

AGENDA

Spotsylvania County Government
Board of Zoning Appeals
Richard E. Holbert Building
October 20, 2020
7:30 P.M.

1. **Call to Order**
2. **Approval of June 16, 2020 BZA Transcript**
3. **Old Business**

Officer Elections

4. **New Business**

V20-0002: Albert K. Nainoa Jr. and Kathleen A. Nainoa (H. Clark Leming, Leming and Healy, P.C., Agent) request a variance to the ten foot (10') minimum side yard requirement for freestanding accessory structures identified in County Code Sec. 23-5.2.3(7)(B). The variance will reduce the side yard setback by 3'6" to remedy a construction error which placed a detached garage within the required setback. The property is located at 6328 Carter Lane Mineral, Virginia 23117. Tax parcel 54C-1-2. Livingston Voting District.

5. **Announcements**

Revised Bylaws Draft

6. **Adjournment**

In The Matter Of:
BOARD OF ZONING APPEALS
IN RE: ALBERT K. NAINOA, JR. AND KATHLEEN A. NAINOA

June 16, 2020

Commonwealth Court Reporters, Inc.

540-372-6655

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COUNTY OF SPOTSYLVANIA
BOARD OF ZONING APPEALS
PUBLIC HEARING

IN RE: V20-0001

Albert K. Nainoa, Jr. and Kathleen A. Nainoa
(H. Clark Leming, Leming & Healy, P.C. Agent)

A meeting of the Spotsylvania County Board of Zoning Appeals was held at the Richard E. Holbert Building, 9104 Courthouse Road, Spotsylvania, Virginia on Tuesday, June 16, 2020 at 7:30 p.m., before Colleen Good, Certified Court Reporter and Notary Public in and for the Commonwealth of Virginia.

1 MEMBERS PRESENT:

2 Mr. George M. Allen-Vice-Chairman, Berkeley District

3 Mr. Mark Stepongzi, Chancellor District

4 Mr. Larry Bramlette, Courtland District

5 Ms. Nancy Biscoe, Livingston District

6 Mr. Ronnie Hilldrup-Secretary, Salem District

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8 MEMBERS NOT PRESENT:

9 Ms. Lynn Smith, Battlefield District

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11 STAFF PRESENT:

12 Ms. Kimberly Pomatto, Zoning Administrator

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P-R-O-C-E-E-D-I-N-G-S

MR. ALLEN: I'm going to call the meeting to order, it's 7:30. The first item on the agenda is approval of the BZA minutes from the 19, May meeting, 2020. I think all the members present have a copy of that. You may not have had a chance to read through it. Unless there is anything major or glaring in there, I'd entertain a motion to approve the minutes as published.

MR. STEPONGZI: Mr. Chair, I'd like to make one small correction to it on Page 130, Line 20, the question mark after my name, the response I had was, no, nothing, is what it should have been.

MR. ALLEN: Okay, without objection I think we can go ahead and make that change. With that correction noted, do I have a second to the motion?

MS. BISCOE: I second.

MR. ALLEN: All in favor of accepting the minutes as corrected, signify by saying aye.

(All Board Members responded in the affirmative).

MR. ALLEN: Those opposed? Hearing

1 no opposition, the minutes are approved as
2 corrected.

3 Next item on the agenda this public
4 hearing case number V20-0001. This case is with
5 Albert K -- and I hope I pronounce this right --
6 Nainoa, Jr. and Kathleen A. Nainoa, represented by
7 H. Clark Leming, Leming and Healy P.C., Agent.

8 MS. POMATTO: Thank you, Mister
9 Vice-Chairman. I'm going to ask the applicant, I
10 believe has a request regarding the rescheduling
11 of this meeting.

12 MR. LEMING: Good evening,
13 Mr. Chairman and members of the BZA. I did not
14 know there would be just four of you this evening.
15 I have probably done about a hundred BZA hearings
16 and I have never proceeded when there was less
17 than the full BZA here.

18 So as you probably know from the
19 rules, the applicant has to have four votes of the
20 entire BZA, not just those that are attending a
21 particular meeting, so for that reason I request
22 that this hearing be postponed, you know, I want
23 to say until the next time when you think you're
24 likely to have the full BZA here, but I think
25 that's what I have to do under these

1 circumstances, so not that you gentleman wouldn't
2 do us justice, it's just that the odds are so
3 stacked in the other direction, lose one vote and
4 it doesn't pass, so. So that's my request. Thank
5 you.

6 MR. ALLEN: We actually have a
7 quorum, sir.

8 MR. LEMING: Yes, sir, huh-uh.

9 MR. ALLEN: And we have five votes
10 here.

11 MR. LEMING: I'm sorry, are you a
12 member?

13 MS. BISCOE: Yes, I am.

14 MR. LEMING: Then there are two --
15 I'm sorry, you're so far separated that I assumed
16 that there was not a majority. I mean, there was
17 not only four of you here tonight. Okay, so you
18 have two missing.

19 MR. ALLEN: Actually, so that we're
20 clear, one member has resigned and that position
21 has not yet been filled. One member is absent.

22 MR. LEMING: I see, okay.

23 MR. ALLEN: We have five members of
24 the BZA present, representing a quorum, so we can
25 proceed.

1 MR. LEMING: Well, even with five
2 members, my position is still that, you know, I
3 still have to get four of those five votes. So
4 even with -- and hopefully there will be another
5 appointment soon, but, you know, so that's my
6 request.

7 I would point out that with regard to
8 a variance, you know, there are no time limits
9 with regard to filing a variation. We're not
10 operating under any timeline here.

11 So you know, I mean the whole thing,
12 we can start from scratch, but my request is that
13 I have the entire BZA, at least as it is
14 constituted right now for a hearing of this
15 nature.

16 So that's, I'm -- for that reason I'm
17 not prepared to go forward tonight because I don't
18 think it's in the applicant's best interest to do
19 so. Now if that is something contrary to what the
20 BZA is able to do under these circumstances, I can
21 withdraw the variance application and we can start
22 all over, but, you know, hopefully what we can do
23 is come up with a time when you will have at least
24 six of your members here, and, hopefully even a
25 seventh if you get another appointment from -- the

1 Board of Supervisors I think in Spotsylvania
2 County appoints their BZA members and the court
3 concurs. So that's still my request and I just,
4 you know, I don't think it's ever in the
5 applicant's best interest to proceed when they
6 don't have a full BZA. And I would do that
7 whether it was Spotsylvania or any other
8 jurisdiction.

9 MR. ALLEN: I'm going to defer to
10 Ms. Pomatto for some advice here.

11 MS. POMATTO: It's at the Board's
12 decision if you are agreeable to reschedule the
13 hearing at their request.

14 My only comment would be that since
15 it is at their request that they will be
16 responsible for the cost for readvertisement.

17 MR. LEMING: That's fine.

18 MR. ALLEN: Is that acceptable?

19 MR. LEMING: Yes, sir.

20 MR. BRAMLETTE: Mr. Chairman, may I
21 make a statement, please?

22 MR. ALLEN: Yes.

23 MR. BRAMLETTE: Given that we've just
24 received a voluminous document today and really
25 haven't had time to really go over it, it may be

1 in our benefit to postpone it, go through this
2 document so that we would be better prepared.

3 MR. ALLEN: Okay. This was on short
4 notice that we received this, Ms. Pomatto. Did --
5 are the Jacksons present tonight?

6 SPEAKER: Yes, sir.

7 MR. HILLDRUP: The question, sir, is
8 that if the Jackson's are here, are they in
9 agreement to postpone it, too?

10 SPEAKER: I would prefer --

11 SPEAKER: I would love to get this
12 nightmare over with honestly, but, it's at your
13 leisure.

14 MR. HILLDRUP: We've had cases before
15 where we only had five. We've had cases where
16 there is only four of us been here.

17 MR. LEMING: I understand. I think
18 it's the applicant's choice, and with a variance,
19 as I say, and that's my intent today -- if it's an
20 issue for the BZA, then we will withdraw the
21 variance and start again.

22 So I just, I'm not going to proceed
23 without the full BZA. But I think Mr. Bramlette
24 makes a good point because we're seeing these
25 materials for the first time today as well and

1 Ms. Pomatto, they weren't sent to us. They came
2 to us from Ms. Pomatto, so we're seeing them for
3 the first time as well.

4 MR. ALLEN: So the zoning office has
5 just received this also?

6 MS. POMATTO: We received them late
7 yesterday afternoon.

8 SPEAKER: Sir, if I may, this
9 information has been knowledgeable by both parties
10 this entire time. That's all I can assert.

11 SPEAKER: Everything we presented,
12 was -- they had this information.

13 MR. LEMING: It's a little unusual
14 procedure for these people who are here to
15 participate in a hearing to have this ongoing
16 dialogue with the BZA, but the important issue is
17 not whether we know about the documents, we're
18 seeing the ones they've collected today for the
19 first time, but whether you've seen the documents,
20 not us.

21 MR. STEPONGZI: Mr. Chairman, I'd
22 like to suggest that we open up to a motion and
23 then to a vote to see if the Board wants to
24 postpone the public hearing tonight -- next
25 meeting.

1 MR. ALLEN: Okay, in view of the fact
2 that we've just received this, I will entertain a
3 motion from the Board members to delay this
4 hearing until next month or as such time as we can
5 get this back on the docket, to delay this until
6 the next Board meeting so that everyone has the
7 opportunity to read through this document.

8 MR. STEPONGZI: Yes, Mr. Chairman, I
9 so make the motion to delay the meeting until next
10 month or when we have our meeting so we can review
11 the material.

12 MR. ALLEN: Okay, Mr. Stepongzi has
13 moved that we delay this meeting until next month,
14 or until the next regularly scheduled meeting. Do
15 I have a second for that motion?

16 MS. POMATTO: Mr. Chair, I'll just
17 point out that you do have a vacancy right now
18 that needs to be appointed. So there is just,
19 there is no guarantee that that seventh member
20 will be present at that July meeting.

21 MR. ALLEN: Okay. Mr. Leming, do you
22 understand that it may be a case for the same
23 situation next month?

24 MR. LEMING: Six is better than five.

25 MR. ALLEN: Excuse me, sir?

1 MR. LEMING: Six is better than five.

2 MR. ALLEN: Mr. Stepongzi, would you
3 be willing to amend your motion that this would be
4 delayed and should we have the same situation next
5 month, that we only have five members present? I
6 can't guarantee that any other members might be
7 absent next month, and I can't guarantee that
8 we'll have another sitting board member. Do you
9 understand that, Mr. Leming?

10 MR. LEMING: I do. I do understand
11 your position, yes.

12 MR. STEPONGZI: I will amend my
13 motion so that we have, the next meeting where we
14 have a quorum that we will post the hearing, the
15 public hearing.

16 MR. ALLEN: Okay, Mr. Steponoski's --
17 I'm sorry, Mr. Stepongzi's motion that we will
18 delay this meeting until next month, and if we
19 have a quorum that the meeting will then proceed
20 regardless of whether we have a new board member
21 or not, if we have a quorum we will hear the case
22 next month. Do I have a second to that motion?

23 MR. BRAMLETTE: I second it.

24 MR. ALLEN: Mr. Bramlette seconds the
25 motion. All in favor signify by saying aye.

1 MR. BRAMLETTE: Aye.

2 MR. STEPONGZI: Aye.

3 MS. BISCOE: Aye.

4 MR. ALLEN: Aye.

5 MR. ALLEN: All opposed?

6 MR. HILLDRUP: No.

7 MR. ALLEN: The motion is passed 4-1.

8 MR. LEMING: All right, thank you,
9 Mr. Acting Chairman, and hopefully we will see you
10 in July.

11 MR. ALLEN: Ms. Pomatto, will you
12 make sure that all parties are notified of the
13 change in the meeting and being put back on the
14 docket as A20-001- I'm sorry, V20-0001, that will
15 be placed back on the docket to the next regularly
16 scheduled meeting.

17 MS. POMATTO: Yes, sir.

18 MR. ALLEN: Thank you, very much.

19 MS. POMATTO: And Mr. Chair, just so
20 the court reporter can hear everybody when you're
21 speaking, if you'll try to -- either speak louder
22 or maybe remove your mask, use the microphone.

23 MR. ALLEN: I think we're safe with
24 social distancing. We're all more than 6 feet
25 away.

1 Mr. and Mrs. Jackson, I do appreciate
2 you coming tonight and I do appreciate you getting
3 this package to us. I think it will benefit all
4 concerned if the Board has time to read through
5 this package and any -- I know it would help me
6 because there is a couple of places in here that
7 you have highlighted, specifically that portion in
8 the document that says any residential accessory
9 structure may extend into required rear and side
10 yards but shall be located on closer than 10 feet
11 from the rear and side yard lots or in cluster
12 subdivisions no closer than 5 feet from the rear
13 and side yard lot lines.

14 I would like to get a clearer
15 understanding on that from the zoning officer.

16 MS. POMATTO: Okay.

17 MR. ALLEN: And that would give us
18 some time to get that together. I do apologize if
19 this has been an inconvenience for you, but I
20 think it will benefit all parties concerned if we
21 do this next month.

22 SPEAKER: Thank you.

23 MR. ALLEN: Thank you very much.
24 Next item on our agenda is old business, and I
25 know of no old business. Is there any other

1 things that are still pending?

2 MS. POMATTO: No, sir.

3 MR. ALLEN: I'd like to move on then
4 to new business. The only new business that I
5 know of right now is we have an election of
6 officers scheduled for this evening, and again,
7 this would have to do with the members of the
8 Board. We have not yet, my understanding, we have
9 not yet got a replacement?

10 MS. POMATTO: Not yet.

11 MR. ALLEN: I think in deference to
12 our -- our regular policy is that the new incoming
13 member or one of the newer members of the Board is
14 nominated for Secretary, the Secretary is then
15 nominated for Vice-President, or Vice-Chair, and
16 the Vice-Chair is nominated for Chairman.

17 With that understanding I think it
18 would be the best thing to delay our election of
19 officers until next month also.

20 Have we had any indication for a
21 replacement coming from the district?

22 MS. POMATTO: There was a replacement
23 that was recommended, however he sat on the EDA
24 and there was a restriction from a member on the
25 EDA serving on another committee, so it was back

1 to the drawing board.

2 So I know that Mr. Skinner is
3 actively looking for another appointment.

4 MR. ALLEN: Do you know if the Board
5 of Supervisors has gotten or is reviewing any of
6 the resume's for the position?

7 MS. POMATTO: It is not on the agenda
8 for the 23rd to my knowledge. That could change
9 in the next couple of days but not to my
10 knowledge.

11 MR. ALLEN: Okay. Then I would like
12 to entertain a motion that we postpone the
13 election of officers to the next scheduled meeting
14 providing we have a candidate.

15 MS. BISCOE: I make a motion that we
16 wait until our next meeting to elect officers.

17 MR. ALLEN: Okay. Ms. Biscoe has
18 moved that we postpone the election of officers
19 until the next regularly scheduled meeting. Do I
20 have a second?

21 MR. STEPONGZI: I'll second.

22 MR. ALLEN: Mr. Stepongzi seconds.
23 All in favor say aye.

24 (All Board Members responded in the affirmative).
25

1
2 MR. ALLEN: Opposed? Being no
3 opposition the election of officers will be
4 postponed until the next meeting.

5 Next item on here is draft revisions
6 to the bylaws discussion.

7 MS. POMATTO: Yes, sir, so what was
8 included in your packet is the bylaws with track
9 changes that are reflecting -- the revision was
10 really just to memorialize your regularly
11 scheduled meeting of the third Tuesday of the
12 month because it still was referencing the Monday,
13 and through that we did send this over to the
14 county attorney and they made some more clarifying
15 edits, formatting edits.

16 So all of those edits are in that
17 track changes version that you have in front of
18 you, and I had a couple of questions for the Board
19 to consider, and so for this meeting what I was
20 hoping for is just to hear if there is any other
21 substantive changes that you would like to
22 incorporate into this, I can make those changes,
23 send it back over to the county attorney for their
24 blessing and then bring it back to you at the next
25 meeting for your adoption.

1 MR. BRAMLETTE: I'd like to ask a
2 question. On Page 4, one of the items that is
3 listed is actually a question and not a change --

4 MS. POMATTO: Yes.

5 MR. BRAMLETTE: And it has the
6 reference with a situation that we have tonight,
7 where we didn't get documentation until the last
8 minute.

9 MS. POMATTO: Yes. And that was the
10 same situation even last month where there was
11 multiple parties involved submitting information,
12 it was requiring a quick turn around, and
13 depending on the complexity of the case, that can
14 put a lot on -- that's a lot of expectation of the
15 Board to react quickly, so you certainly could
16 incorporate that into your bylaws to set a
17 deadline for materials to be submitted and, you
18 know, should they not meet that deadline and they
19 submit it, that the case then would be postponed
20 to a later meeting.

21 MR. BRAMLETTE: Yes, because we did
22 have to read a bunch in last times, we also had
23 pictures presented last time that we had not seen
24 before. It makes it difficult to sit up here and
25 try to make decisions without having some prior

1 knowledge of what we're looking at.

2 So I am in favor of answering this
3 question as to having the documentation since the
4 submission for discussion but in front of this
5 Board has to be more than 30 days in advance, it
6 would seem like to me that it would be fine to say
7 that you have to have everything ready to go and
8 present it to the Board no later than seven days
9 prior to the meeting.

10 MS. BISCOE: I don't have a copy of
11 the bylaws in my packet here.

12 MS. POMATTO: Let me see if I can get
13 you an extra copy.

14 MS. BISCOE: I had read them but I
15 don't have that tonight.

16 MR. BRAMLETTE: The reason I have it
17 is I'm a hold out as far as, I have difficulty
18 trying to read documents that are on the computer
19 screen and roll up in front of me, so I request
20 that the documents be mailed to me and so --

21 MR. HILLDRUP: I fully understand
22 your problem.

23 MR. STEPONGZI: I definitely do, too.
24 My question was going to be how much lead time
25 have you answered that, do we want to make it

1 shorter? I think seven days is sufficient, but
2 there are times when documents just can't be
3 prepared in about five days.

4 MR. BRAMLETTE: The reason that I
5 said seven days is like I said, I'm somewhat of a
6 hold out in that they have to mail me whatever
7 they have, and so even though they do FedEx it to
8 me or UPS it, they do get it to me very quickly,
9 but it's still a couple of days. So that seven
10 days to them means four days to me, not that I
11 can't read a document in four days.

12 MR. STEPONGZI: You bring up a good
13 question because you're talking about the time
14 when they would have to send it out and allowing
15 us sufficient time, I was thinking they would have
16 to get it to us five days before the hearing which
17 means they would have to get it sooner than that,
18 process it in and then send it out. Because I'm
19 not sure if they can always get it to us within
20 five days before the meeting.

21 MR. BRAMLETTE: I'm very negotiable
22 on that. Like I say, if I've got a document in
23 front of me for something I'm going to do here
24 with the Board, if I've got it the day before I
25 have to come to the Board, so I've got plenty of

1 time to read it, think about what it is actually
2 trying to tell me, then that would be sufficient.
3 So if we said, okay, to me in two days, two days
4 to mail it, four days.

5 MR. ALLEN: Okay.

6 MR. BRAMLETTE: If it was to get the
7 documents to them five days in advance, it would
8 still work.

9 MR. STEPONGZI: Let's then to get it
10 to them and have them send it out at least seven
11 days beforehand, so there would be sufficient time
12 in transit, so that we would have time to read it
13 because there are, sometimes it's better being
14 read hard copy wise than it is electronic.

15 MR. BRAMLETTE: Now a lot of cases,
16 this not being one, tonight's case, generally I go
17 out to the site and look at it, being that this
18 was an open area, so forth, I didn't bother to do
19 that.

20 So like I say, if I've got it two
21 days in advance, I can do whatever I need to do,
22 so if you can get it to me, as long as it's in
23 your possession I would say seven days in front,
24 everybody should be able to meet that time frame?

25 MR. ALLEN: Would you like to qualify

1 that and say seven business days? That adds like
2 two days.

3 MS. POMATTO: That would be helpful.
4 Just as a matter of practice, we always
5 communicate to the applicants when they apply that
6 the staff report, the packet of materials will be
7 published and provided to the BZA member a week
8 ahead of time.

9 So the seven days, or if you want to
10 qualify it with seven business days, that will
11 give us time to incorporate it into that package
12 as supplemental materials for you and hopefully
13 just be, you know, one mailing or one distribution
14 rather than us sending our staff materials and
15 then having to follow-up with a separate mailing.

16 MR. ALLEN: Okay, then I think we're
17 probably pretty much in agreement, so on Page 4, I
18 believe that's item 5, under article 6, does the
19 Board want to establish a deadline for
20 supplemental material to be submitted prior to the
21 public hearing, the answer to that is yes, and if
22 we could make that seven business days.

23 MR. BRAMLETTE: Now I have another
24 issue, this is on Page 1, and it's an
25 understanding issue on my part, the comment reads,

1 does the BZA want the Secretary to be a member of
2 the BZA, State Code allow for a non member to be
3 elected.

4 We have right now, presently, the
5 Secretary is a member of the BZA, so the question
6 then, if I read this correctly, is do we want to
7 eliminate the member and find a non-member to be
8 the Secretary?

