



**LEXINGTON BOARD OF ZONING APPEALS**  
**Monday, September 18, 2023 - 6:00 P.M.**

**Second Floor 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, March 21, 2022\*

**3. NEW BUSINESS**

**A. Election of Chair**

- Nominations
- Motion & Vote

**B. Election of Vice-chair**

- Nominations
- Motion & Vote

C. **BZA 2023-01:** An appeal request for the property located at 207 Diamond Street.

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

**4. ADJOURN**

\*indicates attachment

## MINUTES

**The Lexington Board of Zoning Appeals  
Monday, March 21, 2022 – 6:00 p.m.  
Community Meeting Room – City Hall  
300 East Washington Street**

### Board of Zoning Appeals:

Presiding: Jim Gianniny, Chair  
Present: Gail MacLeod, Vice-Chair  
Mary Harvey-Halseth  
Ross Waller (arrived 2 minutes late)

### City Staff:

Arne Glaeser, Planning Director  
Kate Beard, Planning Admin. Asst.  
Jared Jenkins, City Attorney

Absent: Robert Hull

### CALL TO ORDER:

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

### MINUTES:

The September 9, 2019 Board of Zoning Appeals Minutes were approved (3-0) as presented (M. Harvey-Halseth / G. MacLeod).

### NEW BUSINESS:

#### A. Election of Chair

G. MacLeod moved to nominate J. Gianniny as Chair of the BZA. M. Harvey-Halseth seconded and the motion carried (4-0).

#### B. Election of Vice-Chair

M. Harvey-Halseth moved to nominate G. MacLeod as Vice-Chair of the BZA. R. Waller seconded and the motion carried (4-0).

#### C. **BZA 2022-01** – An appeal request for the property located at 30 Edmondson Avenue.

##### 1. **Staff Report** – A. Glaeser provided background, as follows:

The appellant wishes to renovate an accessory structure on his property and is appealing the Zoning Administrator’s January 5, 2022 determination that an accessory dwelling unit (a.k.a an accessory apartment) must be located within the main dwelling unit and cannot be located in an accessory building detached from the main building. He directed the Board’s attention to the definitions provided in the staff report and indicated they would be the focus of much of the evening’s discussion. He read the current definition for *accessory apartment* “a residential use having the external appearance of a single-family residence in which there is located a second dwelling unit that comprises no more than 25% of the gross floor area of the building nor more than a total of 750 square feet,” and stated that *accessory dwelling* is a by right use in the R-1 zoning district which is where the subject property is located. He oriented the Board to the location of the property and subject structure and provided a brief history of relevant definitions and permitted uses provided in the Zoning Ordinance over time. He admitted an inconsistency in nomenclature exists in the current Zoning Ordinance whereby the *accessory*

*dwelling* use listed in the Use Matrix is not defined in the definitions section but argued the definition provided for *accessory apartment* was intended to define the *accessory dwelling* use. He provided a cursory overview of the statutes the Board should rely upon in making its decision and explained the Board was being asked to determine whether the Zoning Administrator was correct in his determination that the requested use is not in accordance with the Zoning Ordinance because it is not within the main building.

Board Questions – R. Waller asked for confirmation that guest houses are prohibited in Lexington. A. Glaeser confirmed a guest house that is separate from the main building would be prohibited unless it was a nonconformity that existed before 1957 and had been in continuous use since that time. He indicated he believed there were likely examples of such legal, nonconforming structures in Lexington and clarified that a legal nonconformity is determined to be abandoned if it is unused for a period of two years. R. Waller asked if the use would be allowed if the structure was on a separate tax parcel. A. Glaeser responded that in that circumstance, provided all lot requirements were met, the structure would be the main structure on the property and a single-family dwelling is a by right use in the R-1 district.

2. **Applicant Statement** – Sam Crickenburger, consultant, emphasized that words matter. He said the Board was considering the words *accessory* and *dwelling*, terms defined in the Ordinance, and noted that the Use Matrix provides *accessory dwelling* as a by right use in the R-1 zoning district. The appellant, Joe Small, stated the subject building was used as a dwelling from about 1954 until 1982 and has water, gas, electric and sewer service. He argued that though currently unoccupied, the building is a dwelling, that the Use Matrix lists *accessory dwelling* as a by right use in his zoning district, and that a common sense reading should allow him to use it as such. He argued that he simply wants to renovate an existing dwelling on his property. He asserted that Administrator Glaeser’s determination was a legal determination and not a determination of fact and was therefore not entitled to deference. He then made assertions about how the Board should determine his burden of proof. He argued that the public would differentiate between a “dwelling” and an “apartment” and asked the Board to apply the common meaning of the language.

M. Harvey-Halseth asked for clarification of the abandonment issue and Mr. Small provided his understanding of that provision of the Code. R. Waller asked the appellant if the subject building currently contains a kitchen. Mr. Small replied the building has a kitchen with no fixtures, but with electrical wiring and a drain. R. Waller suggested that was not persuasive evidence of a kitchen, saying a garage could be similarly equipped. R. Waller asked Administrator Glaeser if the renovation project would be allowed to proceed without a kitchen. A. Glaeser responded that the Ordinance does not define what is necessary to qualify as a “dwelling” and that a project involving additional sleeping space, without a kitchen, would likely be acceptable. Mr. Small asserted this line of inquiry was not relevant and argued the main issue was whether the structure had been designed for residential use, claiming it had been. A. Glaeser stated he had not been inside the structure, but it did not appear to him to have been designed for residential use. G. MacLeod provided examples of uses that would be allowable in an accessory building as they met the definition requirement of no housekeeping. Mr. Small pointed out that the zoning ordinance contains a definition for *building accessory* which prohibits housekeeping as well as one for *accessory use or building* which does not prohibit housekeeping. He argued the inconsistencies are confusing at a minimum and any finding based on such inconsistencies should be decided in the land owner’s favor.

3. **Public Comment** – Michael Gilmore, 19 Edmondson Avenue – said he and his wife Mary Ann have lived at 19 Edmondson Ave., in full view of the subject property, since 1985. He stated he and his wife have no objections to the applicant’s proposal. He suggested it would appear to be within the historical use of many properties, it would improve the condition of the property, and that he and his wife are generally in favor of allowing accessory dwellings on appropriately sized lots.
4. **Board Discussion and Decision** –G. MacLeod offered that while the definitions and omissions are confusing and disconcerting, the existing definitions for *building accessory* and *accessory apartment* specify either a prohibition against housekeeping or a requirement of being attached to the main building. She said that if there is a difference between an accessory dwelling and an accessory apartment, the building in question would fall under *building accessory* definition which specifies no housekeeping. Mr. Crickenburger commented that the Zoning Ordinance also has a definition for *accessory use or accessory structure* which does not contain the prohibitive language. Mr. Small posited that the definition to which Mr. Crickenburger referred was likely added more recently and should therefore be considered the controlling definition. J. Gianniny pointed out that the entire code was adopted in 2017. He explained that he was on City Council at the time the *accessory apartment* use was adopted. He said that at that time the requirement was that it be a part of the main building and there was no *accessory dwelling* use. Following a discussion of the zoning ordinance prior to 2017 and its reorganization in 2017, J. Gianniny suggested the Board needed to decide what an accessory dwelling is and whether housekeeping is allowed in it. R. Waller added that, apart from intent, consideration should be given to what can be inferred from the existing text. He said that made a decision difficult as the text is unclear. J. Gianniny said he believed the intent was to allow an *accessory apartment* in the matrix, but agreed the text is unclear and suggested the Board make a recommendation to Council to fix the inconsistent language. He added that the Board also needed to decide whether the Zoning Administrator’s determination was reasonable and factually based or unreasonable and factually incorrect. Jared Jenkins, City Attorney, pointed out that the statute clearly states the determination is presumed to be correct and the question is whether the appellant has presented enough evidence to overcome that presumption. Mr. Small argued the standard to overcome presumption was a preponderance of the evidence. Mr. Crickenburger urged the Board to focus on the plain meaning of the words used in the matrix. **G. MacLeod moved to find Administrator Glaeser’s determination to be reasonable and factually based. The motion died for lack of a second. M. Harvey-Halseth moved to approve this BZA request and to ask that the issue of definitions be reviewed by the Planning Commission and City Council.** Chair Gianniny asked if the motion included a finding that the Zoning Administrator’s determination appears to be unreasonable and factually incorrect. M. Harvey-Halseth responded it did not. A. Glaeser cautioned the Board that its decision must include a finding of fact and any motion must provide a clear record of the reasons for the decision. M. Harvey-Halseth said she was uncomfortable saying the Zoning Administrator made an error in his decision as his decision was based on flawed definitions. R. Waller agreed and asked Mr. Jenkins how the Board should evaluate how the Zoning Administrator’s determination was made. Mr. Jenkins responded that the fundamental issue was whether the determination was correct. He said the Zoning Administrator had acknowledged the inconsistencies in the definitions and had stated the basis of his determination which pursuant to City Code is presumptively correct. He indicated that the question would be whether the evidence presented by the appellant was sufficient to overcome that presumption. Any motion

