



BOARD OF ZONING APPEALS REGULAR MEETING AGENDA

Town Council Chambers
765 Lynn Street, Herndon, VA 20170

Thursday, July 25, 2024 | 7:00 PM

1. Call to Order

2. Approval of Minutes

- a. January 25, 2024, Board of Zoning Appeals Regular Meeting

3. Comments

- a. Comments from the Staff Members
- b. Comments from the Board Members
- c. Comments from Citizens

Members of the public may, for one 3-minute period, provide public comments, requests, consent or general item comments, and comments on matters not included on the agenda.

4. Public Hearing

- a. BOARD OF ZONING APPEALS, BZA #24-002, 351 Hillwood Court, to seek three variances from Section 78-30.2(g), R-10 Dimensional Standards, and Section 78-21(f), Features Allowed Within Required Setbacks and Yards.

5. New Business

- a. Discussion item regarding whether a member of the BZA can also be appointed as a member to the Planning Commission and whether the BZA can consider and decide Special Exceptions, instead of the Town Council after consideration by the Planning Commission.

6. Adjournment



Board of Zoning Appeals Regular Meeting **Agenda Item 2.a.**

Agenda Item: January 25, 2024, Board of Zoning Appeals Regular Meeting

Meeting Date: July 25, 2024

Category: Approval of Minutes

Prepared by: Aaron Zoellick, Clerk of Boards and Commissions

Description:

This is a request to approve the minutes from the January 25, 2024, Board of Zoning Appeals regular meeting.

Background:

N/A

Budget Impact:

N/A

Recommendation:

Recommend approval of the minutes, as presented.

Attachments:

1. 01.25.2024 BZA Meeting Minutes



HERNDON BOARD OF ZONING APPEALS
Regular Meeting Minutes
Thursday, January 25, 2024

1. Call to Order

Chair Kim called the January 25, 2024, Board of Zoning Appeals to order at 7:00 PM and stated that 5 board members were present, which constituted a quorum.

2. Organizational Meeting

a. Election of Officers

Chair Kim called on Deputy Town Attorney Lauri Sigler to provide a brief summary on the Election of Officer process as it related to the Board of Zoning Appeals.

Ms. Sigler provided her explanation and answered questions from the Board.

Chair

Chair Kim called for a motion to nominate the Chair for the Board of Zoning Appeals

Chair Kim nominated Cari Lyn Pierce as Chair for a one-year term effective January 25, 2024.

Motion seconded by Board Member Frye.

Chair Kim called for a discussion on the motion.

Board Member Mundt asked if Vice Chair Pierce was accepting the nomination. Vice Chair Pierce acknowledged that she would accept the nomination.

The question was called on the motion, which was carried by a 5 - 0 roll call vote. The vote was: Board Members Frye, Mundt, Porter, Vice Chair Pierce and Chair Kim voting "Aye."

Vice Chair

Board Member Mundt motioned to nominate Stevan Porter as Vice Chair for a one

year term effective January 25, 2024.

Motion seconded by Board Member Frye.

The question was called on the motion, which was carried by a 4 - 1 roll call vote. The vote was: Board Members Frye, Mundt, Vice Chair Pierce and Chair Kim voting "Aye." Board Member Porter abstained.

Secretary

Board Member Porter motioned to designate the Zoning Administrator or their designee as Secretary for a one year term effective January 25, 2024.

Motion seconded by Board Member Mundt.

Chair Kim called for a discussion on the motion.

The question was called on the motion, which was carried by a 5 - 0 roll call vote. The vote was: Board Members Frye, Mundt, Porter, Vice Chair Pierce and Chair Kim voting "Aye."

Parliamentarian

Board Member Mundt motioned to designate the Town Attorney or their designee as Parliamentarian for a one year term effective January 25, 2024.

Motion seconded by Board Member Frye.

The question was called on the motion, which was carried by a 5 - 0 roll call vote. The vote was: Board Members Frye, Mundt, Porter, Vice Chair Pierce and Chair Kim voting "Aye."

Resolution

Board Member Mundt motioned to approve the resolution electing the Officers and designating the Secretary and Parliamentarian of the Board of Zoning Appeals.

Motion seconded by board member Porter.

The question was called on the motion, which was carried by a 5 - 0 roll call vote. The vote was: Board Members Frye, Mundt, Porter, Vice Chair Pierce and Chair Kim voting "Aye."

3. Approval of Minutes

a. December 21, 2023, Board of Zoning Appeals Regular Meeting Minutes

Board Member Frye motioned to approve the December 21, 2023, Board of Zoning Appeals regular meeting minutes.

Motion seconded by Chair Pierce.

The question was called on the motion, which was carried by a 4 - 1 roll call vote. The vote was: Board Members Frye, Kim, Mundt, and Chair Pierce voting "Aye." Vice Chair Porter abstained.

4. Comments

a. Comments from the Board Members

Chair Pierce recognized members of the Board of Zoning Appeals for comments.

Board Member Mundt initiated a discussion with the Zoning Administrator and the Deputy Town Attorney to clarify administrative items that were brought up during his recent training for the Board in Richmond. Board Member Mundt asked specifically about the idea of the BZA reviewing special/conditional use permits and the idea of a BZA member sitting on the Planning Commission.

The Board and staff discussed these points.

Staff responded to his questions and advised that they would research the process changes and provide additional information at an upcoming meeting.

There were no further comments from the Board.

b. Comments from the Staff Members

Chair Pierce recognized staff members for comments.

There were no comments from the staff members.

c. Comments from Citizens

Chair Pierce recognized members of the audience for comments.

There were no comments from citizens.

5. Public Hearings

There were no public hearings on the agenda.

6. New Business

a. Resolution to amend and restate the Bylaws of the Town of Herndon Board of Zoning Appeals

Chair Pierce recognized Ms. Sigler for the discussion on the amendments of the Bylaws of the Board of Zoning Appeals.

Lauri, introduction on the bylaw review process. Effort for consistency among all boards and commissions. Terminology changes. There are reasons for differences based on State Code and Town Code. Town Council attendance policy. Compile comments from boards/commissions and see if we can maintain consistency.

There was discussion among the board members and staff on this item, including: (1) whether the attendance policy will be consistent for all boards and commissions and the Town Council, (2) consideration of good cause in absences from meetings, (3) the process for motions on public hearings and the order in which discussion among the Board is allowed (proceeding or following a motion on the table), and (4) the understanding of the language used for proper decorum and enforcement of such decorum.

Ms. Sigler acknowledged that the Town Attorney's office would continue to compile items of interest from all Boards and the Planning Commission and return to the board in the coming months with additional information on the adoption of the bylaws by the Board of Zoning Appeals.

7. Adjournment

There being no further business, and without objection, the January 25, 2024, Board of Zoning Appeals regular meeting was adjourned at 7:43 p.m. on the motion of Board Member Kim, seconded by Vice Chair Porter.

Agenda Item: **BOARD OF ZONING APPEALS, BZA #24-002, 351 Hillwood Court, to seek three variances from Section 78-30.2(g), R-10 Dimensional Standards, and Section 78-21(f), Features Allowed Within Required Setbacks and Yards.**

Meeting Date: July 25, 2024

Category: Public Hearing

Prepared by: David Stromberg, Zoning Administrator

Description:

Variance 1 is to seek a variance from Section 78-30.2(g), R-10 Dimensional Standards, to allow a proposed garage and a portion of an attached accessory dwelling unit to encroach one foot into the required 10-foot side yard setback.

Variance 2 is to seek a variance from Section 78-30.2(g) to allow an attached garage and a portion of an attached accessory dwelling unit to encroach five feet into the required 25-foot rear yard setback.

Variance 3 is to seek a variance from Section 78-30.2(g) to allow a deck to be located approximately five feet into the required 10-foot side yard setback and Section 78-21(f) to be attached to the primary dwelling approximately 3.5 feet above the maximum attachment height of 12 feet.

Background:

The property was developed as lot 147 of The Downs, Section 2. The subdivision was approved in 1973 and the house was constructed in 1976. At the time of approval of The Downs subdivision, the R-10 zoning district required a minimum lot size of 8,500 square feet and a minimum front yard setback of 25 feet. The R-10 zoning district regulations were subsequently changed to require a minimum lot size of 10,000 square feet and a 35-foot front setback. This change to the zoning ordinance rendered the subject lot legally nonconforming with regards to the minimum lot size (9,225 square feet) and front setback 27.3 feet).

The property is a cul-de-sac lot at the southern terminus of Hillwood Court. There are existing residences on both sides of the property. Haley Smith Park is to the rear of the property and a portion of the rear side of the property borders Van Buren Street. There is a 20-foot storm sewer easement that extends across the entirety of the rear of the property.

The applicant is proposing to expand and renovate an existing attached one-car garage and a portion of the living space (Exhibit 1). It appears that the attached garage was at some point converted from a two-car garage to a one-car garage and additional living space. The proposal is to convert the garage back to a larger two-car garage with storage area (Exhibit 2) and to add a second story accessory dwelling unit (Exhibit 3). The proposal includes an attached deck for the second level accessory dwelling unit. The deck attaches at 15'-31/2" and encroaches approximately five feet into the side yard.

Budget Impact:

N/A

Recommendation:

Approval of a variance shall meet the six criteria identified in Section 78-155.4(d)(1) of the zoning ordinance.

Variance 1 meets five of the criteria and partially meets one criteria.

Variance 2 meets five of the criteria and partially meets the last criteria.

Variance 3 meets four of the criteria, partially meets one criteria, and fails to meet one criteria.

Staff recommends disapproval of the three variances based on not meeting all six criteria.