9 MS. POMATTO: Right. So if you want
10 to continue as you've practiced with the member
11 being, holding the Secretary position, that's
12 fine. We'll just specify that and make that clear
13 in this language.

14 If you would like a non-member, so
15 that could be a staff person, to serve as the
16 Secretary, we can do that as well. The Planning
17 Commission, for example, their Secretary is
18 actually a staff member. It's not a member of the
19 Planning Commission, so they made that tweak in
20 the code language to allow that option to the BZA
21 as well.

22 But this is not, you know, us saying
23 you should do this or shouldn't do this, we're
24 just wanting to make the bylaws very specific to
25 make it clear that the Secretary is or isn't a

1 member of the BZA.

2 MR. BRAMLETTE: Now let me follow-up
3 then with, then, the non-member Secretary would
4 come from your office?

5 MS. POMATTO: Yes, sir.

6 MR. ALLEN: The only question I have
7 with that is that if the Secretary came from your
8 office, that would be the person that signs the
9 forms, once -- whether we've approved a variance
10 or a waiver, it's whether it was approved or
11 whether it was disapproved.

12 The Secretary of the Board of Zoning
13 Appeals is the person who signs that. Would we
14 have to do anything or does the state law allow
15 for a secretary in your office to sign that?

16 MS. POMATTO: You would need to
17 designate that person, so that we would do that in
18 a meeting where you would designate that person as
19 your Secretary.

20 But again, you don't -- this isn't
21 where you have to, this is just where we're trying
22 to clarify it in the language.

23 MR. HILLDRUP: Not necessarily it
24 now, but I think we need to keep it in the loop of
25 where we have, members, because we're more

1 responsible for what is going to happen and
2 whether to do what we need to do.

3 MR. BRAMLETTE: And also in that
4 respect, it seems to me that in cases that have
5 gone forward to the next higher court, has always
6 addressed the name of the Secretary in the filing,
7 so it would be a non-member addressed in the name
8 versus a member of the BZA, and I think the BZA
9 ought to be responsible enough to have some member
10 of this Board have their name on a court filing.

11 MR. HILLDRUP: We make the decision
12 we should follow through.

13 MR. BRAMLETTE: Yes. So I'm of the
14 leaning that we should stay the way we are.

15 MR. STEPONGZI: I think we ought to
16 keep it the way it is, too.

17 MR. ALLEN: I think that would be the
18 simplest thing because the questions on here for
19 the variance requests and whether it's approved or
20 disapproved, are pretty specific, and those are
21 things that on the working copy that I use that
22 during the meeting (inaudible) parameters, for
23 disapproval or if they've met the parameters for
24 approval, track that during the meeting and during
25 discussions so that when I vote to say that we're

1 going to approve or disapprove or something, I can
2 back it up with what we have here and if we just
3 have somebody from the office signing this, that
4 might compromise them in the office because
5 they're not voting members of this Board.

6 So just make that clear that the
7 person who signs these is the Secretary of this
8 Board.

9 MS. POMATTO: And a member of the
10 Board?

11 MR. ALLEN: -- Secretary from the
12 office being in attendance to help us with
13 administrative type things, but I think it should
14 be a person who is a Board member is the
15 Secretary.

16 MR. STEPONGZI: Agree.

17 MR. BRAMLETTE: The rest of the
18 changes were administrative, small, dot the T type
19 of things and I had no qualms with any of those.
20 Any of those.

21 MR. ALLEN: Do you need a motion from
22 us to have to approve these changes going forward?

23 MS. POMATTO: No, sir. I feel like I
24 have clear direction. I'm going to incorporate
25 those changes and hopefully I can get a final

1 document back to you at your next meeting for
2 adoption.

3 MR. ALLEN: Okay. I have no other
4 agenda items on here. I'll entertain a motion for
5 adjournment.

6 MR. BRAMLETTE: Mr. Chairman, I would
7 like to ask if we had any other meetings scheduled
8 for July other than what we are now looking at.

9 MS. POMATTO: No, sir, there is no
10 other applications in process.

11 MR. BRAMLETTE: Thank you.

12 MR. STEPONGZI: I make a motion that
13 we adjourn.

14 MR. ALLEN: Okay. Mr. Steponzgi has
15 moved that we adjourn the meeting. Do I have a
16 second?

17 MR. HILLDRUP: Second.

18 MR. ALLEN: Okay, Mr. Bramlette has
19 seconded. All in favor signify by saying aye.

20
21 (All Board Members responded in the affirmative).
22

23 MR. ALLEN: Any opposed? Thank you.
24 The meeting stands adjourned.

25 (The meeting concluded at 8:03 p.m.)

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Case File Number: _____

Case Hearing Date: _____

Fees:	
Permit intake Fee:	\$ 65.00
Residential:	\$ 500.00
Commercial:	\$ 650.00
Mailing Cost:	_____
Total Due:	_____

Board of Zoning Appeals Application Form

Application Type: Please check below.

- Variance, from the Zoning Ordinance, Spotsylvania County
- Appeal, from the Zoning Administrator's Decision and/or Notice of Violation, Date of Decision or Violation: _____
- Appeal, of the Zoning Administrator's Interpretation of the Zoning Ordinance, Dated: _____
- Rehearing, Previous Public Hearing Case Number: _____

1. Location Description: 6328 Carter Ln Mineral, VA 22030

Email Address: lemingandhealy1@msn.com

2. Tax Map Parcel Number: 54C-1-2

3. Zoning District: R-R Voting District: Livingston

4. Overlay District: None

5. Record Owner Name: Albert K. Nainoa Jr or Kathleen A. Nainoa

Address: 6328 Carter Ln Mineral, VA 22030

6. Applicant's Name: H. Clark Leming, Leming and Healy, P.C., Agent for Albert K. Nainoa and Kathleen A. Nainoa

Address: 233 Garrisonville Road, Suite 204, Stafford, VA 22554

7. Contract Owner: N/A

Address: N/A

Telephone Numbers: Owner: (703) 217-2137 Applicant: (540) 659-5155

Other: _____

The undersigned hereby attests that all the information herein provided, including the plot plan, building setbacks, prospective drawings, statements, etc is true, correct and accurate. The undersigned further understands that should such information be found incorrect, any action taken by the Board of Zoning Appeals based on such may be invalidated. The applicant, if other than property owner, also attests that he/she has obtained power of attorney to apply for this application. The undersigned authorizes the county representatives to have access to the property during reasonable hours for inspection.

Landowner Signature: _____

Date: _____

Applicant Signature: _____

Date: 9/15/20

Power of Attorney Form

**State of Virginia
County of Spotsylvania**

This 14 day of September, 2020, I, Kathleen A. Nainoa
the owner/contract purchaser, (circle one), of 6328 Carter Ln,

(describe land by tax map number), make, constitute, and appoint H. Clark Leming, Leming and Healy, P.C.
my true and lawful attorney-in-fact, and in my name, place and stead giving unto said Variance Application

full power and authority to do and perform all acts and make all representation necessary, without
any limitation whatsoever, to make application for said Board of Zoning Appeals Application.

The right, powers, and authority of said attorney-in-fact herein granted shall commence and be in
full force and effect on September 14, 2020, and shall remain
in full force and effect thereafter until actual notice, by certified mail, return receipt requested is
received by the Zoning Office of Spotsylvania County stating that the terms of this power have
been revoked or modified.

Kathleen A. Nainoa
Owner/Contract Purchaser/Authorized Agent
(Circle One)

COMMONWEALTH OF VIRGINIA:

COUNTY of Stafford

Acknowledged before me this 14 day of September, 20 20 in

my County and State aforesaid, by the aforesaid Principal or Authorized Agent.

Tamara Chardette Bayona-Huffman
Notary Public

My Commission Expires: May 31, 2023

TAMARA CHARDETTE BAYONA-HUFFMAN
NOTARY PUBLIC
REGISTRATION # 7849789
COMMONWEALTH OF VIRGINIA
MY COMMISSION EXPIRES
MAY 31, 2023

Instructions: Please answer the following questions clearly. If additional space is needed to answer the questions, you may attach the answers on a separate sheet of paper. Please list "See Attached" for each item, and attach to the Justification Form.

Justification for Variance

1. Explain, in detail, why strict application of the Zoning Ordinance prevents reasonable use of the property and will produce an undue hardship. The test for an undue hardship may not include the following: monetary reasons, mere inconvenience, profitable use, or nearby non-conformity.

See attached.

2. Explain why such undue hardship is not shared generally by other properties in the same zoning district and in the same vicinity as the subject property, or other extraordinary conditions of the property.

3. Explain why the authorization of the variance requested will not be of substantial detriment to adjacent property and will not change the character of the district.

4. Explain in detail why such hardship is neither personal in nature, nor self-imposed. Explain why the granting of this variance will not constitute a special privilege or convenience for the applicant.

POSTING AFFIDAVIT

I, _____, hereby certify that on the _____ day of _____
20_____ a sign (s) stating that zoning action was pending on the property described below
was/were posted on the property and that the sign (s) was/were easily visible from all public streets and
public ways abutting the property.

Property Description: _____

Given under my hand this _____ day of _____, 20_____

Applicant/Agent

COMMONWEALTH OF VIRGINIA:

COUNTY of _____

Acknowledged before me this _____ day of _____, 20_____ in
my County and State aforesaid, by the aforesaid Principal or Authorized Agent.

Notary Public

My Commission Expires: _____

Return Form To:

Spotsylvania County-Planning & Zoning Department
9019 Old Battlefield Boulevard
Suite 320
Spotsylvania, Virginia 22553
Attn: Zoning Assistant

County of Spotsylvania

MEMORANDUM

BZA Application Package Attachment and Notice

The statement below explains the legal reasons why the Board of Zoning Appeals may disapprove a variance request.

1. The alleged hardship is not an undue hardship because it is a self-created hardship imposed by the applicant or the previous owner.
2. Strict application of the zoning ordinance would not produce an undue hardship on the owner.
3. The alleged hardship is generally shared by other properties in the same district and same vicinity.
4. Approval of the variance would be of substantial detriment to the adjacent property and/or the character of the district would be changed by granting the variance.
5. Financial or monetary reasons shall not be sufficient to establish an undue hardship and cause for variance approval, except in the extraordinary circumstance where there would be no reasonable use of the property without the variance.
6. Authorization of a variance will simply provide a special privilege or convenience to the owner.
7. Virginia Supreme Court provided guidance in the Cochran v. Fairfax County BZA case, whereby, the threshold for the BZA in considering an application for a variance...is whether the effect of the zoning ordinance upon the property under consideration, as it stands, interferes with "all reasonable beneficial uses of the property, taken as a whole."
If the answer is in the negative, the BZA may have no authority to go further.

I hereby certify as applicant, that I have read the above listed reasons for possible disapproval of the request for a variance.

Signature:  _____

Date: September 15, 2020

* This form reflects the incorrect legal standard and does not conform with current State law or the County's own ordinance. See Variance standard revisions in 2015. Cochran is no longer good law.



Variance Request Justification

Kathleen A. Nainoa and Albert K. Nainoa (“Nainoa”) hereby request a three and one-half foot (3.5’) variance from the requirement of Spotsylvania County (“County”) Code Sec. 23-5.2.3(7)(B) that residential accessory structures such as garages be located no closer than ten feet (10’) from side yard lot lines (the “10’ measurement”).¹ In support thereof, Nainoa states as follows.

A. Background

Nainoa is the owner of a certain parcel of land consisting of approximately 2.10 acres, and shown on the records of the County Commissioner of the Revenue (“COR”) as Tax Map Parcel Number 54C-1-2 (the “Property”). The Property is platted as Lot 2 in the Kelly’s Landing Subdivision, and is zoned to the County’s Residential Resort (R-R) Zoning District. Nainoa acquired the Property in 1994, and constructed an approximately 1288 square foot single-family residential dwelling unit on the Property in 2000. While Nainoa’s primary residence is in Fairfax County, the dwelling unit on the Property serves as the Nainoa’s vacation home. The western portion of the Property borders Lot 1 of the Kelly’s Landing Subdivision, which is an approximately 6.54 acre unimproved tract of land shown on the County COR records as Tax Map 54-C-1-2 that has been owned by Paul W. Jackson and Mary L. Jackson since 2018 (the “Jackson Property”).²

The County approves the construction plans for the garage, and the garage is constructed.

On February 1, 2013, Nainoa contracted with Ogburn Construction, Inc. (“OCI”) to construct the detached garage at a contract price of approximately \$45,430.78. On or about February 11, 2013, OCI, on behalf on Nainoa, submitted to the County Building Department a Residential Building Permit Application (“Building Application”) to authorize the construction of a 24 x 36 foot detached garage on the Property.³ The detached garage is a by-right accessory structure to Nainoa’s residence in the County’s R-R Zoning District. The plat which accompanied the Building Application showed a measurement of eleven feet (11’) from the southwest corner of the garage to the Jackson Property line in compliance with County Code Sec. 23-5.2.3(7)(B).⁴ As shown on Exhibit A, the Building Application was approved the County Building Department on or about February 15, 2013, and was approved by the County Zoning Department on or about

¹ As detailed below, the survey that formed the basis for the County’s Notices of Violation showed the garage approximately 3.1’ from the side yard lot line. However, Nainoa seeks a 3.5’ variance out of an abundance of caution to account for potential (minor) deviations across surveys.

² Paul W. Jackson and Mary L. Jackson are hereafter collectively referred to as “Jackson.”

³ The Building Application is attached hereto as Exhibit A. The OCI contract is attached hereto as Exhibit B.

⁴ The Building Application utilized Nainoa’s house plat that was initially prepared by William W. Webb on or about July 20, 2000, and superimposed the proposed detached garage on such plat, which also shows a permanent monument on the property line where the property line takes an approximate 30 degree turn to the southeast at the southwest corner of the proposed garage.

February 21, 2013. Shortly after the County approved the Building Application, a former employee of OCI constructed the detached garage on the Property. The OCI employee measured the distance of the constructed garage on multiple occasions from the garage to the monument shown on the plat where the western property lines turns approximately 30 degrees from the south southwest to the southeast. The measurement was invariably at least 11 feet. The OCI employee did not measure the garage from the southwest corner of the garage to the property line after it turns to the southeast where the 11' measurement is shown on the plat. Nainoa had no reason during the construction of the garage or thereafter to believe the garage was not constructed according to the approved plan, and specifically at least 11 feet from the Jackson Property line.

No issue is raised as to the garage location for over six years after construction.

In April of 2013, the County Building Department inspected and approved the construction of structural and electrical components of the garage. Upon information and belief, the County Building Department did not raise any issue with the location of the garage during the course of those inspections, and the County never raised any issue as to the garage location at all until October of 2019. Moreover, the prior Jackson Property owner never raised issue as to the construction or location of the garage. In fact, Jackson did not even raise issue with the location of the garage at the time they acquired the Jackson Property on or about July 2, 2018. As such, neither the County nor the Jackson Property owner provided any indication to Nainoa that the location of the garage was an issue, and Nainoa had no reason to suspect the garage location was an issue for over six (6) years after construction.

Jackson commissions a survey in September 2019 which reveals that the garage is approximately 6.9' from the Neighboring Property line.

On or about September 4, 2019, Jackson requested permission from Nainoa to build a structure to house Jackson's boat five feet (5') from the Property line as extended into Lake Anna. After consulting with their realtor, who indicated that this location would affect the view shed from the Nainoa property and could lead to a diminution in the value of the Property, Nainoa declined this request. Thereafter, Jackson commissioned a survey prepared by Norman C. Cox on or about September 28, 2019 which revealed that the rear southwest corner of the Nainoa's detached garage was located approximately 6.9' from the Neighboring Property line as such line turned from the south southeast 30 degrees to the southeast. Jackson provided this survey to Nainoa in an apparent effort to assert leverage over Nainoa related to the boat house issue, as shown in a text message between Mr. Jackson and Ms. Nainoa attached hereto as Exhibit C. Upon information and belief, Jackson provided the survey to the County Zoning Department and initiated a complaint with the County Zoning Department on this basis. The County advised Nainoa of the Zoning Ordinance setback violation and how the violation might be remedied.

Nainoa unsuccessfully attempts to acquire from Jackson the land necessary to render the garage compliant with the 10' measurement.

In an effort to remedy the situation, Nainoa attempted to acquire from Jackson approximately sixty-three (63) square feet of land from the Jackson Property in order to accomplish a Boundary Line Adjustment ("BLA") which would render the garage compliant with the 10' measurement.

Even though this 63 square foot of land has an assessed value of approximately \$18.27, Nainoa offered Jackson \$1,000.00 for the land, and further offered to pay the full \$1,800.00 BLA application fee to the County.⁵ Jackson rejected the offer and requested \$4,000.00, or *approximately 218 times more than the assessed value of the land to be acquired*. Faced with no other viable alternative short of complete demolition and reconstruction of the garage, Nainoa accepted Jackson's predatory \$4,000.00 demand. On or about January 6, 2020, counsel for Nainoa prepared an agreement to that effect and presented it to Jackson.⁶ Jackson, however, rejected the agreement.

On March 13, 2020, the County issued another Notice of Violation to Nainoa on the basis that the garage location violates the 10' measurement of County Code Sec. 23-5.2.3(7)(B). As a corrective action, the March 13, 2020 Notice of Violation required Nainoa to relocate the garage to meet the 10' measurement within the thirty (30) days of issuance of the Notice.⁷

B. Justification

Virginia Code § 15.2-2309(2) provides that "a variance shall be granted" by the Board of Zoning Appeals ("BZA") when the evidence shows "that the strict application of the terms of the ordinance would unreasonably restrict the utilization of the property" or, alternatively, "that the granting of the variance would alleviate a hardship due to a physical condition relating to the property or improvements thereon . . ." and the following additional criteria have been met:

(i) 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; (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 A 4 of § 15.2-2286 at the time of the filing of the variance application.⁸

⁵ The Jackson Property is approximately 6.54 acres, or 285,471 square feet. According to the County COR's 2019 assessment records, the Jackson Property has a total assessed value of \$83,300, or \$0.29 per square foot. Thus, the assessed value of the 63 square feet of land is approximately \$18.27 (63 square feet x \$0.29 per square foot).

⁶ A copy of this agreement is attached hereto as Exhibit D.

⁷ A copy of this Notice is attached hereto as Exhibit E.

⁸ The County's Variance Application Form utilizes an outdated variance standard that is no longer the law in Virginia. This Virginia General Assembly adopted the above standard in 2015 (2015 Acts of Assembly, Chapter 597), and the County Board of Supervisors duly amended its Zoning Ordinance in 2016 to incorporate this current

Nainoa meets the criteria above for the following reasons:

1. Strict application of the 10' measurement of County Code Sec. 23-5.2.3(7)(B) would unreasonably restrict the utilization of the property or, alternatively, the granting of a variance to County Code Sec. 23-5.2.3(7)(B) would alleviate a hardship due to a physical condition relating to the property or improvements thereon.

Strict application of the 10' measurement of County Code Sec. 23-5.2.3(7)(B) would unreasonably restrict Nainoa's utilization of the Property, as it would now require the demolition and reconstruction of the detached garage that Nainoa expended approximately \$45,430.78 to construct. Further, the removal of the corner of the garage, approximately 63 square feet, would eliminate one of the parking spaces within the garage. Strict enforcement of the 10' measurement would further be unreasonable under the circumstances, as: (a) the detached garage is a by-right, accessory structure to Nainoa's single-family residence, and Nainoa duly secured the necessary approvals from the County Zoning and Building Departments permitting its construction; (b) the non-compliant garage location was the result of an inadvertent contractor measurement error that was made after the County's approval of the Building Application through no fault of Nainoa; (c) the non-compliant garage location went undetected for over 6 years by all parties, including the County and the prior and current owners of the Jackson Property; (d) because over 6 years elapsed before anyone discovered the non-compliant garage location, Nainoa is likely time-barred from pursuing a breach of contract claim against the offending contractor;⁹ (e) Nainoa made exhaustive efforts to remedy the non-compliance by agreeing to the acquisition of the 63 square feet of land needed for a BLA from Jackson at the exploitative price of \$4,000.00, only to have Jackson unreasonably renege on that agreement; and (f) the 3'1" intrusion into the setback does not impose any hardship on or diminution in the value of the Jackson property or its owners.

Granting the requested variance to County Code Sec. 23-5.2.3(7)(B) would also alleviate a hardship due the physical condition of improvements on the Property, as Nainoa would otherwise be required expend tens of thousands of dollars to demolish the garage and reconstruct it approximately 3.1' from its current location due to an inadvertent contractor measurement error that went undetected for over 6 years. Removing the corner of the garage would also create a hardship both in terms of unreasonable cost, the elimination of a parking space in the garage and a resulting odd shaped unsightly garage. In addition, the County's Zoning Ordinance recognizes that the property owner should not be penalized under these circumstances, as County Code Sec. 23-5.1.4 authorizes the County Zoning Administrator to administratively "approve a reduction in the minimum yard requirements in the case of any building existing" when the "noncompliance was done in good faith, or through no fault of the property owner, or was the result of an error in the location of the building subsequent to the issuance of a building permit . .

variance standard. Accordingly, this Justification duly utilizes the current standard for a variance rather than the outdated standard cited in the Application Form

⁹ The statute of limitations period for a breach of contract in Virginia is five (5) years from the date of breach, regardless of when the breach was discovered. *See* Va. Code Ann. §§ 8.01-246; 8.01-230. Thus, it could be argued that the statute of limitations for enforcing the contractor's error as to the garage location expired in 2018, even though such error was not discovered by the County, the Neighboring Property owners, or Nainoa until 2019.

