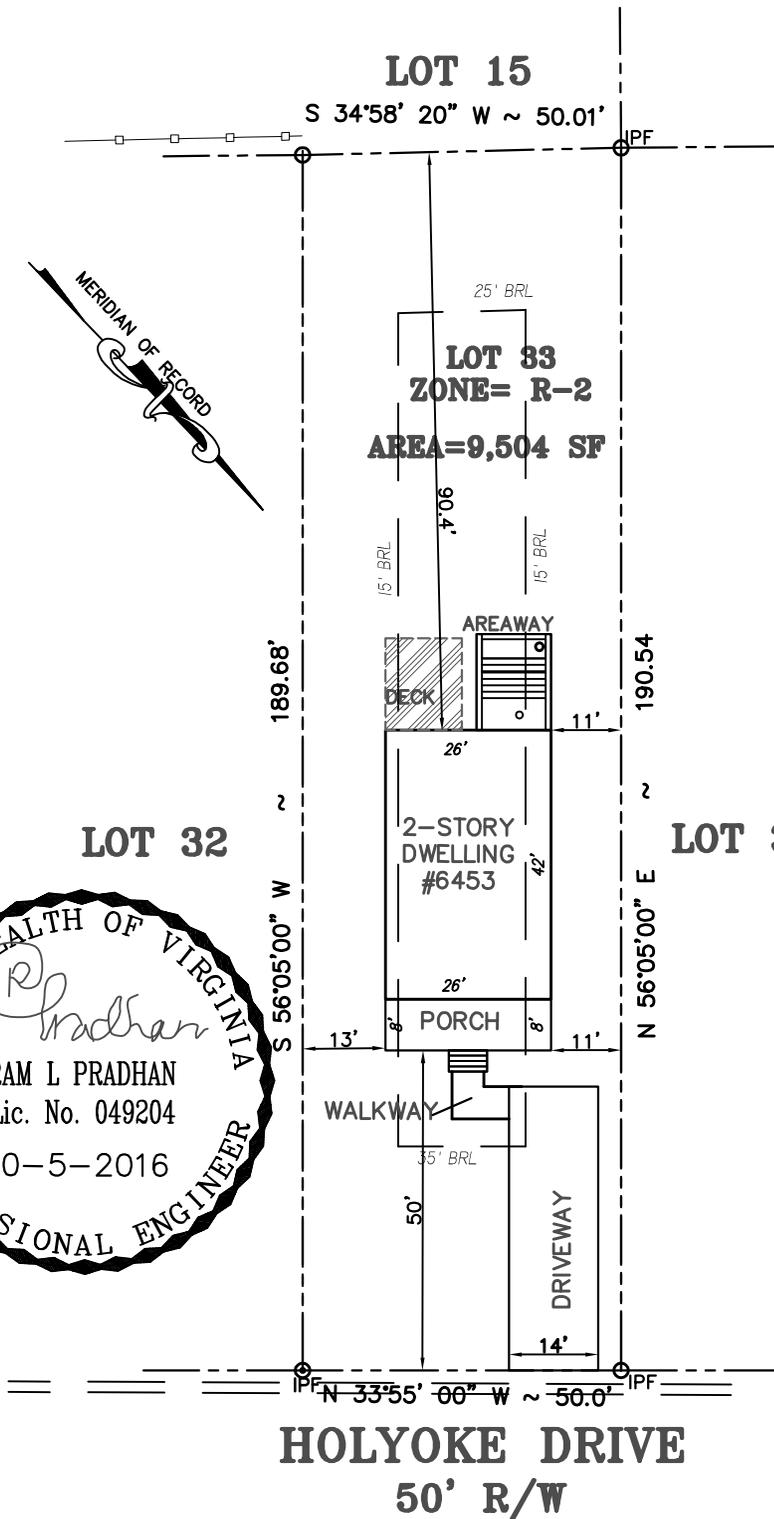
FRONT YARD AREA = 2,500 SF
FRONT YARD SURFACING AREA = 620 SF
% OF FRONT YARD SURFACE = 620/2,500
24.80 % < 25.0 % (ALLOWABLE)

IMPERVIOUS AREA CALCULATIONS

HOUSE = 1,092 SF
PORCH = 208 SF
STEPS = 20 SF
DRIVEWAY = 620 SF
AREAWAY = 175 SF
WALKWAY = 67 SF
TOTAL = 2,182 SF
% IMP. AREA = 2,182/9,504 x 100% = 22.96 %

FLOOR AREA:

BASEMENT FLOOR = 1092 SF
FIRST FLOOR = 1092 SF
SECOND FLOOR = 1092 SF
PORCH = 208 SF
TOTAL = 3,484 SF



SITE ANALYSIS

DESCRIPTIONS	PROPOSED
IMPERVIOUS AREA	22.96%
GROSS FLOOR AREA	3,484 SF
FLOOR AREA RATIO (FAR)	0.366
BUILDING HEIGHT	< 35.0'

SETBACK TABLE (ZONE R-2, INTERIOR LOT)

	REQUIRED	PROVIDED	VARIANCE
FRONT	35' (MIN.)	50'	NOT REQUIRED
SIDE	15' (MIN)	11.00'(RIGHT) 13.00'(LEFT)	4.0' (LEFT) 2.0' (RIGHT)
REAR	25' (MIN.)	90.4'	NOT REQUIRED

VARIANCE PLAT

LOTS 33 MT. PLEASANT
6453 HOLYOKE DRIVE, ANNANDALE
FAIRFAX COUNTY, VIRGINIA 22003
SCALE: 1"=30', DATE: OCTOBER 05, 2016

PREPARED BY

Inova Engineering Consultants, Inc.
25209 LARKS TERRACE
SOUTH RIDING, VIRGINIA 20152
PHONE: (703) 655-3951
E-MAIL: INOVAENGINEERS@YAHOO.COM

VARIANCE REQUEST

The applicant is requesting a variance for a reduction of minimum side yards to permit construction of a new two-story single family detached dwelling with 2,392 square feet of gross floor area (3,484 square feet including the basement) on an existing lot. The lot is approximately 9,504 square feet and 50 feet wide. The proposed dwelling would be located 13.0 feet from the eastern (left) side lot line and 11.0 feet from the western (right) side lot line. In addition, there will be a deck located on the rear of the dwelling, 13.0 feet from the left side lot line. The location of the proposed deck is allowed by-right.

A copy of the variance plat, titled "Variance Plat, Lot 33, Mount Pleasant," prepared by Ram L. Prahdan on June 13, 2016, as revised on June 28, 2016, is included in the front of the staff report.

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

CHARACTER OF THE SITE AND SURROUNDING AREA

The site is currently vacant and characterized by a generally open lawn that is fairly level, with mature vegetation in the rear yard. The adjacent lot to the west (Lot 34) is developed with a single family detached dwelling originally constructed in 1925, but was subsequently demolished and replaced with a new dwelling in 2015. The adjacent lot to the east (Lot 32) is also developed with a single family detached dwelling that was constructed in 2008. A significant number of the lots on Holyoke Drive do not meet the minimum lot size or width requirements. Photographs below illustrate the character of the neighborhood.



