



**LEXINGTON BOARD OF ZONING APPEALS  
Monday, September 9, 2019 - 6:00 P.M.**

**First Floor Meeting Room (Community Meeting Room)  
Lexington City Hall  
300 E. Washington Street, Lexington, Virginia**

**AGENDA**

**1. CALL TO ORDER**

**2. APPROVAL OF MINUTES**

A. Board of Zoning Appeals minutes from Monday, November 12, 2018\*

**3. NEW BUSINESS**

**A. Election of Chair**

- Nominations
- Motion & Vote

**B. Election of Vice-chair**

- Nominations
- Motion & Vote

C. **BZA 2019-01:** A variance request for the property located at 206 S. Randolph Street.

- 1) Staff Report\*
- 2) Applicant Statement
- 3) Public Comment
- 4) Board Discussion & Decision

D. **BZA 2019-01:** A variance request for properties located at 104 Tucker Street and 116 E. Henry Street.

- 5) Staff Report\*
- 6) Applicant Statement
- 7) Public Comment
- 8) Board Discussion & Decision

**4. ADJOURN**

(Please be aware that there may be a quorum of City Council present)

\*indicates attachment

**Draft**

**MINUTES**

**The Lexington Board of Zoning Appeals  
Monday, November 12, 2018 – 6:00 p.m.  
First Floor – Community Meeting Room  
Lexington City Hall**

**Board of Zoning Appeals:**

Presiding: Jim Gianniny, Chair  
Present: Robert Hull  
Tim Golden  
Gail MacLeod  
Ross Waller

**City Staff:**

Arne Glaeser, Planning Director  
Meredith Warfield, Planning Admin. Asst.

Absent:

**CALL TO ORDER:**

A. Glaeser called the meeting to order at 6:00 p.m.

**MINUTES:**

The 9-11-17 Board of Zoning Appeals Minutes were approved (5-0) as presented (J. Gianniny/T. Golden).

**NEW BUSINESS:**

**A. Election of Chair**

- T. Golden moved to nominate J. Gianniny as Chair of the BZA. R. Hull seconded and the motion carried (5/0).

**B. Election of Vice-Chair**

- T. Golden moved to nominate G. MacLeod as Vice-Chair of the BZA. R. Hull seconded and the motion carried (5/0).

BZA 2018-01 – A variance request for the property located at 111 Rebel Ridge Road.

- **Staff Report** – A. Glaeser provided background, as follows:
  - The applicant is requesting a variance to allow for the reduction in the minimum front yard setback requirement from 25 feet to 12 feet in depth at 111 Rebel Ridge Road. The applicant wishes to build a new deck/carport that will be within 12 feet of the front property line. This front yard setback variance request meets all of the criteria set out in the State Code. The subject property fronts on a 50-foot wide reserve strip that likely was intended to extend Rebel Ridge Road to the property now owned by Kendal. The approved conditional zoning and site plan for the Kendal parcel do not include an access from this end of Rebel Ridge Road and the reserve strip provides no further use or benefit. The applicant has a deeded access easement of 35 feet in width within the aforementioned 50-foot wide strip that provides access to their residence at 111 Rebel Ridge Road. Although the strict application of the front yard setback would not unreasonably restrict the utilization of the property as evidenced by the existing residence, the granting of the variance

would alleviate a hardship due to the odd shape of the subject parcel and condition of the adjacent 50-foot wide reserve strip providing no benefit. Staff therefore recommends approval.

- Board Questions to Staff – T. Golden asked who owned the 50-foot wide reserve strip, to which A. Glaeser responded that the McClungs owned the strip. They could subdivide their property if they wished, but each new property must face a public street, which may be difficult. Questions were clarified by staff about the use of the reserve strip. Staff stated that the reserve strip was a private street and it was not accepted as a public street. A. Glaeser added that a letter had been received and disseminated to the BZA from a neighbor who was in favor of the variance. T. Golden asked whether the applicant had to do exactly what the request stated, which was to build a carport/deck. A. Glaeser responded that it depended on what the BZA decided to dictate in the motion.
- Applicant Statement – Maggie Shapiro of 111 Rebel Ridge Road stated that she had spoken to the McClungs, the immediate neighbors, and that they were in favor of the request although they had not made their opinion public. R. Waller asked whether the applicant had considered building the deck/carport on the other side of the house where there was more land area. The applicant responded that the slope of the land and the rock in the ground there made that a difficult option. The applicant also clarified that the plans for the deck/carport are evolving and that she and her husband had talked about a screened porch in the space as well.
- **Commission Discussion and Decision – T. Golden moved to approve the front yard setback variance reduction from 25 feet to 12 feet for the construction of a deck/carport in accordance with the diagram presented. R. Hull seconded and the motion carried (5/0).**

#### **OTHER BUSINESS**

None

#### **ADJOURN:**

The meeting adjourned at 6:25 p.m. with unanimous approval.

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Jim Gianniny, Chair, Board of Zoning Appeals

**Staff Report**  
**Variance Application**  
**BZA 2019-01 Variance Request to Minimum Side Yard;**  
**206 S. Randolph Street**

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**STAFF REPORT**

**To:** Board of Zoning Appeals  
**Case Number:** BZA 2019-01  
**Date:** September 3, 2019

**Staff:** Arne Glaeser  
**Tax Map:** 23-7-13

**General Info:** The Board of Zoning Appeals is scheduled to hear this request at 6:00 pm on Monday, September 9, 2019 in the Community Meeting Room, First Floor City Hall, 300 E. Washington Street.

**Applicant/Owner:** Scott & Ami Shank

**Requested Action:** A variance request to allow for the reduction in the minimum side yard setback requirement from 10 feet to 11 inches in depth

**Code Section:** 420-4.7 (Zoning District Regulations)

**Location:** The affected property is located at 206 S. Randolph Street.

**Existing Land Use:** The property is currently improved with a single family residence (approximately 3006 square feet in size), a concrete driveway, and an accessory building (garage is approximately 1,725 square feet in size).

**Adjacent Land Use:** All Adjacent properties east of S. Randolph Street are zoned R-1, while the adjacent parcels to the west of S. Randolph Street are zoned C-1.

**Comprehensive Plan:** Moderate Density Residential

**Zoning History:** N/A

**Request:**

The applicants desire to build a noncommercial greenhouse up to 11 inches from the side property line that is shared with the parcel located at 204 S. Randolph Street (see applicant submitted diagram on page 6).