.”¹⁰ The County Board of Supervisors’ (“BOS”) adoption of County Code Sec. 23-5.1.4 demonstrates a clear intent to alleviate property owners of the hardship associated with a contractor location error which occurs subsequent to the County’s approval of the building permit, and the BZA’s granting of a variance in this case would be consistent with this intent.

2. “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.”

Nainoa acquired the Property in good faith by deed dated July 11, 1994. Nainoa also contracted for the construction of the by-right detached garage in good faith at a contract price of \$45,430.78, and secured all necessary permits and approvals from the County attendant to such construction. The hardship was not created by Nainoa, but rather was the result of an inadvertent contractor measurement error that occurred after the County’s issuance of the building permit, and was not discovered until over 6 years after construction. Moreover, the OCI employee did attempt to measure the setback from the garage to the permanent monument located at the junction of the property line’s dogleg to the southeast. Further, and as detailed above, the BOS, through its adoption of County Code Sec. 23-5.1.4, has recognized that an inadvertent contractor error “in the location of the building subsequent to the issuance of a building permit” is not the fault of the property owner, thereby affirming that the hardship was not created by Nainoa.

3. “The granting of the variance will not be of substantial detriment to adjacent property and nearby properties in the proximity of that geographical area.”

The granting of a variance has no material impact on any adjacent or nearby properties. While Jackson has initiated a complaint with the County regarding the garage location, Jackson’s stated concern was that the non-compliant location could hurt or ruin *Nainoa’s potential sale of their Property*, as opposed to having an impact on the Neighboring Property. *See Exhibit C*. In fact, even this stated concern was a pretext, as Jackson’s text messages make clear that the ultimate objective was to use the non-compliant garage location to exert leverage over Nainoa in connection with an unrelated boat housing issue. *Id.*

4. “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.”

The BOS, through its adoption of County Code Sec. 23-5.1.4, has developed a general regulation to address the scenario where a structure is erected too close a side yard lot line as a result of an inadvertent contractor error, but this general regulation is limited to situations where the error does not exceed 10% of the measurement involved. This case is not of so general or recurring a nature so as to lend itself to the formulation of a general regulation for various reasons, including but not limited to: (a) the contractor error was approximately thirty-one percent (31%) of the measurement involved, even though the plat accompanying the approved Building Application showed a compliant building location 11’ from the Neighboring Property

¹⁰ Nainoa acknowledges that the Zoning Administrator’s administrative approval authority under County Code Sec. 23-5.1.4 is limited to cases where the contractor error “does not exceed ten (10) percent of the measurement that is involved” and, therefore, cannot be utilized to approve the approximately 3.1’ encroachment at issue here.

line; (b) more than 6 years elapsed before anyone discovered the non-compliance; and (c) Nainoa has made every effort to resolve the issue by acquiring the land necessary to render the garage location compliant, but such efforts were inexplicably rejected by the Neighboring Property owner.

5. 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.”

The detached garage is a by-right accessory structure in the County’s R-R Zoning District. Accordingly, the BZA’s granting of the variance does not result in a use that is not otherwise permitted or a change in the zoning classification of the Property.

6. “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 A 4 of § 15.2-2286 at the time of the filing of the variance application.”

Virginia Code § 15.2-2201 defines a “special exception” as “a special use that is a use not permitted in a particular district except by a special use permit under the provisions of this chapter and any zoning ordinances adopted herewith.” The special exception process is inapplicable because the garage is a by-right accessory structure in the County’s R-R Zoning District. Moreover, as detailed above, County Code Sec. 23-5.1.4 only authorizes administrative zoning modifications for side yard encroachments that do not exceed 10% of the measurement involved. Because this encroachment exceeds that 10% threshold, a variance from the BZA is necessary.

C. Conclusion

Based on the foregoing, Nainoa requests that the BZA grant this request for a variance to the 10’ measurement of Code Sec. 23-5.2.3(7)(B) as it relates to the existing detached garage on the Property.

ving Departments:

- Zoning
- Building
- Erosion
- Ches Bay

County of Spotsylvania
RESIDENTIAL PERMIT APPLICATION
 Community Development Division
 9019 Old Battlefield Blvd. 3rd Floor
 Spotsylvania, Av 22553
 Phone (540)507-7222 Fax (540) 507-7282

App/Permit # Assigned:
POS13-029

APPLICATIONS WILL NOT BE ACCEPTED UNLESS FILLED OUT COMPLETELY. PLEASE PUT NA IF IT DOES NOT APPLY TO YOUR PROJECT.

Prior to Permit Issuance the following items are required if marked: FILLED OUT BY STAFF

- Copy of VA State Contractor's License
- Copy of Spotsylvania Business License
- Tradesman Statements for Elec Plumb Gas HVAC Tank Affidavit
- Proof of Ownership LPA Commercial Affidavit Landowner Affidavit
- Other

FEB 13 2013

Project Description 24 X 36 Detached Garage

Applicant

Co. of Spotsylvania, VA
 Code - Compliance

Name: THOMAS LORD Address: 7627 Bryn Mawr Rd., Henrico, VA 23229
 Phone #: 423-504-0675 Fax #: 804-288-4779 Email Address: THOMASLORD@AOL.com

General Contractor

Name: Ogburn Construction, Inc. Address: 7627 Bryn Mawr Rd., Henrico, VA 23229
 Phone #: 804-909-4779 Fax #: 804-288-4779 Email Address: Ogburn.david@gmail.com

Landowner

Name: AL Nainoa Address: 6328 Carter Ln., Mineral, VA 23117
 Phone #: 703-293-7248 Fax #: _____ Email Address: _____

Mechanic's Lien Agent

Name: _____ Address: _____
 Phone #: _____ Fax #: _____ Email Address: _____

Electrician

Name: David Gregory - Goshen Electric Address: 14431 Deedle Creek Dr., Montpelier, VA 23152
 Phone #: 804-337-0763 Fax #: _____ Email Address: GOSHENELECTRICINC@gmail.com

Plumber

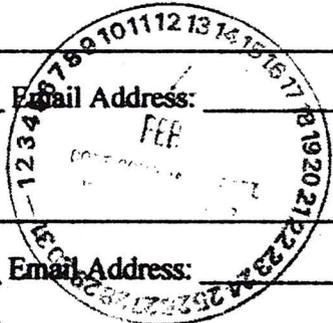
Name: _____ Address: _____
 Phone #: _____ Fax #: _____ Email Address: _____

HVAC Contractor

Name: _____ Address: _____
 Phone #: _____ Fax #: _____ Email Address: _____

LP Tank Contractor

Name: _____ Address: _____
 Phone #: _____ Fax #: _____ Email Address: _____



1043.72

Job Site Information

Tax Map 54C Dbl. Circle 1 Block _____ Lot/Parcel 2 Voting District Livingston

Physical Address: 6328 Carter Lane, Mineral, VA 23117 Subdivision Kelly's Landing

Is this a Gated Community? Yes No If yes, please note Gate Code for Inspections: 4598

Project Description: : 24 x 36 Detached GARAGE

New Manufactured Home		
Single Wide	Double Wide	Triple Wide
Length _____	Width _____	_____
Serial # _____	_____	
Year _____	Make _____	_____

Project Value (Less Land Value) \$31,000.00
 Ext Wall Vinyl Foundation Concrete Roof Covering Metal
 # of Stories 1 # Full Baths 0 # Half Baths 0
 # Bedrooms 0 Fuel Type 0 Air Cond. (Y/N) N
 Heat Type N/A # Fireplaces 0 # Flues 0

New Single Family Home		
SFH	Modular	Townhouse/Duplex
Overall Length _____	Width _____	_____

Gas Logs Lines Tank Heater
 Water Source Private Sewer Source Private

Other Residential Projects		
Interior Reno	Addition	Accessory
Addition: Length _____	Width _____	_____
Deck: Length _____	Width _____	_____
Garage/Shed: Length <u>24</u>	Width <u>36</u>	_____
Porch: Length <u>48</u>	Width <u>8</u>	_____
Select One:	Screened	<u>Open</u>
Other _____	Length _____	Width _____

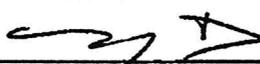
Elec. Ser. Amps 60 Elec. Power Co. _____
 Roof Type - Manuf Truss Yes No
 Floor Type - Manuf Truss or Eng Product Yes No
 Crawl Slab Basement
 Basement: Finished Unfinished - Sq. Ft. 0
 Garage: Attached Detached None

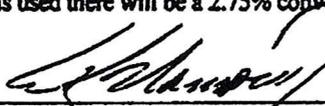
List each room in house by floor:

1st Fl GARAGE
 2nd Fl _____
 3rd Fl _____
 Basement _____

I hereby certify that I shall conform to the Zoning Ordinance, Building Codes, Erosion Ordinance, Chesapeake Bay Preservation Ordinance and the Water and Sewer Construction Specifications of Spotsylvania County. NOTICE: The Permits must be displayed on the premises. The permits are void if construction is not started within six (6) months of permit issuance. Any application inactive for six months is subject to being voided.

Accepted Forms of Payment: Please be advised that the only forms of payment currently accepted by the Code Compliance Department are Check, Money order, *Debit, and *Credit. *If Debit/Credit is used there will be a 2.75% convenience fee added to the total amount due.


 Applicant's Signature Required
THOMAS LORD
 Applicant's Printed Name


 Landowner's Signature Required
Albert R. Weaver Jr.
 Landowner's Printed Name

Application Verified
 Date: 2/13/12 By: AM



Application Designated Contact

The following person is the primary point of contact for all questions that may arise during the plan review process.

Applications will not be accepted without this information.

NAME: THOMAS LORD

MAILING ADDRESS: 7627 Bryn Mawr Rd.
Henrico, VA 23229

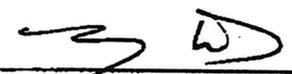
DAYTIME PHONE # (423) 504-0675

FAX NUMBER: (804) 288-4779

E-MAIL (optional): THOMAS ALORD @ AOL.COM

This person is the (circle one):

- Land Owner
- Contractor
- Design Professional
- Other: _____


Applicant's Signature

02/11/13
Date

THOMAS LORD
Applicant's Printed Name

For Office Use Only

Zoning Department

Zoning Use RR

Approved - Date of Approval 2/21/13 Disapproved - Date of Disapproval _____

Remarks

ZON APP FOR PORCH + DETACHED GARAGE PER ZON ORD SEC
23-5.1.2(a) + 23-5.2.2(B)

FEES:

Zoning Cert. 170 Site Plan Review _____ Sub Total _____

[Signature]
Authorized Signature

Environmental Department

Bond Amount _____ Bonding Secured (Y/N) _____ CASH INS. CREDIT

Approval Date _____

Authorized Signature _____

FEES:

Environmental _____ Utility _____ Inspection Fee _____

Sub Total _____

Building Department

ZONING ACCESSORY REVIEW CHECKLIST

APPLICATION NUMBER:

Rec B-0214

TAX MAP NUMBER:

54C 112

- 1. Check Tax Map for Zoning District and Overlays
- 2. Check Tax Map/CRW/AS400 for Rezoning/Special Use
- 3. Check if located in RPA and if approved by Erosion or Chesapeake Bay (If not approved, take to RR for distribution)
- 4. Complete specific accessory type below
- 5. Stamp approval and sign plans
- 6. Enter fees in CRW
- 7. Fill out information on application including fees and Zoning Ordinance section number allowing approval
- 8. Route for Quality Check
- 9. Enter approval in CRW
- 10. Enter any notes in Chronology if and why being held for more information, with date and time of contact

Accessory:

- 1. Calculate square footage of accessory
- 3. If garage, verify rooms are not for living space (ie.: bedroom, full bath, kitchen).
- 4. Check for ROW due to road widening that may affect setback
- 5. Verify and circle setbacks

Indian Acres: (A-2 Zoning)

- 1. Calculate square footage of structures—can not be more than 160 sq. ft. each
- 2. Structures can not touch
- 3. Approval from Indian Acres (Can be Trudy McCall's signature as landowner)
- 4. Verify and circle setbacks
- 5. Section to approved with on application and CRW, "...in accordance with 1977 BZA decision

Dock: (Lake Anna) (No setbacks)

- 1. Have two packets with George O'Connell's signature if located on Lake Anna
- 2. Stamp approval on same page as Erosion or Chesapeake Bay approval

Finished Basement: (Interior/Reno Only)

- 1. Calculate square footage – if not on plan, get from Building or call applicant

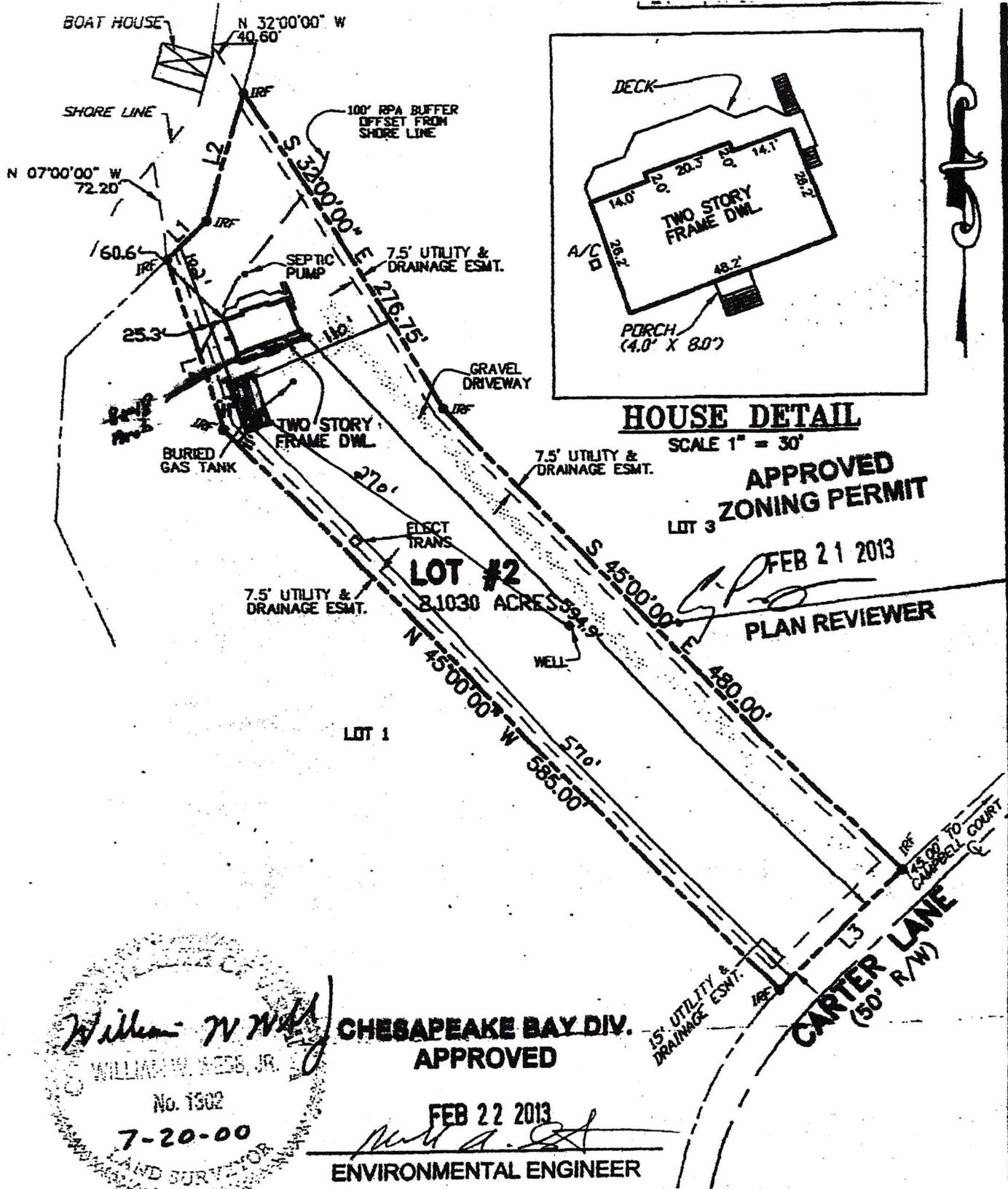
Mobile Home Park:

- 1. No setbacks—must be located within lot

Meter:

- 1. Must contain letter that has been approved by RR
- 2. Fee is \$150-Temporary Electric under Zoning Other fees

Received: _____



NOTES:

1. NO TITLE REPORT FURNISHED
2. EASEMENTS NOT SHOWN MAY EXIST
3. UNDERGROUND UTILITIES AND SUB-SURFACE FACILITIES NOT LOCATED
4. THIS SURVEY DOES NOT ADDRESS WETLANDS, TOXIC OR CONTAMINATED WASTE OR SOIL CONDITIONS NOR HAVE ANY REPORTS, STUDIES, ETC... BEEN FURNISHED TO THIS OFFICE OR OTHER

HOUSE LOCATION
LOT 2
"KELLY'S LANDING"
SUBDIVISION
LIVINGSTON DISTRICT
SPOTSYLVANIA CO., VA.

SCALE 1" = 100' JULY 20, 2000

Residential
 Addition
 Erection
 Ches Bay

County of Spotsylvania
RESIDENTIAL PERMIT APPLICATION
 Community Development Division
 9019 Old Battlefield Blvd. 3rd Floor
 Spotsylvania, Av 22553

App. Fee: _____
 Assessed: _____
 Date: 02/13/2013

Phone (540)507-7222 Fax (540) 507-7282 *touches \$1000*

APPLICATIONS WILL NOT BE ACCEPTED UNLESS FILLED OUT COMPLETELY. PLEASE PUT NA, IF IT DOES NOT APPLY TO YOUR PROJECT.

Prior to Permit Issuance the following items are required if marked: **FILLED OUT BY STAFF**

- Copy of VA State Contractor's License
- Copy of Spotsylvania Business License
- Tradesman Statements for Elec Plumb Gas HVAC Tank Affidavit
- Proof of Ownership LPA Commercial Affidavit Landowner Affidavit
- Other

FEB 13 2013

Project Description 24 X 36 Detached Garage
+ 8 X 48 FRONT PORCH
 Applicant

Co. of Spotsylvania, VA
 Code - Compliance

Name: THOMAS LORD Address: 7627 Bryn Mawr Rd., Henrico, VA 23229

Phone #: 423-504-0675 Fax #: 804-288-4779 Email Address: THOMASALORD@AOL.com

General Contractor

Name: Ogburn Construction, Inc. Address: 7627 Bryn Mawr Rd., Henrico, VA 23229

Phone #: 804-909-4779 Fax #: 804-288-4779 Email Address: ogburn.david@gmail.com

Landowner

Name: AL Nainoa Address: 6328 Carter Ln., Mineral, VA 23117

Phone #: 703-293-7248 Fax #: _____ Email Address: _____

Mechanic's Lien Agent

Name: _____ Address: _____

Phone #: _____ Fax #: _____ Email Address: _____

Electrician

Name: David Gregory - Goshen Electric Address: 1431 Doodle Creek Dr., Montpelier, VA 23152

Phone #: 804-337-0763 Fax #: _____ Email Address: GOSHENELECTRICINC@gmail.com

Plumber

Name: _____ Address: _____

Phone #: _____ Fax #: _____ Email Address: _____

HVAC Contractor

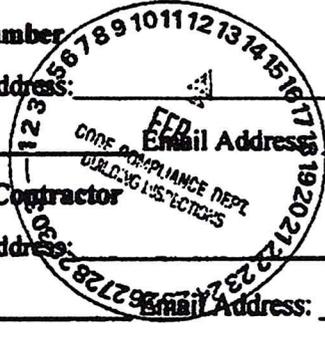
Name: _____ Address: _____

Phone #: _____ Fax #: _____ Email Address: _____

LP Tank Contractor

Name: _____ Address: _____

Phone #: _____ Fax #: _____ Email Address: _____



RES13-0219

KELLY'S LANDING, LOT 2

6328 CARTER LN

DEBURN CONSTRUCTION

For Office Use Only

Notification Designated

Zoning Department

Zoning Use _____

Approved - Date of Approval _____ Disapproved - Date of Disapproval _____

Remarks _____

FEES:

Zoning Cert. _____ Site Plan Review _____ Sub Total _____

Authorized Signature _____

Environmental Department

Bond Amount _____ Bonding Secured (Y/N) _____ CASH INS. CREDIT

Approval Date _____

Authorized Signature _____

FEES:

Environmental _____ Utility _____ Inspection Fee _____

Sub Total _____

Building Department

Bs.	_____	R5-SB
1st	_____	NA SOIL
2nd	_____	0-BR
3rd	_____	NO-ELEV.
Garage	864	8X48 PORCH.
Porch	384	24 X 36 GARAGE
Deck	_____	VUSBC 2009
Other	_____	
sq. ft.	1248	
x	38	
Bid \$	474.24	
Elect	_____	
Plum	_____	
Mech	_____	
Rev.	_____	

APPROVED
Spotsylvania Co

FEB 15 11

PLANS REVIEWED
BUILDING DEPT.

