



# County of Fairfax, Virginia

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October 26, 2016

## STAFF REPORT

### SPECIAL PERMIT SP 2016-DR-078

#### DRANESVILLE DISTRICT

**APPLICANTS/OWNERS:** Margaret T. Donnelly  
Brian J. Donnelly, Tr

**STREET ADDRESS:** 1909 Kirby Road, McLean, 22101

**SUBDIVISION:** Chesterbrook

**TAX MAP REFERENCE:** 41-1 ((1)) 44A

**LOT SIZE:** 20,291 square feet

**ZONING DISTRICT:** R-1

**ZONING ORDINANCE PROVISIONS:** 8-914, 8-922

**SPECIAL PERMIT PROPOSAL:** To permit a reduction of certain yard requirements to permit the construction of a deck 13.4 feet from a side lot line and to permit a reduction in minimum yard requirements based on an error in building location to permit an accessory structure (gazebo) to remain 4.4 feet from a side lot line

#### STAFF RECOMMENDATION:

Staff recommends approval of SP 2016-DR-078 for the addition with the adoption of the proposed development conditions contained in Appendix 1.

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

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*Sharon E. Williams*

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

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

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

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

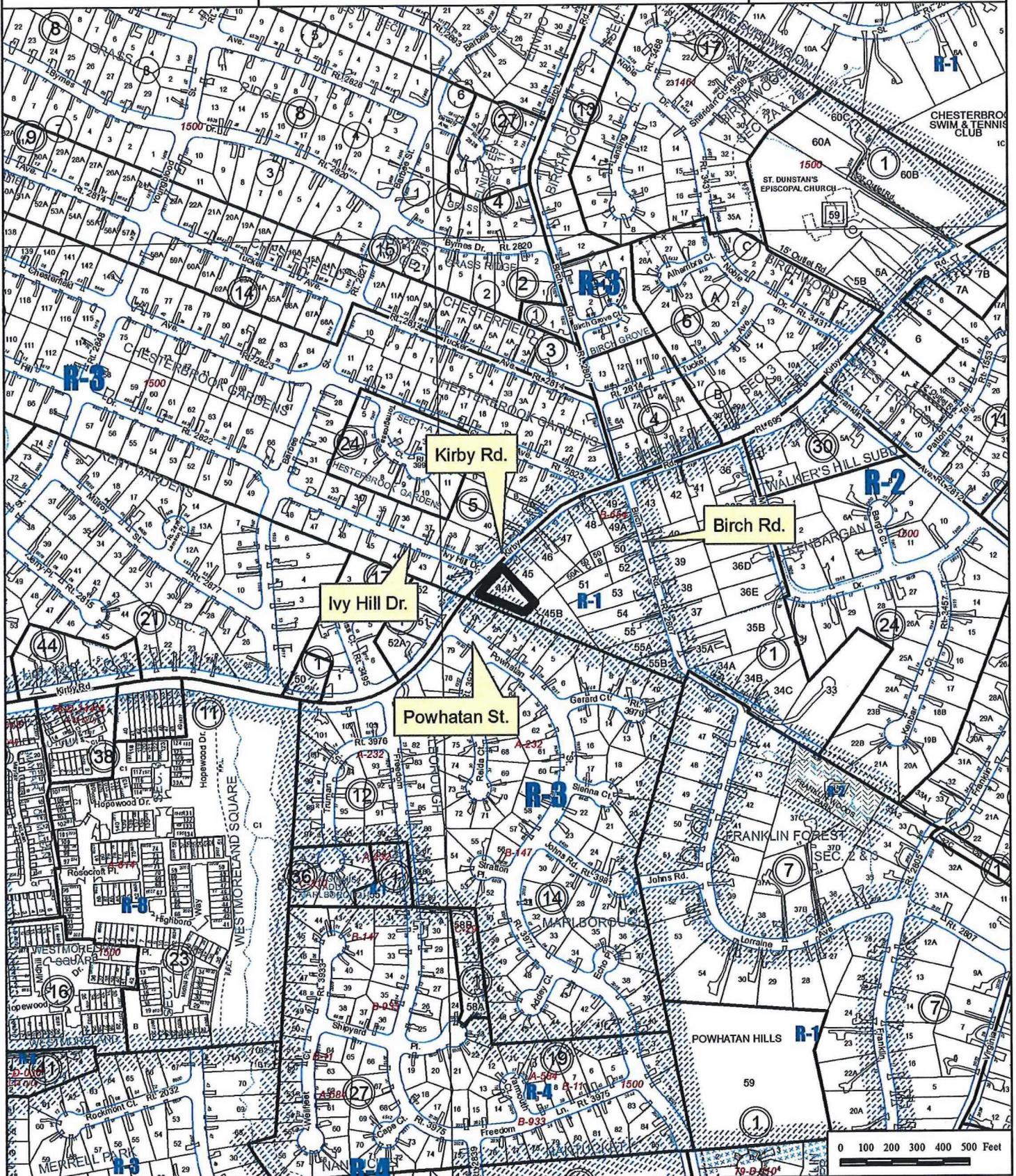


Americans with Disabilities Act (ADA): Reasonable accommodation is available upon 48 hours advance notice. For additional information on ADA call (703) 324-1334 or TTY 711 (Virginia Relay Center).



# Special Permit SP 2016-DR-078

MARGARET T. DONNELLY, TR; BRIAN J. DONNELLY, TR





## SPECIAL PERMIT REQUEST

The applicants are seeking a special permit to allow a reduction of certain yard requirements to permit the construction of a deck 13.4 feet from the side lot line. The proposed deck will be approximately 332 square feet and 9.0 feet tall. The applicants are also requesting a special permit to allow an error in building location to permit a gazbo to remain 4.4 feet from a side lot line.

A copy of the special permit plat, titled "Special Permit Plat on the Property of Margaret T. Donnelly, Tr. and Brian J., Donnelly, Tr.," prepared by Fred Kendall Price on July 20, 2016, as revised on August 20, 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 20,291 square foot application property consists of a two-story single-family detached dwelling. Vehicular access to the dwelling is provided via a semi-circular, asphalt driveway off of Kirby Road. A walkway and stoop provide access to the home. A set of stairs leads from the rear of the dwelling into the rear yard and connects with a stone walkway. A 1.5 foot tall stone retaining wall meanders off of the southeastern corner of the dwelling leading to a stone waterfall and pond along the eastern lot line. A 12.7 foot tall gazebo is located near the southwestern corner of the rear yard. A wood fence of varying heights ranging from 4.0 feet to 6.0 feet encloses the rear yard.