Figure 1: Adjacent lots on Holyoke Drive



Figure 2: Adjacent lots on Holyoke Drive

The property is located south of Columbia Pike, west of Lincolnia Road and Barcroft Plaza and east of Old Columbia Pike. The subject property and surrounding properties are located in the Highway Corridor Overlay District and zoned R-2, developed with single-family detached dwellings.



Figure 3: Aerial View

BACKGROUND AND HISTORY

Fairfax County Tax Records indicate that the applicant purchased the vacant lot in April of 2015.

On November 23, 2015 the applicant submitted a lot validation request to determine if the lot was buildable. The Lot Validation Determination found that the property is subject to the grandfathering provisions of Sect. 2-405 of the Zoning Ordinance and, thus, may be used for a permitted use in the zoning district even though the lot does not meet the minimum lot area and width of the zoning district. (Appendix 4) The lot was created by deed in 1925, prior to the establishment of the Ordinance. (Appendix 5)

Similar variances have been approved by the BZA for nearby properties (Appendix 6):

1. On March 3, 1985 the BZA approved a variance (VC 84-M-144), to permit the construction of a dwelling 11.0 feet from each side lot line on a 9,596 square foot property located at 6457 Holyoke Drive.
2. On July 5, 1994 the BZA approved a variance (VC 94-M-047), to permit the construction of a dwelling 8.0 feet from side lot lines on a 9,111 square foot property located at 6440 Holyoke Drive.

DESCRIPTION OF THE PROPOSED APPLICATION

The applicants request a variance to allow the construction of a two-story, single-family detached dwelling located 13.0 feet from the eastern side lot line and 11.0 feet from the western side lot line. The dwelling would be approximately 3,484 (26 feet wide by 42 feet long) square feet in area (including the basement) and 20.8 feet in height. The lot is undersized at 9,504 square feet and 50 feet wide, versus 15,000 square feet and 100 feet wide required in the Ordinance for the R-2 District.

As shown below, the façade of the proposed dwelling will consist of vinyl siding material on the entire house with an asphalt shingled roof. The design is consistent with the newer houses in the neighborhood. There will be a by-right deck located 13.0 feet from the side lot line.

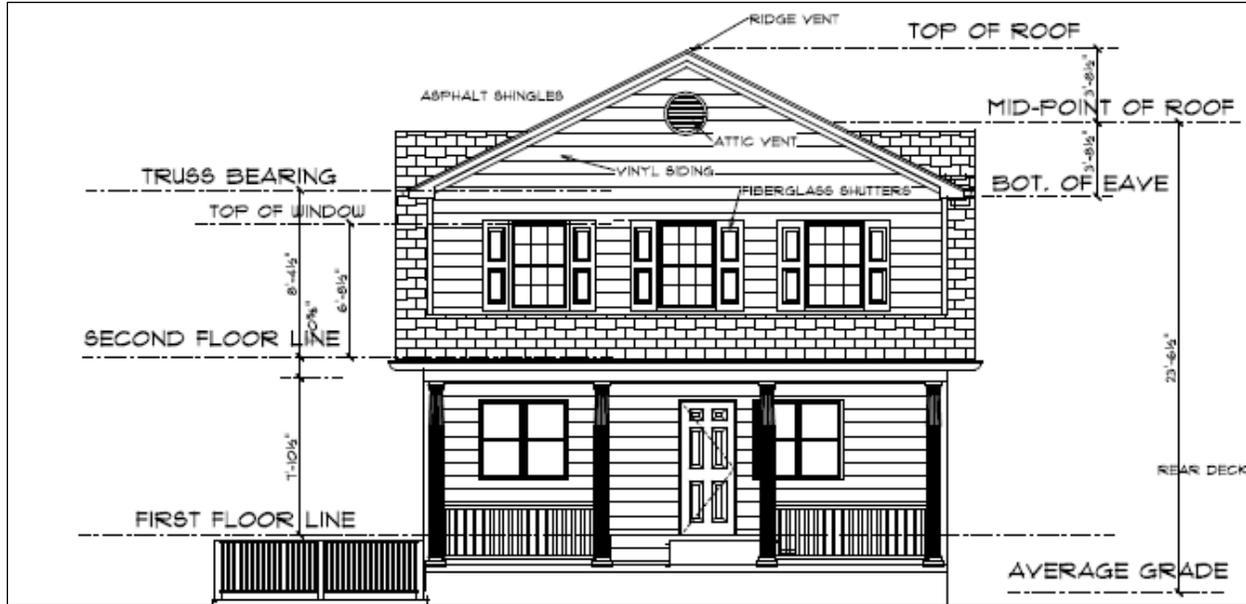


Figure 4: Front Elevation

ANALYSIS

Comprehensive Plan Provisions

Plan Area: Area I, Lincolnia Planning District
Planning Sector: Pinecrest Community Planning Sector (L1)
Plan Map: Residential, 1-2 dwelling units per acre

Zoning District Standards

Bulk Standards (R-2)		
Standard	Required	Provided
Lot Size	15,000 sf.	9,504 sf.
Lot Width	Interior: 100 feet	50 feet
Building Height	35 feet max.	28.5 feet
Front Yard	Min. 35 feet	50.0 feet
Side Yard	Min. 15.0 feet	13.0 feet (east) 11.0 feet (west)
Rear Yard	25.0 feet	90.4 feet

Variance Requirements (Appendix 7)

In addition to meeting the definition of a 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).

Although the subject property is generally flat and rectangular in shape with no unique limitations in terms of environmental characteristics or the presence of floodplain or Resource Protection Areas (RPAs), the lot exhibits exceptional narrowness compared to the minimum required lot width for the R-2 District. As previously mentioned, the minimum required lot width in the R-2 District is 100 feet. The lot width of the subject property is approximately 50 percent of the minimum required lot width at 50 feet. In addition, the lot is also significantly undersized for the R-2 District with a total area of 9,504 square feet, which is approximately 63 percent of the minimum required lot area of 15,00 square feet. Staff believes this application meets this standard because if the applicant were to build a by-right house it would be a maximum of 20 feet wide. A house of that width would not be practical or desirable and it would be out of character with the neighboring properties.

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

As discussed, the applicant purchased the property in April of 2015. Staff believes that the property was acquired in good faith based on the information contained in the statement of justification. The lot was created in 1925 by deed, prior to the establishment of the Ordinance the lot width and area has not been modified since it was created. Therefore, staff does not believe that the hardship was created by the applicant. This standard has been met.

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 eaves of the proposed dwelling would be approximately 24 feet away from both of the adjacent dwellings on Lots 32 and 34. Overall, the height, size, and architectural style of the proposed dwelling is generally compatible with the character of the neighborhood on Holyoke Drive. Therefore, staff believes that the variance would not cause a substantial detriment to the adjacent properties.