Job Site Information
 Tax Map 54B-100 Block 1 Community Development Div. Livingston Voting District 54C
 Lot/Parcel 2

Physical Address: 6328 Carter Lane, Mineral, VA 23117 Subdivision Kelly's Landing

Is this a Gated Community? Yes No If yes, please note Gate Code for Inspections: 4598

Project Description: 24 x 36 Detached GARAGE AND FRONT PORCH

New Manufactured Home
 Single Wide Double Wide Triple Wide
 Length _____ Width _____
 Serial # _____
 Year _____ Make _____

Project Value (Less Land Value) \$31,000.00
 Ext Wall Vinyl Foundation Concrete Roof Covering Metal
 # of Stories 1 # Full Baths 0 # Half Baths 0
 # Bedrooms 0 Fuel Type 0 Air Cond. (Y/N) N
 Heat Type N/A # Fireplaces 0 # Flues 0

New Single Family Home
 SFH Modular Townhouse/Duplex
 Overall Length _____ Width _____

Gas Logs Lines Tank Heater
 Water Source Private Sewer Source Private

Other Residential Projects
 Interior Reno Addition Accessory
 Addition: Length _____ Width _____
 Deck: Length _____ Width _____
 Garage/Shed: Length 24 Width 36
 Porch: Length 48 Width 8
 Select One: Screened Open
 Other _____ Length _____ Width _____

Elec. Ser. Amps 60 Elec. Power Co. _____
 Roof Type - Manuf Truss Yes No
 Floor Type - Manuf Truss or Eng Product Yes No
 Crawl Slab Basement
 Basement: Finished Unfinished - Sq. Ft. 0
 Garage: Attached Detached None

List each room in house by floor:
 1st Fl GARAGE
 2nd Fl _____
 3rd Fl _____
 Basement _____

I hereby certify that I shall conform to the Zoning Ordinance, Building Codes, Erosion Ordinance, Chesapeake Bay Preservation Ordinance and the Water and Sewer Construction Specifications of Spotsylvania County. NOTICE: The Permits must be displayed on the premises. The permits are void if construction is not started within six (6) months of permit issuance. Any application inactive for six months is subject to being voided.
 Accepted Forms of Payment: Please be advised that the only forms of payment currently accepted by the Code Compliance Department are Check, Money order, *Debit, and *Credit. *If Debit/Credit is used there will be a 2.75% convenience fee added to the total amount due.

[Signature]
 Applicant's Signature Required
THOMAS LORD
 Applicant's Printed Name

[Signature]
 Landowner's Signature Required
Albert R. Weaver Jr.
 Landowner's Printed Name

Application Verified
 Date: 2/13/12 By: [Signature]

CONTRACTUAL AGREEMENT2/1/2013

Customer Name: Al Nainoa Building Size: 24x36x8
 Current Address: 6328 Carter Ln
Mineral Va 23117
 Site Address: _____
 County: Spotsylvania
 Customer Home Phone: 703-273-7248 703-217-2137 Other Phone: ~~703-536-5396~~ gate 4598

The total price to be paid is subject to additions or deductions as specifically provided for in this agreement, or as may be mutually agreed upon in writing. Progressive payments listed below will be due upon request by Contractor, provided that the listed work for each payment requested has been substantially completed, within 3 days after notice of completion. At final inspection payment Owner will give to Contractor a "punch list" of any items which may need adjustment, repair or completion, which the Contractor will complete promptly. If there is a delay in any payment due Contractor, which is caused by the Owner or Owners agent, then Owner agrees to pay Contractor interest of 9% per annum (prorated per diem) on the unpaid balance until paid.

1. **Work Changes:** Any modifications or other changes must be approved by Contractor. Contractor may require that the Owner pay for the cost of changes prior to the change being made. Changes may also delay the completion of the Addition. The Contractor reserves the right to make minor adjustments to dimensions and the placement of walls, roof and cornice heights and structural bearing points to better facilitate the use of labor, materials and integrity of the structure, or to meet IBC codes.
2. **Insurance:** Owner will provide a home owners/builder's risk insurance policy in an amount equal to the total cost of the improvements, with loss payable to protect both Contractor and Owner as their interests may appear which will include theft coverage of materials. Contractor will maintain his continuous coverage of Workmen Compensation Insurance and General Liability Insurance.
3. **Warranty:** Contractor warrants that all work completed under this contract shall be in accordance with the terms therein and with normal standards of construction on all workmanship and all materials provided by Contractor for a period of one year from date of final inspection. Service of warranty will be in effect after final payment for substantial completion is made by owners. Substantial completion shall be defined as 2% of total contract price. Contractor is not liable for cracking in concrete due to the inherent nature of Concrete.
4. **Inspection:** The improvements, including all fixtures and equipment shall be inspected by Owner prior to taking possession. Possession shall constitute acceptance and full completion of Contractor's obligations in this contract, except as may be agreed to by Owner and Contractor in writing prior to occupancy. The Contractor's Warranty shall survive possession and final settlement.
5. **Possession:** Owner shall have no right of possession until the contract price has been paid in full, except as agreed upon in writing by all parties.
6. **Visiting the Site:** Owner agrees not to interfere with, or disrupt, any work crews. Any negotiations with subcontractors or workers regarding their work or any changes will be handled only through the Contractor.
7. **Termination:** If the Owner fails to make a payment when due, or is otherwise in default, the Contractor may suspend further work on this job until default is remedied or Contractor may terminate this contract because of Owner's default. Contractor shall proceed to perform this contract continuously and with due diligence. If the Contractor abandons this job, is negligent, performs work in a substandard manner or contrary to the plans and specifications contained herein Owner may terminate this contract with cause after giving the Contractor written notification and a 10 day period to correct the problem. If this contract is terminated by either party the Contractor will be reimbursed by the Owner for the costs of any work which has been completed up to date of termination.



Customer's Initials _____

Name: Al Nainoa

Contractor's Initials _____

INFO SHEET

Name: Al Nainoa

ROOF	
Overhangs	Eaves & Gables
Overhang Size	12"
Roof Type	29 Gauge Roof Metal
Metal Roof Color	Patina Green
Cupola or Weathervain	N/A

WINDOWS	
Window Qty	4
Window Size	2'8" x 3'10"
Window Type	PlyGem- w/Screens & Grilles

LEAN-TO	
Lean-To Type	N/A
Lean-To Width	0
Lean-To Length	0

SIDING	
Siding Type	Vinyl Siding
Metal Siding Color	N/A
Metal Trim Color	White (889)
Vinyl Siding Color	White
Vinyl Siding Type	Comfort
Vinyl Siding Profile	DSDL
Vinyl Siding Trim Color	White
Soffit Color	White
Soffit Type	D5 Standard Soffit

DOORS	
Metal Entry Door Qty	1
Entry Door Size & Type	6' x 6'8" 15-Light metal
Entry Door Orientation	N/A
#2 Entry Door Size & Type	N/A
#2 Entry Door Orientation	N/A
#2 Entry Door Qty	0

GARAGE DOORS	
Garage Door Qty	3
Garage Door Size & Type	9' x 7' Value Series Plus - T511
Gargae Door Window	Madison 611 - Classic
Garage Door Opener	3255 - Chain Drive
#2 Garage Door Qty	0
#2 Garage Door Size & Type	N/A
#2 Gargae Door Window	N/A

STRUCTURE	
Building Depth - Truss Span	24
Building Width	36
Wall Height	8
Number of Stories	1
2nd Story Wall Height	0

Roof Pitch	6/12
Truss Centers	48
2x4 Purlins	YES
Gable Trusses	2

Wainscot	NO
Wainscot Size	0

Garage Door Header Bearing Trusses	YES
Garage Door Wind Panel	24" - 48"
Steps with Angle	NO
Steps In-Line with Joists	NO

EXTRAS	
Site-Work	INCLUDED

Concrete - Cubic Yards	75
Concrete Depth	4"
Stone Base - (Tons)	84

Overhead Powerlines	NO
---------------------	----

Power Supplied by Homeowner	NO
-----------------------------	----

Interior Build-Out	NOT INCLUDED
--------------------	--------------

Plans	INCLUDED
-------	----------

Electrical	INCLUDED
------------	----------

Permit by OCI	INCLUDED
---------------	----------

Survey by OCI	NOT INCLUDED
---------------	--------------

Wall Insulation	0
-----------------	---

Roof Insulation	N/A
-----------------	-----

Sheetrock - Square Footage	0
----------------------------	---

BT



Customer's Initials _____

Contractor's Initials _____

8. **Costs of Enforcement:** Any party failing to comply with the terms of this contract shall pay all expenses, including a reasonable attorney's fee, incurred by the other party to this contract as a result of such failure.

9. **Full Agreement:** Other documents which are considered part of this agreement shall be the *Plans*. *This Contract represents the entire agreement between the parties, and no other agreement, verbal or otherwise, shall be binding upon the parties unless it is in writing and is incorporated in this contract.*

10. **Definitions & Notifications:** Whenever used, the singular shall include the plural, the plural the singular and the use of any genders shall include both parties. Ogburn Construction, Inc. is licensed in Virginia as a Class "A" General Contractor.

11. **Severability:** In the event that a court of competent jurisdiction should rule any provision or part of this agreement is void or voidable, then all remaining provisions of this agreement shall remain in full force and effect as if the parties had originally executed this agreement without said offending provisions.

12. **Access:** Customer must provide uninterrupted access to the site for delivery and construction of building. Contractor is not liable for any damage to existing driveways.

13. **Site work:** Contractor is not liable for unforeseen cost such as hidden rock or stumps and customer understands that additional charges may apply for removal. Contractor agrees to inform customer in advance before doing work if additional cost exceeds \$250.00. Contractor assumes that soil is load bearing and is not liable for Engineering or additional cost associated with new design should a soil analysis test be required.

14. **Concrete:** Customer agrees to pay for any additional concrete necessary to complete job beyond what is specified below. The cost specified below does not account for soft soil, roots, or any other impurity that would create a need for additional concrete. This additional cost will not include any labor charge, only the cost of the concrete itself.

15. **Unforeseen Costs:** Customer is responsible for any and all costs over and above contracted amount for items that are considered unforeseen costs. (i.e. county required surveys, utility line adjustments, soil analysis etc.)

16. **Disclaimer:** Due to natural inflation and constant change in material costs, the total contract price listed below is only valid if signed by both parties within fourteen (14) days of receipt of this contract.

Accepted and signed Date: 2/15/2013

in consideration of the mutual terms, covenants and conditions contained herein, the parties agree as follows.

Total:	\$	<u>45,430.78</u>	Deposit:	\$	<u>4,543.08</u>
Due upon completion of foundation:	\$	<u>10,346.00</u>			
Due upon material delivery:	\$	<u>18,172.31</u>			
Due upon substantial completion of framing :	\$	<u>4,074.95</u>			
Due upon completion of electrical, insulation, plumbing, and/or sheetrock:	\$	<u>4,074.95</u>			
Due upon completion of garage doors:	\$	<u>4,219.50</u>			

Customer's Initials ABH
Contractor's Initials BJ

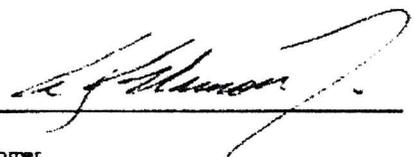
Name: Al Nainoa

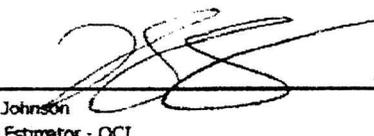
Electrical Description
price includes 60 amp sub panel
Price includes (6) 110 outlets
Price includes (6) fluorescent lights
Price includes wiring for exterior coachlamp at entry door. Customer provides fixture

Access to Site
Existing driveway

Site-Work Description
Price includes taking down of 6 trees. Trees remain on site to be stacked at top of hill
Price includes cut and fill for 24x46 garage building pad and cut swell around building on left side
Price includes cut and fill for 20x36 turnaround pad with stone
price includes additional 20 ton load of stone for driveway spread

Interior Build-Out Description
N/A

X 
Customer

X  2-1/13
Bryan Johnson
Senior Estimator - OCI

Because you mentioned real estate and during sale they require a survey you can not mis it on angled part it could hurt sale or ruin it that is not a threat we just thought may it would give us some thing so neither had to ask for favor but you chose to threaten me with court?



You would be the

EDWARD F. YOUNGER

Attorney At Law

9130 Courthouse Road

P. O. Box 2200

Spotsylvania, Virginia 22553

eyounger@youngerlaw.com

Tel: (540) 582-6885

Fax: (540)582-6721

January 6, 2020

Paul and Mary Jackson
6626 Williams Lane
Spotsylvania, Virginia 22551

**Re: Mr. and Mrs. Nainoa
6328 Carter Lane, Mineral, Virginia 23117 / Boundary Line Adjustment**

Dear Mr. and Mrs. Jackson:

I represent Mr. and Mrs. Nainoa in reference to the receipt of your letter dated October 25, 2019. They accept your proposal to pay you Four Thousand Dollars (\$4,000.00) for 400 square feet of land on the adjacent parcel. That would include the 63 square feet of encroachment. The boundary line square feet is agreed to, but the boundary line has to be one consistent with the professional opinion of the engineer as to the shape and configuration of the 400 square feet.

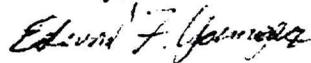
My clients would like to have the tree trimmed/pruned, as the tree is healthy, therefore they will need the right of access to the tree from your lot. You may have the wood from the tree for firewood, if you want it. The agreement would also require the two of you to sign any documents necessary or helpful to completing the boundary line adjustment and all county or court documents necessary.

My clients would pay for the boundary line adjustment application of \$1,840.00 and my clients would be using Webb and Associates for the surveyors. The payment of the \$4,000.00 and trimming/pruning of the tree are contingent on getting all necessary paperwork completed with the county and the courts concerning the recordation. Time is of the essence of this agreement. Please advise if this is acceptable to you within ten (10) days or this offer will be withdrawn. If you both agree to the terms of this letter, please sign and date acknowledgment of your agreement.

Agreed: _____ Date: _____

Agreed: _____ Date: _____

Sincerely,



Edward F. Younger

EFY/rdy

cc: Mr. and Mrs. Nainoa



Spotsylvania County Planning and Zoning Department Notice of Violation and/or Notice to Comply

2019 Old Battlefield Blvd., Suite 320
Spotsylvania, VA 22553

Phone: (540) 307-7404
FAX: (540) 307-7261

http://www.spotsylvania.va.us

Case # ZV19-0404 Date of Notice: 3/13/2020 Date(s) of Offense: 10/11/2019 & 3/13/2020

Location of Offense: 3825 CARTER LN Tax Map: 54C-1-2

Property Owner:

Name: ALBERT K NAINOA JR &
KATHLEEN A NAINOA
Address: 3825 BEVAN LANE
FAIRFAX, VA 22030

OTHER PARTIES RESPONSIBLE FOR VIOLATION: (if applicable)

You are hereby notified that you are in violation of the County and/or State Code Sections as listed and directed to take prompt corrective action(s) as specified below:

CODE SECTION VIOLATED	NATURE OF VIOLATION	CORRECTION REQUIRED	COMPLIANCE DATE
Spotsylvania County Code Section 22-52.3(7)(B)	Constructing a residential accessory structure closer than ten (10) feet from the side and/or rear lines.	Relocate the accessory structure to meet the side and/or rear minimum setback of ten (10) feet within 30 days of the date of this notice.	4/12/2020

Corrective action must be taken by the compliance date(s) specified in this notice. County and/or State Code may require that you be given Notice of Violation or Notice to Comply. This notice is intended to be such notice. Failure to respond as directed may result in legal proceedings against you. The County of Spotsylvania is committed to working cooperatively with you by explaining the nature of the violation(s) and ordinance(s) noted above. If you have any questions and/or concerns regarding the notice of violation or how to gain compliance, we would encourage you to please e-mail (preferred) or call the Code Enforcement Officer with the contact information listed on this notice.

Spotsylvania Code Section 22-112 (a) Any person violating any provision of this chapter shall be deemed guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than...

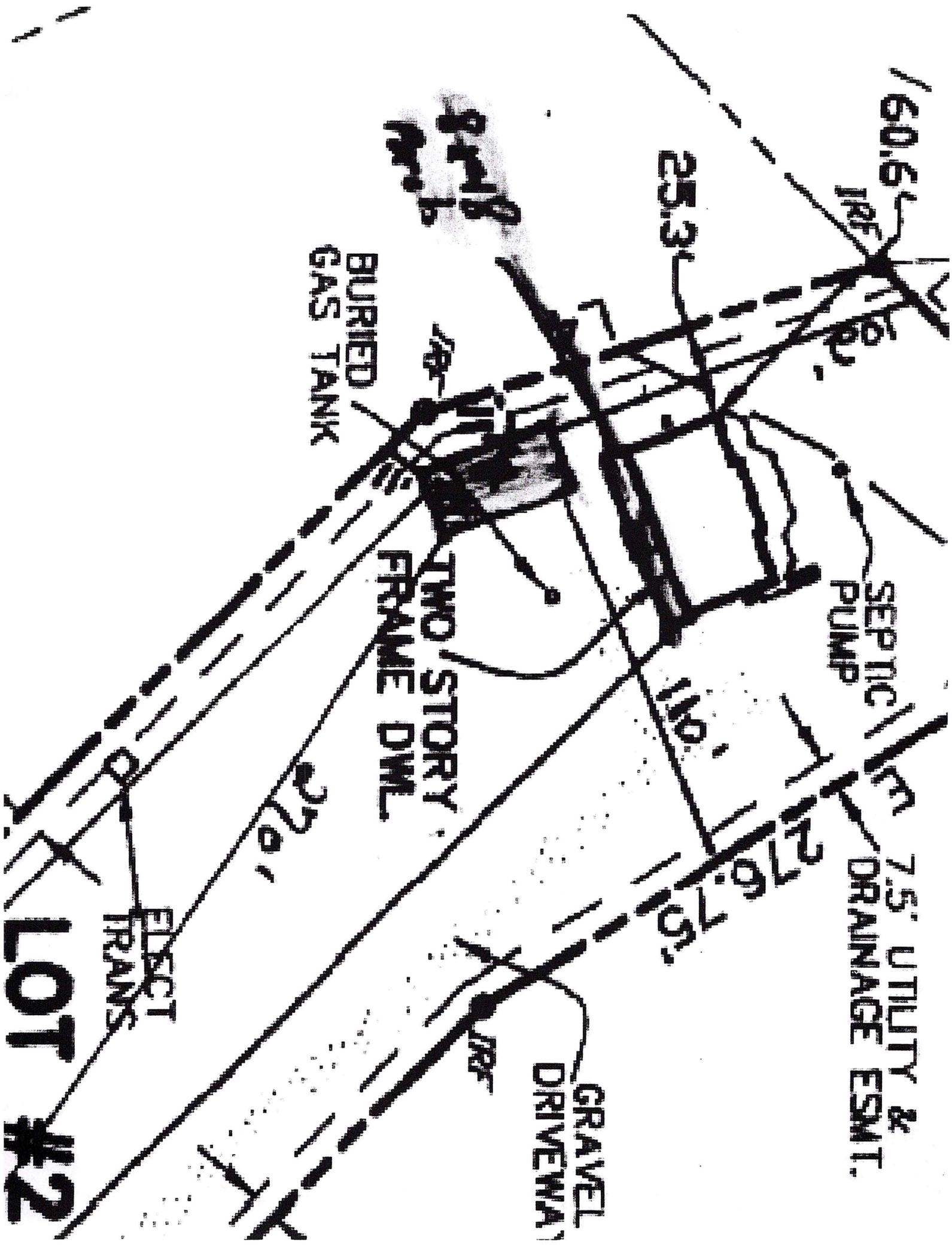
Spotsylvania Code Section 22-112 (a) Any person violating any provision of this chapter shall be deemed guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than...

BY: Dona Blingard
DATE: 3/13/2020

DONA BLINGARD, Code Enforcement Officer
Email: dblingard@spotsylvania.gov

NOTICE DISBURSED: Call Center Direct Mail Email In-person Other Other

Please note: Your signed copy of this notice is required to be filed with the County Clerk's Office. If applicable, please file in your local jurisdiction.



160.6'

IRF

25.3'

110.0'

BURIED
GAS TANK

SEPTIC
PUMP

TWO STORY
FRAME DWL.