Attachments:

1. Staff Report
2. Resolution for Approval (Proposed)
3. Resolution for Denial (Proposed)
4. Survey With Addition
5. Ground Floor Plan With Property Setbacks
6. Second Level Floor Plan With Property Setbacks
7. Applicant Statement
8. Legal Ad
9. Staff Presentation

STAFF REPORT

Agenda Item: BZA #24-02 – 351 Hillwood Court

Meeting Date: July 25, 2024

Staff Contact: David Stromberg, AICP, Zoning Administrator

Summary Information:

Requested Variance(s)	Variance 1 is to seek a variance from Section 78-30.2(g), R-10 Dimensional Standards, to allow a proposed garage and a portion of an attached accessory dwelling unit to encroach one foot into the required 10-foot side yard setback. Variance 2 is to seek a variance from Section 78-30.2(g) to allow an attached garage and a portion of an attached accessory dwelling unit to encroach five feet into the required 25-foot rear yard setback. Variance 3 is to seek a variance from Section 78-30.2(g) to allow a deck to be located approximately five feet into the required 10-foot side yard setback and Section 78-21(f) to be attached to the primary dwelling approximately 3.5 feet above the maximum attachment height of 12 feet.	
Address	351 Hillwood Court	
Fairfax County Tax Map Number	0162 22 0147	
Owners & Applicants	Nicholas Drymalski and Soraia Abreu	
Zoning	R-10, Residential Single Family	
Lot Area	9,225 square feet (legal nonconforming)	
Property Use	Residential single family	
Required Yards and Setbacks	Front: 35 feet Rear: 25 feet Left (south) side: 10 feet Right (north) side: 10 feet	
Principle Structure Distance from Lot Lines	Front: 27.3 feet (legal nonconforming) Rear: 28.08 feet Left (south) side: 11.1 feet Right (north) side: 12 feet	
Adjacent Zoning	North: R-10	East: PD-R, Planned Development-Residential

	South: R-10	West: R-10	
Building Type(s)	Detached single family	Date of Construction:	1976

Location Map:



Background & Site Description:

Site Description

The property was developed as lot 147 of The Downs, Section 2. The subdivision was approved in 1973 and the house was constructed in 1976. At the time of approval of The Downs subdivision, the R-10 zoning district required a minimum lot size of 8,500 square feet and a minimum front yard setback of 25 feet. The R-10 zoning district regulations were subsequently changed to require a minimum lot size of 10,000 square feet and a 35-foot front setback. This change to the zoning ordinance rendered the subject lot legally

nonconforming with regards to the minimum lot size (9,225 square feet) and front setback 27.3 feet).

The property is a cul-de-sac lot at the southern terminus of Hillwood Court. There are existing residences on both sides of the property. Haley Smith Park is to the rear of the property and a portion of the rear side of the property borders Van Buren Street. There is a 20-foot storm sewer easement that extends across the entirety of the rear of the property.

Background – Variance Requests in The Downs, Section 2

- Variance BZA #89-17, 405 Hillwood Court, the Board granted a variance to allow a reduction in the front setback and secondary front setback from 35 feet to 25.5 feet.
- Variance BZA #85-7, 400 Hillwood Court, the board granted a variance to allow an addition to encroach 4 feet into the front setback.
- Variance BZA #82-12, 359 Hillwood Court, the Board granted a variance to allow a covered patio to be located 23 feet from the required setback instead of 35 feet.
- Variance BZA #82-19, 353 Hillwood Court, the Board granted a variance to allow a conforming garage on a legally nonconforming building. This would not require a variance under the current nonconforming provisions in the zoning ordinance.

Case Details & Proposal:

The applicant is proposing to expand and renovate an existing attached one-car garage and a portion of the living space (Exhibit 1). It appears that the attached garage was at some point converted from a two-car garage to a one-car garage and additional living space. The proposal is to convert the garage back to a larger two-car garage with storage area (Exhibit 2) and to add a second story accessory dwelling unit (Exhibit 3). The proposal includes an attached deck for the second level accessory dwelling unit. The deck attaches at 15'-31/2" and encroaches approximately five feet into the side yard.

Staff Analysis:

Zoning Ordinance Compliance

An accessory dwelling unit is allowed by-right in the R-10 zoning district and is not the subject of this variance request.

Variance Request 1 – to allow an addition to encroach one foot into the required 10-foot side yard setback. Evaluation of the review criteria is below:

Criteria from Section 78-155.4(d)(1) – Variances	Meets or Does not Meet	Why the application meets or does not meet the criteria of Section 78-155.4(d)(1)
Strict application of the terms of the ordinance would unreasonably restrict the utilization of the property or that the granting of the variance would alleviate a hardship due to a physical condition relating to the property or improvements thereon.	Partially meets	The shape of the lot and the orientation of the house creates setbacks that are not parallel to the structure. However, the proposal could be modified to reduce the size of the garage to 24 feet in width, which would still allow for the attached garage and accessory dwelling unit.
The property was acquired in good faith and any hardship was not created by the applicant for the variance.	Meets	The property was acquired in good faith and the applicant has not performed any unpermitted construction.
The granting of the variance will not be of substantial detriment to adjacent property and nearby properties.	Meets	The existing garage is 11.1 feet from the left property line and the request is to be nine feet from the left property line. Similar variances granted for side yard setbacks of less than two feet have not resulted in an increase of complaints.
The condition or situation of the property is not of so general or recurring nature as to make reasonably practicable the formulation of a general regulation to be adopted as an amendment to the ordinance.	Meets	The nonconforming status of this property, while common in The Downs, Section 2, is not common through R-10 districts in town and does not warrant an amendment to the zoning ordinance.
The granting of the variance does not result in a use that is not otherwise permitted on such property or a change in the zoning classification of the property	Meets	If granted, this variance would not alter the permitted uses or permitted intensity of the R-10 zoning district.

The relief or remedy sought by the variance application is not available through a special exception process or the process for modification of a zoning ordinance	Meets	Modifications are restricted to PD, Planned Development, districts and the property is zoned R-10.
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Variance Request 2 is to allow an attached garage and a portion of an attached accessory dwelling unit to encroach five feet into the required 25-foot rear yard setback. Evaluation of the review criteria is below:

Criteria from Section 78-155.4(d)(1) – Variances	Meets or Does not Meet	Why the application meets or does not meet the criteria of Section 78-155.4(d)(1)
Strict application of the terms of the ordinance would unreasonably restrict the utilization of the property or that the granting of the variance would alleviate a hardship due to a physical condition relating to the property or improvements thereon.	Partially meets	The shape of the lot and the orientation of the house creates setbacks that are not parallel to the structure. However, the structure could be reduced in depth to approximately 25 feet, which would still allow for the attached garage and accessory dwelling unit.
The property was acquired in good faith and any hardship was not created by the applicant for the variance.	Meets	The property was acquired in good faith and the applicant has not performed any unpermitted construction.
The granting of the variance will not be of substantial detriment to adjacent property and nearby properties.	Meets	There is a 20-foot storm sewer easement that extends along the rear of the property and it is adjacent to Haley Smith Park. The park is owned by the town, is currently buffered with mature trees, and is required to maintain that landscape buffer.
The condition or situation of the property is not of so general or recurring nature as to make reasonably practicable the	Meets	The nonconforming status of this property, while common in The Downs, Section 2, is not common through R-10

formulation of a general regulation to be adopted as an amendment to the ordinance.		districts in town and does not warrant an amendment to the zoning ordinance.
The granting of the variance does not result in a use that is not otherwise permitted on such property or a change in the zoning classification of the property	Meets	If granted, this variance would not alter the permitted uses or permitted intensity of the R-10 zoning district.
The relief or remedy sought by the variance application is not available through a special exception process or the process for modification of a zoning ordinance	Meets	Modifications are restricted to PD, Planned Development, districts and the property is zoned R-10.

Variance 3 is to allow a deck to be located approximately five feet into the required 10-foot side yard setback and to be attached to the primary dwelling approximately 3.5 feet above the maximum attachment height of 12 feet. The evaluation criteria are listed below:

Criteria from Section 78-155.4(d)(1) – Variances	Meets or Does not Meet	Why the application meets or does not meet the criteria of Section 78-155.4(d)(1)
Strict application of the terms of the ordinance would unreasonably restrict the utilization of the property or that the granting of the variance would alleviate a hardship due to a physical condition relating to the property or improvements thereon.	Partially meets	The shape of the lot and the orientation of the house creates setbacks that are not parallel to the structure. The proposal could be modified to eliminate the deck. A staircase without a deck that provides access to the accessory dwelling unit is allowed to encroach four feet into the side yard setback, provided it is not closer than five feet to the property line, without the need for a variance.
The property was acquired in good faith and any hardship	Meets	The property was acquired in good faith and the applicant has not performed any unpermitted construction.

was not created by the applicant for the variance.		
The granting of the variance will not be of substantial detriment to adjacent property and nearby properties.	Does not meet	The ordinance restricts decks to the rear yard, prohibits them in side yards, and only allows them higher than 12 feet when fully outside of all required setbacks. The intent is to preserve privacy between adjacent residential properties. Granting the variance will allow an outdoor living area within five feet of the adjacent residential property and at a height that is more than twice as tall as a privacy fence is allowed (seven feet).
The condition or situation of the property is not of so general or recurring nature as to make reasonably practicable the formulation of a general regulation to be adopted as an amendment to the ordinance.	Meets	The nonconforming status of this property, while common in The Downs, Section 2, is not common through R-10 districts in town and does not warrant an amendment to the zoning ordinance.
The granting of the variance does not result in a use that is not otherwise permitted on such property or a change in the zoning classification of the property	Meets	If granted, this variance would not alter the permitted uses or permitted intensity of the R-10 zoning district.
The relief or remedy sought by the variance application is not available through a special exception process or the process for modification of a zoning ordinance	Meets	Modifications are restricted to PD, Planned Development, districts and the property is zoned R-10.