to overturn the determination would have to state the determination was incorrect and cite specific reasons. G. MacLeod offered an argument that the determination was correct noting that while the governing words in the use matrix are not defined, there are other definitions which specify that an accessory building cannot be used for housekeeping and an accessory apartment must be attached to the main building. She said the fact that these rules have been applied in this manner for at least a couple decades was persuasive in deciding the determination was correct. She added that this has been the expectation of property owners and if the Board should start applying the rules in different ways there was a risk of property owners being unable to rely on the consistency of the application of the rules. She said she believed the City had been consistent for a number of years in requiring accessory dwellings/apartments to be attached to the main building, noting that was how it was discussed and applied when she was a Planning Commissioner. **G. MacLeod moved to find Administrator Glaeser's determination reasonable and correct. J. Gianniny seconded.** There was discussion about procedural matters should the vote result in a tie and the appellant was advised of his right to request the matter be held over to a meeting of the entire board. Chair Gianniny called for a vote **and the motion carried (3-1) with M. Harvey-Halseth voting against.**

#### **OTHER BUSINESS**

G. MacLeod requested the Board refer this to the Planning Commission and City Council to tidy up the language as soon as possible. A. Glaeser said he would bring up the matter with the Planning Commission at its next meeting.

#### **ADJOURN:**

The meeting adjourned at 7:13 pm with unanimous approval. (M. Harvey-Halseth / R. Waller)

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Jim Gianniny, Chair, Board of Zoning Appeals

**Staff Report**  
**BZA 2023-01 Appeal of Zoning Administrator's determination;**  
**207 Diamond Street**

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**STAFF REPORT**

**To:** Board of Zoning Appeals  
**Case Number:** BZA 2023-01  
**Date:** September 12, 2023

**Staff:** Arne Glaeser  
**Tax Map:** 17-6-1-20

**General Info:** The Board of Zoning Appeals is scheduled to hear this request at 6:00 pm on Monday, September 18, 2023 in the Upstairs Meeting Room, Second Floor City Hall, 300 E. Washington Street.

**Appellant/Owner:** Stephen and Marqui Simmons / Stephen and Marqui Simmons

**Requested Action:** An application appealing the Zoning Administrator's determination that 207 Diamond Street is not the owners' primary residence.

The Appellant is appealing a determination made by Arne Glaeser, as Zoning Administrator, in a letter dated August 8, 2023, wherein Mr. Glaeser determined that Mr. and Mrs. Simmons did not adequately prove in their application for a short term rental registration that 207 Diamond Street is their primary residence where they reside for at least 185 days in the current calendar year.

**Code Section:** 420-20.1 – Definition of Short Term Residential Rental is “a residential dwelling unit that is used or advertised for rent for transient occupancy in increments of fewer than 30 consecutive days. This use type does not include bed-and-breakfast establishments.”

420-11.3.22.A – Definition of primary resident (or Host) is “the owner of the short term rental unit, or lessee of the short term rental unit with a lease agreement that is one year or greater in length, who occupies the property as his or her principal place of residence and domicile. In determining compliance with these regulations, the host has the burden of demonstrating that the dwelling unit is his or her primary residence.”

420-11.3.22.B.11 – Use and design standards for short term residential rental require “in all residential zoning districts, the dwelling unit used for short term rentals must be the host's primary residence, which means he or she resides there for at least one hundred and eighty five (185) days during each year.”

**Location:** The affected property is located at 207 Diamond Street (Tax Map #17-6-1-20) which is in the General Residential (R-1) zoning district.

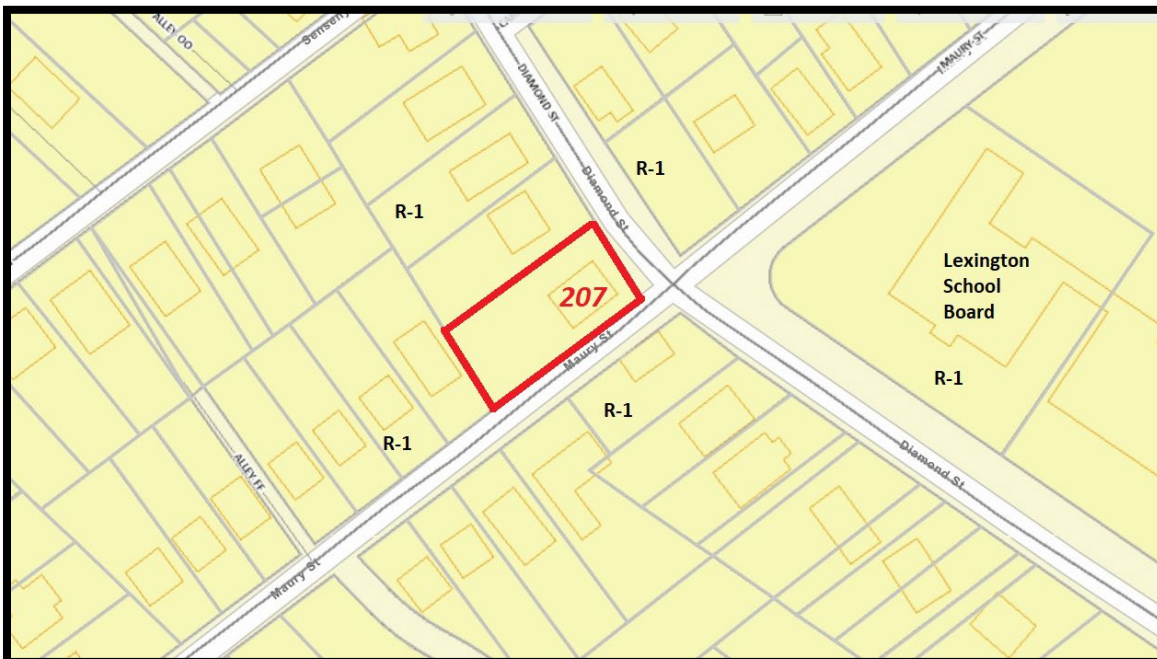
**Existing Land Use:** The subject parcel is currently improved with a primary dwelling unit facing Diamond Street.

Staff Report  
BZA 2023-01 Appeal of Zoning Administrator's determination;  
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*View of subject parcel from Diamond Street*



**Adjacent Land Use:** All of the properties in the immediate vicinity are single family residences zoned R-1 (General Residential), and the Lexington School Board office located catty-corner is also zoned R-1.





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**Comprehensive Plan:** Traditional Neighborhood future land use designation.

**Zoning Determination:**

An update to the Lexington Zoning Ordinance in 2017 added short term rentals as a use and there are a number of use and design standards that must be met for a short term rental registration to be issued. In the residential zoning districts a short term rental registration can only be issued to primary residents who live on the property for at least 185 days out of the year, and it is the owners' burden of proof to show they are primary residents. Although there is no singular document proving primary residency, staff typically suggests an applicant for a short term rental registration submit:

- a) Income tax return,
- b) Voter registration,
- c) Driver's license,
- d) Vehicle registration, and
- e) Banking statements to show on balance a dwelling is a primary residence.

In support of the short term rental application for 207 Diamond Street the applicants provided:

- a) Lexington voter registrations for Stephen Simmons and for Marqui Simmons with the 207 Diamond Street address listed;
- b) an auto insurance policy with the 207 Diamond Street address with coverage for five vehicles (2016 Audi Q3, 2015 Volkswagen Passat, 2014 Jeep Wrangler Unlimited SP, 2008 Mercedes-Benz E350, & 2021 GMC Sierra C1500);
- c) a print-out from the DMV website showing four of the above listed vehicles, two trailers, and a 1980 Nissan Patrol listed at the 207 Diamond Street address, but the 2008 Mercedes-Benz E350 is not included;
- d) a print out from the Anthem insurance company showing the contact details for Stephen Simmons include the 207 Diamond Street address; and
- e) a copy of the October 2, 2019 sales contract for 207 Diamond Street showing that the buyers, represented that they would occupy the property as their principal residence.

Documents commonly submitted to support a claim of primary residency such as income tax returns and copies of driver's licenses were not submitted. The Lexington Commissioner of Revenue's office also confirmed there has not been a Virginia State Income Tax form filed with the Lexington address as of August 8, 2023.

The Zoning Administrator then determined in a letter dated August 8, 2023 that 207 Diamond Street is not the primary residence and the applicants therefore did not meet the standards for the issuance of a short term residential rental registration. The determination was primarily made because a) both of the applicants are employed and derive their income from jobs located in Northern Virginia, b) tax forms could not be provided despite owning the property at 207 Diamond Street since November 20, 2019, and c) not one of the five vehicles and two trailers registered in Lexington were parked at 207 Diamond Street on Sunday morning, August 6, 2023.