110.0'

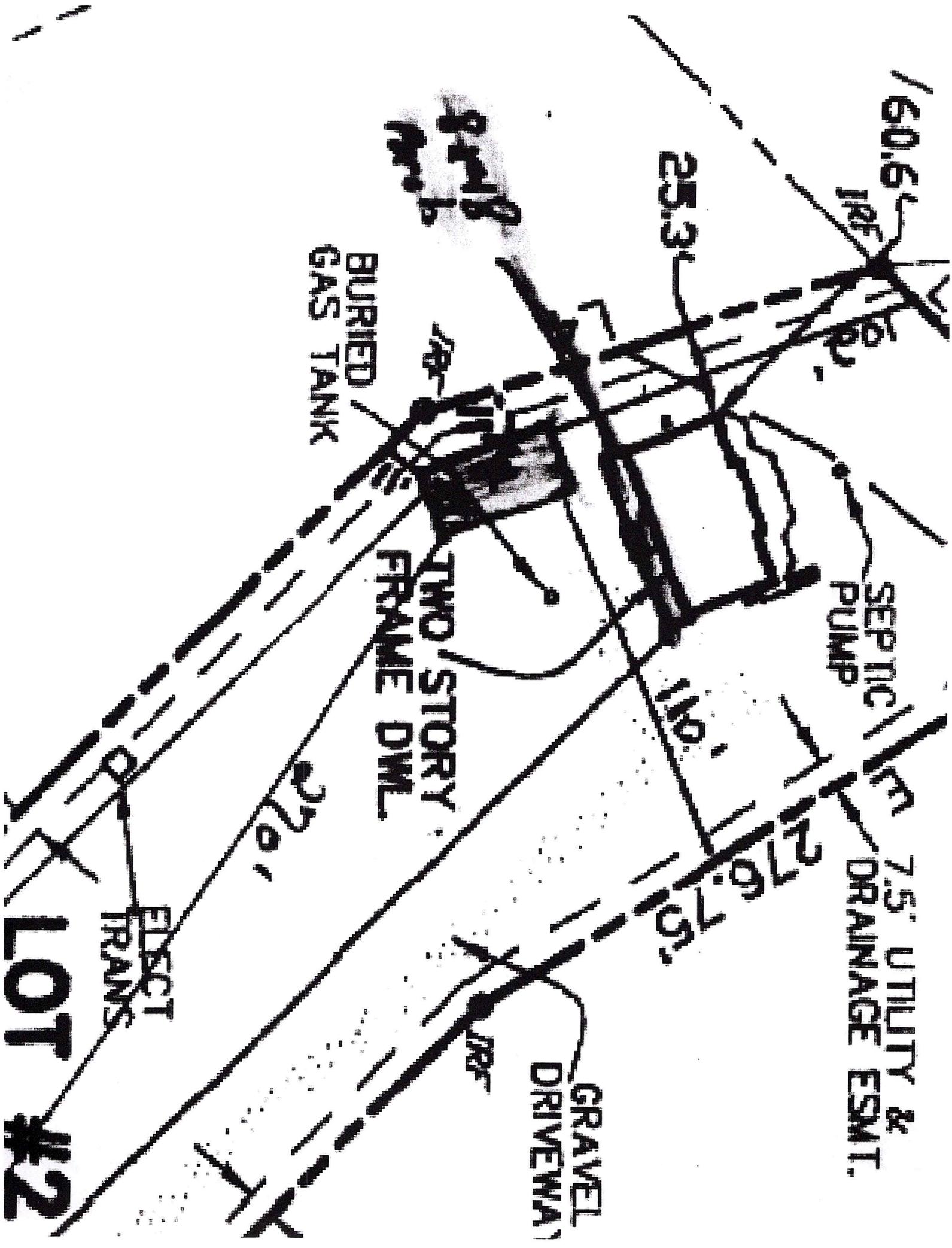
7.5' UTILITY &
DRAINAGE ESMT.

220.1'

GRAVEL
DRIVEWAY

ELECTRICALS

LOT #2



160.6' REF

25.3'

SEPTIC PUMP

TWO STORY FRAME DWL.

BURIED GAS TANK

7.5' UTILITY & DRAINAGE ESMT.

GRAVEL DRIVEWAY

LOT #2

ELECT TRANS

270'

110'

122'

126.7'

7.5' UTILITY &
DRAINAGE ESMT.

GRAVEL
DRIVEWAY

ELECT
TRANS

LOT #2

SEPTIC
PUMP

TWO STORY
FRAME DWL

BURIED
GAS TANK

60.6'

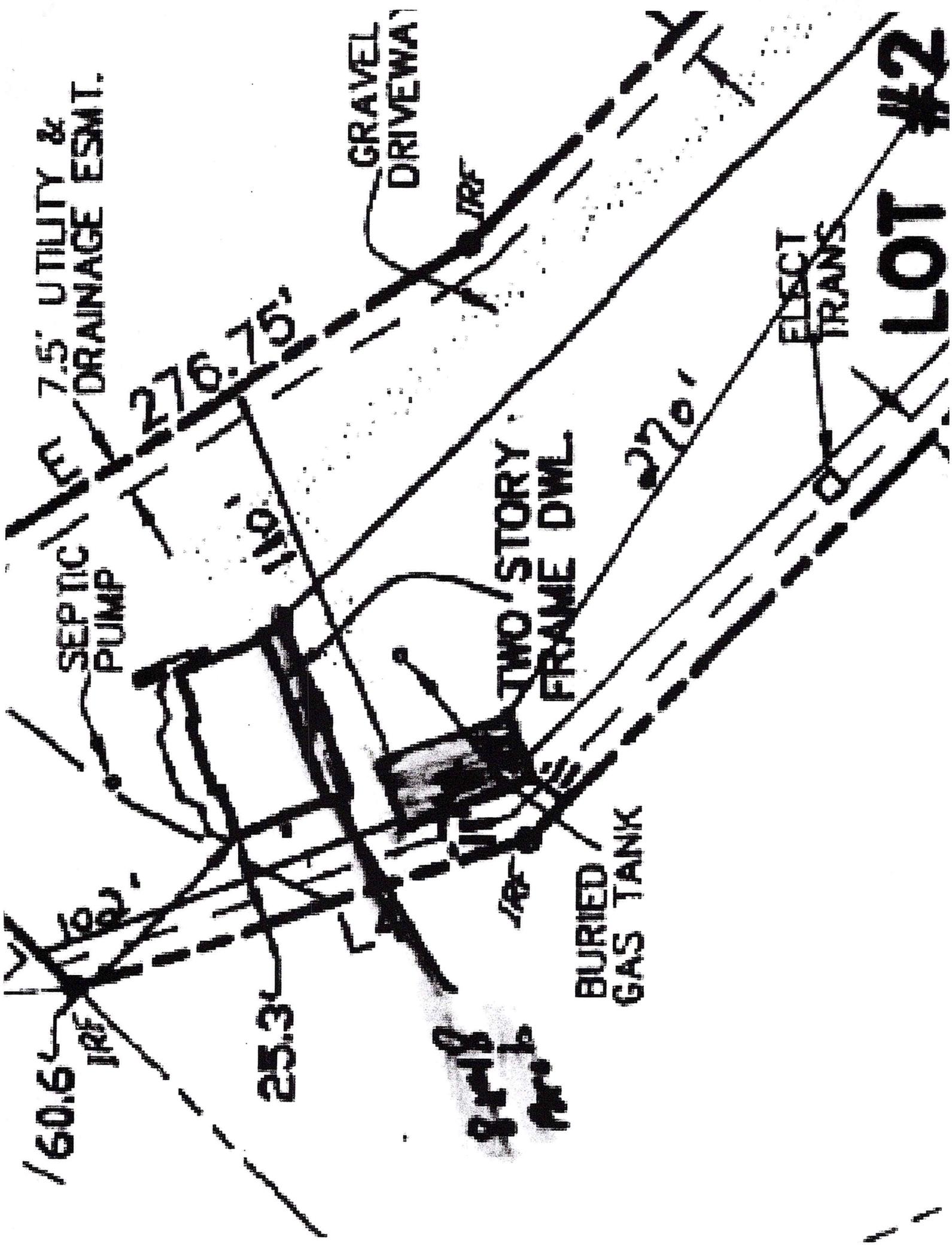
172.0'

25.3'

110'

270'

9x18
10x16



7.5' UTILITY &
DRAINAGE ESMT.

GRAVEL
DRIVEWAY

ELECT
TRANS

LOT #2

TWO STORY
FRAME DWL

BURIED
GAS TANK

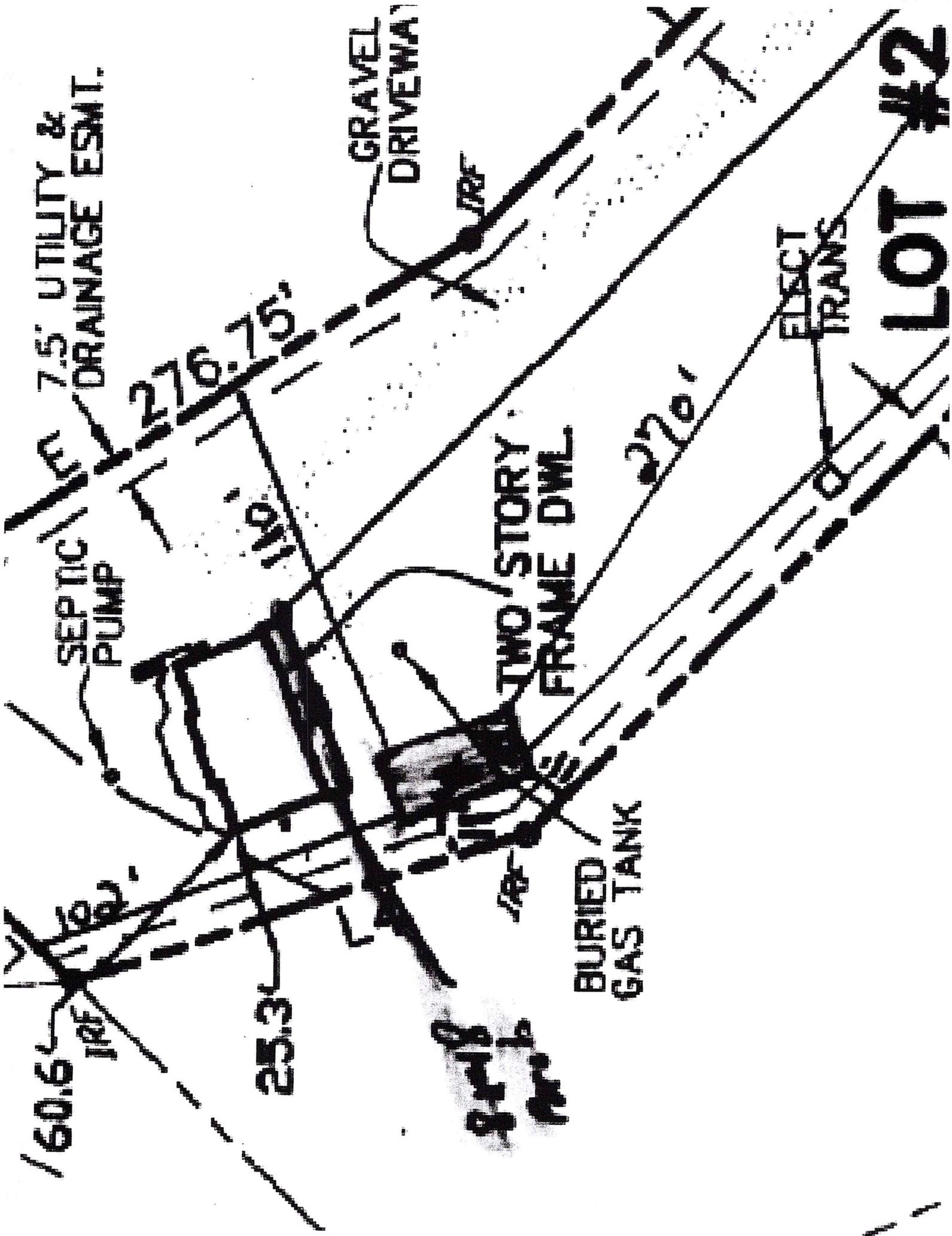
SEPTIC
PUMP

60.6'

25.3'

110'

270'



BLA AREA SWITCH

Email with
Proposed Boundary
Line adjustment

From: Norman Cox (arrowheadcurt@aol.com)

To: jacksonwm6166@yahoo.com

Date: Friday, February 7, 2020, 04:34 PM EST

Please review. I sent drawing to neighbor also. For the pier, it might be easier if you give me a drawing with distances. Thanks, Curtis

-----Original Message-----

From: Wes & Mary Jackson <jacksonwm6166@yahoo.com>

To: Norman Cox <arrowheadcurt@aol.com>

Sent: Tue, Feb 4, 2020 2:07 pm

Subject: Re: distances to proposed pier

could I just make the distance to dock 40 feet ? would that keep the water line that goes out from property at 16 foot distance from pier ?.then could I make the dock 82 feet from land? ,then dock would be 33 feet out from land this side?.pier can be longer than 40 feet it just can not be bigger than a certain amount of square feet . it can not be out in cove more than 1/3 with ruler I get 120 feet wide cove . dock can start somewhere on our property around 18 feet from property line with it being 5 feet wide. I hope you can understand this and it works out in computer and looks good what is your thoughts do you think this will work ,also if you want to just hand draw on paper with distances and I will send him it in email he said he would look at first and make sure it was okay before you print it and I send in paper work

thanks

Wes

On Sunday, February 2, 2020, 12:29:56 PM EST, Norman Cox <arrowheadcurt@aol.com> wrote:

-----Original Message-----

From: Wes & Mary Jackson <jacksonwm6166@yahoo.com>

To: Norman Cox <arrowheadcurt@aol.com>

Sent: Sat, Feb 1, 2020 11:58 am

Subject: this is what i am thinking ?



SCANS0438.PDF
122.5kB



- 3rd bay on garage not
accessible due to design



County of Spotsylvania
Department of Planning & Zoning
Staff Report
Board of Zoning Appeals

Project Number: V20-0002

Owner/Applicant: Albert K. Nainoa Jr. and Kathleen A. Nainoa

Applicant Representative: H. Clark Leming, Leming and Healy, P.C.

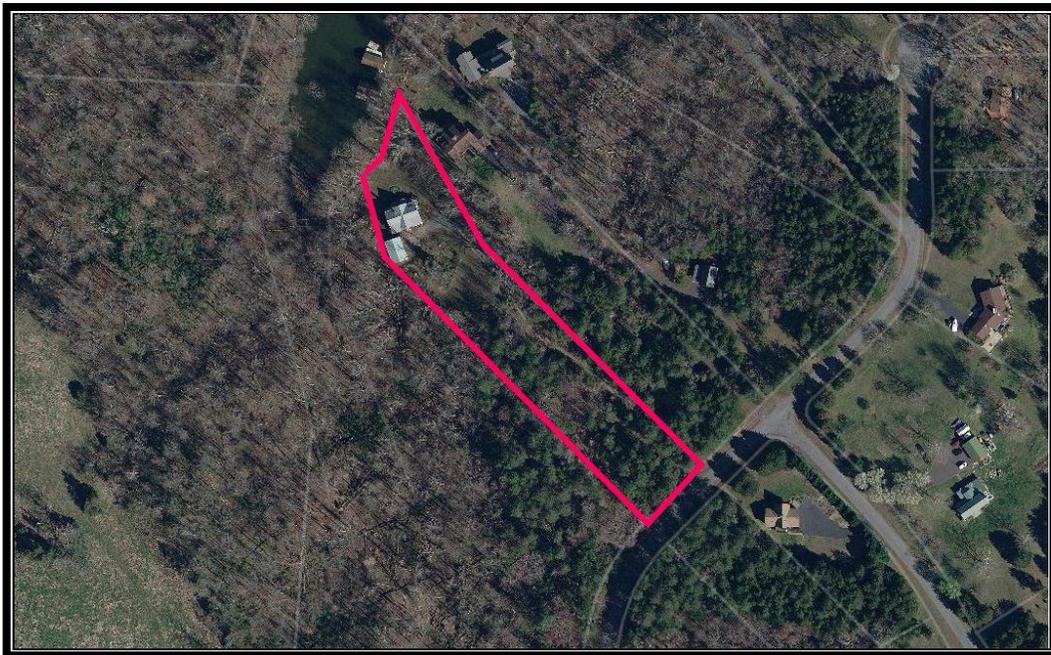
Request: The applicants request a variance to the ten foot (10') minimum side yard requirement for freestanding accessory structures identified in County Code Sec. 23-5.2.3(7)(B). The variance will reduce the side yard setback by 3'6" to remedy a construction error which placed a detached garage within the required setback.

Tax Map Parcel(s): 54C-1-2

Location: The property is located at 6328 Carter Lane Mineral, Virginia 23117.

Voting District: Livingston

Date Application Deemed Complete: September 25, 2020



II. Analysis.

The Spotsylvania County Zoning Ordinance contemplates construction errors and grants the Zoning Administrator the authority to approve reductions in the minimum yard requirements based on errors in the building location provided the error does not exceed ten percent of the measurement. In this case, the error is over 30% with the corner of the garage encroaching into the side yard setback by just over three feet (3'). With that, the property owners are left with no alternative than to seek remedy through a variance or demolish the garage or portion thereof.

As defined in Virginia Code 15.2-2201, "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 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 purpose of the ordinance. It shall not include a change in use, which change shall be accomplished by a rezoning or by a conditional zoning.

In this instance, given that a boundary line adjustment was unsuccessful, a strict application of the ordinance would require the demolition of the garage or a portion thereof. The variance request is consistent with the Zoning Ordinance in that Section 23-5.1.4 provides for administrative relief to construction errors within specific parameters as previously described.

The burden of proof shall be on the applicant to prove by a preponderance of the evidence that their application meets the standards for a variance as defined in VA Code 15.2-2201 and the criteria set out in this section, VA Code 15.2-2309 (2) et seq. Listed below are the standards with staff's analysis provided in italics for the Board of Zoning Appeals' consideration.

- (i) 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;

Based on staff's research, the Nainoas purchased their property in 1994 and constructed a single family dwelling in 2000. The Nainoas secured the appropriate permits needed to construct the detached garage. The Code requires a ten-foot setback (10') for accessory structures from the side property line and the approved permit identifies the building eleven feet (11') from the side property lines. The hardship is the result of a construction error.

- (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;

The property most impacted by the reduced setback is the adjacent lot to the west which is owned by the Jacksons. Based on County records, this lot is approximately 6.5 acres and currently vacant. The required side yard setback for an accessory structure is ten feet (10'). The length of the garage adjacent to the side property line is 36' and approximately 30' of the building is in compliance with the setback. The remaining six-foot portion of the building is located 6' 9" from the property line which turns westward into the property. Please refer to Figure 1.

- (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;

The Spotsylvania County Zoning Ordinance addresses construction errors and grants the Zoning Administrator the authority to approve reductions in the minimum yard requirements based on errors in the building location provided the error does not exceed ten percent of the measurement. In this case, the error is over 30% with the corner of the garage encroaching into the side yard setback by just over three feet (3').

- (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

The granting of the variance does not result in a use that is not otherwise permitted on the property.

- (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 A 4 of § 15.2-2286 at the time of the filing of the variance application.

There is no relief to this situation through a special use permit or rezoning. Compliance with the setback can be achieved by either a boundary line adjustment or demolition of the garage. It is staff's understanding attempts to pursue a boundary line adjustment have been unsuccessful.

Considerations: The Board of Zoning Appeals must determine if the applicants' variance request meets the standards for a variance as defined in VA Code 15.2-2201 and the criteria set out in VA Code 15.2-2309 (2) et seq. Should the Board decide to grant the variance, conditions may be imposed in order to mitigate impacts to adjacent properties.

**PUBLIC
CORRESPONDANCE**

Dear Board of Zoning Members,

We felt it necessary to communicate with you why we are opposing the variance request being made by the Nainoa's. Ultimately the property owners are responsible to make sure that their contractor of choice has followed all codes when building an accessory structure. The fact that this garage does not meet the required county setback requirements is not a construction error on behalf of Ogburn Construction, Inc., but a self created problem caused by a set of poor decisions as shown by the Nainoa's.

Back Ground

We purchased Lot 1 of Kelly's Landing on July 2, 2018 in hopes of building our retirement home in the future. After purchasing the property in 2018 we had a survey done to identify the property line between us and the Nainoa's as we were cleaning a pathway for a walkway down to the waterfront and didn't want to cross over on the property lines. We had the survey done by Cox Survey's on July 30, 2018 to clearly identify the property line, **Exhibit A & A1, Plat line, July 30, 2018**. After discovering the measurements of their garage by the survey, my husband, Paul informed Mrs. Nainoa in 2018 when he saw her at the property that the garage did not meet the required setbacks.

The County approves the construction plans for the garage, and the garage is constructed

As referenced by Mr. Leming, the Nainoa's had a detached garage constructed in 2013 by Ogburn Construction, Inc. The contract referred to as, Exhibit B, in the applicant's packet shows the survey by Ogburn Construction, Inc. is **NOT INCLUDED in their contract,** which is initialed by the applicants acknowledging a survey was not included. Item 15 in this same contract states, "unforeseen costs: Customer is responsible for any and all costs over and above contracted amount for items that are considered unforeseen costs. (i.e. county required surveys, utility line adjustments, soil analysis etc." Again, this page is initialed by the applicants. The applicant's chose to utilize the survey from their house placement in 2000 rather than have a survey done to properly place the 24 X 36, \$45,000+ structure in a confined space and 1' from setback line to meet county building codes in regards to setback requirements, **Exhibit B & B1, GIS Arial Eagle View 2018**.