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

While the residential lots in the vicinity of the subject property on Holyoke Drive are similar in terms of area, width, depth, and shape most other nearby properties in the R-2 district are much larger. The condition on Holyoke Drive is unique to this specific portion of the neighborhood. There have been at least two other variance applications to permit the construction of a dwelling in this subdivision. Other houses have been constructed on multiple lots; however, this is not an option for this applicant. As a result, staff believes that the situation is not so recurring as to necessitate a new general regulation as an amendment to the Zoning Ordinance.

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

Staff finds that the variance request for the construction of a dwelling located 13.0 feet, 11.0 feet from side lot lines would not result in a use that is otherwise permitted or cause a change in the zoning classification of the property. Staff believes this standard is satisfied.

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

A variance is the only mechanism to provide the relief requested to construct this single family detached dwelling.

CONCLUSION / RECOMMENDATION

Staff recommends approval of VC 2016-MA-009 for the construction of a single-family detached dwelling subject to the proposed development conditions contained in Appendix 1.

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

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

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

APPENDICES

1. Proposed Development Conditions
2. Applicant's Statement of Justification
3. Applicant's Affidavit
4. Lot Validation
5. 1925 Deed and Subdivision Plat
6. Similar Case History
7. Code of Virginia Sect. 15.2-2309, as amended

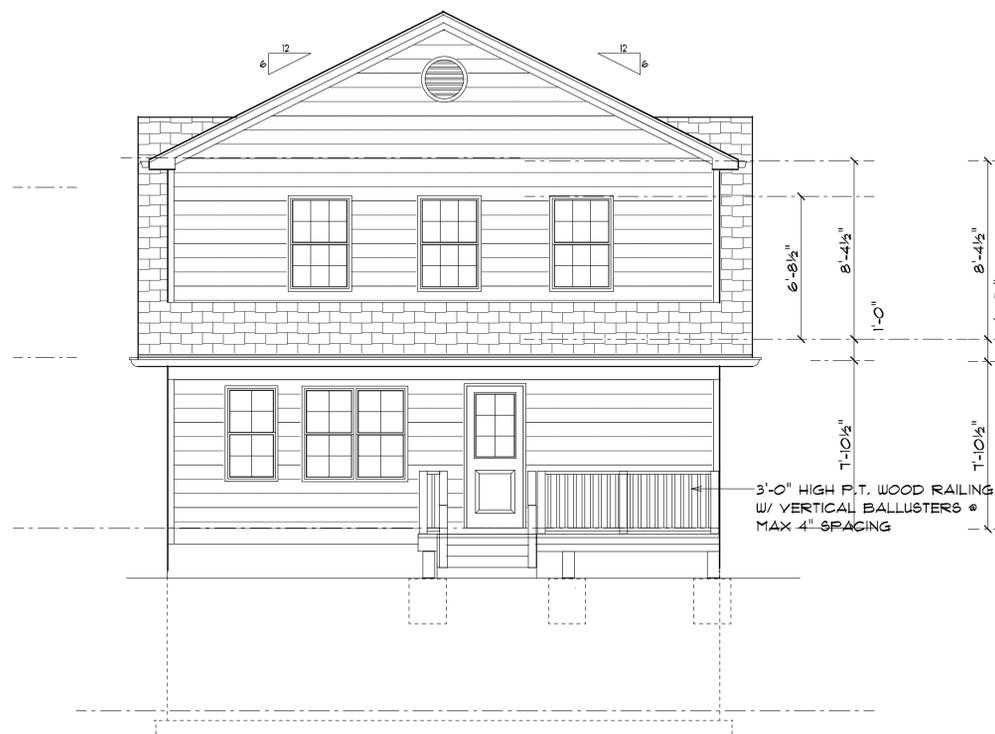
PROPOSED DEVELOPMENT CONDITIONS**VC 2016-MA-009****October 12, 2016**

If it is the intent of the Board of Zoning Appeals to approve VC 2016-MA-009 located at 6453 Holyoke Drive, Tax Map 61-3 ((6)) 33, for the construction of a single-family dwelling located 13.0 feet from the eastern side lot line and 11.0 feet from the western side lot line, pursuant to Section 18-401 of the Fairfax County Zoning Ordinance, staff recommends that the Board condition the approval by requiring conformance with the following development conditions:

1. This variance is approved for the single family dwelling as shown on the plat titled, "Variance Plat, Lot 33, Mount Pleasant," prepared by Ram L. Prahdan on June 13, 2016, as revised on October 5, 2016, as submitted with this application and is not transferable to other land.
2. These conditions shall be recorded by the applicant among the land records of Fairfax County for this lot prior to the issuance of a building permit. A certified copy of the recorded conditions shall be provided to the Zoning Permit Review Branch, Department of Planning and Zoning.
3. All applicable building permits and final inspections shall be obtained for the single-family detached dwelling.
4. The architectural style shall be generally consistent with the illustrations in Attachment 1 to these conditions.

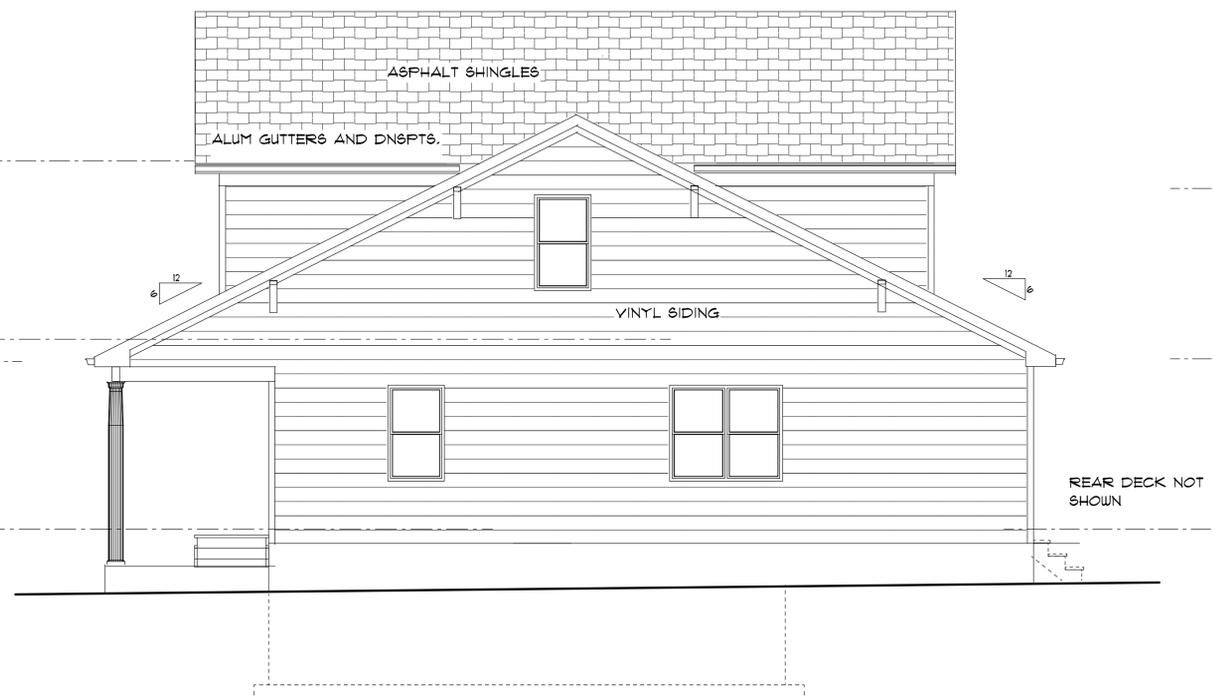
This approval, contingent upon the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations or adopted standards.