**Analysis:**

It is the role of the Board of Zoning Appeals (BZA) to decide if the Zoning Administrator's determination was reasonable. If the determination was not based on factual evidence or some other



**Staff Report**  
**BZA 2023-01 Appeal of Zoning Administrator's determination;**  
**207 Diamond Street**

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standard, then the BZA should reverse the determination. If the decision is found to be reasonable by the BZA then the determination should be upheld.

The owners of 207 Diamond Street filed a short term rental registration application with the Zoning Administrator, and to support the claim of the subject parcel meeting the primary residence standards for short term rentals, the applicants provided a number of documents (see attachment C). The Zoning Administrator reviewed the application and documents and determined the applicants do not meet the primary resident requirement. The applicants can therefore not be issued a short term rental registration in compliance with the short term rental use and design standards found in Section 420-11.3.22 of the Code of the City of Lexington.

On balance, the documents submitted by the applicants for a short term rental registration fell short of proving the owners are primary residents. While the voter registrations for both Stephen and Marqui were helpful to show 207 Diamond Street is a primary residence, the automobile insurance policy and DMV print out were considered less helpful because automobiles can be insured and registered at either residential address utilized by the Simmons. The tax rate for personal property was more likely the reason all vehicles were registered in Lexington as opposed to a locality in northern Virginia. The Anthem insurance print-out only shows the contact details for Stephen Simmons to be 207 Diamond Street. The exclusion of Marqui Simmons on this document begs the question whether there is a separate policy that may or may not be addressed at 207 Diamond Street. The copy of the October 2, 2019 sales contract to purchase 207 Diamond Street showing that the buyers represented that they would occupy the property as their principal residence was the least helpful because there is no entity to enforce the provision, and a buyer can easily purchase a property and still not occupy the property as their principal residence.

Missing from the submitted application materials are income tax returns and banking statements that would help support the claim that 207 Diamond Street is the applicants' primary residence. It seems reasonable to conclude that the application materials submitted with the short term rental registration application were insufficient to prove 207 Diamond Street is undoubtedly the applicants' primary residence.

**Summary of the scope of BZA review on appeal**

- The issue for the BZA is whether the Zoning Administrator's decision was correct and reasonable.
- Statements by the appellant or his attorney may further limit the scope of the appeal.
- In the consideration of an appeal, the BZA may not:
  - Determine whether a proposed use is appropriate in the zoning district.
  - Determine what is in the public interest.
  - Amend or repeal a zoning regulation.
  - Determine that a zoning regulation is invalid.

The BZA may reverse or affirm, wholly or partly, or may modify the decision of the Zoning Administrator. The concurring vote of a majority of the BZA membership (i.e. three votes) is necessary to reverse the determination of the Zoning Administrator. If the vote results in a tie, the appellant may request a deferral to the next meeting, but nothing compels the BZA to grant the request.

**Staff Report**  
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**Suggested Motions:**

I move to deny the request in BZA 2023-01 to overturn the determination made by the Zoning Administrator that the owners are not primary residents and can therefore not be issued a short term rental registration for the property at 207 Diamond Street (Tax Parcel 17-6-1-20). The determination appears to be reasonable and factually based.

-or-

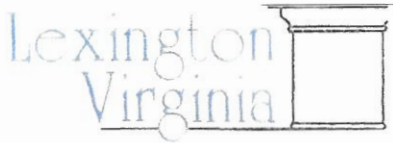
I move to approve the request in BZA 2023-01 to overturn the determination made by the Zoning Administrator that the owners are not primary residents and can therefore be issued a short term rental registration for the property at 207 Diamond Street (Tax Parcel 17-6-1-20) provided all other use and design standards for short term rentals can be met. The determination appears to be unreasonable and factually incorrect.

**Attachments:**

- A – Application, and letter from the appellants, Stephen and Marqui Simmons dated August 18, 2023
- B – Letter from Zoning Administrator dated August 8, 2023
- C – Short term rental registration application dated July 10, 2023

**Attachment A**

BZA application and letter from the appellants, Stephen and Marqui Simmons dated August 18, 2023




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


www.lexingtonva.gov

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

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

Name: Stephen and Marqui Simmons Phone: 703-774-7232  
Company: n/a Fax: n/a  
Address: 207 Diamond Street, Lexington, VA 24450 Email: smao@hey.com  
Applicant's Signature:  Date: 08/14/2023

### Property Owner

Name: Stephen and Marqui Simmons Phone: 703-774-7232  
Address: 207 Diamond Street, Lexington, VA 24450 Email: smao@hey.com  
Owner's Signature:  Date: 08/14/2023

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

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

Address (or location description): 207 Diamond Street, Lexington, VA 24450

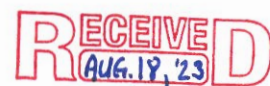
Tax Map: # 17-6-1-20 Deed Book and Page #: \_\_\_\_\_

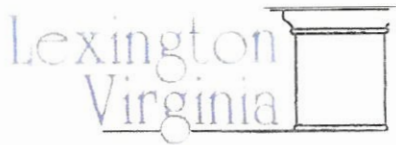
Acreage: \_\_\_\_\_ Zoning (attach any existing zoning conditions or proffers): \_\_\_\_\_

The Applicant requests a variance from Section \_\_\_\_\_ of the City of Lexington Zoning Ordinance, in respect to the requirement for \_\_\_\_\_ in order to build \_\_\_\_\_.

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 2 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.

NON REFUNDABLE





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 300 East Washington Street  
 Lexington, Virginia 24450  
 Phone: (540) 462-3704 Fax: (540) 463-5310

## **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:**

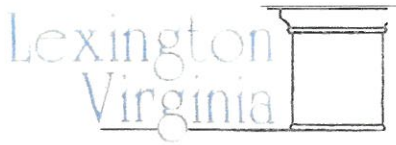
To hear and decide appeals from any order, requirement, decision or determination made by an administrative officer in the administration or enforcement of this chapter or of any ordinance adopted pursuant hereto.

### **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 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, or alleviate a hardship by granting a reasonable modification to a property or improvements thereon requested by, or on behalf of, a person with a disability, 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. *(Neither of these provisions apply in Lexington because the Lexington City Code does not a) authorize the BZA to hear special exception petitions and b) the zoning administrator is not authorized to grant a modification from any provision contained in the zoning ordinance with respect to physical requirements on a lot or parcel of land.)*

The applicant must demonstrate these findings to the Board of Zoning Appeals. Submit a letter attached to the application, demonstrating findings 1 through 5 listed above.



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300 East Washington Street
Lexington, Virginia 24450
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Variations: (continued)

In addition to the State variance criteria listed on the previous page, please answer the following questions:

1. What are the special circumstances that apply to your property?

Four horizontal lines for writing the answer to question 1.

2. What are the circumstances that render the property in question undevelopable?

Four horizontal lines for writing the answer to question 2.

3. How will the requested variance not alter the character of the neighborhood?

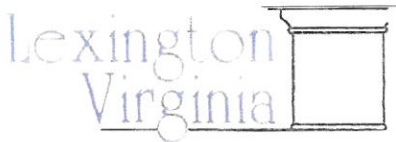
Four horizontal lines for writing the answer to question 3.

4. How will the requested variance be the minimum that will afford relief?

Four horizontal lines for writing the answer to question 4.

Be aware that conditions may be assigned with any variance approval to meet the purpose of the variance regulations.





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Lexington, Virginia 24450  
Phone: (540) 462-3704 Fax: (540) 463-5310

### 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: \$350 Amount Paid: \$350 Case Number: BZA- 2023 - 01

Date Received: 8/10/2023 Received By: Aimee Glaeser

#### Staff Review

Planning: ✓ Public Works: NA  
Police: NA Fire/Rescue: NA

#### Board of Zoning Appeals

Legal Ad Dates: 9/6/2023 + 9/13/2023 Adj. Property Notifications: 9/8/2023  
Public Hearing Date: 9/18/2023 Action: \_\_\_\_\_



August 14th, 2023  
Board of Zoning Appeals,

We are writing to appeal Arne Glaeser's determination for our short term residential rental. We respect that Arne is doing his job as he sees it but disagree with his opinion (his words, see his email) based on the facts. I'll break our response down into four sections: Context for Arne's comments, Letter of the law, Spirit of the law, and Variance's. As a sidenote, in the Context section I'm going to explain fully in an attempt to move our appeal forward in a timely manner, but I find it personally intrusive that I have to in the first place.