The lot requirements table in Section 420-4 of the Zoning Ordinance requires a minimum 10 foot side yard setback for all structures in the R-1 zoning district.

**Staff Report**  
**Variance Application**  
**BZA 2019-01 Variance Request to Minimum Side Yard;**  
**206 S. Randolph Street**

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**Code Requirements:**

As stated in Section 15.2-2309 of the *Code of Virginia*, the Board of Zoning Appeals shall consider certain statutory considerations when reviewing a variance request. A variance shall be granted if:

1. The evidence shows that the strict application of the terms of the ordinance would unreasonably restrict the utilization of the property or that the granting of the variance would alleviate a hardship due to a physical condition relating to the property or improvements thereon at the time of the effective date of the ordinance, and
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;
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;
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;
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; and
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.

In granting a variance, the board may impose such conditions regarding the location, character, and other features of the proposed structure or use as it may deem necessary in the public interest and may require a guarantee or bond to ensure that the conditions imposed are being and will continue to be complied with. Notwithstanding any other provision of law, general or special, the property upon which a property owner has been granted a variance shall be treated as conforming for all purposes under state law and local ordinance; however, the structure permitted by the variance may not be expanded unless the expansion is within an area of the site or part of the structure for which no variance is required under the ordinance. Where the expansion is proposed within an area of the site or part of the structure for which a variance is required, the approval of an additional variance shall be required.

**Analysis:**

Staff is of the opinion that the side yard setback variance request does not meet all of the criteria set out in the Code of Virginia.

1. The strict application of the 10 foot side yard setback requirement will not unreasonably restrict the utilization of the property. Utilization of the property is evidenced by the existing 3,006 square foot residence and a 1,725 square foot garage. There is no physical condition relating to the property requiring the proposed greenhouse be located in a minimum yard setback. The proposed greenhouse can be a) made smaller in size, b) located in the garden area, or c) a portion of the garage can be removed and replaced with the desired greenhouse all while meeting minimum yard setbacks.

**Staff Report**  
**Variance Application**  
**BZA 2019-01 Variance Request to Minimum Side Yard;**  
**206 S. Randolph Street**

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2. The property was acquired in good faith and any hardship was not created by the applicant.
3. The granting of the variance will only affect the property owned by Scott and Chantelle Eversole at 204 S. Randolph Street and they submitted a letter in support of the variance requested by the Shanks. The greenhouse is proposed to be located on a shared access easement used as access for both parties and the Eversoles do not object to the location of the greenhouse nor its proximity to the side property boundary.
4. The condition of the subject parcel is not so unique that an amendment to the zoning ordinance could not be reasonably formulated. The condition or situation of the property concerned is quite common and a zoning ordinance amendment could easily be formulated.
5. The requested variance will not allow a use that is prohibited in the R-1 zoning district.
6. The relief or remedy sought by the variance application is not available through a special exception process. The Lexington City Code does not authorize the Board of Zoning Appeals to hear and decide applications for special exceptions as provided in subdivision 6 of § [15.2-2309](#) of the Code of Virginia, and the Lexington City Code does not authorize the zoning administrator to grant a modification from any provision contained in the zoning ordinance with respect to physical requirements on a lot or parcel of land through the process for modification of a zoning ordinance pursuant to subdivision A 4 of § [15.2-2286](#) of the Code of Virginia.

The requested side yard setback variance does not meet all of the stated criteria and staff therefore recommends denial.

**Suggested Motion:**

I move to approve/deny the side yard setback variance requested in BZA 2019-01, a request for variance to Zoning Ordinance Section 420-4 to allow for the reduction in the minimum side yard setback to within 11 inches of a side property boundary for Tax Parcel 23-7-13.

**Attachments:**

- A – Vicinity Map
- B – Photographs
- C – Application

Staff Report  
Variance Application  
BZA 2019-01 Variance Request to Minimum Side Yard;  
206 S. Randolph Street

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*Vicinity Map*  
*(proposed greenhouse shown outlined in yellow)*



Staff Report  
Variance Application  
BZA 2019-01 Variance Request to Minimum Side Yard;  
206 S. Randolph Street

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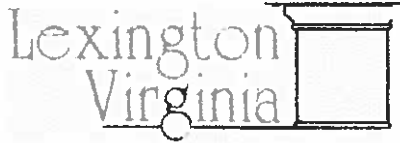
*Driveway between 204 and 206 S. Randolph Streets*



*206 S. Randolph Street seen from Varner Lane*







www.lexingtonva.gov

Planning & Development Department  
P.O. Box 922  
300 East Washington Street  
Lexington, Virginia 24450  
Phone: (540) 462-3704 Fax: (540) 463-5310

## APPLICATION FOR VARIANCE/APEAL OF ZONING ADMINISTRATOR'S DECISION

### Applicant<sup>1</sup>

Name: Scott and Ami Shank Phone: (434) 386-7262

Company: \_\_\_\_\_ Fax: \_\_\_\_\_

Address: 206 S. Randolph St. Email: scott.shank93@gmail.com

Applicant's Signature: *Scott Shank* Date: 8/18/19

### Property Owner

Name: Scott and Ami Shank Phone: (434) 386-7262

Address: 206 S. Randolph St. Email: scott.shank93@gmail.com

Owner's Signature: *Scott Shank* Date: 8/18/19

### Proposal Information<sup>2</sup>

Application Type:  Appeal (attach description of appeal)  Variance<sup>3</sup> (complete below)

Address (or location description): 206 S. Randolph St.

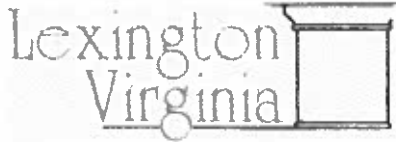
Tax Map: 23 7 13 Deed Book and Page #: 150002014

Acreage: .304 Zoning (attach any existing zoning conditions or proffers): R-1

The Applicant requests a variance from Section 420-4.7 of the City of Lexington Zoning Ordinance, in respect to the requirement for lot requirements

in order to build a non-commercial greenhouse 11 inches from property line.

- (building edge will be 23 inches from property line with a roof overhang no closer than 11 inches.)*
1. Prior to submitting an application, the applicant is required to meet with staff for a pre-application meeting.
  2. Any application deemed incomplete by staff will not be accepted.
  3. See page 3 of this application for the powers and duties of the Board of Zoning Appeals in granting appeals and variances. If not specifically required in the zoning ordinance, submitting a sketch plan or other visual detail of your variance request is highly encouraged.