Pursuant to Sect. 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 why additional time is required.



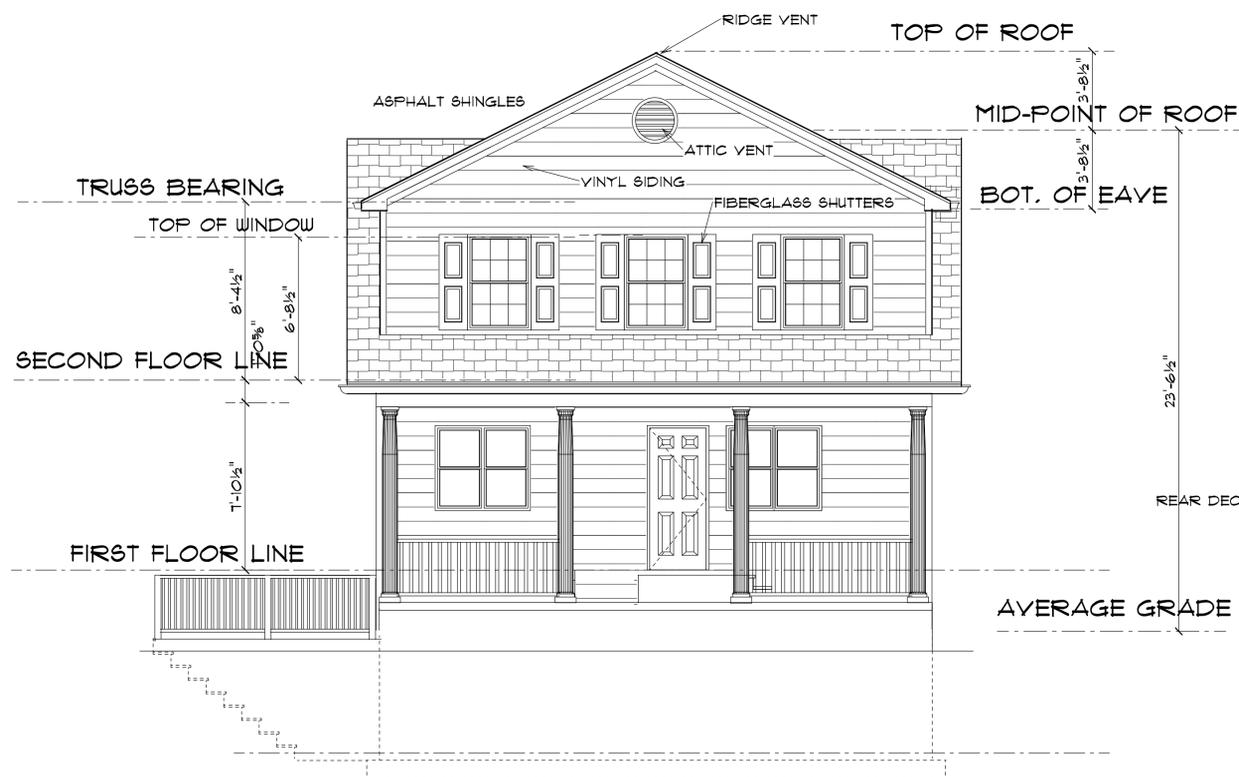
REAR ELEVATION

SCALE: 1/4" = 1'-0"



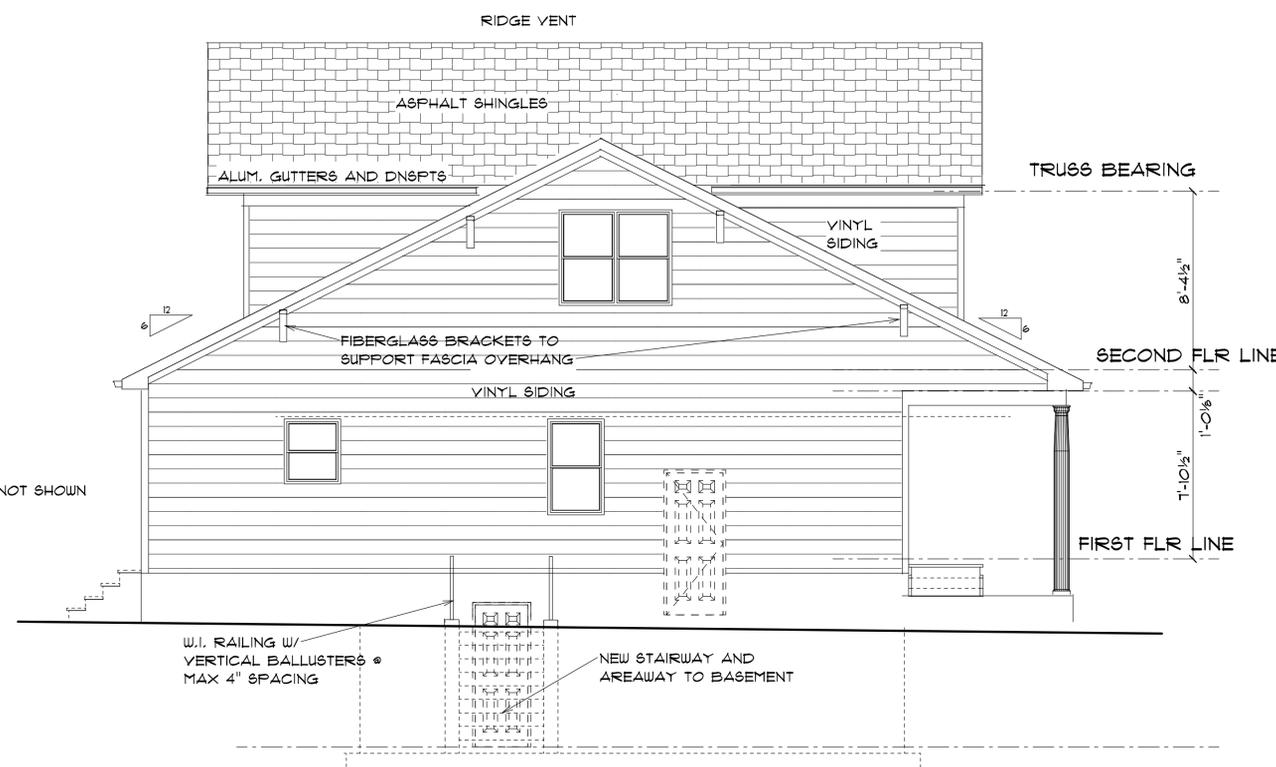
RIGHT SIDE ELEVATION

SCALE: 1/4" = 1'-0"