The property is located off of Kirby Road, northeast of Powhatan Street and southwest of Birch Road. The subject property and surrounding properties are zoned R-1 and are developed with single-family detached dwellings.

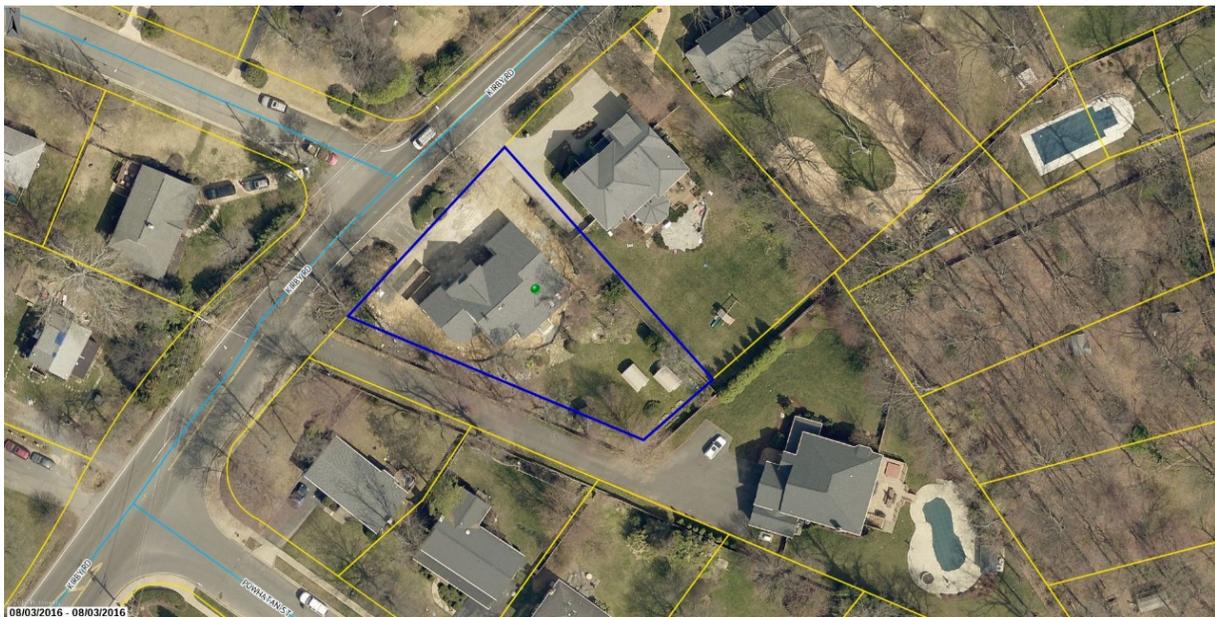


Figure 1: Aerial View

## BACKGROUND AND HISTORY

Fairfax County Tax Records indicate that the applicants purchased the subject property in 1972. In June of 2014 the applicant's filed for a building permit to demolish their existing home and in September of 2014 the applicants built a new single family detached dwelling. (Appendix 4)

According to the applicant's statement of justification the applicants built the gazebo roughly 40-45 years ago. At the time of construction the applicants assumed that a building permit would not be required because the structure would not have water or electricity. The applicants maintain that they were unaware of the locational requirements for accessory structures in Sect. 10-104 (12B) of the Ordinance.

## DESCRIPTION OF THE REQUEST

The applicants are requesting approval of a special permit for a reduction in yard requirements to permit the construction of a deck, located 13.4 feet from a side lot line. In the R-1 District the required side yard is 20 feet; therefore the applicants are requesting a reduction of 6.6 feet, or 33% of the total minimum side yard.

In addition, the applicants are requesting approval of a special permit for a reduction of minimum yard requirements based on an error in building location to permit a gazebo to remain 4.4 feet from a side lot line. With a required side yard of 20 feet, the applicants request a reduction of 15.6 feet, or 78%.

	Structure	Yard	Minimum Yard Required	Proposed Location	Proposed Reduction	Percentage of Reduction Requested
<b>Special Permit (50%)</b>	Deck	Side	20.0 feet	13.4 feet	6.6 feet	33%
<b>Special Permit (Error)</b>	Gazebo	Side	20.0 feet	4.4 feet	15.6 feet	78%

The proposed deck would be approximately 332 square feet in size and 9.0 feet in height, located in the side yard of the property. According to the applicants, the proposed deck will be made with recycled materials with LED lights leading to the ground for safety purposes.