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### Notice to Adjacent Property Owners

For variance requests, the City will give notice of public hearings to be held on the application to those persons who own property, any portion of which abuts the subject property, and all property which is directly across the street from any portion of the subject property, as determined by the City's real property tax records. This notice will give the date, time and place of the hearing, identify the property which is the subject of the application and give a brief description of the proposed action. Notices will be mailed a minimum of ten (10) days prior to the date of the scheduled public hearings.

### Posting of the Property

For variance requests, the City will place a sign provided by the City on the subject property which indicates that an action is pending. The sign will be located to be clearly visible from the street.

### THIS SECTION TO BE COMPLETED BY STAFF ONLY

Application Fee: \$300 Amount Paid: \$300<sup>00</sup> Case Number: BZA- 2019 - 01

Date Received: 8/19/19 Received By: Anne

#### Staff Review

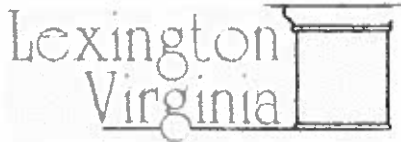
Planning:  Public Works:

Police:  Fire/Rescue:

#### Board of Zoning Appeals

Legal Ad Dates: 8/28/19 + 9/4/19 Adj. Property Notifications: 8/27/19

Public Hearing Date: 9/9/19 Action: \_\_\_\_\_



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## **Powers and Duties of the Board of Zoning Appeals**

Pursuant to § 15.2-2309 of the Code of Virginia, the Board of Zoning Appeals is granted the following powers:

### **Appeals:**

To hear and decide appeals from any order, requirement, decision or determination made by an administrative officer in the administration or enforcement of this chapter or of any ordinance adopted pursuant hereto.

### **Variances:**

The Board may authorize variances from the terms of the Zoning Ordinance, as allowed by State Law. When granting variances, the Board must make the following findings:

1. 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;
2. The granting of the variance will not be of substantial detriment to adjacent property and nearby properties in the proximity of that geographical area;
3. The condition or situation of the property concerned is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted as an amendment to the ordinance;
4. The granting of the variance does not result in a use that is not otherwise permitted on such property or a change in the zoning classification of the property; and
5. The relief or remedy sought by the variance application is not available through a special exception 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.

The applicant must demonstrate these findings to the Board. Submit a letter attached to the application, demonstrating these findings.

Scott and Ami Shank  
206 S. Randolph St.  
Lexington, VA 24450

August 18, 2019

Dear Members of the Board of Zoning Appeals:

Please accept this letter as part of our application for a zoning variance to construct a non-commercial greenhouse on our property located at 206 South Randolph Street in Lexington. We acquired this property on July 23, 2015 as reflected in public records. The property was acquired in good faith and no hardship has been created nor will be created by the variance we are seeking. The only property owners affected are Scott and Chantelle Eversole, who reside at 204 South Randolph Street. Attached is a letter of support signed by Scott Eversole for this variance. Neither they nor we believe there is a substantial detriment to an adjacent property. In fact, we believe the structure will improve the aesthetics of the property.

We do not believe that the request to be able to construct a non-commercial greenhouse 23 inches from the property line (with a roof overhang up to 11 inches from the property line), within the northern boundaries of a previous dilapidated structure abutting the property line, is so general or recurring in nature as to make reasonable practicable the formulation of a general regulation to be adopted as an amendment to the city's ordinances. There are already many grandfathered accessory buildings within the city. We also believe it is unlikely that our project will cause many owners to request variances for similar purposes.

Our construction of a non-commercial greenhouse for our own personal use and pleasure is otherwise permitted on our property within the current zoning district R-1.

Lastly, we are not aware of 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 this variance application.

Thank you for your consideration of this application.

Respectfully,



Scott C. Shank



Ami R. Shank

August 18, 2019

City of Lexington  
Planning and Development Department  
300 East Washington Street  
Lexington, VA 24450

To: Lexington Board of Zoning Appeals,

I'm writing to confirm our support for Scott and Ami Shank to receive a variance to construct a greenhouse on the shared easement (deeded driveway) used to access both properties, 204 S Randolph and 206 S Randolph. As discussed, the greenhouse will be located at the far rear portion of the easement (opposite the driveway exit onto S Randolph St) where a previous shed was removed. Upon construction, the resulting footprint will be set back 23 inches or more beyond our property line (horizontal elevation) at the front lower corner of the greenhouse and approximately 11 inches (vertical elevation to-be-determined) to accommodate the necessary roof overhang.

Please feel free to reach me directly should you have additional questions.