A hand drawn sketch of the garage was submitted stating that it would be 11' from the property. The county approved the application based on the appearance of the permit application that the structure would meet county codes of setback. The county did the appropriate inspections of the structure itself to meet building codes, but the county inspectors themselves do not verify distance to property lines. This information is

reflected in the check list the Building Department provides to citizens and builders to follow when new construction or accessory structures are being built. This check list tells you everything required to obtain a permit. The "Agreement In Lieu of Plan" document that reflects minimum standards shows on item 4, that any residential accessory structure may extend into required rear and side yards, but shall be located no closer than ten (10) feet from the rear and side yard lot lines", **Exhibit C, Agreement In Lieu of Plan document.**

The Nainoa's chose to let the builder place the structure relying on a construction worker with a measuring tape instead of surveyor with the proper equipment. Even with the site survey they submitted with their application to construct the garage depicts the questionable area of the angle on the property lines. The Nainoa's agreed to these plans knowing **the area in which the garage was to be constructed presented numerous obstacles since there was only two rods for identifying the property line that were out of sight and approximately 500' apart; there was a 30 degree turn on the property line making measurement crucial for placement because of the turn; the confined space for a 24' X 36' structure to be built and knowing that the plans you submitted reflected only 1' away from actual setback requirements creates a scenario that even the most experienced builder would find impossible to place.** Yet, the Nainoa's chose to rely on a construction worker with a tape measure to place the garage appropriately and saw nothing wrong with this decision. That shows that they accepted the responsibility for the decision made of the placement of the structure.

Their own application submitted states, "that the OCI employee measured the distance of the constructed garage on multiple occasion from the garage to the monument shown on the plat where the western property lines turns approximately 30 degrees from the south southwest to the southeast. The measurement was invariably at least 11'. The OCI employee **DID NOT** measure the garage from the southwest corner of the garage to the property line after it turns to the southeast where the 11' measurement is shown on the plat." A text message received from Mrs. Nainoa reflected a survey that OCI had ordered in 2019 to verify the structure after the Nainoa's contacted them that reflects that the one edge of the garage is only 10' from the property line and not 11' as stated or measured by the previous employee of Ogburn Construction, **Exhibit D, text reflecting survey provided by Ogburn Construction reflecting 10' exactly at the one end and the section proposed to be removed.** Again, a poor choice the Nainoa's made to rely on this person with a tape measure rather than paying a small fee for a survey to protect themselves and ensure the appropriate placement of an accessory structure in an area with numerous obstacles that is costing them over \$45,000.

No issue is raised as to the garage location for over six years after construction

The Nainoa's were told verbally in 2018 that their garage did not meet setback requirements when we had the survey done. Prior to this time, the previous owners were deceased. The gentleman passed in 2006 and the wife later passed away in 2016 and the land was inherited by their children that did not reside in the state. The property was listed on the market for 458 days before we purchased it.

Jackson commissions a survey in September 2019 which reveals that the garage is approximately 6'9" from the neighboring property line

The original boundary line as shown July 30, 2018, in our **Exhibit A**, was given to the Code Enforcement Office, but was not acceptable since it was not a certified copy. In September 2019 we paid Mr. Norman Cox of Cox Surveys to provide a certified copy of the boundary line between our two parcels as requested from the Spotsylvania County Code Enforcement Department. We received a certified copy of this same survey on October 2, 2019 as the county requested that the survey be a certified copy.

In September 2019, we did in fact inquire with the neighbors about setback areas at the water front via text message. Mrs. Nainoa informed us that her realtor advised them not to do this because this would lower the value of their real estate. I confirmed via text that we understood and we would work with Perry Agee on what is allowed by Dominion; as is required by anyone to add a structure on Lake Anna. My husband texted them regarding the garage and explained that since they were working with a real estate agent to confirm if this was something that could hamper their sale if a survey was done. Something that he pointed out that their own real estate agent should have advised them. He informed them thru text that he was willing to work with them on this issue even without the waterfront area that he originally inquired about.

Nainoa unsuccessfully attempts to acquire from Jackson the land necessary to render the garage compliant with the 10' measurement

In October 2019 I was asked by Dena Slingerland, Spotsylvania County Code Enforcement Officer, to reach out to the Nainoa's to let them know that we were willing to work with them for a boundary line adjustment. We sent a letter to the Nainoa's dated October 25, 2019, **EXHIBIT E, E1 & E2, Letter to Nainoa's offering property for**

sale via certified mail to both their home address and their vacation home address, which was later returned from the vacation home as no one ever signed to receive the envelope.

We finally heard from the Nainoa's in December about a boundary line adjustment as stated in my email to Dena Slingerland to provide an update of any and all communication, **Exhibit F, Email reflecting contact**. The Nainoa's **NEVER** attempted to acquire just 63 square feet of land from us. As identified above, we sent a letter to the Nainoa's attempting to sell the necessary land to meet setback requirements and to encompass a tree that is about 100' tall and 3' to 4' wide due to the liability that has been forced upon us because of the location of the garage that was constructed in 2013 and the Nainoa's failing to meet the correct setback requirements. After receipt of the letter we began exchanging text messages with the Nainoa's trying to work this out together so their structure would be in compliance. Throughout October 2019 to December 2019 there were numerous text messages sent between us regarding this subject, so to highlight one message; as referenced in their Exhibit C, to make it seem as though we were trying to use this situation as leverage is truly being taken out of context. The remainder of the messages should have been included that shows efforts of working it out with them even without anything from the waterfront area; later even reducing the price of the land to \$3,000.00. Our original response was that we would work with Dominion for what is allowed and have since received approval from Dominion to build our dock. The Nainoa's stated that they did not want the liability of the tree. Mrs. Nainoa expressed concern to have this issue addressed prior to the end of 2019 due to time constraints she was working with. On December 26, 2019 I received a text from Mrs. Nainoa stating that they were going back to Plan B. Upon receiving this message, I sent Dena Slingerland a message on December 26, 2019 as showing in, **Exhibit G, Email with Dena Slingerland** that we had worked with the neighbors several weeks, where Mrs. Nainoa tried to negotiate a lower amount and did not want to include the tree, so they were going back to Plan B. On January 6, 2020 I sent Dena Slingerland a message stating that Paul had run into Mr. Nainoa where he told my husband they were going to have an attorney contact us about the boundary line adjustment as referenced in the applicant's as Exhibit D. We received a letter from their first attorney, Edward F. Younger, as referenced in the applicant's package as Exhibit D. This letter suggested that we need to allow the Nainoa's to have 400 s.f. of land for \$4,000.00 and allow their representative or engineer decide what 400 s.f. they were going to take and the pruning of the tree and the money was going to be contingent upon the Nainoa's being happy. On January 8 & 9, 2020 Paul reached out to the attorney as shown in our, **Exhibit H & H1, Email to Mr. Younger**, and addressed the concerns that we had and informed them that we are willing to work with them to resolve this issue, but in no way would we allow someone to decide what 400 s.f. they wanted to take. Paul verbally spoke with the former attorney and told him that he was willing to resolve this and put into writing confirming their conversation, **Exhibit I, Email to Attorney confirming conversation reducing price**; once again lowering our price in good faith to \$3,000.00 and what was necessary to achieve proper setback requirements. At a later date the Nainoa's worked with Norman Cox about

addressing the boundary line adjustment. This survey reflected a total of 628 s.f., but included absolutely no measurements of the proposed boundary line adjustment nor did they mark any lines at the time of survey other than a nail in the ground, **Exhibit J, picture attached with Blue Ribbon**, at the opposite end of the garage towards their home. We sent their attorney a copy of the proposed changes that we were willing to work with once Dena Slingerland confirmed the setback requirement was in fact 10', **Exhibit K and K1, Email with plat diagram and confirmation of setback**. Our parcel does consist of 6.54 acres, but the area that goes to the actual water front is very narrow and this adjustment could have a drastic impact on our property value as well along with adjusting the property line since this is area of our proposed drain field, **Exhibit L, Copy of proposed drain field**.

Granting of The Variance

This variance request does not meet the requirements for approval as identified in the Spotsylvania County, VA Code of Ordinance, **Exhibit M, Spotsylvania County Virginia Code of Ordinances**. The owner has five years to go after the builder civilly, which has nothing to do with this variance request because the builder is not held responsible for the construction, but the owner themselves are responsible for the decisions they made moving forth with construction that relied on a gentleman with a measuring tape. This has been reflected in all of the documents presented. Attached pictures show the area for the garage and the landscape in which they were working with. The financial cost is not a consideration for the determination of the variance request. We again are left with the liability of the tree. The decision has been left all along in the Nainoa's hands to resolve this issue without having to tear down their garage. Our last correspondence with their former legal counsel as referenced in our **Exhibit I, Email to attorney reducing price in good faith to move forward**, reflects our willingness to provide what is necessary for their structure to meet code. We still stand by this offer today. I encourage this board to look at the facts presented and deny this variance request as it does not meet the criteria for approval. The placement of this structure is a result of a grievous decision made by the Nainoa's and not that of Ogburn Construction, Inc.

Mary L. Jackson

Exhibit A

From: Wes & Mary Jackson <jacksonwm6166@yahoo.com>
Sent: Wednesday, September 30, 2020 8:33 PM
To: Mary L. Jackson
Subject: [EXTERNAL]: Fw: Lot line
Attachments: SCANS0318.PDF

CAUTION: This email originated from an external source. Do not click on any links or open attachments unless you recognize the sender and know the content is safe.

----- Forwarded Message -----

From: Norman Cox <arrowheadcurt@aol.com>
To: "jacksonwm6166@yahoo.com" <jacksonwm6166@yahoo.com>
Sent: Monday, July 30, 2018, 10:30:53 PM EDT
Subject: Lot line

Sent from AOL Mobile Mail

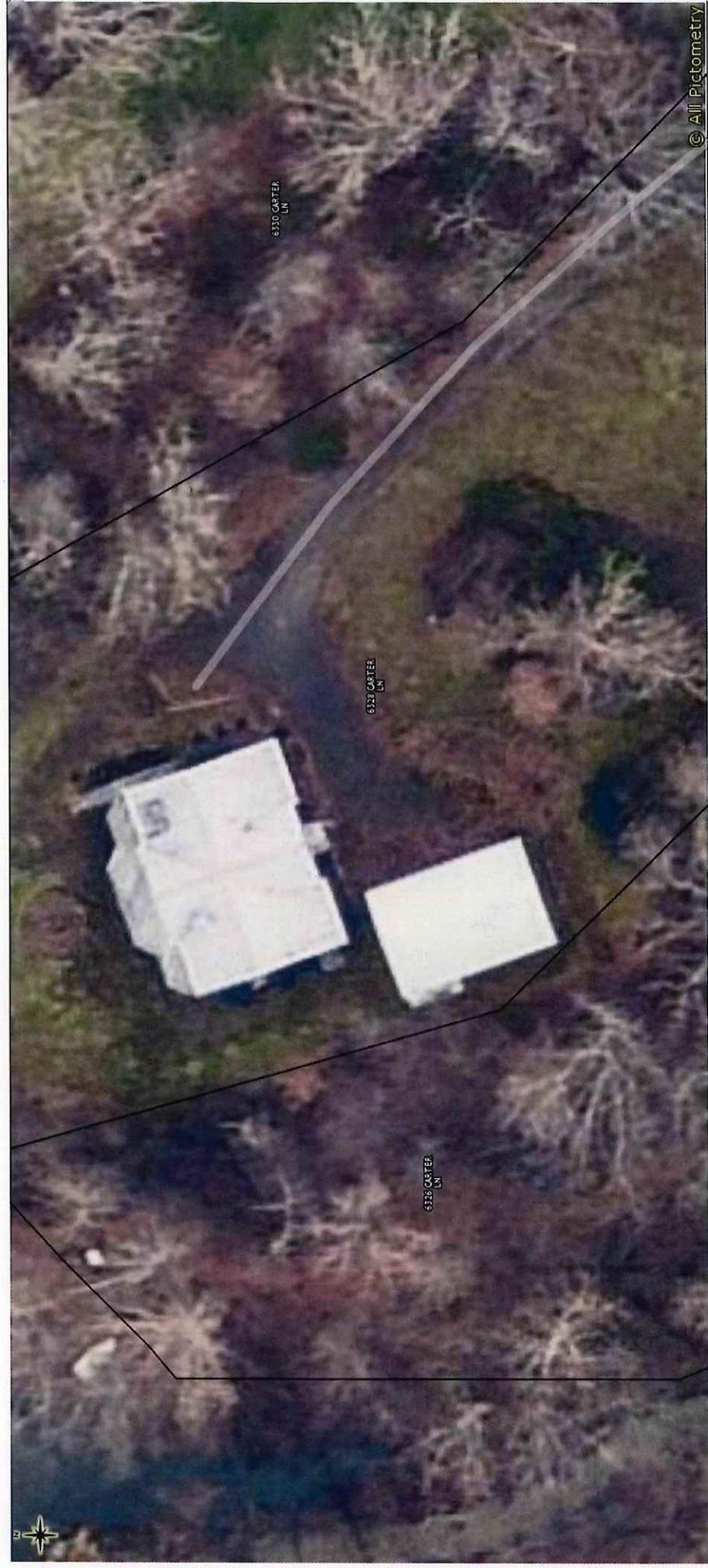
-----Original Message-----

From: Wes & Mary Jackson <jacksonwm6166@yahoo.com>
To: Norman Cox <arrowheadcurt@aol.com>
Sent: Mon, Jul 30, 2018 05:33 PM
Subject: hello

I was sending this ,you had said you were going to put numbers in and send something, I believe it was something about garage and distance and I guess what ever numbers you put in and what line you were sending?.it is nothing important and you can do at leisure ,I just remembered that you had said you would send it, and when I looked I did not see it.thanks
wes

Exhibit B

6328 Carter Lane Eagle View Garage

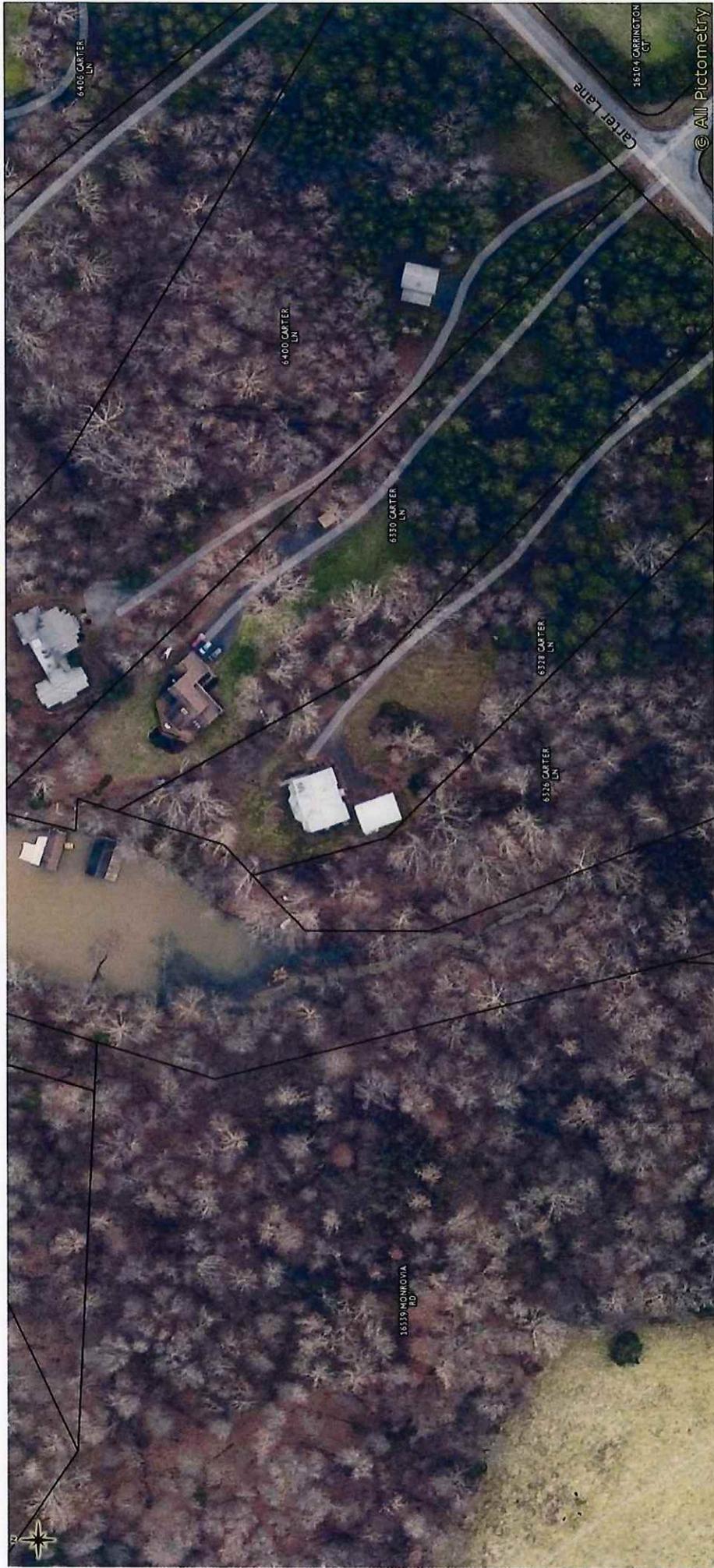


12/30/2018

6328 Carter Lane Eagle View

17 Miss Take
2018-

Exhibit B1



**Agreement In Lieu of Plan
(Minimum Standards)**

Permit Number: _____ **Subdivision:** _____ **TAX MAP #:** _____

1. If you have any questions concerning the typical plot plan shown on pages 6 and 7, please read Zoning Ordinance Code Sections, 23-5.2.1 & 2. If you have any additional questions, please call the Zoning Office at (540) 507-7222. Information is also available at the Intake Counter or online at www.municode.com, Spotsylvania Web Page Link.
2. Accessory structure(s) is subordinate in area to the principal structure(s) and shall cover no more than 30% of the area within the required rear yard. (Section 23-5.2.2(2), *Accessory Structures*)
3. Accessory structures are not permitted within any minimum required front yard. On any lot greater than 2 acres and on lots zoned Residential Resort (RR) or Resort Agricultural (RA) which are greater than 1 acre, you may locate accessory structures within the front yard area, but must meet the minimum required front yard setback for the Zoning District. See Code Section 23-5.2.3(7)(A).
4. Any residential accessory structure may extend into required rear and side yards but shall be located no closer than ten (10) feet from the rear and side yard lot lines or in cluster subdivisions no closer than five (5) feet from the rear and side yard lot lines. Corner lots shall be considered to have 2 front yards and are subject to front yard requirements for both fronts.
5. Open decks have a minimum rear yard setback of 23' for all single-family homes located outside of a proffered subdivision (to include by-right clustered subdivisions).
6. Open decks in the front and/or side yard must meet the setback requirements for the principal structure per the applicable Zoning District. Contact the Zoning Office for zoning confirmation and setbacks requirements.
7. Open, uncovered handicap ramps, none of which are more than ten (10') in width, may extend five (5') into any minimum required yard, but no closer than five (5') to any lot line.
8. No structure shall be located in any easements. Please verify location of easements prior to building.
9. Commercial/Residential propane tank installation shall have a property line setback distance to be no less than 10' from rear and side property lines.
10. Three sided car-ports may extend 5 feet into any minimum required side yard, but not closer than 5' to any side lot line.

****REFER TO PAGE 5 FOR A LIST OF CLUSTER SUBDIVISIONS****

I, hereby certify as owner/owner's agent, that I will comply with all Local and State codes affecting construction, inspection, and use applied for with the Code Compliance Department, including State and Local Building and Zoning Codes. I understand that the attached plan is a representation of a typical lot layout and no structure may be located closer to any lot line than shown as a building restriction line (BRL). Furthermore, I certify that such construction will not interfere or conflict with existing underground well and septic systems or any Health Department regulation.

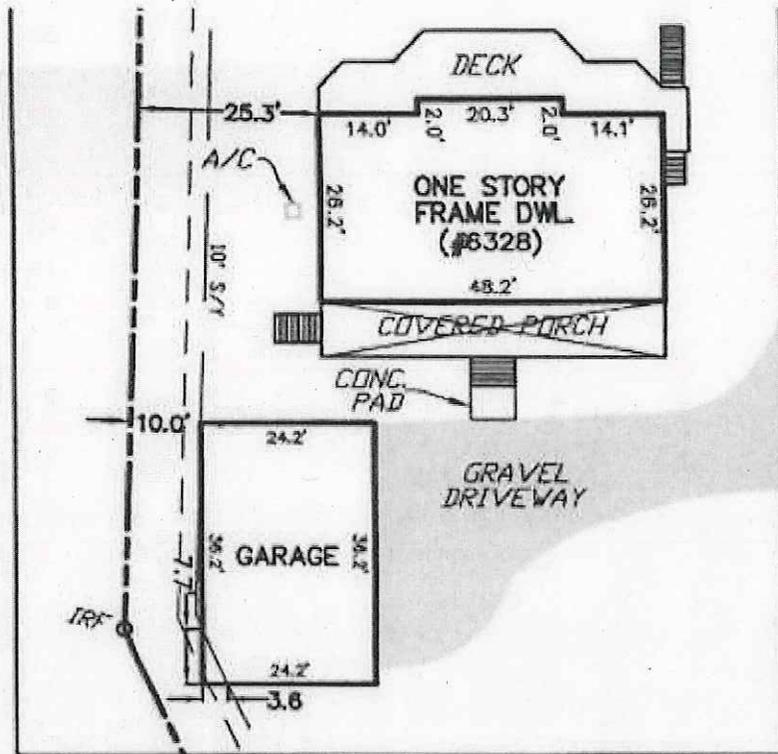
Property Owner's Signature

Property Address

Contractor/Builder Signature

Date

Exhibit D



CUTTING GARAGE DETAIL
SCALE: 1" = 30'

Exhibit E
Letter sent to
Nainoa Certified mail
- Have been working
on this since
October.