Figure 2: Existing Gazebo

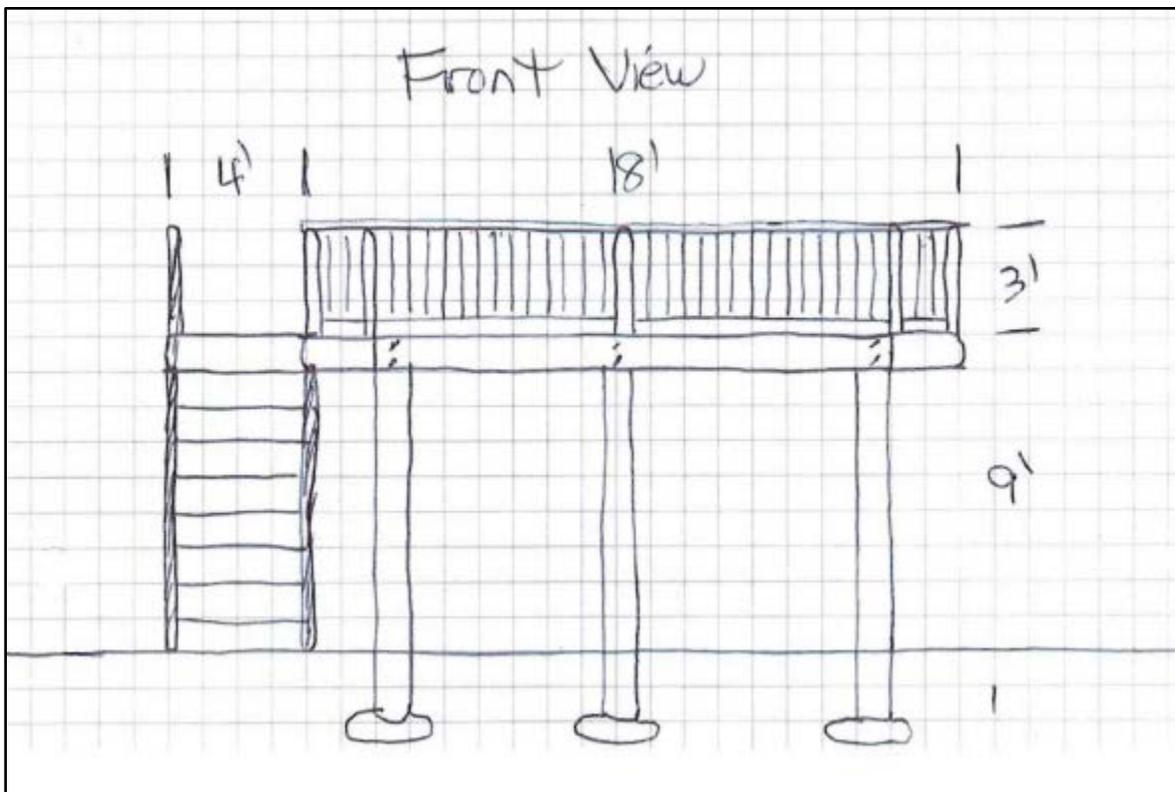


Figure 3: Proposed Elevation

**ANALYSIS**

**Comprehensive Plan Provisions**

**Plan Area:** Area II, McLean Planning District  
**Planning Sector:** Kirby Community Planning Sector (M3)  
**Plan Map:** Residential, 1-2 dwelling units per acre

**Zoning District Standards**

<b>Bulk Standards (R-1)</b>		
<b>Standard</b>	<b>Required</b>	<b>Provided</b>
Lot Size	36,000 sf.	25,288 sf. <sup>1</sup>
Lot Width	Interior: 150 feet	N/A
Building Height	35 feet max.	>35 feet
Front Yard	Min. 40 feet	40.1 feet
Side Yard	Min. 20 feet	20.1 feet
Rear Yard	Min. 25 feet	104.3 feet

<sup>1</sup>The subject parcel was legally created prior to the 1978 Zoning Ordinance; therefore, although the parcel does not meet the Ordinance requirements, it is grandfathered as a legal, buildable lot under the provisions of Sect. 2-405 (Appendix 4)

**Zoning Ordinance Requirements (Appendix 5)**

- Sect. 8-006 General Special Permit Standards
- Sect. 8-903 All Group 9 Uses
- Sect. 8-914 Provisions for Approval of Reduction of the Minimum Yard Requirements Based on an Error in Building Location
- Sect. 8-922 Provisions for Reduction of Certain Yard Requirements

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

<p><b>Standards 1 and 2</b> Comprehensive Plan/ Zoning District</p>	<p>The Comprehensive Plan recommends residential uses and the property is developed with a residential use. The R-1 District allows a reduction in minimum required yards with special permit approval.</p>
<p><b>Standard 3</b> Adjacent Development</p>	<p>In staff's opinion, the proposed deck will not hinder or discourage use or development of neighboring properties or negatively affect value. The proposed deck abuts a 27 foot wide pipestem driveway which provides access to Lot 45B. In addition, there is mature vegetation along the western side lot line that can help screen the proposed deck. The deck will also be located behind the dwelling so that it will not be visible from the street.</p>

<p><b>Standard 4</b> Pedestrian/Vehicular Traffic</p>	<p>No increase in vehicular or pedestrian traffic is expected with this application. In staff's opinion, the proposed deck is not hazardous and does not conflict with existing and anticipated traffic in the neighborhood.</p>
<p><b>Standard 5</b> Landscaping/Screening</p>	<p>Mature vegetation provides adequate screening of the western portion of the property. A 4.0 foot tall wood fence is located along the property boundaries.</p>
<p><b>Standard 6</b> Open Space</p>	<p>There is no prescribed open space requirement on individual lots in the R-1 District.</p>
<p><b>Standard 7</b> Utilities, Drainage, Parking, and Loading</p>	<p>There are no changes to the utilities, drainage and parking serving the property or use.</p>
<p><b>Standard 8</b> Signs</p>	<p>No signage is proposed.</p>

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

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

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

<p><b>Standard 1</b> Yard Requirements Subject to Special Permit</p>	<p>A. <i>Minimum required yards – Yards not less than 50% of the requirement and not less than 5 feet: N/A</i>                  B. <i>Pipestem lots – N/A</i>                  C. <i>Accessory structure locations – N/A</i>                  D. <i>Extensions into minimum required yards allowed by Sect. 2-412: The proposed deck would be located 13.4 feet from the side lot line. The required side yard in an R-1 District is 20 feet, resulting in a reduction of 6.6 feet, or 33%.</i></p>
<p><b>Standard 2</b> Not a Detached Structure in a Front Yard</p>	<p>This application does not propose a detached accessory structure in a front yard.</p>
<p><b>Standard 3</b> Principal Structure that Complied with yard Requirements When Established</p>	<p>When the existing structure was built in 2014, it conformed to all applicable requirements at that time.</p>

<p><b>Standard 4</b> Addition No More than 150% of Existing Gross Floor Area (GFA)</p>	<p>The proposed deck is not an addition, therefore this standard is not applicable.</p>
<p><b>Standard 5</b> Accessory Structure Subordinate in Purpose, Scale, Use, and Intent</p>	<p>The proposed deck will be subordinate in purpose, scale, use and intent of the principal dwelling. The deck is proposed to be 9.0 feet in height which is lower than the existing roofline of the dwelling.</p>
<p><b>Standard 6</b> Construction in Character with On-Site Development</p>	<p>The proposed deck will be constructed on the southwest corner of the dwelling. The statement of justification and elevation drawings indicate that the materials, size and scale of the proposed deck would be compatible with the existing dwelling.</p>
<p><b>Standard 7</b> Construction Harmonious with Off-Site Development</p>	<p>Through the statement of justification, aerial photography, photos and architectural elevations submitted by the applicant, staff has determined that the deck is similar in nature to that of surrounding dwellings. As previously stated, the proposed deck abuts a pipestem driveway and is screened by mature vegetation along the western lot line. Additionally, only a small portion of the propose ddeck is encroaching into the setback. Staff believes this addition will be harmonious with surrounding uses and meets this provision.</p>
<p><b>Standard 8</b> Construction Shall Not Adversely Impact Adjacent Properties</p>	<p>Staff believes that the proposed deck will not significantly affect the use and/or enjoyment of any adjacent property with regard to issues such as noise, light, air, or safety. DPWES has indicated that there are no drainage complaints on file related to this property. Staff believes the deck will not significantly increase runoff or erosion.</p>
<p><b>Standard 9</b> Represents the Minimum Amount of Reduction Necessary</p>	<p>Staff believes the special permit application proposal is modest in nature and is the minimum amount of reduction necessary due to the size and shape of the lot. The property has an angled western side lot line and the dwelling was built to the setback line along the sides and the front, leaving no room for additions or improvements to the sides of the dwelling. Additionally, a majority of the proposed deck is within the setback; only a small portion of the deck (~64.0 square feet) including the stairs encroaches into the setback.</p> <p>Other issues of yard determination, environmental characteristics, slopes, wells, floodplain and/or Resource Protection Areas and historic resources are not applicable to this site.</p>
<p><b>Standard 10</b> BZA May Impose Conditions</p>	<p>Proposed development conditions are included in Appendix 1.</p>