Sincerely,



Scott Eversole



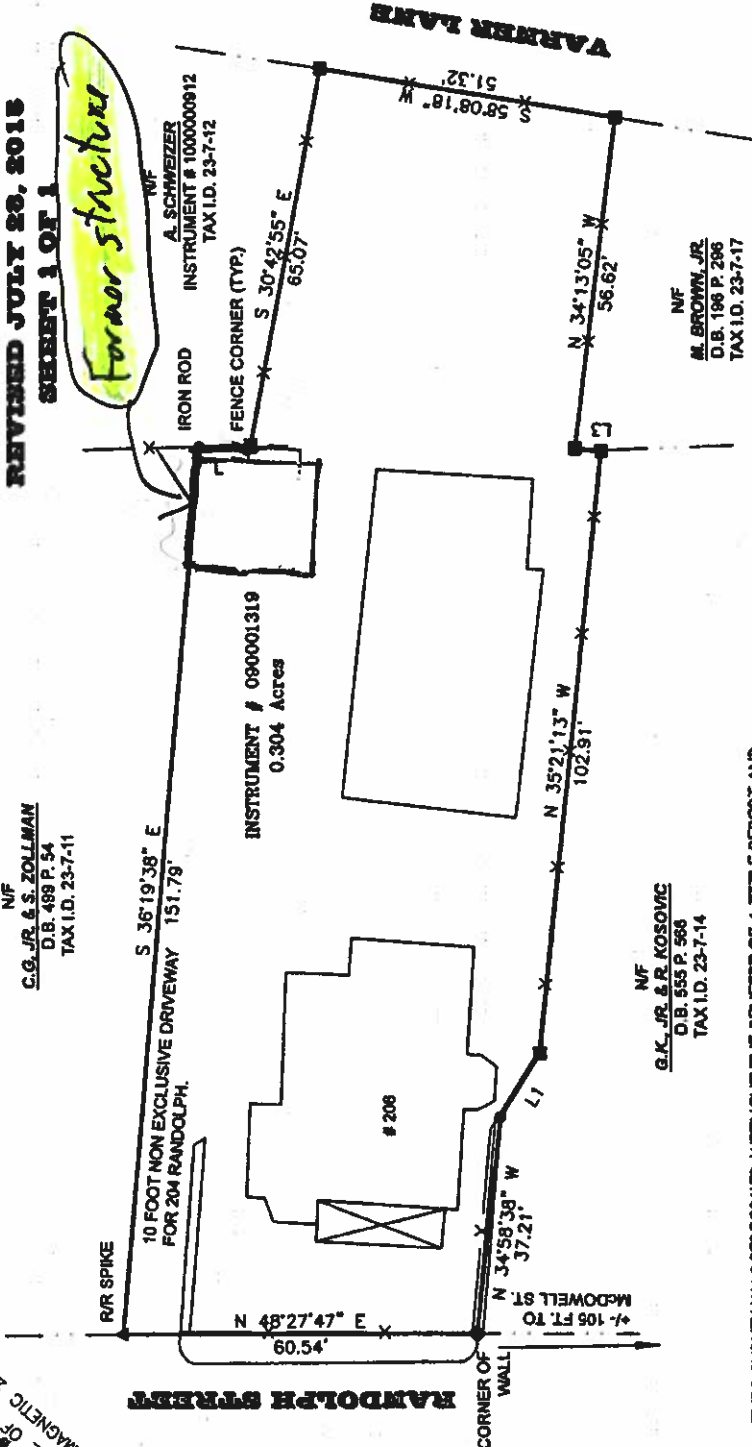
41927

**SURVEY OF  
206 S. RANDOLPH STREET  
TAX PARCEL 23-7-13  
LEXINGTON, VIRGINIA  
GREEN FOREST JOB # GF01125A  
REVISED JULY 26, 2015  
SHEET 1 OF 1**

LINE	BEARING	DISTANCE
1	N 09°23'53" W	1.89
2	S 46°17'11" W	8.82
3	S 53°59'15" W	4.55

NF  
C.G. JR. & S. ZOLLMAN  
D.B. 489 P. 54  
TAX I.D. 23-7-11

*Former structure*



NF  
G.K. JR. & R. KOSOMC  
D.B. 555 P. 566  
TAX I.D. 23-7-14

NF  
M. BROWN, JR.  
D.B. 196 P. 266  
TAX I.D. 23-7-17



THIS SURVEY WAS PERFORMED WITHOUT THE BENEFIT OF A TITLE REPORT AND, THEREFORE, MAY NOT, NECESSARILY, INDICATE ALL ENCUMBRANCES ON THE PROPERTY.

THIS PROPERTY LIES IN FLOOD ZONE "X" (AREA DETERMINED TO BE OUTSIDE 500-YEAR FLOODPLAIN) AS SHOWN ON THE FLOOD INSURANCE RATE MAP (FIRM) FOR ROCKBRIDGE COUNTY, VIRGINIA AND INCORPORATED AREAS. MAP NUMBER 5116300262 C; EFFECTIVE DATE: APRIL 6, 2000.



**GREEN FOREST SURVEYS**  
WWW.GREENFORESTSURVEYS.COM  
P.O. BOX 428  
BUENA VISTA, VA 24416  
(540) 261-1077

JOB NO.	REV.	REV. DATE	NAME	SHEET
GF01125A	1	27 JULY 2015	206 RANDOLPH	1 OF 1







**Staff Report**  
**Variance Application**  
**BZA 2019-02 Variance Request to Minimum Side and Rear Yards;**  
**104 Tucker Street and 116 E. Henry Street respectively**

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**STAFF REPORT**

**To:** Board of Zoning Appeals  
**Case Number:** BZA 2019-02  
**Date:** September 4, 2019

**Staff:** Arne Glaeser  
**Tax Map:** 24-1-22 & 24-1-21

**General Info:** The Board of Zoning Appeals is scheduled to hear this request at 6:00 pm on Monday, September 9, 2019 in the Community Meeting Room, First Floor City Hall, 300 E. Washington Street.

**Applicant/Owner:** Pierson Hotchkiss / Daniel Isaacs-Smith, Millie Anderson

**Requested Action:** A variance request to allow for the reduction in the minimum side yard setback requirement from 10 feet to 3 feet in depth for 104 Tucker Street & a variance request to allow for a reduction in the minimum rear yard setback requirement from 25 feet to 16.4 feet in depth for 116 E. Henry Street.

**Code Section:** 420-4.7 (Zoning District Regulations)

**Location:** The affected properties are located at 104 Tucker Street and 116 E. Henry Street.

**Existing Land Use:** Both properties are currently improved with single family residences.

**Adjacent Land Use:** The subject parcels are zoned R-1 and all of the adjacent parcels are also zoned R-1.

**Comprehensive Plan:** Moderate Density Residential

**Zoning History:** N/A

**Request:**

The owners of 104 Tucker Street have their parcel listed for sale and it was discovered that a portion of their dwelling encroaches over the property line shared with 116 E. Henry Street. The requested yard setback variances are needed prior to a boundary line adjustment to correct the building encroachment and the boundary line is proposed to be moved seven (7) feet to the south.

With the proposed boundary line adjustment, the relocated property line will be three (3) feet from the dwelling located on 104 Tucker Street and will be sixteen and 4/10 tenths (16.4) feet from the deck that is attached to the dwelling located on 116 E. Henry Street. A seven (7) foot reduction of the required 10 foot side yard setback is therefore requested for 104 Tucker Street and a eight and 6/10 tenths (8.6) foot reduction of the required 25 foot rear yard setback is requested for 116 E. Henry Street.

**Staff Report**  
**Variance Application**  
**BZA 2019-02 Variance Request to Minimum Side and Rear Yards;**  
**104 Tucker Street and 116 E. Henry Street respectively**

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The lot requirements table in Section 420-4.7 of the Zoning Ordinance requires a minimum ten (10) foot side yard setback and a minimum twenty-five (25) foot rear yard setback for main structures in the R-1 zoning district. Decks are accessory structures that cannot be located in the yard setbacks while stairs are specifically exempted from setback requirements and can therefore be located in the setbacks.

**Code Requirements:**

As stated in Section 15.2-2309 of the *Code of Virginia*, the Board of Zoning Appeals shall consider certain statutory considerations when reviewing a variance request. A variance shall be granted if:

1. The evidence shows that the strict application of the terms of the ordinance would unreasonably restrict the utilization of the property or that the granting of the variance would alleviate a hardship due to a physical condition relating to the property or improvements thereon at the time of the effective date of the ordinance, and
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;
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;
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;
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; and
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.