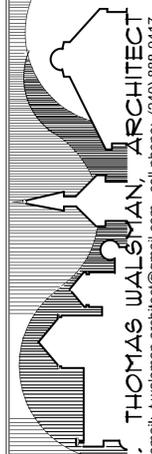
FRONT ELEVATION

SCALE: 1/4" = 1'-0"



LEFT SIDE ELEVATION

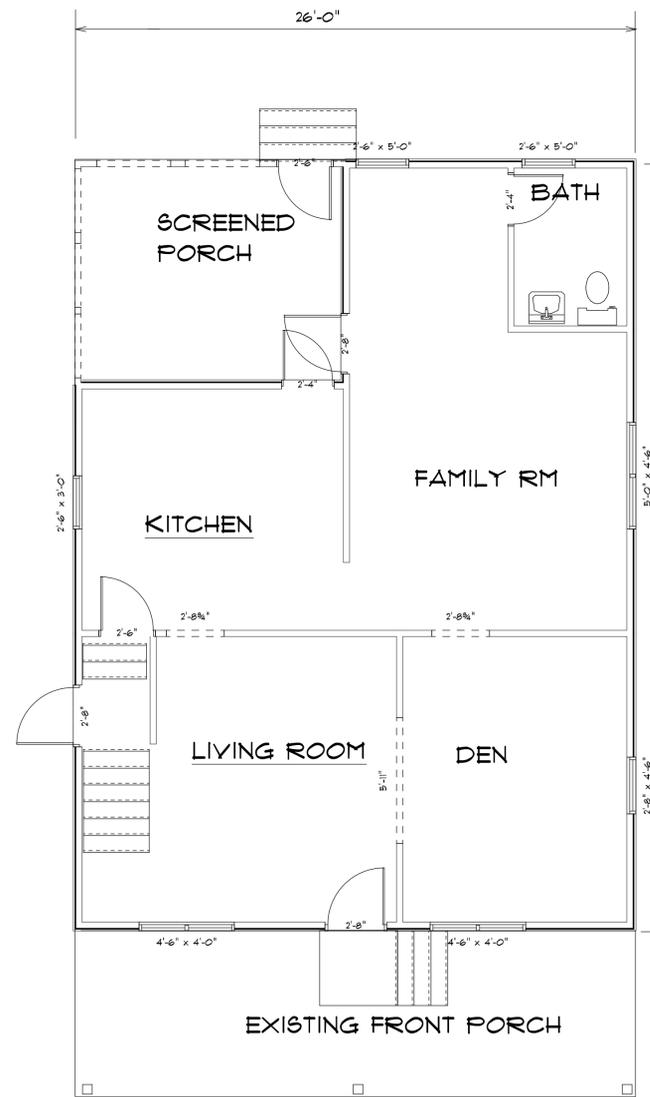
SCALE: 1/4" = 1'-0"



THOMAS WALSHMAN, ARCHITECT
 email: t.walsman.architect@gmail.com cell phone: (240) 888-9417

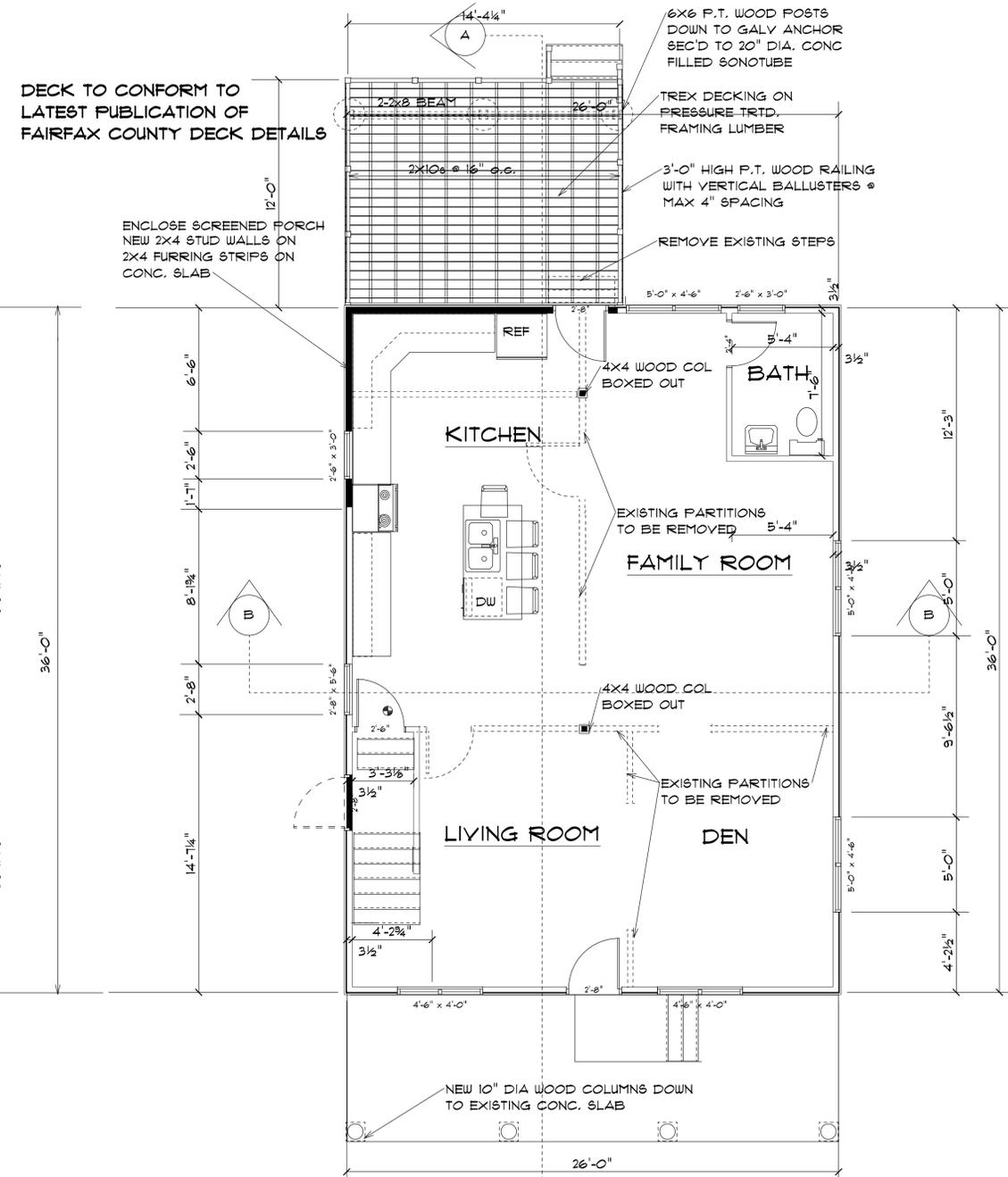
REMODELING OF THE RESIDENCE AT
 6455 HOLYOKE DR., ANNANDALE, VA

PROPOSED BUILDING ELEVATIONS



EXISTING FIRST FLOOR PLAN

SCALE: 1/4" = 1'-0"