<b>Standard 11</b> Submission Requirements	A copy of the plat is included in the beginning of this report.
<b>Standard 12</b> Architectural Elevations	Proposed elevations are included as an attachment to the development conditions in Appendix 1.

## CONCLUSION / RECOMMENDATION

Staff believes that the request for a special permit for reduction in certain yard requirements to permit a deck is in conformance with the applicable Zoning Ordinance provisions with the implementation of the proposed development conditions contained in Appendix 1 of the staff report. Staff recommends approval of SP 2016-SU-078 for the addition with the adoption of the proposed development conditions contained in Appendix 1.

Staff does not make recommendations on building in error applications. However, if it is the intention of the Board of Zoning Appeals to approve the request for a special permit for an error in building location to allow the gazebo to remain 4.4 feet from the side lot line, staff recommends that such approval be made subject to the 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. Building Permit History (Grading Plan and Deed)
5. Applicable Zoning Ordinance Provision

**PROPOSED DEVELOPMENT CONDITIONS****SP 2016-SU-078****October 26, 2016**

If it is the intent of the Board of Zoning Appeals to approve SP 2016-SU-078 located at Tax Map 41-1 ((1)) 44A to permit a reduction of certain yard requirements pursuant to Section 8-922 to permit a deck 13.4 feet from the side lot line and to permit a gazebo to remain pursuant to Section 8-914 of the Fairfax County Zoning Ordinance, staff recommends that the Board condition the approval by requiring conformance with the following development conditions.

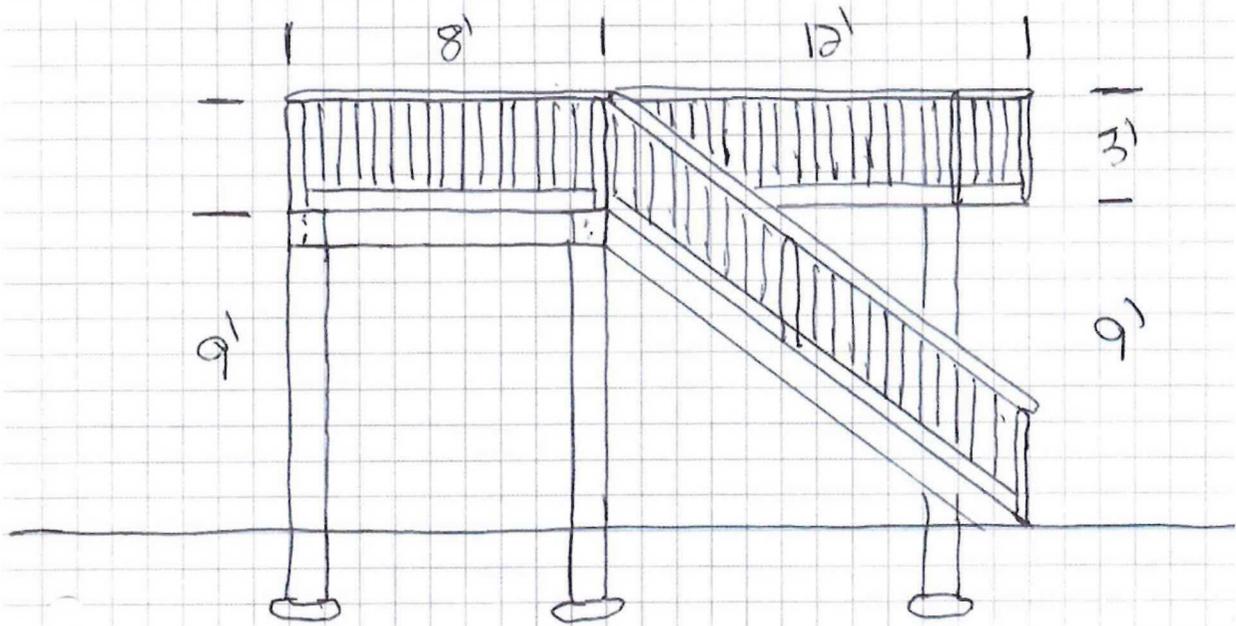
1. These conditions shall be recorded by the applicant among the land records of Fairfax County for this lot prior to the issuance of a building permit. A certified copy of the recorded conditions shall be provided to the Zoning Permit Review Branch, Department of Planning and Zoning.
2. This special permit is approved for the location and size of the gazebo and the deck (332 square feet and 9.0 feet in height), as shown on the plat entitled "Special Permit Plat on the Property of Margaret T. Donnelly, Tr. and Brian J., Donnelly, Tr.," prepared by Fred Kendall Price on July 20, 2016, as revised on August 20, 2016, as submitted with this application and is not transferable to other land.
3. The deck shall be generally consistent with the architectural renderings as shown on 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. 8-015 of the Zoning Ordinance, this special permit shall automatically expire, without notice, thirty (30) months after the date of approval unless construction has commenced and been diligently prosecuted.