### Context

1. Arne referenced phone conversations on July 10, 2023. The recap of those conversations is not accurate. We were not selling a house in Fauquier County anytime in 2023, the only house we owned was our Lexington home. We did purchase a house in Fauquier County on July 13, 2023. As I explained to Arne, the Fauquier County house is a property we purchased to use for our businesses and to stay at part of the year. Part of the reason we were purchasing the Fauquier County house is because a property we used for our businesses, but did not own in Aldie, VA, was being sold and we could no longer use it. An important fact relevant to this point, the Fauquier County house loan was done thru our main business, Ump, LLC.
2. Also referenced in the phone conversations on July 10, 2023 were our occupations. Marqui will continue real estate in Northern Virginia, but she does not do it full time. I will continue operating Umpire Mitigation (Ump, LLC) in Northern Virginia. But, as I explained to Arne, most of the business is done remotely

regardless of where I am or live. My teams go to/do the water damages (80% of our business) that I never go to. I only go to the larger fire damages (10% of our business) and specialty jobs like mold damages (10% of our business). Because it's an emergency business, I don't have a schedule when jobs that require me will happen, but it's not every day or all year. An important fact relevant to my professionalism, no one in Virginia has an active Mold Remediation Supervisor License thru DPOR, the State created the requirement one year and then promptly canceled it the next year when a new Governor came into office.

3. It's correct that three business entities are listed on the Virginia SCC website for me at the Marshall, VA address ( Fauquier County house), because as stated, I use it for business.
4. I'm not sure the relevance (or accuracy of memory) from a second hand conversation with another department on January 14, 2020? That was three years ago, things change. Our Lexington home was not able to be occupied in 2020, it was in terrible condition inside and outside when we purchased it in late 2019. Our short-term rental application was submitted July 10, 2023 and we lived in our Lexington home more than 185 days in a years time from July 2022 to June 2023. If checking with other City departments, I would suggest checking our water and sewer use during that period as a means to verify that. Or, with Wednesday trash pickup.
5. Regarding tax forms, as I explained to Arne, I use my business address for my taxes, not my personal address, that will never change. My businesses are legally setup as LLC's but taxed as Sole Proprietor, so my tax return goes to my business address. In recent years that was the Aldie, VA address we used for our business, in the future it will be the Marshall, VA address.
6. Regarding my driver's license not showing our Lexington home address, that is correct but has nothing to do with where we live.

My driver's license currently has an old address we lived at years ago. I do need to update it for many reasons, I've just been remiss in doing it. When I do update it, it will have our Lexington home address.

7. Regarding five registered vehicles and two trailers at our Lexington home. They are registered there because they are personal vehicles and it's our personal address. The numbers are not correct though, we only own one trailer and I do need to move that to our business name and address in Marshall, VA because I just had it decaled with the Umpire Mitigation logo to use it for business marketing. As far as the five vehicles not being at our Lexington home on Sunday morning August 6, 2023, it's because none of us were there. And I want to make it clear, we will not be at our Lexington home every day or all year long nor have we ever stated we would be. Work will happen, family visits will happen, vacation will happen, life will happen, etc... Have we been there more than 185 days, yes. As additional explanation, we are empty nesters but still title our kids vehicles in our name. Our daughter is at college in DC with her vehicle. Our son just commissioned with the Coast Guard and is in Baltimore with his vehicle. The GMC is with me, the Volkswagon is with Marqui and the 2008 Mercedes is on it's last leg in the shop.

#### Letter of the law

We meet the letter of the law for primary residence based on:

- 3 out of the 5 documents the City typically suggests have been provided that show Lexington as our home address. The other two documents have been explained.
- In a years time, from July 2022 to June 2023, we lived/resided at our Lexington home more than 185 days.



### Spirit of the law

On our phone conversation on July 10, 2023, Arne explained to me that the reason the City adopted the Code regarding short term rentals must be primary residence, is because they beleived that long distance owners do not take care of the property like local owners do. Basically, they want properties to be well maintained. I have two issues with Arne's determination based on that:

1. I don't beleive Arne factored that into his determination at all. I invite anyone to go see our home, as Arne did when he drove by on Sunday, August 6, 2023. It is well maintained. We have spent the last three years repairing it inside and out with our sweat and hard work, hiring wonderful local contractors, and maintaining it tirelessly. It is clear that we love our home and the neighborhood.
2. I understand short term rentals are something a lot of communities are struggling with balancing tax revenue against affordable homes for local people instead of out of state investors. I applaud the 45 days maximum rental rule as a good balance against that. However, I do think local vs long distance owners maintaining properties better is a fallacy. It's my understanding that the house next to our Lexington home is owned by someone local. It's had long term and short term renters. Frankly, it is not well maintained and in fact, I doubt it would pass fire or safety codes to live in it.

### Variance's

We are submitting the appeals application as an appeal of zoning administrators decision and not as a variance. But, I think it's relevant to note that we meet several of the variances, specifically number 3. By allowing us to do 45 days of short term rental it will ensure that we have the funds to continue to maintain our Lexington home and improve it.

In closing, we love our Lexington home and neighbors. Our intent is to create some additional funds through short term rental to continue to improve our home. We would request that the application is processed in a timely manner as our initial application was set aside and not completed for a month.

Thank you,

Stephen and Marqui Simmons  
207 Diamond Street  
Lexington, VA 24450

Attachment B

Letter from Zoning Administrator dated August 8, 2023



CLASSIFIED MAIL / RETURN RECEIPT

August 8, 2023

Stephen and Marqui Simmons  
207 Diamond Street  
Lexington, VA 24450

**RE: A DETERMINATION OF PRIMARY RESIDENCE FOR SHORT TERM RESIDENTIAL RENTAL APPLICATION FOR 207 DIAMOND STREET (TAX MAP # 17-6-1-20)**

Mr. and Mrs. Simmons:

I am writing in response to your submittal of an application requesting a short term residential rental registration for the property you own at 207 Diamond Street. In association with the review of your application for a Short Term Residential Rental Registration and in accordance with Article XI of Chapter 420 of the Code of the City of Lexington, VA (the "Zoning Ordinance), the following determination is made: ***A Short Term Residential Rental Registration cannot be issued to you for 207 Diamond Street because it is not your primary residence.***

The focus of this determination is whether you meet the primary resident requirement for Short Term Residential Rental units located in residential zoning districts, and for clarification, your property at 207 Diamond Street is in the R-1 (General Residential) zoning district. The City of Lexington adopted use and design standards (Sec. 420-11.3.22) for short term residential units in 2017. Standard B.11 requires in all residential zoning districts the dwelling unit used for short term rentals must be the host's primary residence, which means that he or she resides there for at least one hundred and eight five (185) days during each year (Sec. 420-11.22.B.11). Furthermore, per the definition, a primary resident or host means the owner of the short term rental unit, or lessee of the short term rental unit with a lease agreement that is one year or greater in length, who occupies the property as his or her principal place of residence and domicile (Sec. 420-11.22.A). In determining compliance with these regulations, the host has the burden of demonstrating that the dwelling unit is his or her primary residence (Sec. 420-11.22.A).

Although there is no singular document proving primary residency, when asked, we typically suggest an applicant provide:

- a) income tax return,
- b) voter registration,
- c) driver's license,
- d) vehicle registration, and
- e) banking statements to show on balance a dwelling is a primary residence.

This is similar to the facts and circumstances test used by the Internal Revenue Service to determine which property is a main home. While the most important factor is where you spend the most time, other factors are relevant as well, such as the address listed on your 1) U.S. Postal Service address, 2) voter registration



card, 3) federal and state tax returns, and 4) driver's license or car registration. Other factors considered is the residence's proximity to where you work, and to where you bank.

In support of your short term rental application you provided:

- a) Lexington voter registrations for Stephen Simmons and for Marqui Simmons with your 207 Diamond Street address listed,
- b) an auto insurance policy with the 207 Diamond Street address with coverage for five vehicles (2016 Audi Q3, 2015 Volkswagen Passat, 2014 Jeep Wrangler Unlimited SP, 2008 Mercedes-Benz E350, & 2021 GMC Sierra C1500),
- c) a print-out from the DMV website showing four of the above listed vehicles, two trailers, and a 1980 Nissan Patrol listed at the 207 Diamond Street address, but the 2008 Mercedes-Benz E350 is not included,
- d) a print out from the Anthem insurance company showing the contact details for Stephen Simmons includes the 207 Diamond Street address, and
- e) a copy of your October 2, 2019 sales contract for 207 Diamond Street showing that you, as the buyer, represented that you will occupy the property as your principal residence.

Documents commonly submitted to show primary residence such as income tax returns and driver's licenses were not submitted. The Lexington Commissioner of Revenue's office also confirmed there have not been any Virginia State Income Tax forms filed with the Lexington address.