PROPOSED FIRST FLOOR PLAN

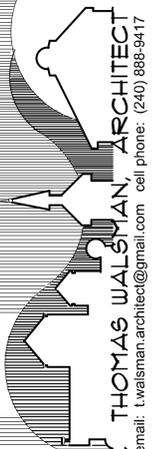
SCALE: 1/4" = 1'-0"

LEGEND

	FLUORESCENT FIXTURE		CABLE OUTLET		BATHROOM EXHAUST FAN
	HVAC DIFFUSER		SWITCH LOCATION		VANITY LIGHT
	TELEPHONE OUTLET		3 WAY SWITCH LOCATION		SCONCE
	ELECTRICAL OUTLET		TYPICAL PARTITION: 1/2" DRYWALL BOTH SIDES ON 2X4s @ 16" O.C.		JUNCTION BOX
	GFI ELECTRICAL OUTLET		TYPICAL 3'-0" X 6'-8" DOOR W/ DOOR SWING SHOWN		
	RECESSED LIGHT		SMOKE DETECTOR		
	SURFACE MTD. LIGHT		CARBON MONOXIDE DETECTOR		
	BATHROOM HEAT/LAMP		CHANDELIER		
	CEILING FAN				

REMODELING OF THE RESIDENCE AT
6455 HOLYOKE DR. ANNANDALE, VA

EXISTING AND PROPOSED FIRST FLOOR PLANS



THOMAS WALSMAN, ARCHITECT
email: Lwalsman.architect@gmail.com cell phone: (240) 888-9417

5-29-2015

A-2

RECEIVED
 Department of Planning & Zoning
 JUN 27 2016
 Zoning Evaluation Division

June 25, 2016

Debbie Pemberton
 Senior Applications Acceptance Planner
 Special Projects/Applications Management Branch, ZED
 Fairfax County Department of Planning and Zoning
 12055 Government Center Parkway, Suite 801
 Fairfax, Virginia 22035-5509

Statement of Justification

Re: Reduction of side yard from 15 feet to 10 feet (33.3% reduction).

Property Address: 6453 Holyoke Drive, Annandale, Va 22003.
Tax Map: 61-3-((06))-33.

Sub: Ordinance 18-404 Required Standards For Variance (Effective July 1, 2015)

This statement is made to express purpose of seeking a grant variance by BZA with regards to reduction of the side setbacks by 33.3% or 5 feet. The property is zoned R-2. The required side setback is 15 feet. However the proposed setback is 10 feet.

I hereby affirm and attest to the following:

Part A:

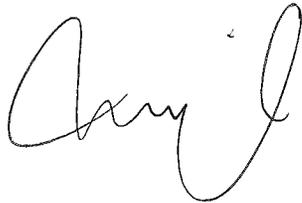
The proposed 2 story dwelling is ordinary on story dwelling. The lot is substandard lot having 50 feet wide lot. If I have to provide 15 feet from each side the proposed dwelling width is 20 feet only. It does not look like a single family dwelling and does not match with the houses in the neighbor lots. For standard lot to qualify for R-2, the minimum width of the lot must be 100 feet. The strict application of ordinance 18-404 as amended would produce considerable expense and undue hardship to me for building a new house. I believe granting the variance will alleviate a minimal width for building a single family dwelling and matching with size and width of the house in neighbor lot.

Part B:

1. I acquired the property in good faith. Since this lot is substandard and created before the zoning ordinance effective. I did not create any hardship that relates to this application for variance;

2. The granting of variance will not be substantial detriment to adjacent property and nearby property in the proximity of the geographical area. The existing structures on neighbor lots have similar conditions in term of side setbacks;
3. 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;
4. 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
5. The relief or remedy sought by the variance application is not available through a special exception (or special permit) or the process for modification of the zoning ordinance at the time of the filing of the variance application.

The property is currently vacant. This site is located residential area of Annandale. The site contains 9,504 sf (0.2182 ac) of land, lot width 50 feet and is zoned R-2. This lot is interior lot. This lot is a substandard lot. The minimum area width required for the standard lot to qualify for R-2 zone is 18,000 sf and 100 feet. The lot area and width is substantially less than that of the standard lot. We would like to request you for granting variance pursuant to section 18-404 for reduction of side setbacks (33.3%) from 15 feet to 10 feet on both side of the property. If you have further questions please call us at 703-501-5252.



Sincerely,

Deyi Awadallah
6453 Holyoke Drive
Annandale, Va 22003
Phone:703-501-5252

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

SPECIAL PERMIT/VARIANCE AFFIDAVIT

DATE: 12-21-2015
(enter date affidavit is notarized)

132308

I, Deyi S Awadallah, do hereby state that I am an
(enter name of applicant or authorized agent)

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

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

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

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

NAME (enter first name, middle initial, and last name)	ADDRESS (enter number, street, city, state, and zip code)	RELATIONSHIP(S) (enter applicable relationships listed in BOLD above)
Deyi S Awadallah		Owner / applicant
Inova Engineering Consultants Inc Ran L. Pradhan	25209 Larks Terrace South Riding VA 20152	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)

Page Two

SPECIAL PERMIT/VARIANCE AFFIDAVIT

DATE: 12-21-2015
(enter date affidavit is notarized)

132308

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)

Inova Engineering Consultants Inc
25209 Larks terrace
South Riding VA 20152

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)

Deyi S Awadallah
Ram L Pradhan

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

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

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

Page Three

SPECIAL PERMIT/VARIANCE AFFIDAVIT

DATE: 12-21-2015
(enter date affidavit is notarized)

132308

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

PARTNERSHIP INFORMATION

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

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

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

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

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

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

Page Four

SPECIAL PERMIT/VARIANCE AFFIDAVIT

DATE: 12-21-2015
(enter date affidavit is notarized)

132300

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: 12-21-2015
(enter date affidavit is notarized)

132300

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

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

none

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

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

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

WITNESS the following signature:

(check one)

Applicant

Applicant's Authorized Agent

Deji S Awadallah owner
(type or print first name, middle initial, last name, and title of signee)

Subscribed and sworn to before me this 21 day of December 2015, in the State/Comm. of Virginia, County/City of Fairfax.