Board of Zoning Appeals Alternatives:

The following alternatives are available to the Board of Zoning Appeals for its decision on BZA #24-002.

1. Recommendation for approval.

2. Recommendation for approval with conditions.
3. Recommendation for denial.
4. Continuance of the application to July 25, 2024.

Staff Recommendation:

Variance 1 should be denied for failure to meet all six criteria of Section 78-155.4(d)(1).

Variance 2 should be denied for failure to meet all six criteria of Section 78-155.4(d)(1).

Variance 3 should be denied for failure to meet all six criteria of Section 78-155.4(d)(1).

If the Board approves the variance(s), staff recommends including the following conditions:

1. The addition should be in substantial compliance with the application materials, including, sheets A1.1 and A1.2 of the floor plan prepared by TPR Designs and dated March 22, 2024.

TOWN OF HERNDON, VIRGINIA

RESOLUTION

July 25, 2024

Resolution – to grant Variance Application BZA #24-02, 351 Hillwood Court, for [one, two, three] variances in order to: 1) seek a variance from Section 78-30.2(g), R-10 Dimensional Standards, to allow a proposed garage and a portion of an attached accessory dwelling unit to encroach one foot into the required 10-foot side yard setback, 2) seek a variance from Section 78-30.2(g) to allow an attached garage and a portion of an attached accessory dwelling unit to encroach five feet into the required 25-foot rear yard setback, 3) seek a variance from Section 78-30.2(g) to allow a deck to be located approximately five feet into the required 10-foot side yard setback and Section 78-21(f) to be attached to the primary dwelling approximately 3.5 feet above the maximum attachment height of 12 feet.

RECITALS

The applicants and owners, Nicholas Drymalski and Soraia Abreu have submitted an application for variances 1, 2, and 3, to Sections 78-30.2(g) and Section 78-21(f) of the Zoning Ordinance, Herndon Town Code, to allow a proposed attached garage and accessory dwelling unit to encroach 1 foot into the side setback, 5 feet into the rear setback, and the attached stairs to encroach 5 feet into the side setback, on a property located at 351 Hillwood Court and identified as Fairfax County Tax Map Number 0162 22 0147.

The Board of Zoning Appeals has reviewed this application and has held a public hearing in accordance with the provisions of §15.2-2204 of the State Code on April July 25, 2024, and reviewed the application against the criteria of Section 78-155.4(d)(1).

THEREFORE, BE IT RESOLVED, by the Board of Zoning Appeals of the Town of Herndon, Virginia, that:

1. The Board **grants** the requested variance **[1, 2, 3]** based on the findings set out below and identified in the staff report:

The strict application of the ordinance would unreasonably restrict the utilization of the property; and

OR

Granting the variance would alleviate an undue hardship due to a physical condition relating to the property or improvements thereon;
and

- a. The Board further finds that all of the following apply:
- 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; and
 - 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; and
 - 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; and
 - 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 or the process for modification of a zoning ordinance at the time of the filing of the variance application;

2. The board imposes the following conditions on the granting of the variance:

- i. The addition should be in substantial compliance with the application materials, including, sheets A1.1 and A1.2 of the floor plan prepared by TPR Designs and dated March 22, 2024.

In favor:	_____	Against:	_____
	_____		_____
	_____		_____
	_____		_____
	_____		_____

Attest:	_____		_____
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Recording Secretary

Date: _____

TOWN OF HERNDON, VIRGINIA

RESOLUTION

July 25, 2024

Resolution – to deny Variance Application BZA #24-02, 351 Hillwood Court, for [one, two, three] variances in order to: 1) seek a variance from Section 78-30.2(g), R-10 Dimensional Standards, to allow a proposed garage and a portion of an attached accessory dwelling unit to encroach one foot into the required 10-foot side yard setback, 2) seek a variance from Section 78-30.2(g) to allow an attached garage and a portion of an attached accessory dwelling unit to encroach five feet into the required 25-foot rear yard setback, 3) seek a variance from Section 78-30.2(g) to allow a deck to be located approximately five feet into the required 10-foot side yard setback and Section 78-21(f) to be attached to the primary dwelling approximately 3.5 feet above the maximum attachment height of 12 feet.

RECITALS

The applicants and owners, Nicholas Drymalski and Soraia Abreu have submitted an application for variances 1, 2, and 3, to Sections 78-30.2(g) and Section 78-21(f) of the Zoning Ordinance, Herndon Town Code, to allow a proposed attached garage and accessory dwelling unit to encroach 1 foot into the side setback, 5 feet into the rear setback, and the attached stairs to encroach 5 feet into the side setback, on a property located at 351 Hillwood Court and identified as Fairfax County Tax Map Number 0162 22 0147.

The Board of Zoning Appeals has reviewed this application and has held a public hearing in accordance with the provisions of §15.2-2204 of the State Code on April July 25, 2024, and reviewed the application against the criteria of Section 78-155.4(d)(1).

THEREFORE, BE IT RESOLVED, by the Board of Zoning Appeals of the Town of Herndon, Virginia, that:

1. The Board **denies** the requested variance **[1, 2, 3]** based on the findings set out below and identified in the staff report:

The strict application of the ordinance does not unreasonably restrict the utilization of the property; and

OR

Granting the variance does not alleviate an undue hardship due to a physical condition relating to the property or improvements thereon;
and

- a. The Board further finds that not all of the following apply:
- 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; and
 - 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; and
 - 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; and
 - 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 or the process for modification of a zoning ordinance at the time of the filing of the variance application;

In favor: _____

Against: _____

Attest: _____

Recording Secretary

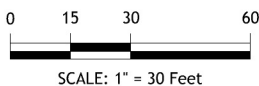
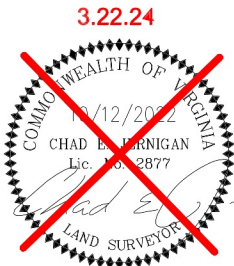
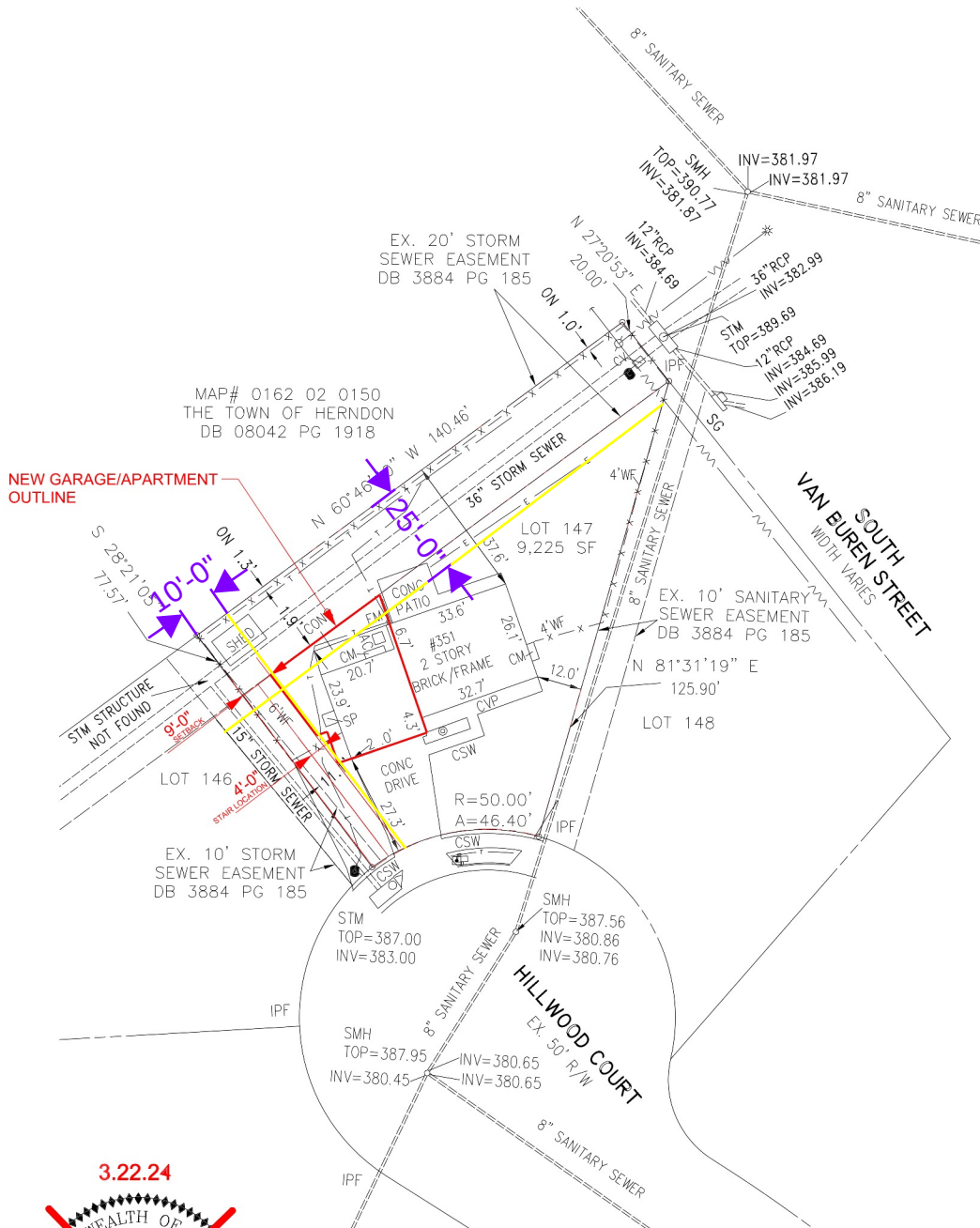
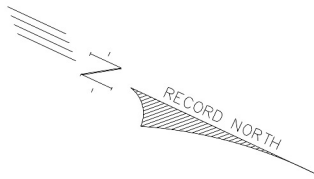
Date: _____

NO TITLE REPORT WAS FURNISHED FOR THE PREPARATION OF THIS SURVEY, AS SUCH THIS SURVEY MAY NOT SHOW ALL EASEMENTS, ENCUMBRANCES, OR OTHER CIRCUMSTANCES AFFECTING TITLE TO THE PROPERTY.