On July 10, 2023 I had a phone conversation with Marqui and then later that day a separate phone conversation with Stephen. In those conversations you communicated that a house is being sold in Fauquier County, VA and another one will be purchased. That residence in Fauquier County would be used when you rent your house on Diamond Street. You also communicated that Marqui would continue her occupation as a realtor in Northern Virginia and that Stephen would continue his occupation fixing properties with water, fire, and mold damage in Northern Virginia. The Virginia Department of Professional and Occupational Regulation in fact lists a real estate license for Marqui Simmons in Marshall, VA, and lists a Mold Remediator Supervisor License for Stephen C. Simmons in Dulles, VA although the status is listed as "terminated". Three businesses entities are listed on the Virginia State Corporation Commission website for Stephen C. Simmons (Ump LLC, Partnerbunch LLC, & Threadly Serious LLC) and all of them have a principal office address listed in Marshall, VA.

You apparently also held a conversation with the Lexington Commissioner of Revenue on January 14, 2020 in which you stated you had a son at VMI, the property at 207 Diamond Street was being renovated, and you were renting a house in Fauquier County. You also communicated that you would be in Lexington on weekends and you would advise when you moved to Lexington permanently.

***It is my determination that 207 Diamond Street is not your primary residence and you therefore do not meet the standards for the issuance of a Short Term Residential Rental registration for 207 Diamond Street*** primarily because a) both of you are employed and derive your income from jobs located in Northern Virginia, b) tax forms could not be provided despite owning the property at 207 Diamond Street since November 20, 2019, and c) you registered five vehicles and two trailers at the 207 Diamond Street address and not one of those were parked at 207 Diamond Street last Sunday morning, August 6, 2023.

Under provisions of 15.2-2311 of the Code of Virginia, this letter represents an interpretation of the City's Zoning Ordinance and anyone aggrieved by this interpretation may appeal to the City of Lexington Board of Zoning Appeals within thirty days of the receipt of this letter. If they do not file a timely appeal, this determination shall be final and unappealable. The applicable fee for appeal is \$350 and the application for

appeal is available at <https://www.lexingtonva.gov/government/forms-applications/-folder-38>. Information regarding the appeal process is located in Article XXIV, Section 420-19.4 of the Zoning Ordinance which is also available on the city's website at [lexingtonva.gov](http://lexingtonva.gov).

Sincerely,



Arne Glaeser  
Director of Planning and Development/Zoning Administrator

Exhibit

Cc: Jeremy Carroll, City Attorney  
Jim Halasz, City Manager

Attachment C

Short term rental registration application dated July 10, 2023

Planning & Development Department

300 East Washington Street

Lexington, Virginia 24450

Phone: (540) 462-3704 Fax: (540) 463-5310

www.lexingtonva.gov

APPLICATION FOR SHORT TERM RESIDENTIAL RENTAL REGISTRATION<sup>1</sup>

Address of Proposed Short Term Rental (STR): 207 Diamond Street, Lexington, VA  
 Name of STR (if any): Diamond House  
 Zoning District of STR:  R-1  R-2  R-M  R-LC  C-1  C-2  Institutional Overlay

**STR located in a residential zoning district (R-1, R-2, or R-M)**

Property Owner: Stephen Simmons  
 Phone: 703-774-7232 Email: ssimmo@huy.com  
 Property Owner's Signature: \_\_\_\_\_ Date: 7/10/23  
 Primary Resident (if different from owner): \_\_\_\_\_  
 Phone: \_\_\_\_\_ Email: \_\_\_\_\_

**CERTIFICATIONS**

**I HEREBY CERTIFY THE FOLLOWING**

I am either the owner of the property where the short term rental use is proposed or I have a lease of at least 365 days in length.

I live at least 185 days during each year on the property where the short term rental use is proposed.

I have read the Use and Design Standards for short term rentals (Section 420-11.3) of the Lexington Zoning Ordinance and agree to conform to all of the STR regulations contained therein.

I understand that violations of the terms of this permit can result in its revocation and penalties.

To address complaints, I agree to allow inspection of the STR at a reasonable time.

I agree to pay all applicable lodging taxes and tangible personal property taxes.

Property Owner/Long Term Lessee Signature: \_\_\_\_\_  
 Please Print Name: Stephen Simmons  
 Date: 7/10/23

1. Prior to submitting an application, the applicant is required to meet with staff for a pre-application meeting.

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

www.lexingtonva.gov

## **STR located in a commercial zoning district (R-LC, C-1, or C-2)<sup>1</sup>**

Property Owner: \_\_\_\_\_

Phone: \_\_\_\_\_ Email: \_\_\_\_\_

Property Owner's Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Property manager (if any): \_\_\_\_\_

Company name: \_\_\_\_\_

Phone: \_\_\_\_\_ Email: \_\_\_\_\_

Manager's Signature: \_\_\_\_\_ Date: \_\_\_\_\_

**1. Prior to submitting an application, the applicant is required to meet with staff for a pre-application meeting**

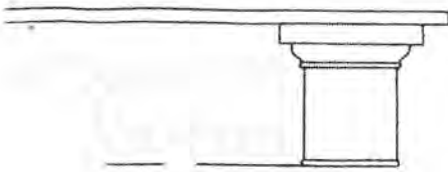
State statute §15.2-983 provides four exemptions to the requirement to register a short term rental if a person is:

- licensed by the Real Estate Board or is a property owner who is represented by a real estate licensee;
- registered pursuant to the Virginia Real Estate Time-Share Act (§ 55-360 et seq.);
- licensed or registered with the Department of Health, related to the provision of room or space for lodging; or
- licensed or registered with the locality, related to the rental or management of real property, including licensed real estate professionals, hotels, motels, campgrounds, and bed and breakfast establishments.

Please check the applicable exemption if you claim an exemption to the registration requirements and provide any necessary documentation to support your claim to an exemption. The exemption to registration does not invalidate or cancel the requirement to pay the lodging tax and the tangible personal property tax. Please contact the Commissioner of Revenue with any tax related questions (540-462-3701).

- NOTE:**
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
  2. Submit completed applications to the Planning and Development Department.
  3. Approved registrations are valid through the calendar year in which approved.
  4. The annual registration fee is \$50 and it is nonrefundable. Renewal applications must be submitted by January 30<sup>th</sup> and a late fee of \$50 will be assessed for renewal applications received after January 30<sup>th</sup>.

**NON REFUNDABLE**



**Planning & Development Department**  
300 East Washington Street  
Lexington, Virginia 24450  
Phone: (540) 462-3704 Fax: (540) 463-5310

www.lexingtonva.gov

**THIS SECTION TO BE COMPLETED BY STAFF ONLY**

**Registration Number: STR-** \_\_\_\_\_ - \_\_\_\_\_

Application Fee: \$50 (and late fee of \$50 for renewal applications received after Jan. 30th)

Amount Paid: \_\_\_\_\_

Date Received: \_\_\_\_\_ Received By: \_\_\_\_\_

Host name: \_\_\_\_\_

Street Address: \_\_\_\_\_

Phone: \_\_\_\_\_

Email: \_\_\_\_\_

**Staff Review**

Planning:

\_\_\_\_\_

Date: \_\_\_\_\_

Building:

\_\_\_\_\_

Date: \_\_\_\_\_





**LEXINGTON CITY**

Office of Voter Registration

300 E Washington St  
Lexington, VA 24450-2720E-mail: [jharris@lexingtonva.gov](mailto:jharris@lexingtonva.gov)  
Website: <http://www.lexingtonva.gov>Phone: 540-462-3706  
Fax: 540-463-5310TO: 

DATE: 5/20/2022

MARQUI SMITH SIMMONS  
207 Diamond St  
Lexington, VA 24450-2609

Dear Registered Voter:

Below is your new Voter Registration Notice. It provides the location where you vote and your federal, state, and local election districts.

Please check your information on the notice below. If accurate please keep the notice for reference. All voters are required to present **acceptable identification** when voting in person or sign an ID Confirmation Statement. Please check the Virginia Department of Elections website at [elections.virginia.gov/voterID](http://elections.virginia.gov/voterID) for a list of acceptable forms of identification.

If any information on your notice is incorrect, now or in the future, please access the Virginia Department of Elections website at [elections.virginia.gov/register](http://elections.virginia.gov/register) and update/correct your information using the online voter registration website. If you have any questions about this notification or you do not have access to a computer, please call the Voter Registration Office using the contact information above.