In granting a variance, the board may impose such conditions regarding the location, character, and other features of the proposed structure or use as it may deem necessary in the public interest and may require a guarantee or bond to ensure that the conditions imposed are being and will continue to be complied with. Notwithstanding any other provision of law, general or special, the property upon which a property owner has been granted a variance shall be treated as conforming for all purposes under state law and local ordinance; however, the structure permitted by the variance may not be expanded unless the expansion is within an area of the site or part of the structure for which no variance is required under the ordinance. Where the expansion is proposed within an area of the site or part of the structure for which a variance is required, the approval of an additional variance shall be required.

**Staff Report**  
**Variance Application**

**BZA 2019-02 Variance Request to Minimum Side and Rear Yards;  
104 Tucker Street and 116 E. Henry Street respectively**

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**Analysis:**

Staff is of the opinion that the side yard setback variance request meets all of the criteria set out in the Code of Virginia.

1. The strict application of the 10 foot side yard setback requirement will not unreasonably restrict the utilization of the property (utilization of the property is evidenced by the existing residence at 104 Tucker Street), however the granting of the variance would alleviate a hardship due to a physical condition relating to improvements thereon at the time of the effective date of the ordinance. Although it cannot be proven definitively, the dwelling and addition at 104 Tucker Street likely existed prior to the adoption of the Lexington zoning ordinance.
2. The property was acquired in good faith and any hardship was not created by the applicant.
3. The granting of the variance will only affect the properties owned by Daniel Isaacs-Smith and by Millie Anderson.
4. The desire to encroach into the side and rear yard setbacks is a generally recurring desire that could be accommodated by the reduction of yard setbacks in the R-1 zoning district, however, the condition or situation of the property concerned is unique because of the small lot sizes that existed prior to the adoption of zoning in the City.
5. The requested variance will not allow a use that is prohibited in the R-1 zoning district.
6. The relief or remedy sought by the variance application is not available through a special exception process. The Lexington City Code does not authorize the Board of Zoning Appeals to hear and decide applications for special exceptions as provided in subdivision 6 of § [15.2-2309](#) of the Code of Virginia, and the Lexington City Code does not authorize the zoning administrator to grant a modification from any provision contained in the zoning ordinance with respect to physical requirements on a lot or parcel of land through the process for modification of a zoning ordinance pursuant to subdivision A 4 of § [15.2-2286](#) of the Code of Virginia.

The side and rear yard setback variances meet all of the stated criteria and staff therefore recommends approval of both requests.

**Suggested Motion:**

I move to approve/deny the front yard setback variance requested in BZA 2019-02, a request for variances to Zoning Ordinance Section 420-4.7 to allow for the reduction in the minimum side yard setback for Tax Parcel 24-1-22 and for the reduction in the minimum rear yard setback for Tax Parcel 24-1-21.

**Attachments:**

A – Vicinity Map & Photograph of 114 Tucker Street

B – Application

Staff Report  
Variance Application  
BZA 2019-02 Variance Request to Minimum Side and Rear Yards;  
104 Tucker Street and 116 E. Henry Street respectively

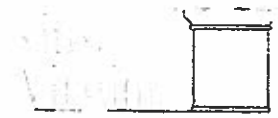
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*Vicinity Map*



*Photograph of addition at 104 Tucker Street that encroaches on 116 E. Henry Street*





www.lexingtonva.gov

Planning & Development Department  
P.O. Box 922  
300 East Washington Street  
Lexington, Virginia 24450  
Phone: (540) 462-3704 Fax: (540) 463-5310

### APPLICATION FOR VARIANCE/APEAL OF ZONING ADMINISTRATOR'S DECISION

#### Applicant<sup>1</sup>

Name: Peikins Hotchkiss Jr Phone: 540-464-9001  
Company: Peikins and Orison Inc Fax: 540-464-5009  
Address: 17 W. Nelson St Lexington Email: hotchkiss@peikins-orison.com  
Applicant's Signature: [Signature] Date: 8-14-19

#### Property Owner and The Christopher B Smith and Madelyn L. Isaacs

Name: Daniel Isaacs Smith Revocable Trust Phone: 239-222-1735  
Address: 20437 Black Oak Lane, Eastern FL Email: disaacsmith@yahoo.com  
Owner's Signature: [Signature] Date: 8/19/2019  
by Madelyn L. Isaacs, Co-Trustee

#### Proposal Information<sup>2</sup>

Application Type:  Appeal (attach description of appeal)  Variance<sup>3</sup> (complete below)  
Address (or location description): 104 TOUCHER ST  
Tax Map: 2A-1-22 Deed Book and Page #: INST # 120001735  
Acreage: 0.054 Zoning (attach any existing zoning conditions or proffers): \_\_\_\_\_

The Applicant requests a variance from Section \_\_\_\_\_ of the City of Lexington Zoning Ordinance, in respect to the requirement for SETBACK in order to build MOVE EXIST PROPERTY LINE WHICH NOW ENCLOSES

1. Prior to submitting an application, the applicant is required to meet with staff for a pre-application meeting.
2. Any application deemed incomplete by staff will not be accepted.
3. See page 3 of this application for the powers and duties of the Board of Zoning Appeals in granting appeals and variances. If not specifically required in the zoning ordinance, submitting a sketch plan or other visual detail of your variance request is highly encouraged.

*Handwritten note:* 2019 Order 2  
Aug 26, 2019

\*Fees Non Refundable

**Lexington**

Russ Orrison, PE, LS  
Pierson Hotchkiss, LS  
Gavin Worley, PE



**Lynchburg**

Norm Walton, PE  
Aaron Dooley, LS

August 20, 2019

**104 Tucker Street Narrative**

The dwelling upon tax parcel 24-1-22, whose address is 104 Tucker St was acquired by Daniel J. Isaacs-Smith, Christopher B. Smith and Madelyn L. Isaacs in instrument 090002256 and 2/3 interest of the same was gifted into the "Christopher B. Smith and Madelyn L. Isaacs Revocable Living Trust" in instrument #120001735. The dwelling upon tax parcel 24-1-21 whose address is 116 E Henry St was acquired by Mildred B. Anderson in instrument #020001185.