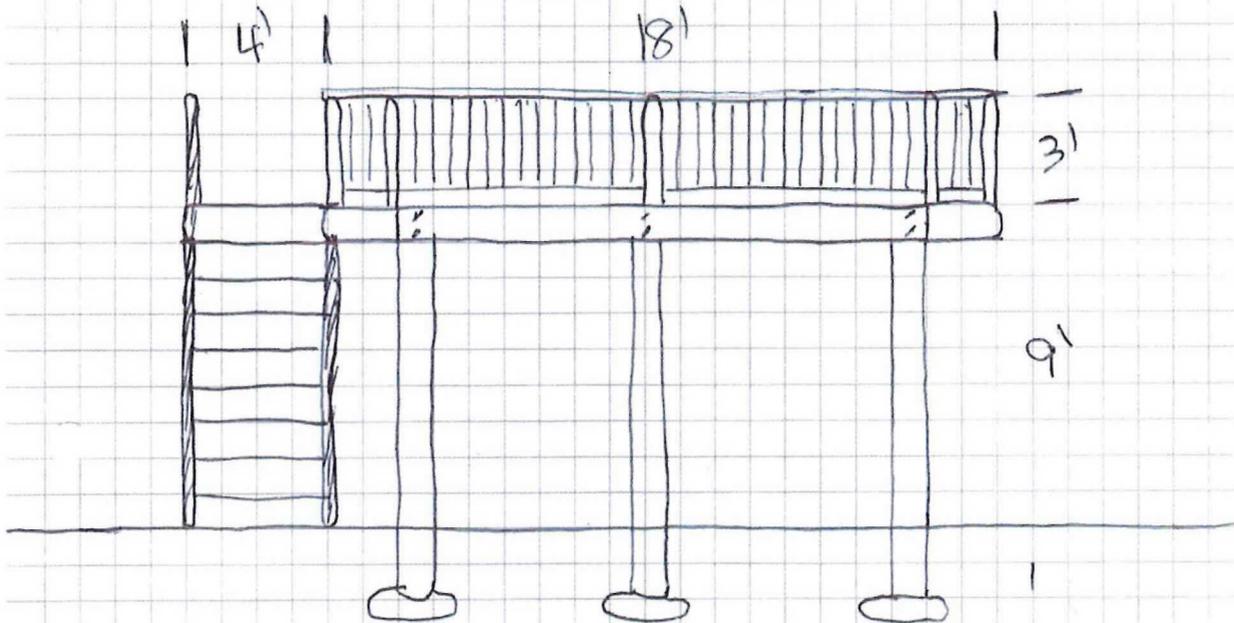
The Board of Zoning Appeals may grant additional time to establish the use if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the special permit. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Brian Donnelly

Side View



Front View



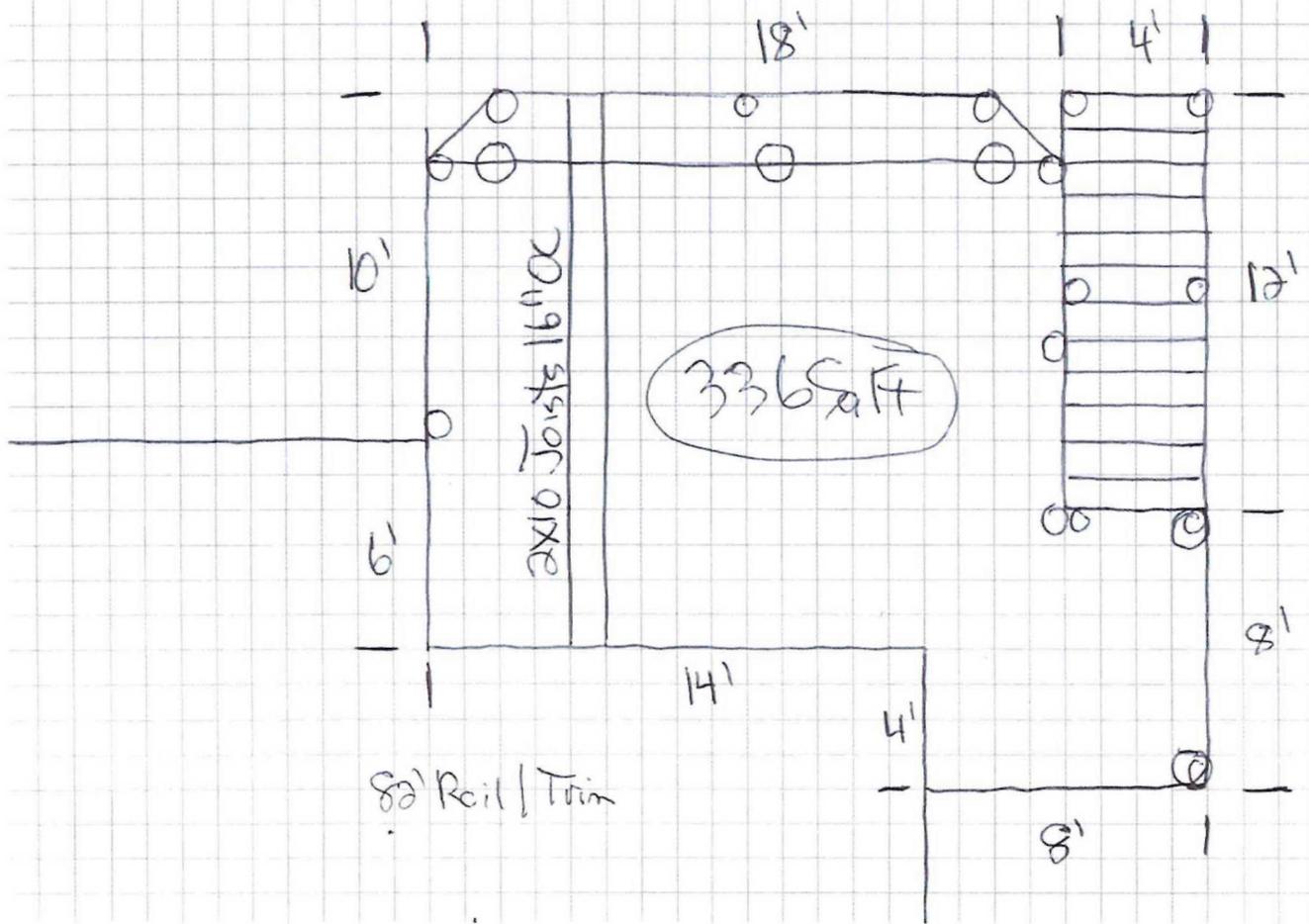
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Department of Planning & Zoning

JUL 06 2016

Zoning Evaluation Division

Brian Donnelly

Top View



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Department of Planning & Zoning

JUL 06 2016

Zoning Evaluation Division

### Justification for Deck

We are requesting that the Board of Zoning Appeals (BZA) approve a special permit to allow a reduction of the 20 foot setback required on lots zoned R-1.

Brian and I have owned this property since 1972. This is our home. In 2014, we began the process to tear down our existing home and build a new house. We did this because we are now elderly. Brian has arthritis in his knees and has had surgery once. I currently have arthritis in both knees and hips. The new house we built allows us to avoid all steps and live on one floor. We made other accommodations in the house, such as wider doors throughout the first floor, that would allow for a wheel chair, should that become necessary.