Jellen Merrill
Notary Public

My commission expires: 12/31/19



de



County of Fairfax, Virginia

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

Lot Validation

Lot Validation Number **956-LV-002-1**

RECEIVED
Department of Planning & Zoning
JAN 11 2016
Zoning Evaluation Division

Property Tax Map Number: 061-3-06-0033
Property Address: 6453 Holyoke Drive
Applicant's Name: Deyi Awadallah
Applicant's Address: 3201 Magnolia Avenue
Applicant's Email: dsaproperties@gmail.com
Applicant's Phone Number: 703-501-5252
Current Zoning: R-2
Magisterial District: Mason
Subdivision Name: Mt. Pleasant

The Department of Public Works and Environmental Services have reviewed the subject lot for compliance with the Fairfax County Subdivision Ordinance. Based on a search of the pertinent deed information associated with this lot, it appears that the subject lot was created and recorded on 2/06/1925, in Liber Book K9, Page 518. From a subdivision perspective, this action is described as one of the following:

- X SLS/11/30/2015 Recordation of a metes and bounds description or plat prior to September 1, 1947.
 Initials/Date
- _____ Recordation of a deed and plat in compliance with the Subdivision Ordinance
 Initials/Date in effect at the time.
- _____ Recordation of a metes and bounds description or plat after September 1,
 Initials/Date 1947 and at least on March 25, 2003, or thereafter the subject lot has been
 included on the Fairfax County Real Property Identification Map as a separate
 lot and has been taxed as a separate lot.
- _____ None of the above. See below.

The Zoning Administration Division, Department of Planning and Zoning (DPZ) have reviewed the subject lot for compliance with the applicable requirements of the Fairfax County Zoning Ordinance. The subject lot is currently zoned R-2 which district requires a minimum lot area of 15,000 sq. ft. and a minimum lot width of 100 feet. The subject lot has a lot area of 9,504 sq. ft. and a lot width of 50 feet.

— The subject lot meets the current Zoning Ordinance requirements for lot area and lot width.

Department of Public Works and Environmental Services
Capital Facilities, Utilities Design and Construction Division, Land Survey Branch
12000 Government Center Parkway, Suite 147
Fairfax, VA 22035-0088
Ph. 703-324-5151, TTY 1-800-828-1120, Fax 703-324-5575
www.fairfaxcounty.gov

The subject lot does not meet the current Zoning Ordinance requirements for lot area and/or lot width. However, the grandfathering provision of Sect. 2-405 of the Zoning Ordinance is applicable based on DPZ research that indicates that the lot met the applicable Zoning Ordinance requirements, with regard to lot area and lot width, when created/recorded or such creation/recordation predated the first Zoning Ordinance (March 1, 1941).

The subject lot does not meet the current Zoning Ordinance requirements for lot area and/or lot width and did not meet such requirements at the time it was created. However, the grandfathering provision of Section 2-405 of the Zoning Ordinance is applicable based on DPZ research that indicates that the lot contained a principal structure on March 9, 2004, that was occupied or had been occupied at any time between March 9, 1999 and March 9, 2004, or is under construction pursuant to a building permit and that a Residential or Non-Residential Use Permit will be issued within 12 months after March 9, 2004.

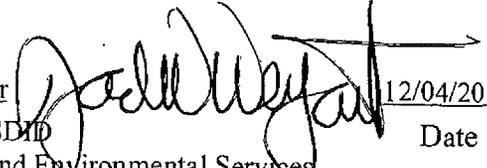
The subject lot does not meet the current Zoning Ordinance requirements and did not meet the applicable lot area and/or lot width requirements when the lot was created or any time thereafter. A separate letter from the DPZ, explaining this noncompliance will be subsequently issued.

Reviewing Authority: Megan Duca 12/3/2015
Zoning Administration Division Date
Department of Planning and Zoning

Based on the foregoing the following is applicable to the subject lot:

The subject lot is considered a valid lot under the Subdivision Ordinance and a building permit may be issued for the development of a use permitted by right, by special permit or by special exception on the lot, provided all County and applicable Zoning Ordinance regulations, including minimum yard requirements, are met.

The subject lot is an **outlot** under the Subdivision Ordinance and does not constitute a buildable lot.

Approving Authority: Jack W. Weyant, P.E., Director  12/04/2015
Land Development Services, SMD Date
Department of Public Works and Environmental Services

PLEASE INCLUDE THIS LOT VALIDATION AS A PART OF ANY FUTURE PLAN SUBMITTALS RELATED TO THE DEVELOPMENT OF THE PROPERTY.

cc: Shahana Khan, GIS and Mapping Services Branch, Department of Information Technology
Andrew Hushour, Deputy Zoning Administrator, Ordinance Administration Branch
Vickie McEntire Anglin, County Surveyor, Land Survey Branch, Utilities Design and Construction Division
Milagros D. Woolson, Department of Tax Administration,
DPZMailforZPRB@fairfaxcounty.gov

TO: Jack Weyant

Department of Public Works and Environmental Services, Fairfax County, Virginia
LOT VALIDATION, (LV) APPLICATION FORM

Please submit this form to:

Customer and Technical Support Center, (CTCS)
Site and Addressing Center Suite 230
12055 Government Center Parkway
Fairfax, Virginia 22035-5504
703-222-0801, TTY 711
<http://www.fairfaxcounty.gov/dpwes/forms>

Lot Validation # ~~080000~~ 956-LV-002

Review Fee Amount: \$444

Date Paid: 11/23/15

Receipt #: _____

The following information is needed in order to complete a request for a LV request for properties located in Fairfax County. Please provide as much information as you have about the parcel in question in order to expedite the research and validation process.

Applicant Information: Please print or type

Applicant's Firm Name: _____

Applicant's Name: Deyi Awadallah

Applicant's Address: 3201 Magnolia Ave

City Falls Church State VA Zip 22041

Phone #: (703) 501 - 5252 Ext. # _____

Email Addresses: dsaproperties@gmail.com

Lot Validation Information

LV Job Location Address: 6453 Holyoke Dr Annandale VA 22003

Property Tax Map Number: 61-3-6--33

Current Zoning: R-2

Magisterial District: Mason

Subdivision Name: mt. pleasant

Deed Book and Page if known: _____

Describe the nature of request or additional information:

determine lot is buildable

RECEIVED

NOV 24 2015

SITE DEVELOPMENT AND INSPECTIONS DIVISION

Applicant/Agent Signature: [Signature] Date: 11-17-2015

1924, each this day personally appeared, before me in my said City and acknowledged the same.

Given under my hand this 13th day of November, 1924.

Charles A. Davis.
Notary Public.

In the Clerk's Office of the Circuit Court of Fairfax County, Va. Nov. 18th 1924.
This deed was received, duly authenticated and admitted to record. (Stamped \$2.00 U. S. S. & C.)

Teste.

F.W. Richardson.
Clerk.