The long standing possession line along a fence to the rear on 116 E Henry and the left side of 104 Tucker was found by survey to in fact encroach upon a portion on of the dwelling at 104 Tucker by about 4'. As it is the desire of the owners of each to unencumber their lots and as the owner of 116 E Henry is agreeable to moving the line if it is to a point that the old possession line fence, hedges and trees are all upon 104 Tucker thus removing the burden of maintenance of the same from 116 E Henry and as the line cannot be moved to this point without violating the rear setback of 116 E Henry and the Side setback of 104 Tucker a variance is sought. The deck of 116 E Henry will be about 16.4' off the line and the closest house corner of the same about 23.6'. 104 Tucker will be about 3' from the adjusted line. There is no change in zoning which can allow the adjusted or current line to comply with the current zoning ordinance. The lots both existed prior to the adoption of the Lexington zoning ordinances. There will be of no detriment to adjacent or nearby properties as the relocation of the line will be essentially transparent and make an undesirable situation better. There is no conditional use permit (i.e. special exception) that allows for the reduction of setbacks.

Respectfully Submitted,

Pierson Hotchkiss Jr, LS

V:\Perkins & Orrison Letterhead\P&O Letterhead.doc

②

17 W. Nelson Street · P.O. Box 1567  
Lexington, Virginia 24450

540-464-9001 Fax: 540-464-5009

317 Brook Park Place  
Forest, Virginia 24551

434-525-5985 Fax: 434-525-5986

Email: pno@perkins-orrison.com

**NOTES:**

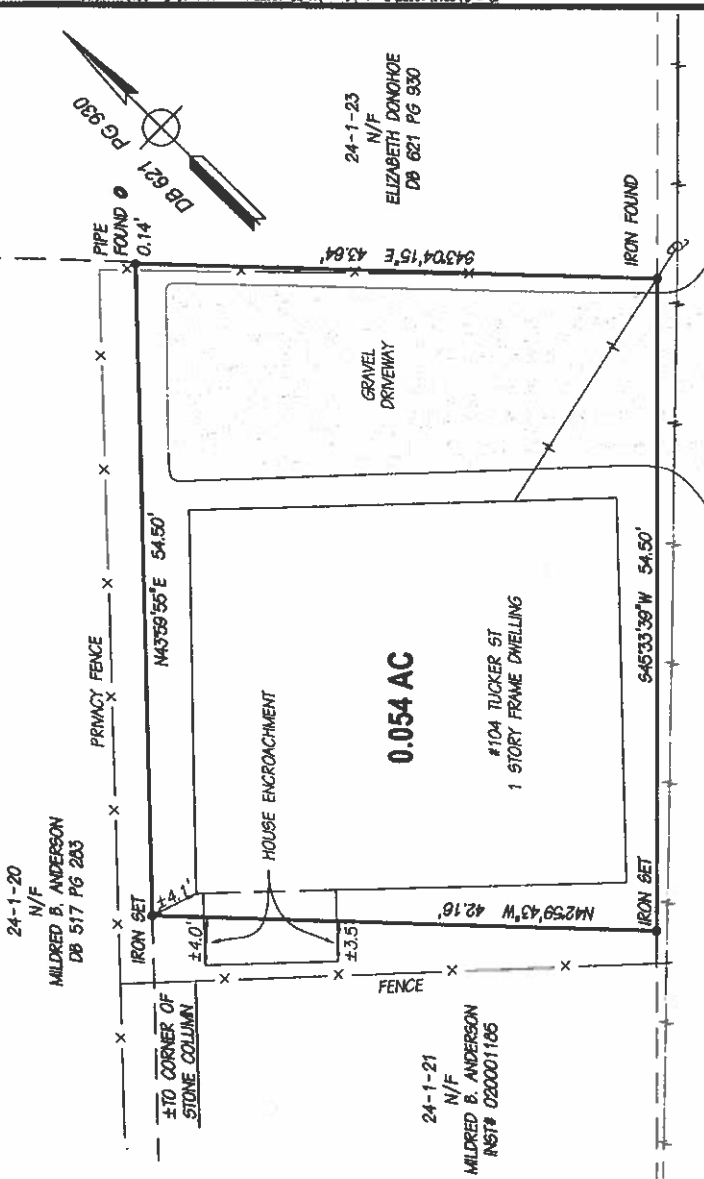
1. THIS SURVEY HAS BEEN PREPARED WITHOUT THE BENEFIT OF A TITLE REPORT AND MAY NOT INDICATE ALL ENCUMBRANCES UPON THE PROPERTY.
2. THIS PROPERTY IS LOCATED IN ZONE "X" UNSHADOWED (AREA OUTSIDE OF THE 100 YEAR FLOOD HAZARD ZONE) AS DETERMINED BY FEMA AND SHOWN ON PANEL #5116300289C DATED APRIL 6, 2000.
3. THIS PLAT HAS BEEN PREPARED FROM A CURRENT FIELD SURVEY PERFORMED PER THE DATE AND THE PLAT.

**SOURCE OF TITLE:**

INST# 120001735  
TAM 24-1-22

24-1-21  
N/F

MILDRED B. ANDERSON  
INST# 020001185



**PLAT SHOWING  
PHYSICAL IMPROVEMENT SURVEY OF  
TAX PARCEL 24-1-22  
CITY OF LEXINGTON, VIRGINIA**

JOB# 18370  
DWG: V-PP-18370.dwg  
DWN: SBL

DATE 12/18/2018



Office: 540-464-0031  
Fax: 540-464-5009  
E-Mail: pnc@perkins-orrison.com  
WEBSITE: <http://www.perkins-orrison.net>

17 W. Nelson Street  
Lexington, VA 24450



3

**NOTES:**

1. THIS EXHIBIT HAS BEEN PREPARED WITHOUT THE BENEFIT OF A TITLE REPORT AND MAY NOT INDICATE ALL ENCUMBRANCES UPON THE PROPERTY.
2. THIS PROPERTY IS LOCATED IN ZONE "X" UNSHADED (AREA OUTSIDE OF THE 100 YEAR FLOOD HAZARD ZONE) AS DETERMINED BY FEMA AND SHOWN ON PANEL #5116300262C DATED APRIL 6, 2000.
3. THIS EXHIBIT IS FOR PRESENTATION ONLY AND IS NOT THE RESULT OF A FIELD SURVEY.