The proposed deck is a continuation of that concept. It allows us to go outside and enjoy our back yard without going up or down steps. As you can see from the plat and also the attached pictures, we have extensive trees and vegetation throughout the yard. These will remain undisturbed. The proposed deck fits into the Comprehensive Plan which states that "Small areas of open space should also be preserved in already congested and developed areas for . . . visual relief, scenic value, and screening and buffering purposes." The deck would greatly enhance our ability to enjoy our back yard. The deck also provides an easier approach to the back yard, with fewer steps than would be required to go down the basement steps and then up more steps to reach ground level. There is also a safety feature in the deck, in that it would give us another way to leave the house quickly if there was a fire.

The General Submission Requirements call for information on the :

A. Type of operations--private residential deck;

B. through E. not applicable, since the deck will not be used for business purposes;

F. The vicinity to be served: privately owned residential area, where most lots are zone R-1 or R-3;

G. Description of building facade and architecture of proposed new buildings or additions: The proposed deck would be 16 ft. x 18 ft. with a 4 ft. by 8 ft. landing and 12, 4 ft.- wide steps with LED lights leading to the ground. It would be built with Trex composite products, made from 95% recycled materials. (See attached contract with Armor Fence for a more complete description of the deck and its substructure.) Also, see attached drawings showing the outline of the deck from the top, front and side. The result will be an attractive addition to the neighborhood.

H. A listing, if known, or all hazardous or toxic substances, or waste: There are no known hazardous or toxic substances, or waste.

I. The proposed deck will conform to the provisions of all applicable ordinances, regulations, adopted standards and any applicable conditions.

### 8-922.- Provisions for Reduction of Certain Yard Requirements

The property on 1909 Kirby Road meets the requirements under Section 8-922, 1.D. Regulations state that the BZA may approve a special permit as long as the extension does not exceed the applicable distances set forth in Sect. 2-412 by more than 50 percent. Although our lot is only .48 of an acre, it carries the R-1 rating which is usually reserved for lots of one acre. The R-1 zoning requires a side yard setback of 20 feet. The proposed deck extends only a little over 6 1/2 feet into the setback requirements, at its maximum point. In addition, as shown

on the plat, the 6 1/2 foot extension diminishes to 0 where the deck approaches the house, because of the angle of the property line. In fact, the deck itself (excluding the stairs ) extends slightly more than 2 feet into the setback area. No other setback areas are affected.

2. The proposed deck will not be located in the front yard.

3. The lot contains a house and the use complies to the minimum yard requirements in effect when the structure was established.

4. The proposed deck, with an area of 332 sq. ft., represents a about 7 percent of the floor area of the original house and garage.

5. The proposed deck is intended for personal use only and is subordinate in purpose, scale, use and intent to the existing house.

6. The size and height of the deck is appropriate for an attachment to the existing house. The house is 29.6 ft high and the deck would be situated at the point even with the first floor level, approximately 9 ft. off the ground. The railing of the deck would be 3 ft. above the floor. The house is a little less than 75 ft. wide and, although the deck intrudes into the set back area (which the house does not), the proposed deck is 18 ft. wide and completely behind the house, not visible from the street.

7. The proposed deck is in character with the neighborhood where most of the lots are zoned either R-1 or R-3. Our neighbor at 1907 Kirby Rd. has a patio that is 240 sq. ft. and their neighbor at 1905 Kirby has an open porch of 230 sq. ft. and a screened porch of 72 sq. ft. The property at 1911 Kirby Road has a patio of 304 sq. ft. and a deck of 416 sq. ft. Around the corner, the property on 1923 Powhatan Street has an enclosed porch of 280 sq. ft. Existing vegetation and trees will be preserved.

8. The proposed deck would not adversely impact the use and enjoyment of any adjacent property with regard to issues such as noise, light, air, safety, erosion, and storm water runoff. There are only two adjacent properties, 1907 and 1911 Kirby Road. The deck would be on the opposite side of the our house from the 1907 neighbor. The owner of the property at 1911 Kirby Road has a pipe stem driveway that would run along the side of the proposed deck. The house, itself, is behind our property, more than 90 feet from the proposed deck. As you can see from the pictures as well as the plat, our neighbors installed fences to ensure their privacy. There is a solid wood fence between our property and the pipe stem driveway and another fence on the far side of the driveway, providing those neighbors living on Powhatan Street privacy. The distance from the deck to our property line would be approximately 13 ft., adding 30 ft. for the pipe stem driveway, and the 25 foot setback requirement for a back yard of properties zoned R-3, the distance from the proposed deck to the house on Powhatan Street would be 72 ft. In addition, we have shrubs and trees already planted along the fence lines which serve as a buffer zone to filter noise, light, air and would prevent erosion and storm water runoff. The neighbors on Ivy Hill Dr. will not be able to see the deck because of its location behind the house.

9. The proposed reduction is the minimum amount of reduction necessary to accommodate the proposed structure. The existing house has a door from the family room that would be used to reach the deck. At present the door is blocked. There is no other door on the first level that accesses the back yard. If the proposed deck was placed further to the right (as you face the back of the house), it would cover a window that could be used as an emergency exit and a door that is the only door from the basement to the back yard. In addition, if the deck were extended further back in the yard, in lieu of the proposed width, substantial shrubs and flower beds

would be destroyed and the already existing stone walkway, which provides access to the back yard, would have to be removed.

12. Attached are depictions of the proposed structure as viewed from all lot lines. The structure will not be visible from the street. The attached contract from Armor describes the building materials that will be used. There will be no roof, windows nor any change in the present landscaping or screening.

## Justification for Gazebo

We are requesting that the Board of Zoning Appeals approve a special permit for reduction to the minimum yard requirements based on error in building location.

The structure in question is a gazebo. It is small, less than 78 sq. ft. in area. We do not know when the gazebo was built, but our best estimate is 40 to 45 years ago. Our oldest son, who is now 38, was christened in the gazebo, and it was not new then. The gazebo holds many cherished memories. Not only was our son christened there, but friends were married there, and in one instance, the gazebo was the site for a memorial service for a dear friend who had passed away. The gazebo, sitting off in the side of the yard, has been a quiet place where one could enjoy the beauty of the garden. From early spring to late fall, flowers and shrubs are in bloom, creating a pleasant vista and safe haven from the hustle and bustle of suburbia.