October 25, 2019

Paul & Mary Jackson
6626 Williams Lane
Spotsylvania, VA. 22551

Mr. & Mrs. Nainoa
6328 Carter Lane
Mineral VA. 23117

Mr. & Mrs. Nainoa
3825 Bevan Drive
Fairfax, VA. 22030-4830

Dear Mr. & Mrs. Nainoa,

We have been contacted by Dena Slingerland, Spotsylvania County Code Enforcement Officer, asking if we were willing to work with you on a boundary line adjustment to allow your garage to meet the required setback guidelines.

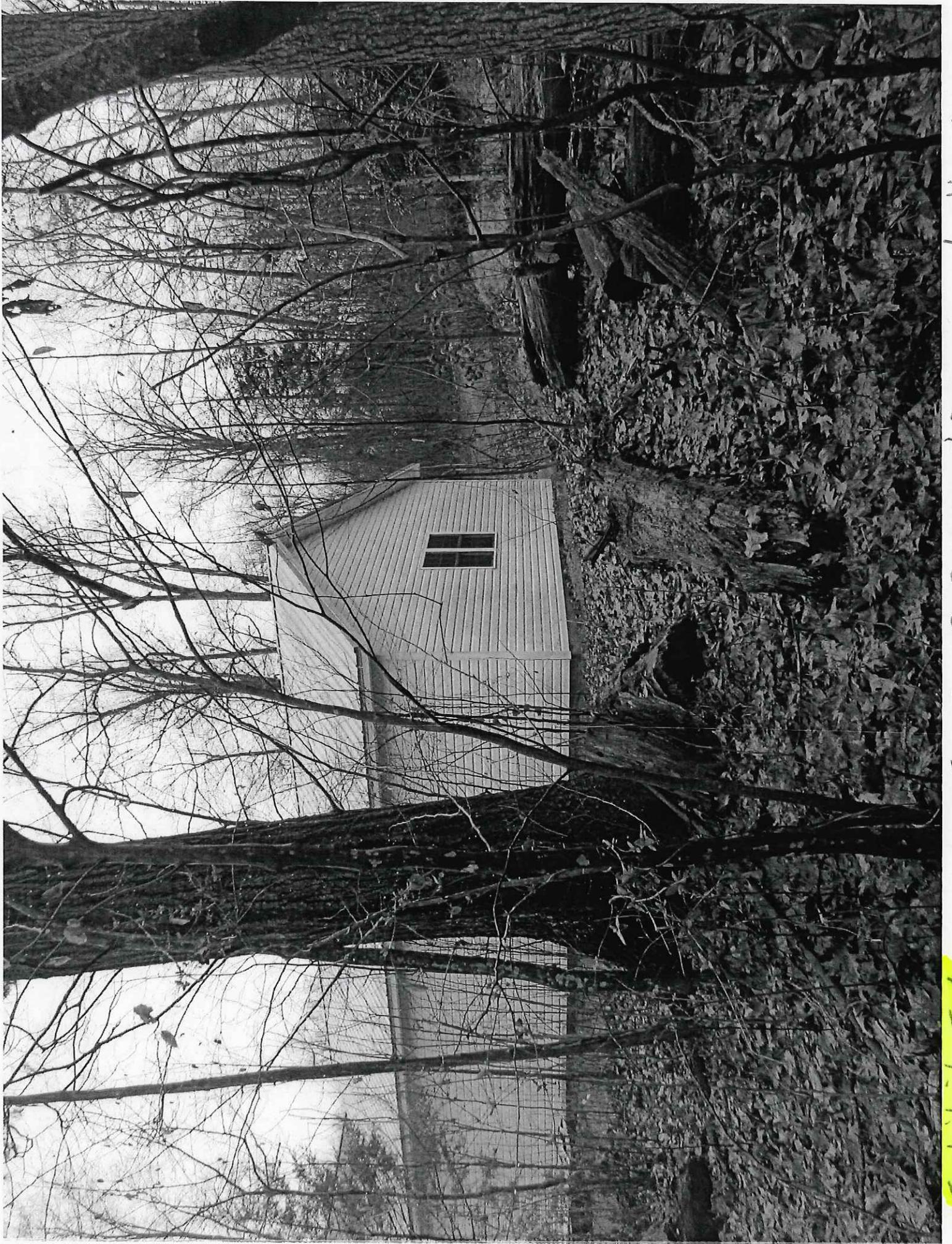
As we originally stated, we would be willing to work with you on this subject. The County requires a boundary line adjustment application which costs \$1,840.00 to process. This would require a survey of the parcels to be submitted with the application. We have used Cox Survey and have reached out to him to see what this would cost you to have done. You however may have your own survey company that you prefer to use. I would hope that Cox Survey would cost a little less since he has already surveyed part of the land. We are willing to sell the land that is required for the setback for \$4,000 to include the other large tree that is close to your garage itself. The new parcels after approved would need to be recorded at the clerk's office, which costs \$22.00 to record the first page and \$21.00 for each additional page. We would not be responsible for any of the fees associated with this entire process.

Please feel free to contact us should you decide to go forth with the boundary line adjustment.

Kindest Regards,

Paul & Mary Jackson

CC: Dena Slingerland



TREE Referenced in our letter

Exhibit E1.

AREA IN QUESTION



Tree we requested to
take in boundary line adjustment
because of it's proximity to said
garage. I now have a liability
Created by them for garage
being built too close to the
property line.

Exhibit E2

Mary L. Jackson

Exhibit F

From: Wes & Mary Jackson <jacksonwm6166@yahoo.com>
Sent: Wednesday, September 30, 2020 8:31 PM
To: Mary L. Jackson
Subject: [EXTERNAL]: Fw: 6328 Carter Lane

CAUTION: This email originated from an external source. Do not click on any links or open attachments unless you recognize the sender and know the content is safe.

----- Forwarded Message -----

From: Wes & Mary Jackson <jacksonwm6166@yahoo.com>
To: DSlingerland@spotsylvania.va.us <dslingerland@spotsylvania.va.us>
Sent: Wednesday, December 11, 2019, 11:51:31 AM EST
Subject: 6328 Carter Lane

Just wanted to touch base with you to let you know the property owners at the above address have now reached out to me about boundary line adjustment.

Kindest Regards,

Mary Jackson

----- Forwarded Message -----

From: "5408948794@vzwpix.com" <5408948794@vzwpix.com>
To: "jacksonwm6166@yahoo.com" <jacksonwm6166@yahoo.com>
Sent: Tuesday, December 10, 2019, 06:53:44 PM EST
Subject:

Fwd: Mary and Paul We have been working with our contractor and the county to get a better understanding of the situation. Would it be possible to get together to discuss the content of your letter. Thinking someplace close and quiet. Perhaps the Cove?

Mary L. Jackson

Exhibit G

From: Wes & Mary Jackson <jacksonwm6166@yahoo.com>
Sent: Wednesday, September 30, 2020 8:27 PM
To: Mary L. Jackson
Subject: [EXTERNAL]: Fw: 6328 Carter Lane - Final Word

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Variance Case

----- Forwarded Message -----

From: Mary L. Jackson <mljackson@spotsylvania.va.us>
To: jacksonwm6166@yahoo.com <jacksonwm6166@yahoo.com>
Sent: Wednesday, January 8, 2020, 03:23:31 PM EST
Subject: FW: 6328 Carter Lane - Final Word

FYI - Below is Dena's most recent message. She has granted an additional thirty days.

-----Original Message-----

From: Dena G. Slingerland
Sent: Wednesday, January 8, 2020 11:10 AM
To: Mary L. Jackson <MLJackson@spotsylvania.va.us>
Subject: RE: 6328 Carter Lane - Final Word

Just a FYI - I received a VM from Mrs. Nainoa asking for an extension. She did not mention her plan other than needing more time. I granted an additional 30 days extension. I will keep you in the loop.

Dena Slingerland
Spotsylvania County
Code Enforcement Officer
(O)540-507-7277
(F) 540-507-7281
dslingerland@spotsylvania.va.us

II SAVE A TREE! Please consider the environment before printing this e-mail This email does not constitute a written zoning determination pursuant to VA Code 15.2-2311.

Let's agree we can disagree and then work for the common good.

-----Original Message-----

From: Mary L. Jackson
Sent: Monday, January 6, 2020 4:07 PM
To: Dena G. Slingerland <DSlingerland@spotsylvania.va.us>
Subject: RE: 6328 Carter Lane - Final Word

I truly do not know. My husband ran into Mr. the other day and he told my husband that they are having an attorney contact us about the boundary line adjustment now. So, I have no idea what is truly going on. Hope you enjoyed your vacation. I will let you know if I hear anything else.

Kindest Regards,

Mary Jackson

-----Original Message-----

From: Dena G. Slingerland
Sent: Monday, January 6, 2020 1:08 PM

Exhibit G

To: Mary L. Jackson <MLJackson@spotsylvania.va.us>
Cc: Joseph Gassaway <JGassaway@spotsylvania.va.us>
Subject: RE: 6328 Carter Lane - Final Word

Thanks for update. I've been on vacation for 2 weeks and have not heard from them. I assume Plan B is to remove part of the garage to meet setbacks.

Dena Slingerland
Spotsylvania County
Code Enforcement Officer
(O)540-507-7277
(F) 540-507-7281
dslingerland@spotsylvania.va.us

II SAVE A TREE! Please consider the environment before printing this e-mail This email does not constitute a written zoning determination pursuant to VA Code 15.2-2311.
Let's agree we can disagree and then work for the common good.

-----Original Message-----

From: Mary L. Jackson
Sent: Thursday, December 26, 2019 9:20 AM
To: Dena G. Slingerland <DSlingerland@spotsylvania.va.us>
Subject: 6328 Carter Lane - Final Word

Just wanted to touch base with you of the latest decision. I have worked with the neighbors for several weeks now. She tried to negotiate a lower amount and did not want to include the tree in the boundary line adjustment. Below is her last message to me stating that she is going to go back to plan B. Not sure what that is, but they do not want to work with us for a boundary line adjustment.

Hope you had a lovely holiday!

Kindest Regards,

Mary Jackson

-----Original Message-----

From: 5408948794@vtext.com [<mailto:5408948794@vtext.com>]
Sent: Thursday, December 26, 2019 9:17 AM
To: Mary L. Jackson <MLJackson@spotsylvania.va.us>
Subject: [EXTERNAL]: Fwd:We will go back to plan B. Thank you for you ...

Fwd:We will go back to plan B. Thank you for you time.

--
This email was Malware checked by UTM 9. <http://www.sophos.com>

Exhibit H

Mary L. Jackson

From: Wes & Mary Jackson <jacksonwm6166@yahoo.com>
Sent: Wednesday, September 30, 2020 8:26 PM
To: Mary L. Jackson
Subject: [EXTERNAL]: Fw: 6328 Carter LN., Mineral, VA. 23117 / Nainoa - Jackson

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----- Forwarded Message -----

From: Wes & Mary Jackson <jacksonwm6166@yahoo.com>
To: eyounger@youngerlaw.com <eyounger@youngerlaw.com>
Cc: Dena G. Slingerland <dslingerland@spotsylvania.va.us>
Sent: Wednesday, January 8, 2020, 08:10:58 PM EST
Subject: 6328 Carter LN., Mineral, VA. 23117 / Nainoa - Jackson

We received your letter dated January 6, 2020 today January 8, 2020. We have some concerns about the conditions outlined in your letter. We could not just sign something saying we will give you, your client and the surveyor permission to make whatever change they feel necessary. I cannot believe any one would give permission for that to occur. In our letter, we outlined the criteria that would need to be met and discussed this at length in messages between the Nainoa's and ourselves. We asked to be present along with one or both of the Nainoa's to meet with the surveyor so we would all be in agreeance with the boundary line adjustments. This has to be agreed upon by both parties involved.

The funds would need to be addressed in further detail. At this point, we have a letter from you stating that they would pay once all their concerns were over. Once the agreed upon proposed boundary line adjustment is approved by the County and recorded, the lands would be theirs because we would have already signed the documents with a notary for the recordation.

We were notified today from the County that an additional thirty day extension has been granted to the Nainoa's. As we previously expressed in our letter, we have been and are willing to work with them, but we have to come to an agreeance. We have done nothing wrong and are only trying to resolve this issue. We are willing to sign something saying that we will work with them, but I will never sign something agreeing with that to have no further say on the boundary line adjustment allowing them to decide on 400 square feet of land. I don't know where the 400 square feet came from; as no one has discussed this with us at this time and we are the land owners. I will call tomorrow as a follow up, I have copied the Code Enforcement Officer on this message as I have made her aware of all communications.

Should you have any further questions, please feel free to contact me at 540-895-9565.

Kindest Regards,

Paul W. Jackson & Mary L. Jackson

- Exhibit H

January 8

Exhibit #1

Mary L. Jackson

From: Wes & Mary Jackson <jacksonwm6166@yahoo.com>
Sent: Wednesday, September 30, 2020 8:29 PM
To: Mary L. Jackson
Subject: [EXTERNAL]: Fw: Last Attempt - 6328 Carter Lane

CAUTION: This email originated from an external source. Do not click on any links or open attachments unless you recognize the sender and know the content is safe.

Exhibit H

- January 9

----- Forwarded Message -----

From: Wes & Mary Jackson <jacksonwm6166@yahoo.com>
To: eyounger@youngerlaw.com <eyounger@youngerlaw.com>
Cc: Dena G. Slingerland <dslingerland@spotsylvania.va.us>
Sent: Thursday, January 9, 2020, 11:53:05 AM EST
Subject: Last Attempt - 6328 Carter Lane

WE HAVE DECIDED TO ATTEMPT ONCE AGAIN TO GET THIS SOLVED. The letter you reference that you are representing them is our only offer, we made this to help them through this issue, not as a negotiation point. Please choose if you would like to proceed. We are willing to work to make sure everybody feels comfortable. Please do not put up anymore unrealistic obstacles. We are willing to work with them to provide that adjustment necessary for them to meet the setback requirements while incorporating the tree. We have a text from them saying that Mr. Nainoa does not want the liability of the tree. It is only because the garage was built close that the dangers and liability is even more. We have made numerous efforts to resolve this and would like to move forward to get this done if this is the direction that they want to pursue. Communication with them stopped once they said they did not want to incorporate the tree in the property line adjustment and we were told they were going to plan b. I have all messages from your client with some even being in the wee hours of the morning when most folks are sleeping, which was unnecessary and could have waited until daytime.

Please let us know how your clients wish to proceed and we will move forth.

Kindest Regards,

Paul W. & Mary L. Jackson

kelly landing

From: Wes & Mary Jackson (jacksonwm6166@yahoo.com)

To: eyounger@youngerlaw.com

Date: Friday, January 17, 2020, 08:44 PM EST

I did want to reiterate what I said during our conversation earlier today. We are offering this in good faith and the understanding that we are not opening up negotiations with this matter. Also that we understand no one asked us to lower the amount. WE WILL ACCEPT \$3,000.00 DOLLARS FOR LAND WITH THE TREE BEING INCLUDED as outlined in our original letter with all of the fees being paid by the Nainoa's for the surveyor, application fee for boundary line adjustment, final recordation for plats once approved. With both parties meeting with surveyors to agree upon said changes that are necessary to meet the setback requirements. This will be it for any and all offers. We only want to know yes or no with the understanding that this will be the last time we discuss this matter. This issue has become extremely aggravating and stressful. Every time we thought we are done with it, it keeps coming up. I just want this to be over with. Please do not send another letter with proposing any such bad conditions. I am expecting letter with protection for us both. Please understand this is not a threat just there has to be an end to this for us. Please only yes or no. I am willing to help in any way I can with this matter.

Kindest Regards,

Paul W. Jackson
540-895-9565



Garage →



Exhibit J

Fw: Property can be treated as Land Sale and NOT Swap

From: Wes & Mary Jackson (jacksonwm6166@yahoo.com)

To: mljackson@spotsylvania.va.us

Date: Tuesday, June 16, 2020, 02:25 PM EDT

I sent email to Dina asking if 10 feet was okay Dina said yes so this is all I had to go on they would not answer any questions and really we had no way of communication so this was sent it is not threatening but you can see our frustration at trying to get this resolved

----- Forwarded Message -----

From: Wes & Mary Jackson <jacksonwm6166@yahoo.com>

To: Younger Edward F. - Younger F. Edward <eyounger@youngerlaw.com>

Sent: Monday, February 10, 2020, 04:57:26 PM EST

Subject: Property can be treated as Land Sale and NOT Swap

The process is same with line adjustment, but no swap. Have to have survey done. You would buy the portion of land that is necessary for your garage to meet code and we would not be getting any of your land. We still have to get approval from the County and go through the same process with the application. All fees still apply that would be paid by you and you would be the only ones benefiting from the land sale. This I would rather do as we did not want to swap land. Everything we have discussed would remain the same with encompassing the tree and the minimal amount of land to bring the one end of the garage into compliance.

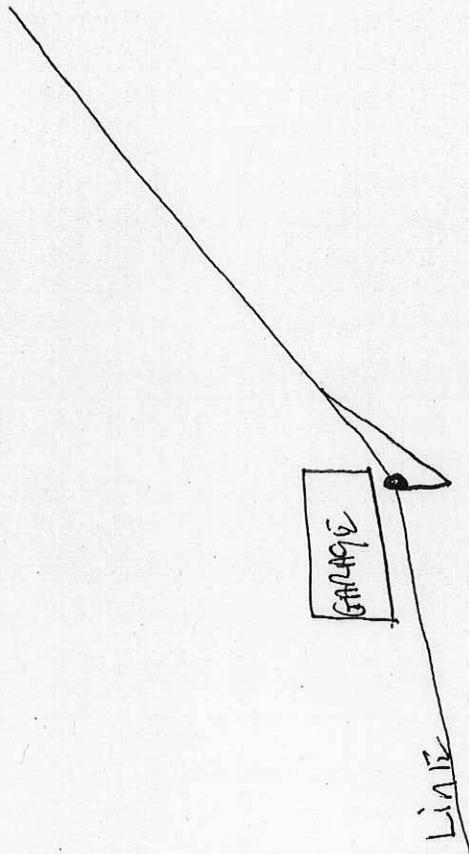
I am willing to sign a paper that states I will sign AT END WITH NOTARY IF ALL THINGS ARE MET AND PAYMENT HAS BEEN MADE FOR THE LAND. IF ANYTHING IS TRIED TO BE CHANGED AGAIN THIS WILL CONSTITUTE AS TERMINATION OF ALL TALKS ON THIS MATTER AND NOTHING ELSE WILL BE DISCUSSED OR ENTERTAINED FURTHER. We are making this last effort to rectify this situation. If you have something from the county on letter head, then please forward for more land consideration. We need a way to communicate. Email is best and it is in writing so no one is confused or distracted. FILE INCLUDED OF PICTURE OF LINE ,THIS IS ONLY WAY IT CAN BE DONE UNLESS COUNTY REQUIREMENTS NEED TO BE MET FOR MORE LAND. IF ANY MORE MEASUREMENTS ARE NEEDED, I WILL MARK PROPERTY WHERE THEY WILL BE DONE AS I WILL NOT BE THERE.