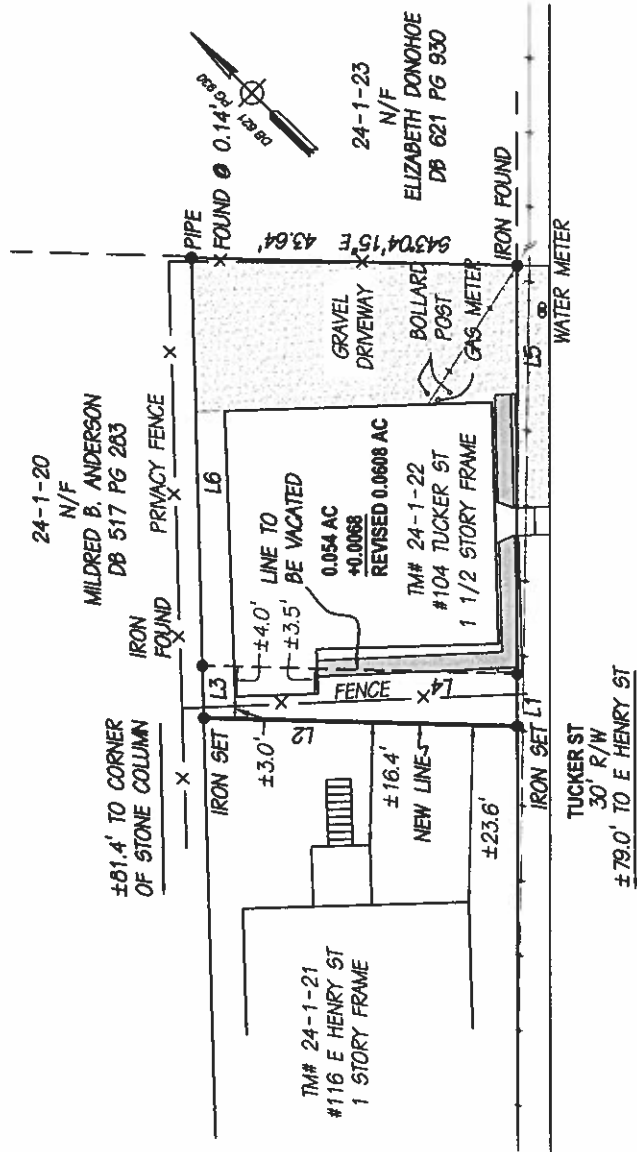
**SOURCE OF TITLE:**

CHRISTOPHER B. AND MADELYN L. ISAACS  
REVOCABLE LIVING TRUST  
INST# 120001735

DANIEL J. ISAACS-SMITH  
INST# 090002256  
TM# 24-1-22

MILDRED B. ANDERSON  
INST# 020001185  
TM# 24-1-21

LINE TABLE		LENGTH
LINE	BEARING	
L1	S45°33'39"W	7.00'
L2	N42°59'06"W	41.97'
L3	N44°00'14"E	7.00'
L4	S42°59'43"E	42.16'
L5	S45°33'39"W	54.50'
L6	N43°59'55"E	54.50'



**LEGEND**

- IRON PIN SET (IPS)
- IRON PIN FOUND (IPF)
- N/F — NOW OR FORMERLY

**EXHIBIT SHOWING  
BOUNDARY ADJUSTMENT BETWEEN  
TAX PARCELS 24-1-22 & 24-1-22  
CITY OF LEXINGTON, VIRGINIA**



DATE: 12/18/2018  
JOB#: 18370  
DWG: V-RP-18370.dwg  
DWN: SBL

Office: 540-464-9001  
Fax: 540-464-5009  
E-Mail: pno@perkins-orrison.com  
WEBSITE - http://www.perkins-orrison.net

17 W. Nelson Street  
Lexington, VA 24450



4



PG0173 FEB 28 88

020001185

TAX MAP NO. 24 1 21

This DEED, made and entered into this 15th day of February, 2002, by and between WILLIAM J. STEARNS, DAVID A. ANDRIACCO AND ROSE E. ANDRIACCO, husband and wife, Grantors; and MILDRED B. ANDERSON, Grantee, whose address is 2893 *Queen Road, Blandville, VA 24116*

-- W I T N E S S E T H --

FOR AND IN CONSIDERATION of the sum of Ten Dollars (\$10.00) cash in hand paid unto Grantors by Grantee, and other just and valuable considerations, receipt of all of which is hereby acknowledged, said Grantors hereby GRANT and CONVEY unto Grantee, with GENERAL WARRANTY and MODERN ENGLISH COVENANTS OF TITLE, the following described property:

All that certain lot of land, together with the buildings and improvements thereon and the rights and appurtenances thereunto belonging, situate in the CITY OF LEXINGTON, VIRGINIA, at the northwest intersection of Henry and Tucker Streets, the said lot fronting 40 feet on the northern side of Henry Street and running back between parallel lines with the western line of Tucker Street, 85 feet to the rear.

The above property is the same acquired by Grantors by deed dated November 29, 1984, recorded in the Clerk's Office of the Circuit Court of Rockbridge County, Virginia in Deed Book 412, page 783, and by deed of assumption dated November

WILLIAM B. McCLUNG & ASSOCIATES, P.C. ATTORNEYS AT LAW P.O. BOX 1137 LEXINGTON, VIRGINIA 24308

*407/753 2/16/84 CEPHAS -> STEARNS  
146/497 11/16/27 R.T. ZOLLNER -> STINTON*

5

29, 1984, recorded in Deed Book 462, page 30.

This conveyance is subject to such restrictive covenants and utility easements of record which do not materially and adversely affect the use of the property for residential purposes or render the title unmarketable.

WITNESS the following signatures and seals:

William J. Stearns (SEAL)  
WILLIAM J. STEARNS

David A. Andriacco (SEAL)  
DAVID A. ANDRIACCO

Rose E. Andriacco (SEAL)  
ROSE E. ANDRIACCO

STATE OF VIRGINIA

COUNTY OF ROCKBRIDGE, to-wit:

The foregoing instrument was acknowledged before me  
this February 15, 2002, by WILLIAM J. STEARNS.  
My commission expires August 31, 2004.

David G. Sechin  
Notary Public

STATE OF OHIO

CITY/COUNTY OF Shirley Hamilton, to-wit:

The foregoing instrument was acknowledged before me

this February 21, 2002, by DAVID A. ANDRIACCO  
and ROSE E. ANDRIACCO.