---

**JACQUELYNNE C. HARRIS**  
General Registrar  
Office of the General Registrar


\* VIRGINIA \*  
DEPARTMENT of ELECTIONS

**VOTER REGISTRATION NOTICE**

DATE ISSUED: 5/20/2022

ID NUMBER: 303048679  
MARQUI SMITH SIMMONS  
207 DIAMOND ST  
LEXINGTON, VA 24450-2609

LANGUAGE PREFERENCE: English

YOUR VOTING LOCATION:  
PIOVANO BUILDING  
350 SPOTSWOOD DRIVE  
LEXINGTON, VA 24450-2441LOCALITY: LEXINGTON CITY  
PRECINCT: 001 - LEXINGTON  
  
DISTRICTS: CONG 06    SEN 003  
                  HSE 037  
LOCAL: LEXINGTON CITY DISTRICTYOUR VOTER REGISTRATION OFFICE:  
300 E WASHINGTON ST  
LEXINGTON, VA 24450-2720  
540-462-3706**FOR TOWN ELECTIONS:**

TOWN:

TOWN PRECINCT / DISTRICT:

TOWN ELECTION VOTING LOCATION:

**Policy Number: 935534471**

Underwritten by:  
Progressive Advanced Insurance Co  
Policyholder:  
Stephen C Simmons  
Page 1 of 1  
July 10, 2023

**Customer Service**

**1-800-776-4737**  
24 hours a day, 7 days a week

## Verification of Insurance for

### Stephen C Simmons

This certificate of insurance is issued as a matter of information only and confers no rights upon the certificate holder. This certificate does not amend, extend, or alter the coverage, terms, exclusions, and conditions afforded by the policy or policies referenced herein.

Please accept this letter as verification of insurance for this policy.

### Policy and driver information

Policy number: 935534471  
Policy state: Virginia  
Policy period: Jul 15, 2023 - Jan 15, 2024  
There was no lapse in coverage during this policy period.  
Effective date: Jul 15, 2023  
Drivers: Stephen C Simmons  
Marqu Simmons  
AIDAN SIMMONS  
OLIVIA SIMMONS  
Address: 207 Diamond Street  
Lexington, VA 24450

### Vehicle information

Vehicle: 2016 AUDI Q3  
Vehicle identification number: WA1EFCF55GR018654

### Coverage information

Liability Coverage		
Bodily Injury Liability	\$100,000 each person/\$300,000 each accident	
Property Damage Liability	\$100,000 each accident	
Other Than Collision	Actual Cash Value	Deductible: \$500
Collision	Actual Cash Value	Deductible: \$500

**Policy Number: 935534471**

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Progressive Advanced Insurance Co  
Policyholder:  
Stephen C Simmons  
Page 1 of 1  
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Drivers: Stephen C Simmons  
Marqui Simmons  
AIDAN SIMMONS  
OLIVIA SIMMONS  
Address: 207 Diamond Street  
Lexington, VA 24450

### Vehicle information

Vehicle: 2015 VOLKSWAGEN PASSAT  
Vehicle identification number: 1VW8V7A34FC040579

### Coverage information

Liability Coverage  
Bodily Injury Liability \$100,000 each person/\$300,000 each accident  
Property Damage Liability \$100,000 each accident  
Other Than Collision Actual Cash Value Deductible: \$500  
Collision Actual Cash Value Deductible: \$500

**Policy Number: 935534471**

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Progressive Advanced Insurance Co  
Policyholder:  
Stephen C Simmons  
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Marqui Simmons  
AIDAN SIMMONS  
OLIVIA SIMMONS  
Address: 207 Diamond Street  
Lexington, VA 24450

### Vehicle information

Vehicle: 2014 JEEP WRGLR UNLIMITED SP  
Vehicle identification number: 1C4HJWDG1EL250346

### Coverage information

Liability Coverage		
Bodily Injury Liability	\$100,000 each person/\$300,000 each accident	
Property Damage Liability	\$100,000 each accident	
Other Than Collision	Actual Cash Value	Deductible: \$500
Collision	Actual Cash Value	Deductible: \$500

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Effective date: Jul 15, 2023  
Drivers: Stephen C Simmons  
Marqui Simmons  
AIDAN SIMMONS  
OLIVIA SIMMONS  
Address: 207 Diamond Street  
Lexington, VA 24450

### Vehicle information

Vehicle: 2008 MERCEDES-BENZ E350  
Vehicle identification number: WDBUF87X18B315650

### Coverage information

Liability Coverage  
Bodily Injury Liability \$100,000 each person/\$300,000 each accident  
Property Damage Liability \$100,000 each accident  
Other Than Collision Actual Cash Value Deductible: \$500  
Collision Actual Cash Value Deductible: \$500

**Policy Number: 935534471**

Underwritten by:  
Progressive Advanced Insurance Co  
Policyholder:  
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July 10, 2023

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Effective date: Jul 15, 2023  
Drivers: Stephen C Simmons  
Marqui Simmons  
AIDAN SIMMONS  
OLIVIA SIMMONS  
Address: 207 Diamond Street  
Lexington, VA 24450

### Vehicle information

Vehicle: 2021 GMC SIERRA C1500/K1500  
Vehicle identification number: 1GTU9FET6M220144  
Lienholder: CAPITAL ONE AUTO FIN  
PO Box 390907  
MINNEAPOLIS, MN 55439

### Coverage information

Liability Coverage  
Bodily Injury Liability \$100,000 each person/\$300,000 each accident  
Property Damage Liability \$100,000 each accident  
Other Than Collision Actual Cash Value Deductible: \$500  
Collision Actual Cash Value Deductible: \$500

Safe Driving Points Balance +02  
 You driver's license is REAL ID compliant

Messages

Year	Expiration Date
2015	10/31/2023
2021	02/29/2024
2016	07/31/2024
2023	Permanent Plate
2000	..
1980	Permanent Photo
2014	01/31/2024

\*Leased vehicles are not listed

- Make
- VOLKSWAGEN PASSAT
- GMC SIERRA
- AUDI Q3
- INTERSTATE ILRD51054FS
- STAR
- NISSAN PATROL
- JEEP WRANGLER UNLIMIT

Contact Information

- Residence Address
- 307 Diamond St
- Levingson, Va 24450-2609
- Mailing Address
- 207 Diamond St
- Levingson, Va 24450-2609

Note: State law does not allow DMV to release names and address information for marketing purposes. See our policy on the release of DMV information and our web policy for additional information. Not all of your account information is available for viewing online. If you have additional questions about your account, please contact us.



Jul 10 12:34

~~changed on Feb 2011~~ ~~His Address is [unclear]~~  
~~Star Sierra~~





*\*Please see pg. 3 #15 showing purchase as primary residence*  
13 38  
*diostillan*  
*primary residence*

RESIDENTIAL SALES CONTRACT (Virginia)

This sales contract ("Contract") is offered on October 2, 2019 ("Date of Offer") between Stephen C. Simmons, Marqui S. Simmons

Katherine A Whittaker ("Buyer") and [Signature] ("Seller") who,

among other things, hereby confirm and acknowledge by their initials and signatures herein that by prior disclosure in this real estate transaction City and County Real Estate ("Listing Brokerage") represents Seller, and Sheridan-MacMahon, Ltd. ("Cooperating Brokerage") represents  Buyer OR  Seller.

The Listing Brokerage and Cooperating Brokerage are collectively referred to as "Broker." (If the brokerage firm is acting as a dual representative for both Seller and Buyer, then the appropriate disclosure form is attached to and made a part of this Contract.) In consideration of the mutual promises and covenants set forth below, and other good and valuable consideration the receipt and sufficiency of which are acknowledged, the parties agree as follows:

1. **REAL PROPERTY.** Buyer will buy and Seller will sell for the sales price ("Sales Price"), Seller's entire interest in the real property (with all improvements, rights and appurtenances) described as follows ("Property"):  
TAX Map/ID # 17 6 1 3 Legal Description: Lot(s) \_\_\_\_\_ Section \_\_\_\_\_  
Subdivision or Condominium \_\_\_\_\_  
Parking Space(s) # \_\_\_\_\_ County/Municipality Lexington City  
Deed Book/Liber # \_\_\_\_\_ Page/Folio # \_\_\_\_\_  
Street Address 207 Diamond Steet  
Unit # \_\_\_\_\_ City Lexington ZIP Code 24450-2633

2. **PRICE AND FINANCING.** (Any % are percentages of Sales Price)  
A. **Down Payment.** \$ 11,000.00 or % \_\_\_\_\_

B. **Financing.**  
1. First Trust (if applicable) \$ 99,000.00 or % \_\_\_\_\_  
 Conventional  VA  FHA  
 USDA  Other: \_\_\_\_\_  
2. Second Trust (if applicable) \$ \_\_\_\_\_ or % \_\_\_\_\_  
3. Seller Held Trust (if applicable) \$ \_\_\_\_\_ or % \_\_\_\_\_

**TOTAL FINANCING** \$ \_\_\_\_\_ or % \_\_\_\_\_  
**SALES PRICE** \$ 110,000.00

C. **Seller Subsidy.** (LESS) \$ zero or % \_\_\_\_\_

D. **Financing Contingency and Application.** This Contract  is (addendum attached) OR  is not contingent on financing. If this Contract is contingent on financing: (i) Buyer will make written application for the financing and any lender-required property insurance no later than seven (7) days after Date of Ratification; (ii) Buyer grants permission for Cooperating Brokerage and the lender to disclose to Listing Brokerage and Seller general information available about the progress of the loan application and loan approval process; and (iii) Seller agrees to comply with reasonable lender requirements.