Also, a building permit was issued to tear down the old house and build the new one in 2013-14. This 2013 plat clearly states that the structure is a covered gazebo and that it will remain (see attached). Although the height of the gazebo was not on the plat, most gazebos are more than 7 ft. from the ground to the top of the roof, in order to permit an adult to stand up inside the gazebo. The gazebo cannot be moved without tearing it down. Nor can the height be lowered to below 7 ft. because flooring and a roof would leave the inside height of less than 6 ft. , too low for some adults to stand.

The noncompliance was done in good faith. When we built the gazebo we had no idea a building permit was required. We were in our mid 20's and happy owners of our first house. Neither of us had ever lived in Fairfax County prior to buying this home. Since the structure would not have water, electricity, stairs, doors or windows, we assumed that a permit was not required. Our neighbor, who was a small builder in Fairfax County, knew we were building the gazebo. He never mentioned that we needed a permit and never expressed any concern that the gazebo would be located so close to his property line.

The reduction will not impair the purpose and intent of this Ordinance because the proposed use complies with all specified standards and that such use will be compatible with existing or planned development in the general area.

The gazebo is not detrimental to the use and enjoyment of other property in the immediate vicinity. Although the gazebo has stood for more than 40 years, no one has ever complained about it. We doubt that any of our neighbors would even know it is there, if they had never been in our yard. The neighbor behind us is screened by a 100 ft. cedar tree, that has been there about as long as the gazebo. On the southwest side, there is an 8 ft. fence that prevents any neighbors from seeing more than the top cone of the roof. And on the northeast side, there is also an 8 ft. fence and numerous plants and trees that prevent that neighbor from seeing the gazebo. We did not build these fences nor are they on our property. As shown in the attached pictures, the gazebo is not visible from Kirby Road and our neighbors on Ivy Hill cannot see it either. Nor can we see into our neighbors yards from the gazebo.

The gazebo has no impact on the safety conditions of other property nor public streets.

Enforcing compliance on the minimum yard requirement in this instance would cause unreasonable hardship on us. As noted above, we have countless fond memories of events that have taken place over the many years that we have enjoyed the gazebo. The boys made it a temporary play house and played hide and seeks around it. The entire family is emotionally tied to the gazebo. In addition, it would pose a significant financial burden to tear down the existing structure, haul away the debris, and rebuild.



Picture taken from right property line 6/30/2016



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

**SPECIAL PERMIT/VARIANCE AFFIDAVIT**

DATE: 7/26/2016  
 (enter date affidavit is notarized)

135739

I, Margaret T. Donnelly, TR, 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)
Margaret T. Donnelly as Trustee of The Margaret T. Donnelly Revocable Living Trust dated August 30, 2010 for the benefit of: Brian J. Donnelly (spouse)	1909 Kirby Road, McLean, VA 22101	<b>Applicant, Title Owner</b>
Brian J. Donnelly as Trustee of The Brian J. Donnelly Revocable Living Trust dated August 30, 2010 for the benefit of: Margaret T. Donnelly (spouse)	1909 Kirby Road, McLean, VA 22101	<b>Applicant, Title Owner</b>

(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: 7/26/2016  
(enter date affidavit is notarized)

135739

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)

No Corporation or shareholders hold a share in this property

**DESCRIPTION OF CORPORATION:** (check one statement)

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

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

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

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

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

**SPECIAL PERMIT/VARIANCE AFFIDAVIT**

DATE: 7/26/2016  
(enter date affidavit is notarized)

135739

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)

There are no partnerships

(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: 7/26/2016  
(enter date affidavit is notarized)

135739

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: 7/26/2016  
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135739

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

Margaret T. Donnelly  
Margaret T. Donnelly, Title Owner  
(type or print first name, middle initial, last name, and title of signee)

Subscribed and sworn to before me this 26<sup>th</sup> day of July, 2016, in the State/Comm. of VIRGINIA, County/City of FAIRFAX.

Jonathan M. Hernandez  
Notary Public

My commission expires: 10/31/2020

JONATHAN M. HERNANDEZ  
NOTARY PUBLIC  
REG. #7681631  
COMMONWEALTH OF VIRGINIA  
MY COMMISSION EXPIRES OCT. 31, 2020





Given under my hand this 4th day of May, 1931.

Bernice W. Jerman.  
Notary Public.

In the Clerk's Office of the Circuit Court of Fairfax County, Va., May 5, 1931

At 11 O'Clock A. M.

This deed was received, duly authenticated and admitted to record.

Teste.

*Ex*

F. W. Richardson

Clerk.

*6-19-31  
mailed to Grant  
& J. H. Va.  
R. 1*

THIS DEED, made this the 4th day of May, 1931, by and between, George Edward Patrick Kerr, unmarried, party of the first part, and James R. Heath, party of the second part;

WITNESSETH, that for and in consideration of the sum of \$10.00, cash in hand paid, and other good and valuable considerations, the receipt of all of which is hereby acknowledged, the party of the first part does hereby grant, bargain, sell and convey, with GENERAL WARRANTY OF TITLE, unto the party of the second part, those two certain lots or parcels of land located in Providence Magisterial District, Fairfax County, Virginia, which were devised to the party of the first part by the last will and testament of the late Jennie E. Walker, dated October 18th, 1925, and recorded in the Clerk's Office of the Circuit Court of Fairfax County, Virginia, on July 20th, 1927, in Will Book No. 12, page 148 of the will records of said County, and in said will described as containing 7.264 acres and 1.845 acres, respectively, and also being a portion of the land which was devised to the said Jennie E. Walker by the last will and testament of her husband, the late George W. Walker, dated August 22nd, 1908, and recorded in the Clerk's Office of said Court, on May 29th, 1911, in Will Book No. 4, page 552 of the said will records, said land being described as follows:-

FIRST. That certain lot or parcel of land which was conveyed to the said George W. Walker by Elizabeth A. Brown, widow, and the heirs at law of the late John A. Brown, by a deed dated May 21st, 1904, and recorded in Liber Q, No. 6, page 162 of the land records of Fairfax County, Virginia, and in said deed bounded and described as follows:-

"Beginning at a stone shown by said Charles Kirby as his corner on the western edge of land; thence with said --N. 13° 45' W. 51 poles 7 links to a point in the center of the County Road, a corner of No. 5, thence with same S. 71° W. 15 poles 18 links, S. 51-1/4° W. 31 poles 3 links to a stake in said Road and in Kirby's line; thence with said line S. 63 1/2° E. 56 poles 5 links to the beginning, containing 7 acres, 1 rood and 28 poles."