LEGEND

AC AIR CONDITIONER
CM CHIMNEY
CONC CONCRETE
CSW CONCRETE SIDEWALK
CV COMMUNICATION VAULT
CVP COVERED PORCH
EM ELECTRIC METER
IPF IRON PIPE FOUND
RCP REINFORCED CONCRETE PIPE
SG STORM GRATE
SP STOOP
SMH SANITARY MANHOLE
STM STORM STRUCTURE/MANHOLE
WF WOOD FENCE

⊙ CLEAN OUT
⬮ COMMUNICATION PEDESTAL
— GUY WIRE
☐ MAILBOX
— OVERHEAD WIRE
— PAINTED EVIDENCE OF UNDERGROUND ELECTRIC UTILITY
— PAINTED EVIDENCE OF UNDERGROUND COMMUNICATION UTILITY
⊙ UTILITY POLE
⊠ WATER METER



LAND SURVEYING, PLLC

HOUSE LOCATION SURVEY
LOT 147
SECTION 2
THE DOWNS
DB. 3884 PG. 185
FAIRFAX COUNTY, VIRGINIA

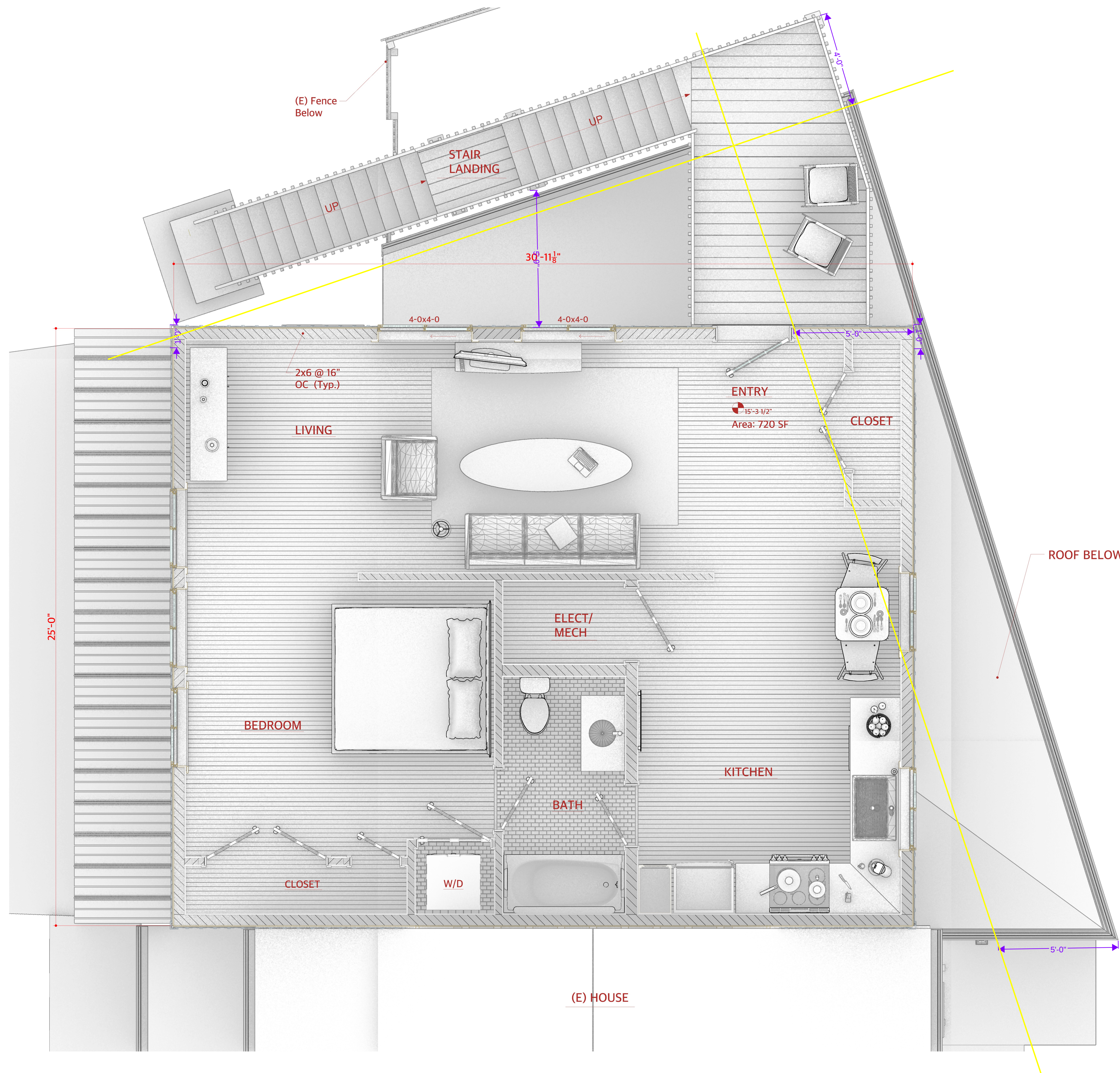
6900 BARRETT ROAD
FALLS CHURCH, VIRGINIA 22042
703.261.7090 | CAP-LS.COM
survey@cap-ls.com



NOT FOR CONSTRUCTION

1. All dimensions are shown to F.O. stud unless otherwise noted.
2. Floor datum: 15'- 1/2"

A1.2



APARTMENT PLAN

Variance request #1

Garage expansion one foot into the side setback to achieve desired 25' width

- We are requesting this variance due to the unusual shape of our property and the location of the garage in the property. Our yard is very narrow towards the front of the property at the street, and becomes very wide towards the rear property line. The front corner of the garage is located in a narrow portion of the property, which makes expanding the width of the garage very difficult.
- Due to the unusual shape of the property, very few other properties share these constraints.
- I do not believe this one foot expansion into our side setback will negatively affect the public interest in any way.
- This variance application does not involve a change in use from those permitted in Article IV of the Zoning Ordinance.

Variance request #2

Deck construction: Allow stairs to be built in the side setback and allow higher than 12' deck height

- We are requesting this variance due to the unusual shape of our property and the location of the garage in the property. Our yard is very narrow towards the front of the property at the street, and becomes very wide towards the rear property line. The front corner of the garage is located in a narrow portion of the property, which makes expanding the width of the garage very difficult.
- Due to the unusual shape of the property, very few other properties share these constraints. Additionally, due to the unusual height of the first floor of the garage, very few other properties/projects will require a deck height higher than 12'.
- I do not believe that the construction of the stairs into our side setback will negatively affect the public interest in any way, nor do I believe the increased deck height will affect the public interest either. Appropriate railings/guard rails will be built to ensure occupant safety.
- This variance application does not involve a change in use from those permitted in Article IV of the Zoning Ordinance.

Variance request #3

Driveway expansion to match garage width (five additional feet)

- We are requesting this variance so that we can build our driveway to match the width of the new garage, set to be 25'. Currently driveways are not allowed to be wider than 20'. Please note that the driveway would only be this wide where it meets the garage. The width would not change where it meets the street, nor would the entire driveway be 25' wide; it would scale up from the current street width/opening to the garage width.
- This small expansion of the driveway width would not markedly impact the amount of impervious surface area on the property and would still leave us well under the established limit.
- I do not believe this expansion will negatively affect the public interest in any way.
- This variance application does not involve a change in use from those permitted in Article IV of the Zoning Ordinance.

Town of Herndon, Virginia
Notice of Public Hearing

Notice is hereby given that the **Board of Zoning Appeals (BZA)** of the Town of Herndon, Virginia, will hold a public hearing on Thursday, July 25, 2024, at 7:00 p.m. in the Herndon Council Chambers Building, located at 765 Lynn Street, Herndon on the following item:

BOARD OF ZONING APPEALS, BZA #24-002, 351 Hillwood Court, to seek three variances from Section 78-30.2(g), R-10 Dimensional Standards, and Section 78-21(f), Features Allowed Within Required Setbacks and Yards, in order to: 1) allow an attached garage and a portion of an attached accessory dwelling unit to encroach one foot into the required 10-foot side yard setback, 2) allow an attached garage and a portion of an attached accessory dwelling unit to encroach five feet into the required 25-foot rear yard setback, and 3) allow a deck to be located approximately five feet into the required 10-foot side yard setback and to be attached to the primary dwelling approximately 3.5 feet above the maximum attachment height of 12 feet. The 9,225 square-foot lot is located at the southern terminus of Hillwood Court, south of its intersection with Alabama Drive. The property is zoned R-10, Single Family Residential. Fairfax County Tax Map Number: 0162 22 0147. Applicants and Property Owners, Nicholas Drymalski and Soraia Abreu.

The public is encouraged to participate in the town's public hearing process. Individuals having an interest in the above item are invited to attend the public hearing and state their opinions and may also submit comments to bza@herndon-va.gov. The proposed item is available for review by the public on the town's website www.herndon-va.gov.

The Town of Herndon supports the Americans with Disabilities Act by making reasonable accommodations for persons with disabilities, so that they may participate in services, programs, or activities, offered by the town. Please call (703) 435-6804 to arrange for any accommodation that may be necessary to allow participation.