If Buyer fails to settle, except due to any Default by Seller, then the provisions of the DEFAULT paragraph shall apply.

Seller: KA W Buyer: SCS MSS



3. **DEPOSIT.** Buyer's deposit ("Deposit") in the amount of  \$ 5,000.00 check and/or  \$ \_\_\_\_\_ by note due and payable on October 2, 2019 shall be held by Sheridan MacMahon, Ltd. ("Escrow Agent"). Buyer  has delivered Deposit to Escrow Agent OR  will deliver the Deposit to Escrow Agent by 1 days after Date of Ratification.

If the Escrow Agent is a Virginia Real Estate Board ("VREB") licensee, the parties direct Escrow Agent to place Deposit in an escrow account by the end of the fifth business banking day following receipt or following Date of Ratification, whichever is later. If Escrow Agent is not a VREB licensee, Deposit will be placed in an escrow account of Escrow Agent after Date of Ratification in conformance with the laws and regulations of Virginia and/or, if VA financing applies, as required by Title 38 of the U.S. Code. This account may be interest bearing and all parties waive any claim to interest resulting from Deposit. Deposit will be held in escrow until: (i) credited toward Sales Price at Settlement; (ii) all parties have agreed in writing as to its disposition; (iii) a court of competent jurisdiction orders disbursement and all appeal periods have expired; or, (iv) disposed of in any other manner authorized by law. Seller and Buyer agree that Escrow Agent will have no liability to any party on account of disbursement of Deposit or on account of failure to disburse Deposit, except in the event of Escrow Agent's gross negligence or willful misconduct.

4. **SETTLEMENT.** Seller and Buyer will make full settlement in accordance with the terms of this Contract ("Settlement") on, or with mutual consent before, November 4, 2019 ("Settlement Date") except as otherwise provided in this Contract. If Settlement Date falls on a Saturday, Sunday, or legal holiday, then Settlement will be on the prior business day.

**NOTICE TO BUYER REGARDING THE REAL ESTATE SETTLEMENT AGENTS ACT ("RESAA")** Choice of Settlement Agent: You have the right to select a Settlement agent to handle the closing of this transaction. The Settlement agent's role in closing your transaction involves the coordination of numerous administrative and clerical functions relating to the collection of documents and the collection and disbursement of funds required to carry out the terms of the contract between the parties. If part of the purchase price is financed, your lender will instruct the Settlement agent as to the signing and recording of loan documents and the disbursement of loan proceeds. No Settlement agent can provide legal advice to any party to the transaction except a Settlement agent who is engaged in the private practice of law in Virginia and who has been retained or engaged by a party to the transaction for the purpose of providing legal services to that party.

**Variation by agreement:** The provisions of the Real Estate Settlement Agents Act may not be varied by agreement, and rights conferred by this chapter may not be waived. The Seller may not require the use of a particular settlement agent as a condition of the sale of the property.

**Escrow, closing and Settlement service guidelines:** The Virginia State Bar issues guidelines to help Settlement agents avoid and prevent the unauthorized practice of law in connection with furnishing escrow, Settlement or closing services. As a party to a real estate transaction, you are entitled to receive a copy of these guidelines from your Settlement agent, upon request, in accordance with the provisions of the Real Estate Settlement Agents Act.

Buyer designates TBD ("Settlement Agent"). Buyer agrees to contact Settlement Agent within 10 Days of Date of Ratification to schedule Settlement. Settlement Agent shall order the title exam and survey if required.

To facilitate Settlement Agent's preparation of various closing documents, including any Closing Disclosure, Buyer hereby authorizes Settlement Agent to send such Closing Disclosure to Buyer by electronic means and agrees to provide Settlement Agent Buyer's electronic mail address for that purpose only.

5. **DOWN PAYMENT.** The balance of the down payment will be paid on or before Settlement Date by certified or cashier's check or by bank-wired funds as required by Settlement Agent. An assignment of funds shall not be used without prior written consent of Seller.

6. **DELIVERY.** This paragraph specifies the general delivery requirements under this Contract. For delivery of property or condominium owner's association documents see the VIRGINIA PROPERTY OWNERS' ASSOCIATION ACT and/or VIRGINIA CONDOMINIUM ACT paragraphs of this Contract. Delivery of the Notice pursuant to the Virginia Residential Property Disclosure Act is addressed in the VIRGINIA RESIDENTIAL PROPERTY DISCLOSURE ACT paragraph.

Delivery ("Delivery", "delivery", or "delivered") methods may include hand-carried, sent by professional courier service, by United States mail, by facsimile, or email transmission. The parties agree that Delivery will be deemed to have occurred on the day: delivered by hand, delivered by a professional courier service (including overnight delivery service) or by United States mail with return receipt requested, or sent by facsimile or email transmission, either of which produces a tangible record of the transmission.

Deliveries will be sent as follows:

A. Addressed to Seller at the Property address unless otherwise specified below by  United States mail, hand delivery or courier service OR  fax OR  email (check all that apply):  
To Seller: connie@cityandcountyrealestate.com

B. Addressed to Buyer by  United States mail, hand delivery or courier service OR  fax OR  email (check all that apply):  
To Buyer: brynsim@msn.com

No party to this Contract will refuse Delivery in order to delay or extend any deadline established in this Contract.

7. **VIRGINIA RESIDENTIAL PROPERTY DISCLOSURE ACT.** The Virginia Residential Property Disclosure Act requires Seller to deliver a disclosure statement prior to the acceptance of this Contract unless the transfer of Property is exempt. The law requires Seller, on a disclosure statement provided by the Real Estate Board, to state that Seller makes no representations or warranties concerning the physical condition of the Property and to sell the Property "as is", except as otherwise provided in this Contract.

If the disclosure statement is delivered to Buyer after Date of Ratification, Buyer's sole remedy shall be to terminate this Contract at or prior to the earliest of (i) three (3) days after delivery of the disclosure statement in person; (ii) five (5) days after the postmark if the disclosure statement is sent by United States mail, postage prepaid, and properly addressed to Buyer; (iii) settlement upon purchase of Property; (iv) occupancy of Property by Buyer; (v) Buyer making written application to a lender for a mortgage loan where such application contains a disclosure that the right of termination shall end upon the application for the mortgage loan; or (vi) the execution by Buyer after receiving the disclosure statement of a written waiver of Buyer's right of termination separate from this Contract.

Written Notice of termination may be (i) hand delivered; (ii) sent by United States mail, postage prepaid, provided that Buyer retains sufficient proof of mailing, which may be either a United States postal certificate

of mailing or a certificate of service confirming that such mailing was prepared by Buyer; (iii) sent by electronic means to the facsimile number or electronic mailing address provided by Seller in the DELIVERY paragraph, provided that Buyer retains sufficient proof of the electronic delivery, which may be an electronic receipt of delivery, a confirmation that the notice was sent by facsimile, or a certificate of service; (iv) overnight delivery using a commercial service or the United States Postal Service.

Any such termination shall be without penalty to Buyer, and any deposit shall be promptly returned to Buyer.

8. **VIRGINIA PROPERTY OWNERS' ASSOCIATION ACT.** Seller represents that the Property  is OR  is not located within a development that is subject to the Virginia Property Owners' Association Act ("POA Act" or "Act" solely in this Paragraph). Section 55-509.4(A) requires the following contract language:

Subject to the provisions of subsection A of § 55-509.10, a person selling a lot shall disclose in the contract that (i) the lot is located within a development that is subject to the Virginia Property Owners' Association Act (§ 55-508 et seq.); (ii) the Act requires the seller to obtain from the property owners' association an association disclosure packet and provide it to the purchaser; (iii) the purchaser may cancel the contract within three days after receiving the association disclosure packet or being notified that the association disclosure packet will not be available; (iv) if the purchaser has received the association disclosure packet, the purchaser has a right to request an update of such disclosure packet in accordance with subsection H of § 55-509.6 or subsection C of § 55-509.7, as appropriate; and (v) the right to receive the association disclosure packet and the right to cancel the contract are waived conclusively if not exercised before settlement.

For delivery of the Packet or the Notice of non-availability of the Packet, Buyer prefers delivery at brynsim@msn.com if electronic or \_\_\_\_\_ if hard copy.

The Act further provides that for purposes of clause (iii), the association disclosure packet shall be deemed not to be available if (a) a current annual report has not been filed by the association with either the State Corporation Commission pursuant to § 13.1-936 or with the Common Interest Community Board pursuant to § 55-516.1, (b) the seller has made a written request to the association that the packet be provided and no such packet has been received within 14 days in accordance with subsection A of § 55-509.5, or (c) written notice has been provided by the association that a packet is not available.