Second. That certain lot or parcel of land, bounded and described as follows:-

"Beginning at "X" on the attached plat, thence in a straight line to "Y" (an iron pipe to be planted) thence N. 51° 22' W. 1643 feet, more or less, to corner of B. F. Johnson; thence N. 16° 9' W. 69.5 feet, more or less, to a black stone; thence S. 52° 2' E. 1642 feet to "X" the point of beginning, being all of that portion of the said parcel or strip of land shown on the attached plat which lies north and west of the line "XY".

Being a portion of the lot or strip of land, described as containing 4 acres and 26 poles, which was conveyed to the said George W. Walker by the widow and heirs at law of the last John A. Brown, by a deed dated May 21st, 1904, and

## **8-006 General Standards**

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

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

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

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

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

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

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

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

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

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

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

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

## 8-922 Provisions for Reduction of Certain Yard Requirements

The BZA may approve a special permit to allow a reduction of certain yard requirements subject to all of the following:

1. Only the following yard requirements shall be subject to such special permit:
  - A. Minimum required yards, as specified in the residential, commercial, industrial and planned development districts in Articles 3, 4, 5 and 6, provided such yards are not subject to proffered conditions or development conditions related to yards and/or such yards are not depicted on an approved conceptual development plan, final development plan, development plan, special exception plat, special permit plat or variance plat.
  - B. Yard regulations for pipestem lots and lots contiguous to pipestem driveways set forth in Sect. 2-416.
  - C. Accessory structure location requirements set forth in Sect. 10-104.
  - D. Regulations on permitted extensions into a minimum required yard as set forth in Sect. 2-412.

Approval of a reduction of yard requirements specified in Paragraphs A, B and C above shall not result in any yard that is less than fifty (50) percent of the requirement and shall not result in any yard of less than five (5) feet, as measured from the lot line to the closest point of the proposed structure.

Approval of a reduction of yard requirements specified in Par. D above shall not result in an extension that exceeds the applicable distances set forth in Sect. 2-412 by more than fifty (50) percent. Where no extension is permitted by the provisions of Sect. 2-412, the BZA shall not approve a special permit that results in a structure that extends into a minimum required yard by more than fifty (50) percent.

2. Such reduction shall not result in the placement of a detached accessory structure in a front yard where the placement of such accessory structure is not otherwise permitted in that yard.

3. This special permit shall only apply to those lots that contain a principal structure and use that complied with the minimum yard requirements in effect when the use or structure was established.
4. The resulting gross floor area of an addition to an existing principal structure may be up to 150 percent of the total gross floor area of the principal structure that existed at the time of the first yard reduction request. In such instance, if a portion of the principal structure is to be removed, no more than fifty (50) percent of the gross floor area of the existing principal structure at the time of the first yard reduction shall be removed.
5. The resulting gross floor area of an existing accessory structure and any addition to it shall be clearly subordinate in purpose, scale, use and intent to the principal structure on the site.
6. The BZA shall determine that the proposed development will be in character with the existing on-site development in terms of the location, height, bulk and scale of the existing structure(s) on the lot.
7. The BZA shall determine that the proposed development is harmonious with the surrounding off-site uses and structures in terms of location, height, bulk and scale of surrounding structures, topography, existing vegetation and the preservation of significant trees as determined by the Director.
8. The BZA shall determine that the proposed development shall not adversely impact the use and/or enjoyment of any adjacent property with regard to issues such as noise, light, air, safety, erosion, and stormwater runoff.
9. The BZA shall determine that the proposed reduction represents the minimum amount of reduction necessary to accommodate the proposed structure on the lot. Specific factors to be considered include, but are not limited to, the layout of the existing structure; availability of alternate locations for the addition; orientation of the structure(s) on the lot; shape of the lot and the associated yard designations on the lot; environmental characteristics of the site, including presence of steep slopes, floodplains and/or Resource Protection Areas; preservation of existing vegetation and significant trees as determined by the Director; location of a well and/or septic field; location of easements; and/or preservation of historic resources.

10. The BZA may impose conditions as it deems necessary to satisfy these criteria, including, but not limited to imposition of a maximum gross floor area, floor area ratio, lot coverage, landscaping and/or screening requirements.
11. Notwithstanding Par. 2 of Sect. 011 above, all applications shall be accompanied by fifteen (15) copies of a plat and such plat shall be presented on a sheet having a maximum size of 24" x 36", and one 8 1/2" x 11" reduction of the plat. Such plat shall be drawn to a designated scale of not less than one inch equals fifty feet (1"= 50'), unless a smaller scale is required to accommodate the development. Such plat shall be certified by a professional engineer, land surveyor, architect, or landscape architect licensed by the State of Virginia. Such plat shall contain the following information:
  - A. Boundaries of entire property, with bearings and distances of the perimeter property lines, and of each zoning district.
  - B. Total area of the property and of each zoning district in square feet or acres.
  - C. Scale and north arrow, with north, to the extent feasible, oriented to the top of the plat and on all supporting graphics.
  - D. The location, dimension and height of any building, structure or addition, whether existing or proposed. In addition, for decks, the height of the finished floor above finished ground level.
  - E. All required minimum yards to include front, side and rear, a graphic depiction of the angle of bulk plane, if applicable, and the distances from all existing and proposed structures to lot lines.
  - F. Means of ingress and egress to the property from a public street(s).
  - G. For nonresidential uses, the location of parking spaces, indicating minimum distance from the nearest property line(s).
  - H. If applicable, the location of a well and/or septic field.
  - I. Existing and proposed gross floor area and floor area ratio.

- J. Location of all existing utility easements having a width of twenty-five (25) feet or more, and all major underground utility easements regardless of width.
  - K. The location, type and height of any existing and proposed landscaping and screening.
  - L. Approximate delineation of any floodplain designated by the Federal Insurance Administration, United States Geological Survey, or Fairfax County, the delineation of any Resource Protection Area and Resource Management Area, and the approximate delineation of any environmental quality corridor as defined in the adopted comprehensive plan, and, if applicable, the distance of any existing and proposed structures from the floodplain, Resource Protection Area and Resource Management Area, or environmental quality corridor.
  - M. Seal and signature of professional person certifying the plat.
12. Architectural depictions of the proposed structure(s) as viewed from all lot lines and street lines to include building materials, roof type, window treatment and any associated landscaping and/or screening shall be provided.