My commission expires July 22, 2002

Naomi Gump  
Notary Public



INSTRUMENT #020001185  
RECORDED IN THE CLERK'S OFFICE  
ROCKBRIDGE COUNTY ON  
MARCH 1, 2002 AT 11:20AM  
\$55.00 GRANTOR TAX WAS  
REQUIRED BY SEC 58.1-802 OF THE  
STATE: \$27.50 LOCAL:  
BRUCE PATTERSON, CLERK  
BY: Kathy Goodbell

7

120001735

PG0106 MAY 21 2012

*This deed prepared without the benefit of a title search by:  
Mann, Vita & Elrod, P.L.L.C.  
15 East Nelson Street  
Lexington, VA 24450*

This deed is exempt from recordation taxes pursuant to § 58.1-811 (A) (12) and (D) of the Code of Virginia, 1950, as amended.

Tax Map No. 24 1 22

**DEED OF GIFT**

THIS DEED OF GIFT, made and entered into this 4th day of April, 2012, by and between CHRISTOPHER B. SMITH AND MADELYN L. ISAACS, GRANTORS; and CHRISTOPHER B. SMITH AND MADELYN L. ISAACS, CO-TRUSTEES under the

CHRISTOPHER B. SMITH AND MADELYN L. ISAACS REVOCABLE LIVING TRUST dated

the 14th day of December, 2011, whose address is 12555 Grandezza Cir. Estero FL 33928

GRANTEES:

**::: WITNESSETH :::**

WHEREAS, Christopher B. Smith, Madelyn L. Isaacs and Daniel J. Isaacs-Smith took title to the hereinafter described property as joint tenants; and,

WHEREAS, Christopher B. Smith and Madelyn L. Isaacs wish to convey their 2/3rds undivided interest in the hereinafter described property to their revocable trust known as THE CHRISTOPHER B. SMITH and MADELYN L. ISAACS REVOCABLE TRUST AGREEMENT date the 14th day of December, 2011 for which they serve as Trustees.

NOW THEREFORE FOR AND IN CONSIDERATION of estate planning purposes and for no monetary consideration, the Grantors do hereby GIVE, GRANT and CONVEY unto the

8

# 120001735

PG 0107 MAY 21

24-1-22

the following described real estate:

All of their two thirds (2/3) undivided interest in and to the following described real estate together with the buildings and improvements thereon, and all rights and appurtenances thereunto belonging, situate in the City of Lexington, Virginia and being described as follows:

Beginning at a stake on the northwest property line of Tucker Street, this point being located 30' from the southeast P.L. of said street and 86' from the intersection of Tucker Street and Henry Street, thence paralleling the latter in a northwesterly direction 40' to the line of a lot owned by M.S. McCoy, thence paralleling Tucker Street (S.W.) 54.5' to a stake, thence parallel to the first line 40' to the N.W.P.L. of Tucker Street, thence with the same (N.E.) 54.5' to the beginning.

Being a fractional interest in the same property conveyed unto Daniel J. Isaacs-Smith, Christopher B. Smith and Madelyn L. Isaacs, by Deed dated June 15, 2009 from Franklin F. Wise, Trustee of the Franklin F. Wise Living Trust dated march 19, 2008, recorded in the Clerk's Office of the Circuit Court of Rockbridge County, Virginia as Instrument #090002556.

TO HAVE AND HOLD an undivided Two-thirds (2/3rds) interest in said property as Co-Trustees under THE CHRISTOPHER B. SMITH AND MADELYN L. ISAACS REVOCABLE TRUST AGREEMENT, dated the 14th day of December, 2011, as the same may be amended from time to time.

TO FURTHER HAVE AND TO HOLD the property with full power, right and authority hereby granted unto Grantees, and their successors in trust, to sell, lease, exchange, encumber and/or convey their interest in said property, either in whole or in part, upon such terms and conditions and for such consideration, or no consideration, as Grantees may in the discretion of Grantees deem advantageous, and, subject to the interests of Daniel J. Isaacs-Smith, with the further right to subdivide and re-subdivide said property and to dedicate such portions thereof for public use as Grantees shall deem desirable, together with the right to grant licenses and easements for utilities or other purposes across, over and under said property, and Grantees are hereby empowered to

- 0700003830 8/14/07 MAYS → WISE
- 405/846 12/5/83 EMORY LINDSAY → MAYS
- 181/129 10/11/41 (~~BE SAME EXACT COND' ILL~~)  
1941  
PELLICK → LINDSAY


execute, acknowledge and deliver such deed, deeds of trust, leases and other instruments necessary to carry out the foregoing powers, and there shall be no obligation or liability upon any purchaser or purchasers, lessee or lessees of said property, or any part thereof, or upon any party or parties making any loans secured by deed or deeds of trust upon said property, or any part thereof, to see to the proper application of the trust portion of the proceeds of such sale, lease or loan.


Every deed, deed of trust, lease or other instrument executed by the Grantees, or their successors in trust, on behalf of the trust identified herein and in relation to the property described herein shall be conclusive evidence in favor of every person claiming any right, title or interest thereunder that: (1) at the time of the delivery of such instrument the trust was in full force and effect; (2) that such instrument was executed in accordance with the terms and conditions of the trust agreement establishing said trust, as the same may be amended from time to time, and is binding upon all beneficiaries under said trust; and (3) if such instrument is executed by successors in trust to the Grantees, that such successors in trust have been properly appointed and are fully vested with all the title, estate, rights, powers, duties and obligations of Grantees provided such successors in trust have been properly appointed. For purposes of identifying the successors in trust to the Grantees, the following individuals are named as the successor trustees of each of the trusts identified herein in the following order of succession: DANIEL J. ISAACS SMITH, ANDREW J. ISAACS-SMITH and RUSSELL HIRSCH.

This conveyance is made subject to restrictive covenants, rights of way and easements of record which pertain to the subject real estate.

[Signatures and Acknowledgment on Following Page]

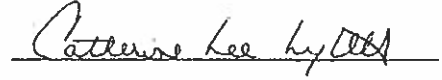
WITNESS the following signatures and seals:

  
CHRISTOPHER B. SMITH (SEAL)

  
MADELYN L. ISAACS (SEAL)

STATE OF FLORIDA, AT LARGE  
CITY/COUNTY OF Lee, To-wit:

The foregoing instrument was acknowledged before me in my jurisdiction this 16  
day of April, 2012 by CHRISTOPHER B. SMITH and MADELYN L. ISAACS.

  
Catherine Lee Lytell

Notary Public

My commission expires: 11-18 2012

Notary registration no.: DD 827652

[SEAL]



INSTRUMENT #120001735  
RECORDED IN THE CLERK'S OFFICE OF  
ROCKBRIDGE COUNTY ON  
MAY 21, 2012 AT 03:12PM

BRUCE PATTERSON, CLERK  
RECORDED BY: VAK  