Kirstyn Barr Jovanovich, Town Clerk

Note to Publisher:

Publish on July 5/July 12, 2024

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BZA #24-002 – 351 Hillwood Court

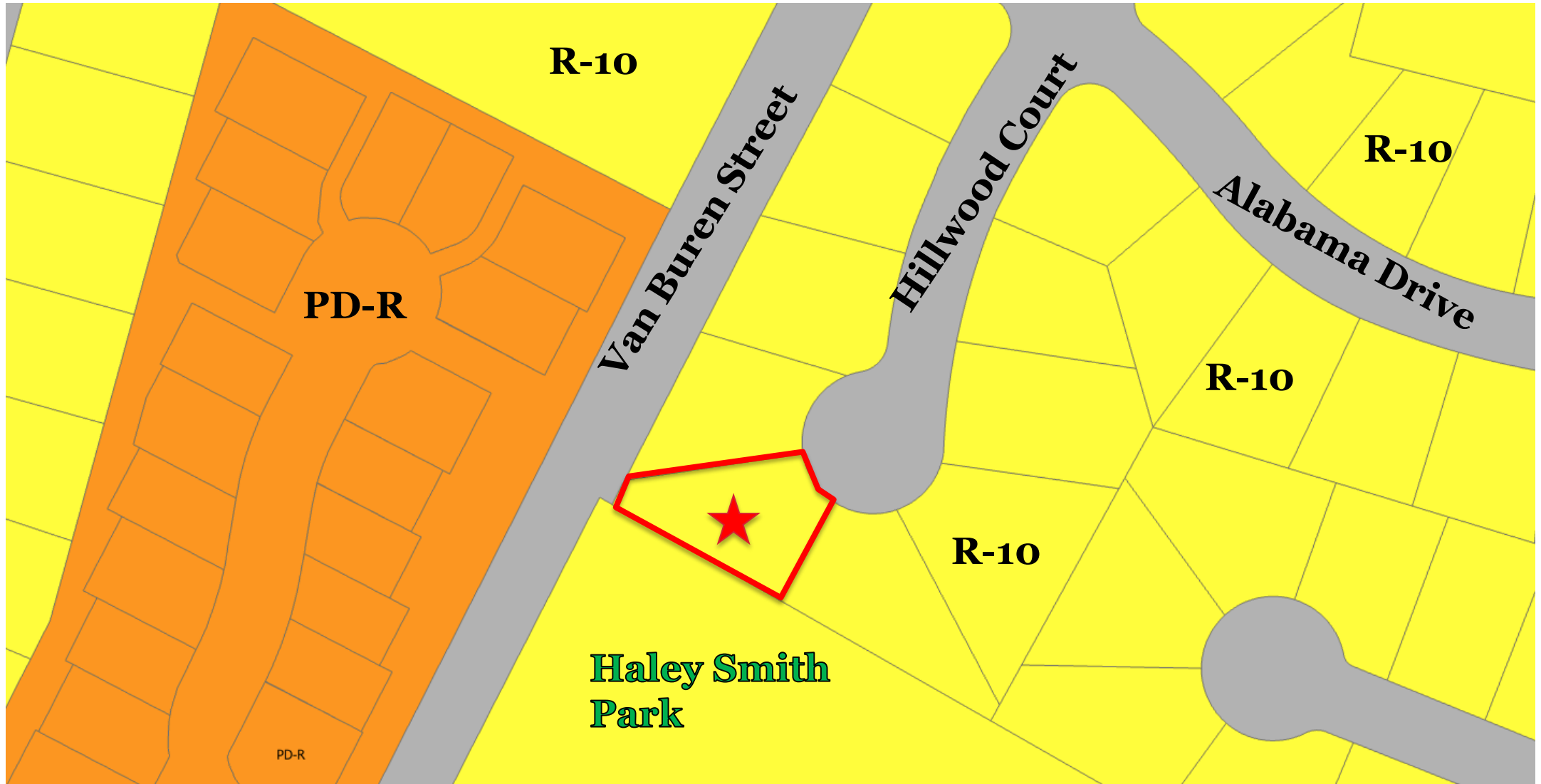
Board of Zoning Appeals
July 25, 2024

David Stromberg, AICP
Zoning Administrator

Site Location – 351 Hillwood Court

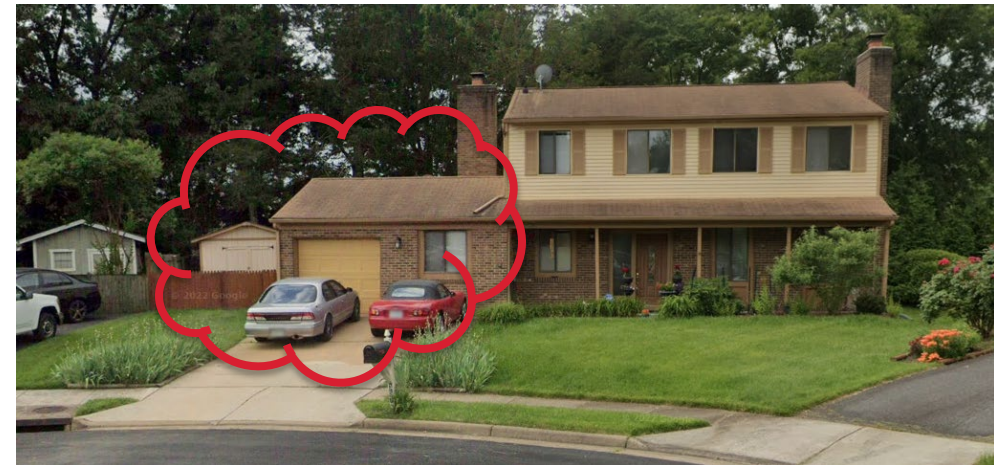
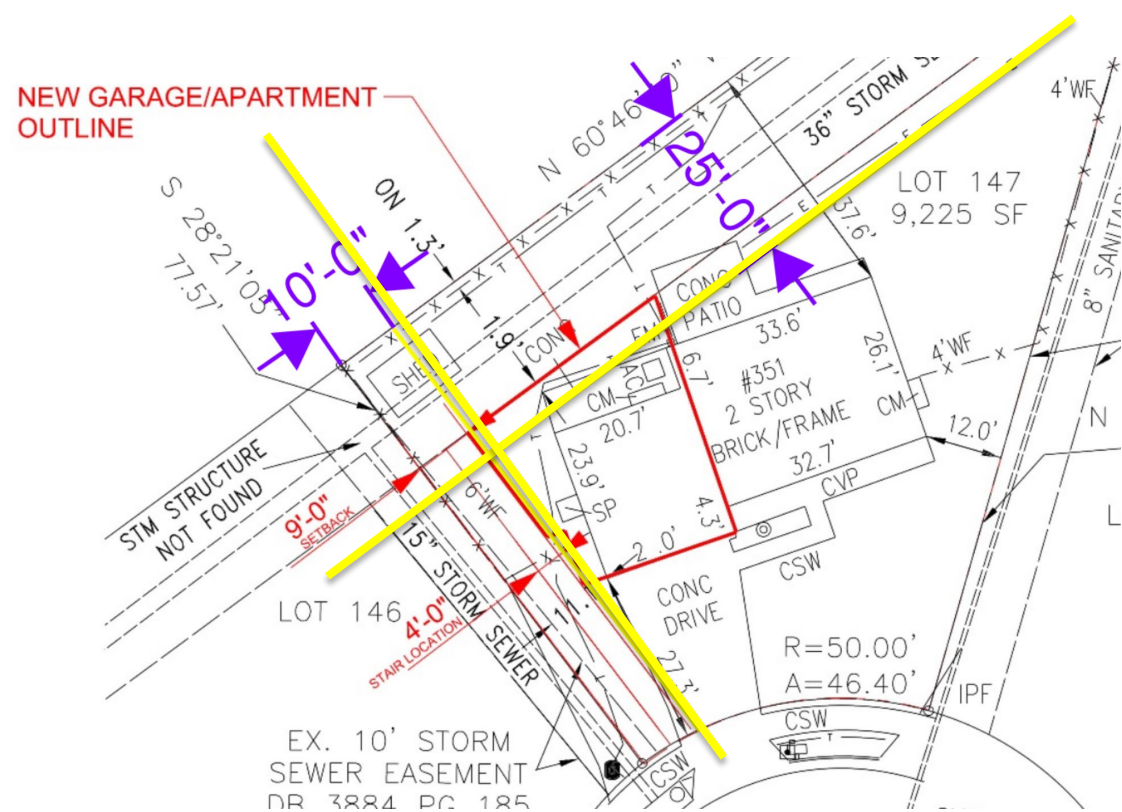