Kindest Regards,

Wes Jackson

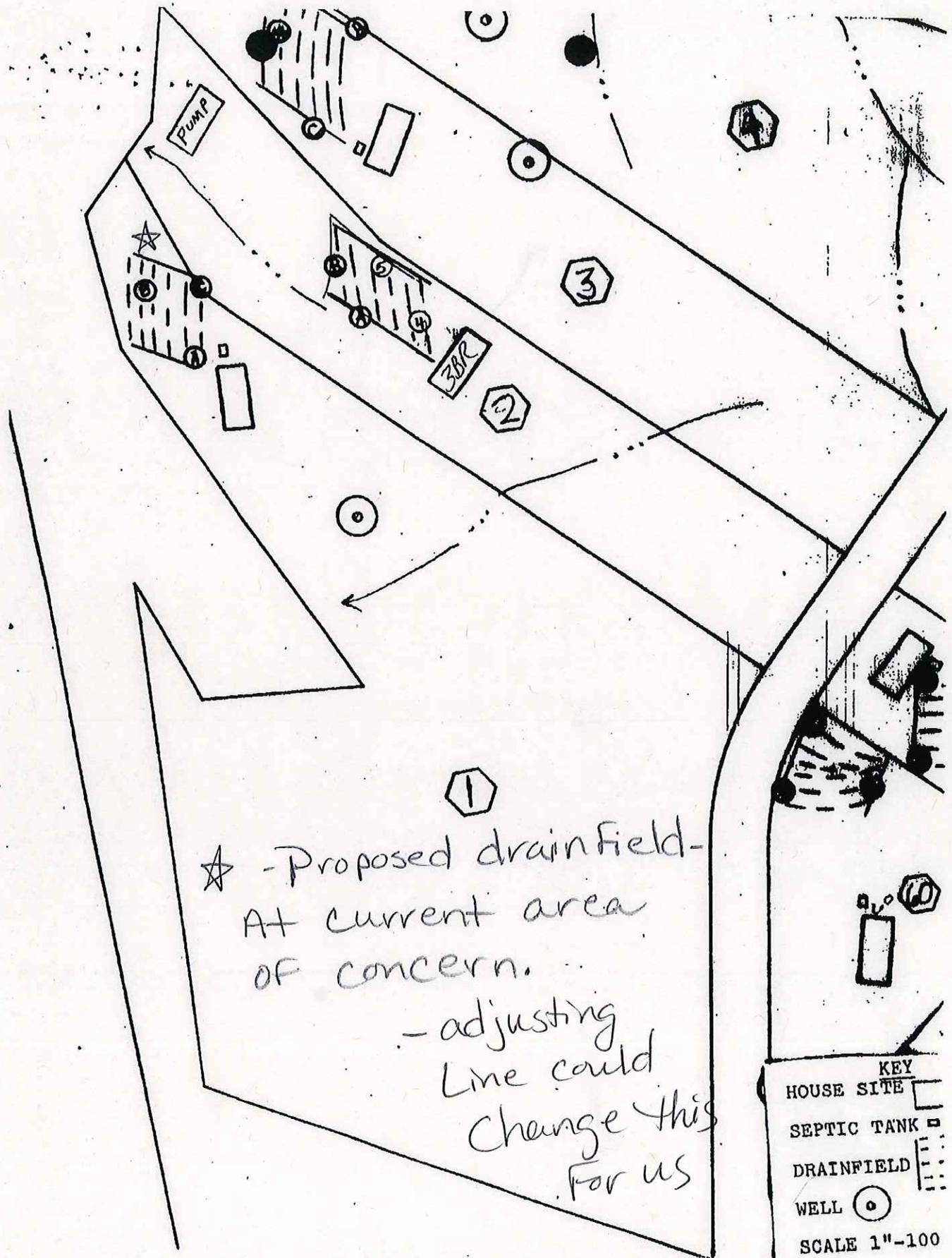


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not to SCALE
ONLY AS MUCH LAND TO BEING TREE AND
BUILDING INTO COMPLIANCE

Exhibit L



by any wall or roof construction, it shall be deemed to be a part of the principal building and shall comply in all respects with the requirements of this chapter applicable to a principal building.

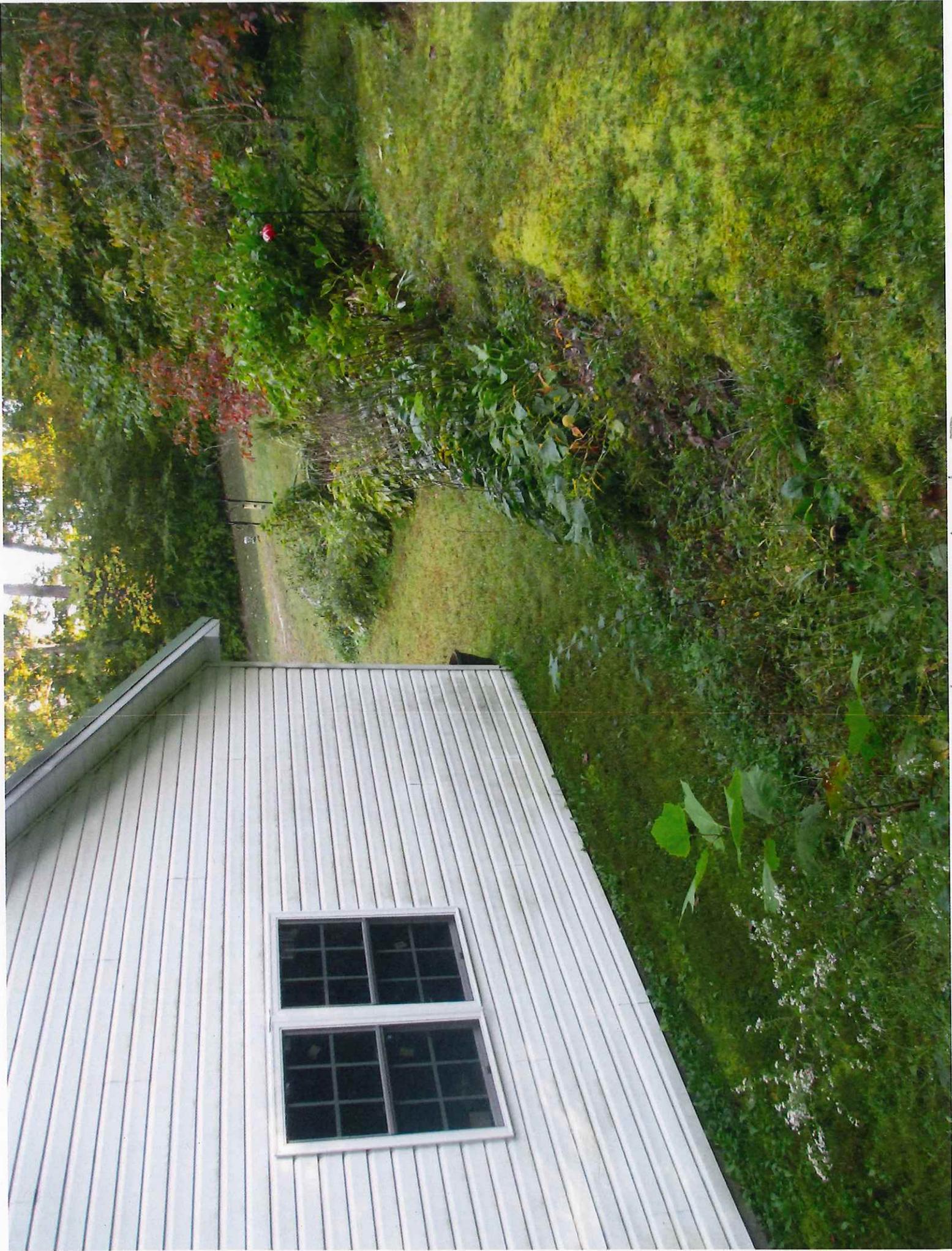
- (2) The required minimum yards referenced in this section shall refer to the minimum yards in the applicable zoning district for the principal building(s) with which the accessory-type building is associated.
- (3) Ground-supported antenna structures for the operation of private radio facilities authorized by the Federal Communications Commission regulations may be permitted in an agricultural, rural or residential district provided that such structures shall not be located closer to any lot line than a distance equal to their height.
- (4) Off-street parking and loading spaces shall be located in accordance with the provisions of this chapter and article 5 of the Design Standards Manual.
- (5) Recreational courts, including but not limited to tennis courts, basketball courts and the like may not extend into any required yard.
- (6) All chicken coops and chicken tractors as permitted in the R-1, R-2, R-3, R-R, V, PD-H districts, and A-2, A-3, Ru, R-A, PRR lots under five (5) acres where the keeping of domestic laying hens are permitted shall be located behind the primary structure (outside of the side yard), or ten (10) feet from adjoining property lines not owned by the applicant, whichever is greater, and thirty-five (35) feet from any dwelling located on a property not owned by the applicant.

Additionally:

- (a) No such structure in any instance within the zoning districts as specified above shall be located in a resource protection area (RPA) or storm drainage area that would allow fecal matter to enter any storm drainage system, water body or stream.
- (7) The following regulations shall apply to the location of all freestanding structures or uses except that specifically set forth in subsections (1)—(6) above:
 - (A) No accessory structure, except a statue, basketball standard or flagpole, shall be located (a) in any minimum required front yard on any lot or (b) in any front yard on any lot containing less than two (2) acres or (c) in residential resort (RR) or resort agricultural (RA) district on any lot containing less than one (1) acre. When located in a front yard, these exempt structures shall not be located closer than fifteen (15) feet to a front lot line or twelve (12) feet to a side lot line.
 - (B) Any residential accessory structure may extend into required rear and side yards but shall be located no closer than ten (10) feet from the rear and side yard lot lines or in cluster subdivisions no closer than five (5) feet from the rear and side yard lot lines.
 - (C) Any commercial or industrial accessory structures must meet minimum yard requirements as set forth in the underlying zoning district, except for accessory structures that are less than or equal to two hundred fifty (250) square feet where a ten



WD Exhibit #70 referenced picture of Terrain towards Third Bay



Garage view of third Bay

no exhibit # Deferred

BYLAWS
BOARD OF ZONING APPEALS
SPOTSYLVANIA COUNTY, VIRGINIA

The Spotsylvania County Board of Zoning Appeals shall be governed by these Bylaws. A copy of these Bylaws shall be available to the public at the Board of Zoning Appeals' office located at 9019 Old Battlefield Boulevard, Suite 3020, Spotsylvania, Virginia 22553.

ARTICLE I. MEMBERSHIP AND POWERS

The Board of Zoning Appeals (hereinafter "the BZA") shall consist of seven (7) members appointed in accordance with Section 15.2-2308 of the Code of Virginia.

The BZA shall have all and only such powers as are designated to it by the Code of Virginia and by the Code of Spotsylvania County and shall exercise such powers only in the manner, for the purpose, and in accordance with the procedures set forth above.

ARTICLE II. OFFICERS

1. The BZA shall elect a Chairman, a Vice-Chairman, and a Secretary at its first regular meeting in June. The Secretary shall be a member of the BZA. If such regular meeting is cancelled or a quorum is lacking, the election shall be held within thirty-six (36) days thereafter at a regular or special meeting. The officers shall hold their respective offices for a term of one (1) year. The prior Chairman, Vice-Chairman, and Secretary shall remain in office until their successors take office immediately upon their election. No officer shall serve more than two consecutive terms in any one office.
2. If the Chairman resigns his/her office or becomes ineligible to serve as a member of the BZA, the Vice-Chairman shall succeed him or her in office for the remainder of the term. In the event any other officer's position becomes vacant at any time during the year, an election shall be held at the earliest opportunity to fill the vacancy.
3. The Chairman shall preside at all meetings and hearings of the BZA. The Chairman shall decide all points of order and procedure and shall appoint any committees and committee chairpersons that may be found necessary. The Chairman may designate members of the BZA to make personal inspections of parcels of land when necessary for the proper consideration of cases. The Chairman shall direct the official business of the BZA and exercise general managerial power to conduct the BZA's business. The Chairman may delegate specific duties to the Vice-Chairman or may authorize the Vice-Chairman to perform specific duties during the Chairman's absence from the jurisdiction or in case of other disability to perform necessary BZA functions in a timely manner.

4. The Vice-Chairman shall assume the duties of the Chairman in the Chairman's absence. In the absence of both the Chairman and Vice-Chairman, an acting Chairman shall be selected by the members of the BZA present to preside over the meeting.

ARTICLE III. MEETINGS, QUORUM AND VOTING

1. The regular meeting of the BZA shall be held on the third ~~Monday-Tuesday~~ of each month. Each regular meeting shall begin at 7:30 P.M. in the Board of Supervisors' meeting room at the Holbert Building located at 9104 Courthouse Road, Spotsylvania, Virginia, -22553. If a regular meeting date falls on a Spotsylvania County holiday or if no business is scheduled before the BZA, or if it is apparent to the Chairman that a quorum will not be available, or if other good cause exists, any meeting may be cancelled or postponed to a more convenient date by the Chairman by giving notice to all members before the time set for such meeting. Notice of such cancellation or postponement shall also be given to any citizen who requests notification of a Board meeting. A notice of cancellation shall also be posted at the Holbert Building.
2. Special meetings may be called by the Chairman and/or such other times as a quorum of the BZA shall determine provided at least a five-day (5-day) notice of such hearing is given to each member in writing.
3. All meetings shall be open to the public unless a closed meeting is held pursuant to the Virginia Freedom of Information Act.
4. Quorum.
 - a. A quorum shall be necessary to transact any BZA business or for the BZA to hold a meeting.
 - b. A quorum shall consist of four (4) members (i.e., a majority) of the BZA.
5. Voting.
 - a. The concurring vote of four (4) members (a simple majority of the membership) shall be required to:
 - i. grant variances;
 - ii. reverse decisions or determinations of the Zoning Administrator or any other administrative officer pertaining to the Spotsylvania County Zoning Ordinance or those powers provided to the Zoning Administrator pursuant to the Code of Virginia;

- iii. ~~to~~ decide interpretations of district maps where there is any uncertainty as to the location of a district boundary;
 - iv. grant a rehearing; and
 - v. amend these bylaws.
- b. The concurring vote of a majority of all members present and voting, or such other greater number as may be required by the Code of Virginia or the Zoning Ordinance, shall be required to effect all other actions of the Board.
- c. Disclosure by a BZA member. ~~1.)~~
- i. A member shall make a disclosure of the member's interest in a specific matter before the BZA when required by the Virginia Conflict of Interest Act or other law or ordinance. ~~2.)~~
 - e-ii. Any disclosure shall be announced and made part of the record of the BZA prior to a case being heard or as soon as a basis for disclosure is discovered.
- d. Disqualification of a BZA member. ~~1.)~~
- i. A member shall be disqualified to act on a specific matter before the BZA when required by law. The reason for disqualification shall be made part of the record of the BZA.
 - ii. ~~2.)~~ A member may be disqualified under any circumstance, which in the opinion of the individual member, would create an appearance of impropriety or unfairness. The decision to be disqualified shall be entered into the record of the BZA, but a member need not state the reasons for disqualification.
 - iii. ~~3.)~~ Any disqualification shall be announced and made part of the record of the BZA prior to a case being heard or as soon as a basis for disqualification is discovered.
 - iv. ~~4.)~~ Any board member may consult the Commonwealth's Attorney or the County Attorney as to whether an actual conflict of interests exists.
 - e-v. ~~5.)~~ It is recommended that any BZA member not present at a public hearing either carefully review the complete record of the public hearing before voting or abstain from voting.
6. The order of business at all regular meetings of the BZA shall be as follows:
- a. Call to order and roll call with recordation of members present and absent
 - b. Action on minutes of previous meeting(s)
 - c. Continued hearings with consideration and determination on cases as heard
 - d. New hearings with consideration and determination on cases as heard
 - e. Old business
 - f. New business
 - g. Adjournment
7. The BZA may adjourn and continue a regular meeting if all applications or other matters scheduled for hearing cannot be disposed of on the day set.

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ARTICLE IV. DUTIES

It shall be the duty of the BZA, in accordance with the provisions of Section 15.2-2309 of the Code of Virginia to hear and decide cases involving the following:

1. Variances to the strict application of the requirements of the Zoning Ordinance.
2. Appeals from a decision of the Zoning Administrator, or other administrative officer, in accordance with the provisions of the Spotsylvania County Zoning Ordinance.
3. Applications for the interpretation of the district map where there is any uncertainty as to the location of the district boundary.

ARTICLE V. APPLICATIONS TO THE BZA

1. All applications to the BZA for appeals, variances, and special permits shall be made on forms supplied by the Department of Planning & Zoning. All other applications or requests, for which there is no required form, shall be made in writing. No application for action before the BZA shall be accepted nor forwarded by the Zoning Administrator to the BZA for consideration until all application fees ~~in effect~~ are paid, including any fees past due and owing.
2. All applications shall include all of the information required by the Spotsylvania County Zoning Ordinance before being scheduled for a public hearing.

ARTICLE VI. PROCESSING OF APPLICATION

1. All applications shall be filed with the Department of Planning & Zoning. The processing and scheduling of applications shall comply with the requirements of the Spotsylvania County Zoning Ordinance and the Code of Virginia.
2. The Department of Planning & Zoning staff of the BZA shall notify the applicants in writing of the date, time, and place of the scheduled public hearing.
3. The Department of Planning & Zoning staff shall, in accordance with the Code of Virginia cause to be advertised by publication, in a newspaper of general circulation in the area of the application, the required legal notice of the application.
4. The Department of Planning & Zoning shall be responsible for fulfilling all applicable notice requirements to abutting and other property owners. Planning & Zoning staff shall send This notice shall be by regular mail and shall make affidavit that such mailings have been made ~~and file such affidavit with the paper in the case.~~
5. The Department of Planning & Zoning staff shall prepare and distribute a staff report and any pertinent information to the BZA at or before the scheduled public hearing.

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~~5-6.~~ Supplemental information provided by the applicant or other affected parties shall be submitted to Planning & Zoning staff no later than seven (7) business days prior to the scheduled public hearing.

ARTICLE VII. THE PUBLIC HEARING

1. The Chairman of the BZA ~~calls-will call~~ the meeting to order and announces the public hearing, rules, and procedures for the meeting.
2. The Chairman ~~goes-will go~~ over the procedures for the public hearing.
 - a. The BZA may question the applicant, ~~his-their~~ representative, or staff on comments offered.
 - b. No cross-examination or questions of speakers testifying shall be permitted, except by members of the BZA.
 - c. ~~The-A Planning & Zoning staff~~ representative will reads the public hearing advertisement ~~and present the case~~.
 - d. The Chairman ~~calls-will call~~ for the applicant and/or their authorized agent or attorney to come forward and state their case.
 - e. The Chairman ~~calls-will call~~ for comments from the public and has the option of limiting speaking time when comments become repetitive.
 - f. The BZA may ask final questions of any party before ~~the Chairman~~ closes the public hearing.
 - g. The BZA shall not be bound by strict rules of evidence, nor shall it be limited to consideration of such evidence as would be admissible in a court of law, but it may exclude irrelevant, immaterial, incompetent, or unduly repetitious testimony or evidence.
 - h. The BZA Chairman shall have the authority to rule on all matters of evidence and conduct at BZA meetings. The BZA Chairman shall maintain decorum at all public hearings and shall have the authority to expel anyone who unduly interrupts the conduct of a public hearing.
3. The BZA may discuss the matter and take action in the form of a motion that requires 4 affirmative votes to pass.
4. The BZA decision is final unless appealed to the Circuit Court within thirty (30) days of the decision filed at the time of the BZA's vote. The vote shall be certified by the signature of the BZA Secretary on the final decision form. This form is retained in the permanent case file by the zoning office staff. Such written decision shall be promptly provided in the next available U.S. mail to the applicant.
5. BZA public hearings shall be in accordance with the written by-laws and the desk copy of Robert's Rules of Order in the Board chambers.

ARTICLE VIII. REQUEST FOR RE-HEARING AND RE-CONSIDERATION

1. The BZA may grant a re-hearing of ~~the a~~ variance matter when the applicant requests such in writing ~~no longer than thirty six~~ within (36) days from the BZA final decision form being signed. The following criteria apply to re-hearings:
 - a. The re-hearing request may be based on new information coming to light not previously reviewed by the BZA and relevant to the matter.
 - b. The re-hearing request may be based on a legal basis or new material fact.
 - c. ~~The R~~re-hearing requests shall be considered at the next available scheduled meeting on the BZA meeting calendar.
 - d. The motion ~~for to grant~~ a re-hearing request must be made by a BZA member in the previous decision making majority on the matter.
2. ~~If granted. T~~he BZA will set the date for re-hearing and notice of such hearing date will be given to the applicant by the Department of Planning & Zoning ~~staff to the applicants of such hearing date~~. The case will be re-advertised by the Department of Planning & Zoning staff, and will proceed in the same manner as a regular public hearing.
3. Re-hearing the matter will not change the original deadline for appeal of BZA decisions to the Circuit Court.

ARTICLE IX. RECORDS

BZA files shall be permanent records maintained in the Department of the Zoning Administrator. All such records shall be public records, unless exempt from Freedom of Information, (FOIA), rules and regulations.

ARTICLE X. SEVERABILITY

If any word, clause, sentence, article, section, sub-section or other part or parts of these By-laws shall be held by a Court of Spotsylvania or of competent jurisdiction, to be unconstitutional or otherwise invalid, such shall not affect any of the remaining parts of these By-laws, nor shall it affect any application of these By-laws that may be given effect without unconstitutional or invalid parts. To this end, all provisions of these By-laws are hereby declared to be severable.

ARTICLE XI. AMENDING RULES

1. These rules may be amended by a four (4) member majority of the BZA, except where such amendment would be contrary to requirements of the Code of Virginia or Spotsylvania County Zoning Ordinance.
2. Any particular rule of procedure may be suspended or waived at any meeting by unanimous vote of the BZA members present unless such rule is set by the Code of Virginia or the Spotsylvania County Zoning Ordinance.

Adoption Certification

Adopted the _____ day of _____, ~~2013~~2020,
to be effective immediately upon adoption and duly recorded in the Office of
the Zoning Administrator.

Approved as to form by, _____,
Chairman

Peter Kolakowski~~Dennis Buchanan~~,

BZA Chairman