In the Clerk's Office of the Circuit Court of Fairfax County, Va., Feby. 6th 1925.
This deed was received, duly authenticated and admitted to record. (No Stamp required)

Teste.

F.W. Richardson
Clerk.

This Deed of Dedication, Made this 14th day of January, A. D., 1925, by B. M. Smith and Charlotte M. Smith, his wife, the owners and proprietors of the hereinafter described tract of Land.

Done at Court

Whereas the said B. M. Smith and Charlotte M. Smith, his wife, are the owners and proprietors of a certain tract of land situated in Falls Church Magisterial District, Fairfax County, Virginia, which was conveyed to the said B. M. Smith by Laura Etta Crockett and husband by deed dated November 10, 1924 and recorded in Liber K No. 9 page 3 and therein described by metes and bounds as follows to wit:

Beginning at E, a set stone in Andrew Gaine's line, corner to Lot No. 1; thence with Gaine's line, N. 36° 37' E. 24.26 poles to "C", a set gray stone, Gaine's corner in Moore's line; thence with the lands of Moore and Andrew Jackson, N. 25° 14' W. 57.22 poles to "D" a stone on the northeast bank of a ditch, Jackson's corner on the south side of the Old Columbia Turnpike; thence with said Pike S. 54° 41' W. 25.60 poles to "F", a set stone on the southwest side of said Pike, a corner to "No. 1" thence with "No. 1" across the tract S. 37° 22' E. 64.96 poles to the beginning, containing 9 acres 1 rood and 11 poles;

and tract of land being also described by metes and bounds in accordance with recent survey dated December 18, 1924 made by George E. Garrett, civil engineer, as follows to wit:

Beginning at red A on the accompanying plat, an original set stone on the northeast side of Columbia Pike, thence with the northeast side of said Pike North 57° 31' east 422.4 feet to an iron pipe; thence departing from said Pike south 32° 43' 30" east 944.13 feet to an original stone; thence south 39° 10' west 400.29 feet to an iron pipe; thence north 34° 58' 20" west 1071.16 feet to the point of beginning containing 9.311 acres.

And Whereas the said owners and proprietors desire to subdivide the hereinbefore described tract of land into lots and a street in accordance with the annexed plat.

Now, Therefore, This Deed Witnesseth, that the said B. M. Smith and Charlotte M. Smith, his wife, the owners and proprietors of the hereinbefore described tract of land do hereby subdivide said tract of land into lots and a street as shown on

plat of said tract hereto annexed and made part hereof and do hereby dedicate the street shown thereon, said subdivision being known and designated as "Mt. Pleasant", containing thirty-nine lots, numbered from one to thirty-nine inclusive.

And the said B. M. Smith and Charlotte M. Smith, his wife, the owners and proprietors of the hereinbefore described tract of land do hereby state that the annexed subdivision of said tract known and designated as Mt. Pleasant, as appears in the annexed plat is made with the free consent and in accordance with the desire of the undersigned owners and proprietors and in accordance with the provisions of Sections 5217 and 5218 of the 1919 Code of Virginia.

Witness the following signatures and seals.

B. M. Smith. (Seal)
Charlotte M. Smith. (Seal)

State of Virginia, to wit:
County of Arlington,

I, John C. McCarthy a Notary Public in and for the County of Arlington in the State of Virginia aforesaid, do hereby certify that B.M. Smith, and Charlotte M. Smith, his wife, whose names are signed to the foregoing and annexed deed of dedication dated the 14th day of January, A. D., 1925, have acknowledged the same before me in my County and State aforesaid, and that my commission as Notary Public expires Sept. 17th 1926.

Given under my hand this 3rd day of February A. D. 1925.

John C. McCarthy.
Notary Public, Arlington Co. Virginia.

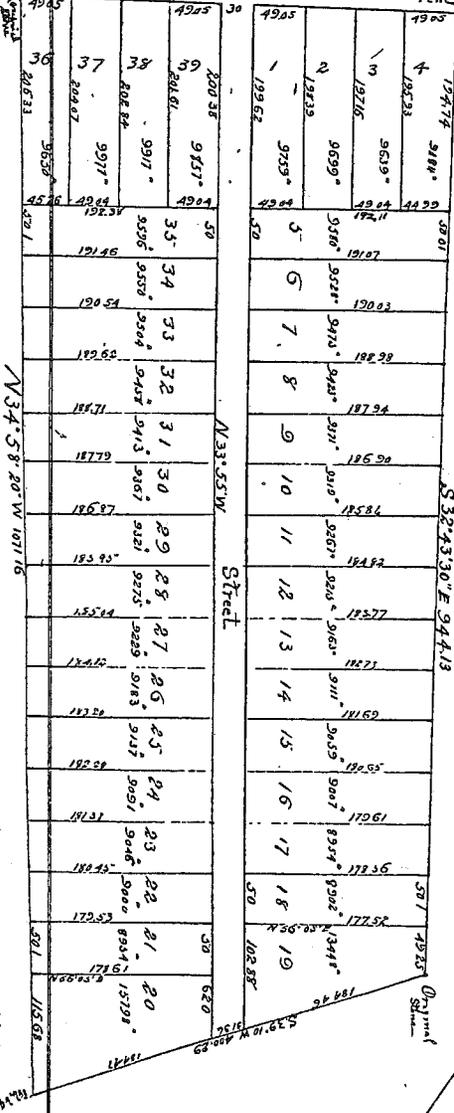
In the Clerk's Office of the Circuit Court of Fairfax County, Va., Feb. 6th 1925.
This deed (with plat attached) was received, duly authenticated and admitted to record. (No Stamp required)

Teste. *Edw. J. Cochran*
Clerk.

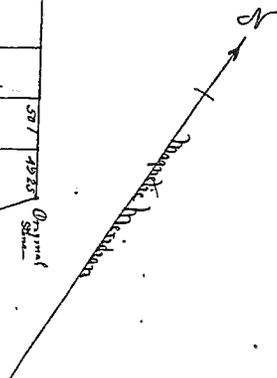
Over for plat.

490
540
1800

Columbia - N57°31'E 482.1 P.R.C.



Plat
Showing Subdivision made for
B.M. Smith
A.M. Deason
Survey for County, Virginia
November 1884.
Scale 1" = 80'
Geo. Bond, Surveyor, Albemarle Co., Va.



N34°58'20"W 1071.6

S32°23'30"E 944.13

Original Survey

Original Survey

Similar Case History

ZAPS - VC - VC 94-M -047

Application Desc ...: PERMIT CONSTRUCTION OF DWELLING 8 FT. FROM SIDE LOT LINES (15 FT. MIN. SIDE YARD REQ.)

APPLICATION
APPROVED

BOS Hearing: 0001-01-01

ZAPS - VC - VC 84-M -144

Application Desc ...: CONSTRUCTION OF DWELLING TO 11 FEET FROM EACH SIDE LOT LINE (15 FEET REQUIRED)

APPLICATION
APPROVED

BOS Hearing: 0001-01-01

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.