Zoning Map – 351 Hillwood Court



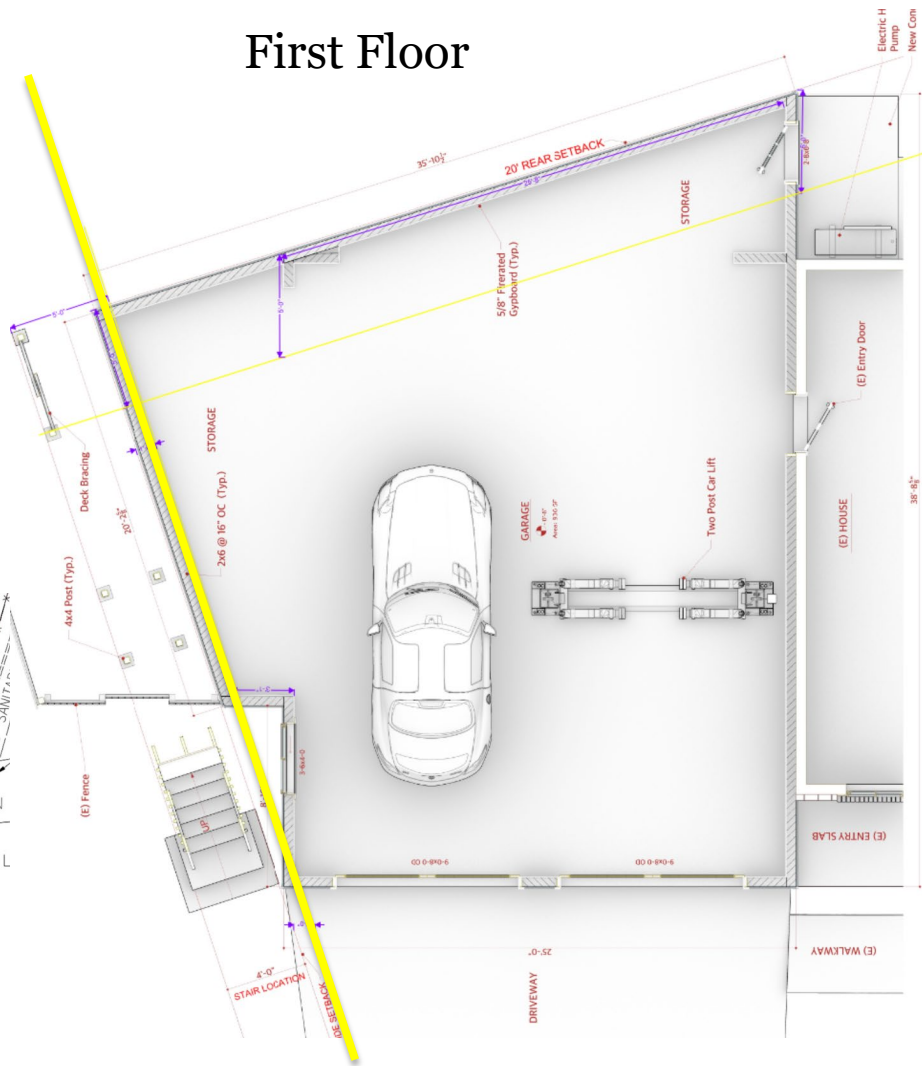
Proposed Addition

- Replace existing garage and living area with larger garage and upper-level accessory dwelling unit
 - Proposed addition encroaches 1 foot into side yard setback (Variance 1)
 - Proposed addition encroaches 5 feet into rear yard setback (Variance 2)
 - Proposed deck and stairs encroach 5 feet into side yard setback (Variance 3)

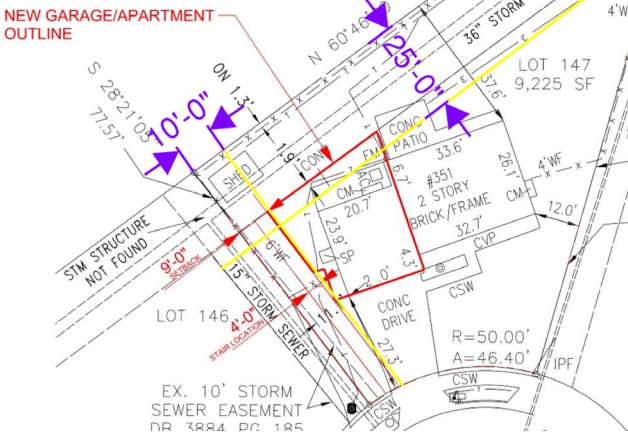
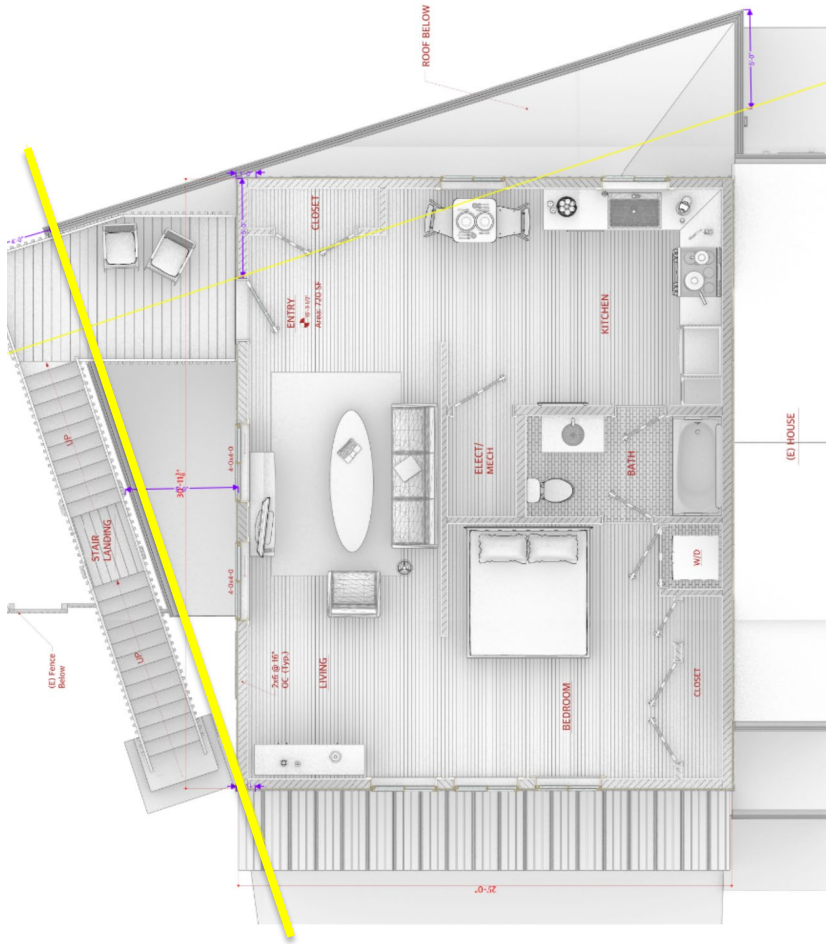


Variance Request 1 – for garage and ADU to encroach 1 foot into the side yard setback

First Floor

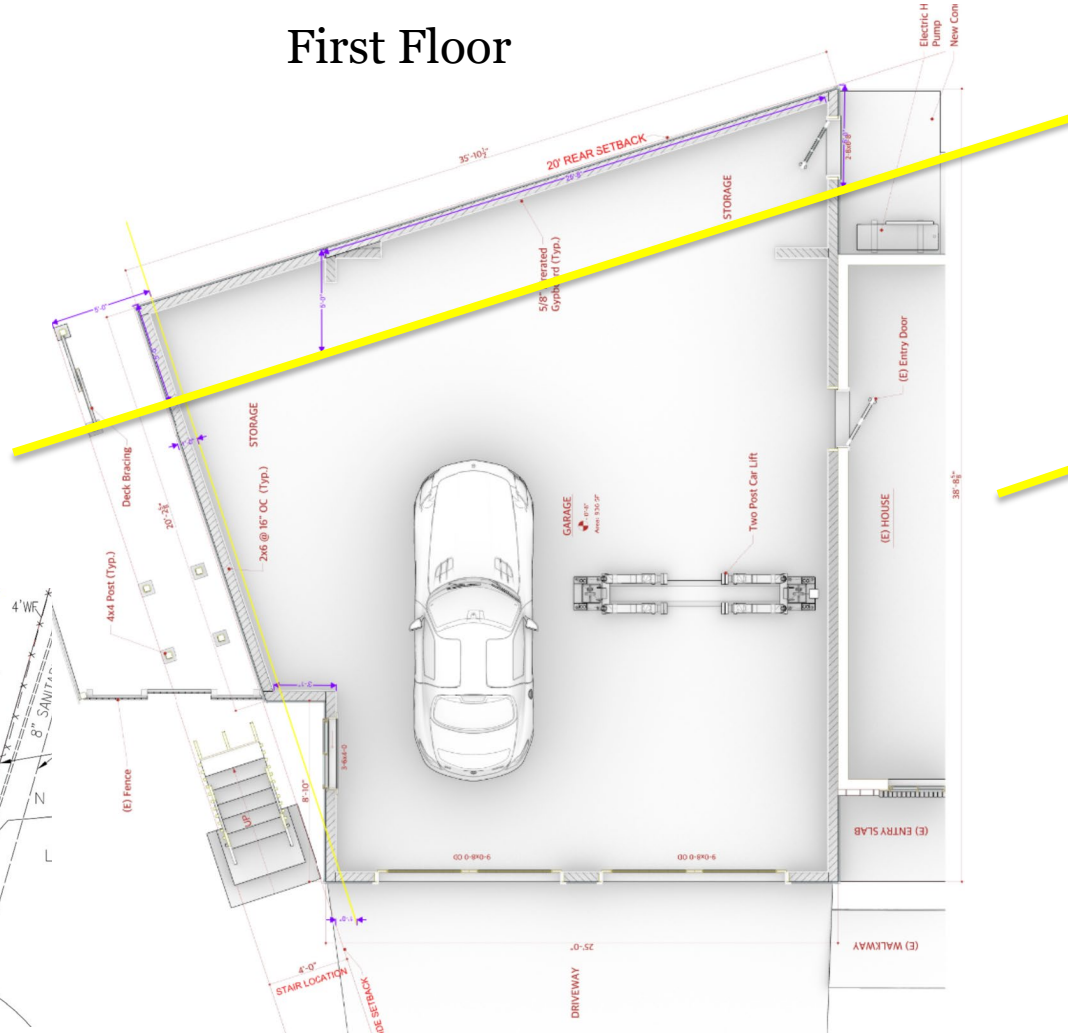


Second Floor

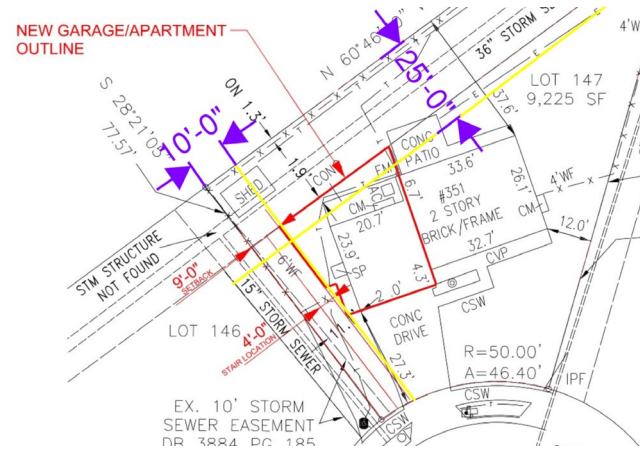
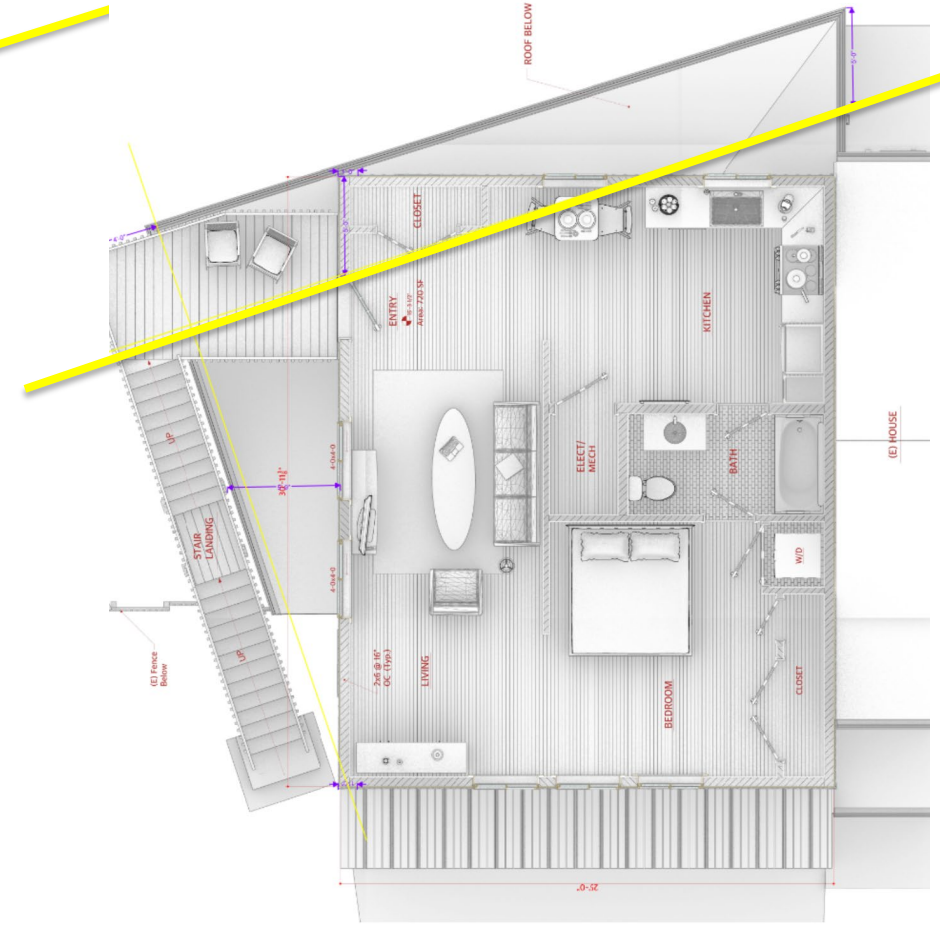


Variance Request 2 – for garage and ADU to encroach 5 feet into the rear yard setback

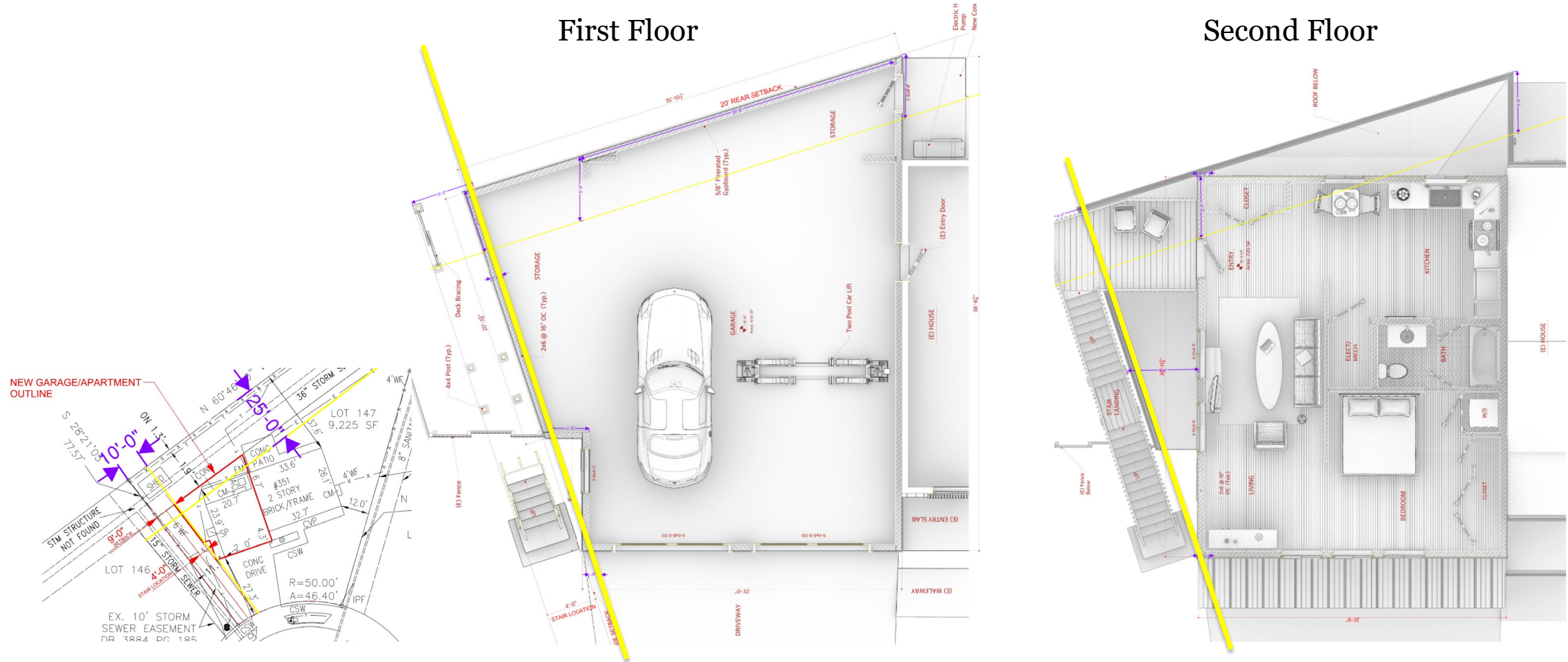
First Floor



Second Floor



Variance Request 3 – for deck to encroach 5 feet into the side yard setback and be attached above 12 feet



Variance Request 1 – for garage and ADU to encroach 1 foot into the side yard setback

Strict application would unreasonably restrict use of the property or relieve hardship due to a physical conditions	Partially meets	The shape of the lot and the orientation of the house creates setbacks that are not parallel to the structure. However, the proposal could be modified to reduce the size of the garage to 24 feet in width, which would still allow for the attached garage and accessory dwelling unit.
Property acquired in good faith and the hardship was not created by the applicant	Meets	The property was acquired in good faith and the applicant has not performed any unpermitted construction.
Granting will not be of substantial detriment to adjacent properties	Meets	The existing garage is 11.1 feet from the left property line and the request is to be nine feet from the left property line. Similar variances granted for side yard setbacks of less than two feet have not resulted in an increase of complaints.
Condition is not so general as to consider a general regulation be adopted as an amendment to the ordinance	Meets	The nonconforming status of this property, while common in The Downs, Section 2, is not common through R-10 districts in town and does not warrant an amendment to the zoning ordinance.
Granting will not result in a use that is not otherwise permitted or result in a change in the zoning classification	Meets	If granted, this variance would not alter the permitted uses or permitted intensity of the R-10 zoning district.
Relief is not available through a special exception or zoning modification	Meets	Modifications are restricted to PD, Planned Development, districts and the property is zoned R-10.

Variance Request 2 – for garage and ADU to encroach 5 feet into the rear yard setback

Strict application would unreasonably restrict use of the property or relieve hardship due to a physical conditions	Partially meets	The shape of the lot and the orientation of the house creates setbacks that are not parallel to the structure. However, the structure could be reduced in depth to approximately 25 feet, which would still allow for the attached garage and accessory dwelling unit.
Property acquired in good faith and the hardship was not created by the applicant	Meets	The property was acquired in good faith and the applicant has not performed any unpermitted construction.
Granting will not be of substantial detriment to adjacent properties	Meets	There is a 20-foot storm sewer easement that extends along the rear of the property and it is adjacent to Haley Smith Park. The park is owned by the town, is currently buffered with mature trees, and is required to maintain that landscape buffer.
Condition is not so general as to consider a general regulation be adopted as an amendment to the ordinance	Meets	The nonconforming status of this property, while common in The Downs, Section 2, is not common through R-10 districts in town and does not warrant an amendment to the zoning ordinance.
Granting will not result in a use that is not otherwise permitted or result in a change in the zoning classification	Meets	If granted, this variance would not alter the permitted uses or permitted intensity of the R-10 zoning district.
Relief is not available through a special exception or zoning modification	Meets	Modifications are restricted to PD, Planned Development, districts and the property is zoned R-10.

Variance Request 3 – for deck to encroach 5 feet into the side yard setback and be attached above 12 feet

Strict application would unreasonably restrict use of the property or relieve hardship due to a physical conditions	Partially meets	The shape of the lot and the orientation of the house creates setbacks that are not parallel to the structure. The proposal could be modified to eliminate the deck. A staircase without a deck that provides access to the accessory dwelling unit is allowed to encroach four feet into the side yard setback, provided it is not closer than five feet to the property line.
Property acquired in good faith and the hardship was not created by the applicant	Meets	The property was acquired in good faith and the applicant has not performed any unpermitted construction.
Granting will not be of substantial detriment to adjacent properties	Does not meet	The ordinance restricts decks to the rear yard, prohibits them in side yards, and only allows them higher than 12 feet when fully outside of all required setbacks. The intent is to preserve privacy between adjacent residential properties. Granting the variance will allow an outdoor living area within five feet of the adjacent residential property and at a height that is more than twice as tall as a privacy fence is allowed (seven feet).
Condition is not so general as to consider a general regulation be adopted as an amendment to the ordinance	Meets	The nonconforming status of this property, while common in The Downs, Section 2, is not common through R-10 districts in town and does not warrant an amendment to the zoning ordinance.
Granting will not result in a use that is not otherwise permitted or result in a change in the zoning classification	Meets	If granted, this variance would not alter the permitted uses or permitted intensity of the R-10 zoning district.
Relief is not available through a special exception or zoning modification	Meets	Modifications are restricted to PD, Planned Development, districts and the property is zoned R-10.

Recommendations

- Variance 1 should be denied for failure to meet all six criteria of Section 78-155.4(d)(1).
- Variance 2 should be denied for failure to meet all six criteria of Section 78-155.4(d)(1).
- Variance 3 should be denied for failure to meet all six criteria of Section 78-155.4(d)(1).
- If the variances are approved, staff recommends including the condition in the staff report regarding substantial compliance with the submitted architectural drawings.

Draft Motions

Approval

I move that the BZA approve and grant the requested variance(s) [**1 and/or 2 and/or 3**] for BZA #24-002 [with conditions] in accordance with the draft resolution attached to the staff report based on the finding(s) therein and that:

The strict application of the ordinance would unreasonably restrict the utilization of the property; and

OR

Granting the variance would alleviate an undue hardship due to a physical condition relating to the property or improvements thereon.

Denial

I move that the BZA deny the requested variance(s) [**1 and/or 2 and/or 3**] for BZA #24-002 in accordance with the draft resolution attached to the staff report based on the failure to meet the finding(s) therein and that:

The strict application of the ordinance would not unreasonably restrict the utilization of the property; and

OR

Granting the variance would not alleviate an undue hardship due to a physical condition relating to the property or improvements thereon.

BZA #24-002 – 351 Hillwood Court

Board of Zoning Appeals
July 25, 2024

David Stromberg, AICP
Zoning Administrator

Agenda Item: Discussion item regarding whether a member of the BZA can also be appointed as a member to the Planning Commission and whether the BZA can consider and decide Special Exceptions, instead of the Town Council after consideration by the Planning Commission.

Meeting Date: July 25, 2024

Category: New Business

Prepared by: Lauri Sigler, Deputy Town Attorney

Description:

Board member Mundt previously asked staff to provide feedback regarding two issues that were mentioned in a training class for members of a Board of Zoning Appeals (BZA) he attended earlier this year. This memorandum will provide the legal answers to two questions: 1) Can a member of the BZA also be appointed as a member to the Planning Commission; and 2) Can the BZA consider and decide Special Exception applications, instead of the Town Council after consideration by the Planning Commission.

Question 1: Can a member of the BZA also be appointed as a member to the Planning Commission as is the case in other Virginia localities?

Answer: No, while the Code of Virginia permits one member of a local BZA to also be appointed to the locality's Planning Commission; both the Herndon Town Charter and the Zoning Ordinance prohibit a BZA member from being appointed to the Planning Commission or holding any other positions with the Town. Both the Herndon Town Charter and the Zoning Ordinance would have to be amended for a member of the BZA to be permitted to also be appointed to the Planning Commission.

Section 15.2-2308 of the Code of Virginia does permit one member of the BZA to sit on the local Planning Commission and specifically states:

"Members of the board shall hold no other public office in the locality, except that one may be a member of the local planning commission, any member may be appointed to serve as an officer of election as defined in § 24.2-101, and any elected official of an incorporated town may serve on the board of the county in which the member also resides."

However, the Herndon Town Charter specifically prohibits a member of the BZA from being appointed as a member of the Planning Commission or holding any other

positions with the Town in Sec. 7.4. - Board of zoning appeals, that states:

"The council shall appoint a board of zoning appeals, consisting of five members, none of whom shall hold any other positions with the town and each of whom shall be a qualified voter of said town. Their term of office shall be for five years each, except that original appointments shall be made for such terms that the term of one member shall expire each year."

Additionally, Sec. 78-150.3(b)(3) of the Herndon Zoning Ordinance also prohibits a member of the BZA from being appointed to the Planning Commission and states:

"(3) Limitations. No member of the board shall hold any other position, whether elected, appointed or employed, with the town."

The Zoning Ordinance can be amended through the zoning text amendment process that requires the following:

1. The text amendment must be initiated by a resolution of intent adopted by the Town Council or the Planning Commission.
2. The text amendment is then considered by the Planning Commission, which makes a recommendation to the Town Council after consideration at a public hearing with public comment.
3. The text amendment is then considered by the Town Council, which will make a decision about whether to adopt the amendment after consideration at a public hearing with public comment.

The charter of a municipal corporation contains the locality's constitution-like laws and can only be amended by the Virginia General Assembly. The Virginia Code provides for two methods to amend a town's charter. The first is by election pursuant to §15.2-201.

With this scenario the town publishes the proposed amendment prior to holding an election as provided in §24.2-681 to determine whether the voters of the town desire to request the General Assembly to grant the locality an amendment to its existing charter. The second method is through a public hearing pursuant to §15.2-202 where the town publishes the proposed amendment before conducting a public hearing to take comment from the public. Regardless of how the town chooses to initiate the charter amendment process, the request must be sponsored and incorporated into a bill that must then be passed just like any other bill before the General Assembly. Once a bill to amend a town's charter is before the General Assembly, there is a chance that other provisions of the charter not included in the bill, could be considered and amended by the General Assembly.

Question 2: Can the BZA consider and decide Special Exception applications, instead of the Town Council after consideration by the Planning Commission?

Answer: Yes, the Code of Virginia permits a BZA to grant Special Exceptions instead of the governing body after consideration by the planning commission; however, currently the Zoning Ordinance only permits Special Exceptions to be granted by the Town Council after consideration and a recommendation by the Planning Commission. The

Zoning Ordinance would have to be amended in order for the BZA to be delegated the authority to grant Special Exceptions.

Virginia Code §15.2-2201 defines special exception to mean “a special use that is a use not permitted in a particular district except by a special use permit granted under the [relevant state laws] and any zoning ordinances adopted herewith.” Special exceptions, is a term used in the Herndon Zoning Ordinance, but are also known as special use permits or conditional use permits, although they may not all necessarily serve the same purpose in a particular locality. A governing body pursuant to §15.2-2286(A)(3), is authorized to grant Special Exceptions “under suitable regulations and safeguards”, after consideration by the Planning Commission. Additionally, pursuant to §15.2-2309(6), a governing body also may delegate the authority to grant Special Exception to the BZA. Whether granted by the governing body or by the BZA, Special Exceptions are legislative in nature.

The authority to grant a Special Exception in the Town of Herndon can be found in Sec. 78-155.3(b) of the Zoning Ordinance that states:

“The town council is authorized to review and approve, approve with conditions, or disapprove an application for a special exception pursuant to this section following review and recommendation by the planning commission...”

Uses allowed by Special Exception are considered to have a potentially greater impact than those uses allowed as a matter of right. Special Exceptions must be evaluated under reasonable standards, based on zoning principles. Impacts from Special Exceptions are addressed through the imposition of conditions at the time of approval. Conditions must be reasonably related to the impacts to be addressed, and the extent of the conditions must be roughly proportional to the impacts.

There are nuanced differences in the Virginia Code pertaining to procedural rules depending on which body is designated with the authority to grant a Special Exception, but regardless of where the authority lies, decisions to grant or deny a Special Exception may be appealed to the circuit court. The standard of review the court must apply when considering an appeal does differ, however. Decisions by a Town Council are *presumed correct* and reviewed under the fairly debatable standard. Decisions by a BZA granting or denying a Special Exception are also presumed correct, *but the presumption may be rebutted* by showing to the satisfaction of the court that the BZA applied erroneous principles of law, or where the discretion is involved, the decision of the BZA was plainly wrong, was in violation of the purpose and intent of the zoning ordinance, and is not fairly debatable.

In order to change the current process for approval and permit the BZA to grant Special Exceptions, a text amendment to the Zoning Ordinance would have to be adopted by the Town Council following the same process as outlined above.

With regard to workload, in FY 2023–2024 five (5) Special Exception applications were considered by the Planning Commission and Town Council.

Background:

Budget Impact:

None

Recommendation:

Staff has no recommendation, this is an informational item only.

Attachments:

None