The Act further provides that if the contract does not contain the disclosure required by subsection A of § 55-509.4, the purchaser's sole remedy is to cancel the contract prior to settlement.

The Act further provides that the information contained in the association disclosure packet shall be current as of a date specified on the association disclosure packet prepared in accordance with this section; however, a disclosure packet update or financial update may be requested in accordance with subsection G of § 55-509.6 or subsection C of § 55-509.7, as appropriate. The purchaser may cancel the contract: (i) within three days after the date of the contract, if on or before the date that the purchaser signs the contract, the purchaser receives the association disclosure packet or is notified that the association disclosure packet will not be available; (ii) within three days after receiving the association disclosure packet if the association disclosure packet or notice that the association disclosure packet will not be available is hand delivered, delivered by electronic means, or delivered by a commercial overnight delivery service or the United Parcel Service, and a receipt obtained; or (iii) within six days



after the postmark date if the association disclosure packet or notice that the association disclosure packet will not be available is sent to the purchaser by United States mail. The purchaser may also cancel the contract at any time prior to settlement if the purchaser has not been notified that the association disclosure packet will not be available, and the association disclosure packet is not delivered to the purchaser. Notice of cancellation shall be provided to the lot owner or his agent by one of the following methods: (a) Hand delivery; (b) United States mail, postage prepaid, provided the sender retains sufficient proof of mailing, which may be either a United States postal certificate of mailing or a certificate of service prepared by the sender confirming such mailing; (c) Electronic means provided the sender retains sufficient proof of the electronic delivery, which may be an electronic receipt of delivery, a confirmation that the notice was sent by facsimile, or a certificate of service prepared by the sender confirming the electronic delivery; or (d) Overnight delivery using a commercial service or the United States Postal Service.

The Act further provides that in the event of a dispute, the sender shall have the burden to demonstrate delivery of the notice of cancellation. Such cancellation shall be without penalty, and the seller shall cause any deposit to be returned promptly to the purchaser.

The Act further provides that whenever any contract is canceled based on a failure to comply with subsection A or C of § 55-509.4 or pursuant to subsection B of § 55-509.4, any deposit or escrowed funds shall be returned within 30 days of the cancellation, unless the parties to the contract specify in writing a shorter period.

The parties specify that such funds shall immediately be returned pursuant to the VOID CONTRACT paragraph of this Contract.

The Act further provides that any rights of the purchaser to cancel the contract provided by this chapter are waived conclusively if not exercised prior to settlement.

The Act further provides that except as expressly provided in this chapter [of the Act], the provisions of this section and § 55-509.5 may not be varied by agreement, and the rights conferred by this section and § 55-509.5 may not be waived.

9. **VIRGINIA CONDOMINIUM ACT.** Seller represents that the Property  is OR  is not a condominium unit. The Virginia Condominium Act (the "Condominium Act" or "Act" solely in this Paragraph), requires the following contract language:

In the event of any resale of a condominium unit by a unit owner other than the declarant, and subject to the provisions of subsection F and § 55-79.87 A, the unit owner shall disclose in the contract that (i) the unit is located within a development which is subject to the Condominium Act, (ii) the Act requires the seller to obtain from the unit owners' association a resale certificate and provide it to the purchaser, (iii) the purchaser may cancel the contract within three days after receiving the resale certificate or being notified that the resale certificate will not be available, (iv) if the purchaser has received the resale certificate, the purchaser has a right to request a resale certificate update or financial update in accordance with § 55-79.97:1, as appropriate, and (v) the right to receive the resale certificate and the right to cancel the contract are waived conclusively if not exercised before settlement.

For delivery of the Certificate, Buyer prefers delivery at \_\_\_\_\_  
\_\_\_\_\_ if electronic or \_\_\_\_\_  
\_\_\_\_\_ if hard copy.

The Act further provides that for purposes of clause (iii), the resale certificate shall be deemed not to be available if (a) a current annual report has not been filed by the unit owners' association with either the State Corporation Commission pursuant to § 13.1-936 or the Common Interest Community Board pursuant to § 55-79.93:1, (b) the seller has made a written request to the unit owners' association that the resale certificate be provided and no such resale certificate has been received within 14 days in accordance with subsection C, or (c) written notice has been provided by the unit owners' association that a resale certificate is not available.

The Act further provides that if the contract does not contain the disclosure required by subsection A of § 55-79.97, the purchaser's sole remedy is to cancel the contract prior to settlement.

The Act further provides that the information contained in the resale certificate shall be current as of a date specified on the resale certificate. A resale certificate update or a financial update may be requested as provided in § 55-79.97:1, as appropriate.

The Act further provides that the purchaser may cancel the contract (i) within three days after the date of the contract, if the purchaser receives the resale certificate or is notified that the resale certificate will not be available on or before the date that the purchaser signs the contract; (ii) within three days after receiving the resale certificate or notice that the resale certificate will not be available if the resale certificate is hand delivered, delivered by electronic means, or delivered by a commercial overnight delivery service or the United Postal Service, and a receipt obtained; or (iii) within six days after the postmark date if the resale certificate or notice that the resale certificate will not be available is sent to the purchaser by United States mail. Notice of cancellation shall be provided to the unit owner or his agent by one of the following methods: (a) Hand delivery; (b) United States mail, postage prepaid, provided the sender retains sufficient proof of mailing, which may be either a United States postal certificate of mailing or a certificate of service prepared by the sender confirming such mailing; (c) Electronic means provided the sender retains sufficient proof of the electronic delivery, which may be an electronic receipt of delivery, a confirmation that the notice was sent by facsimile, or a certificate of service prepared by the sender confirming the electronic delivery; or (d) Overnight delivery using a commercial service or the United States Postal Service.

The Act further provides that in the event of a dispute, the sender shall have the burden to demonstrate delivery of the notice of cancellation. Such cancellation shall be without penalty, and the unit owner shall cause any deposit to be returned promptly to the purchaser.

The Act further provides that failure to receive a resale certificate shall not excuse any failure to comply with the provisions of the condominium instruments, articles of incorporation, or rules or regulations.

**10. PROPERTY MAINTENANCE AND CONDITION.** Except as otherwise specified herein, Seller will deliver Property free and clear of trash and debris, broom clean and in substantially the same physical condition to be determined as of  Date of Offer OR  Date of home inspection OR  Other: \_\_\_\_\_ Seller will have all utilities in service through Settlement or as otherwise agreed. Buyer and Seller will not hold Broker liable for any breach of this Paragraph.

Buyer acknowledges, subject to Seller acceptance, that this Contract may be contingent upon home inspection(s) and/or other inspections to ascertain the physical condition of Property. If Buyer desires one or more inspection contingencies, such contingencies must be included in an addendum to this Contract.

This Contract is contingent upon home inspection(s) and/or other inspections. (Addendum attached)  
OR

Buyer waives the opportunity to make this Contract contingent upon home inspection(s).



Buyer acknowledges that except as otherwise specified in this Contract, Property, including electrical, plumbing, existing appliances, heating, air conditioning, equipment and fixtures shall convey in its AS-IS condition as of the date specified above.

**11. ACCESS TO PROPERTY.** Seller will provide Broker, Buyer, inspectors representing Buyer, and representatives of lending institutions for Appraisal purposes reasonable access to the Property to comply with this Contract. In addition, Buyer and/or Buyer's representative will have the right to make walk-through inspection(s) within seven (7) days prior to Settlement and/or occupancy, unless otherwise agreed to by Buyer and Seller.

**12. UTILITIES WATER, SEWAGE, HEATING AND CENTRAL AIR CONDITIONING.**  
(Check all that apply)

Water Supply:  Public  Private Well  Community Well  
 Hot Water:  Oil  Gas  Elec.  Other \_\_\_\_\_  
 Air Conditioning:  Oil  Gas  Elec.  Heat Pump  Other \_\_\_\_\_ Zones \_\_\_\_\_  
 Heating:  Oil  Gas  Elec.  Heat Pump  Other \_\_\_\_\_ Zones \_\_\_\_\_  
 Sewage Disposal:  Public  Septic for # BR \_\_\_\_\_  Community Septic  Alternative Septic for # BR: \_\_\_\_\_  
 Septic Waiver Disclosure provided by Seller (if applicable) per VA Code § 32.1-164.1:1. State Board of Health septic system waivers are not transferable.

**13. PERSONAL PROPERTY AND FIXTURES.** Property includes the following personal property and fixtures, if existing: built-in heating and central air conditioning equipment, plumbing and lighting fixtures, sump pump, attic and exhaust fans, storm windows, storm doors, screens, installed wall-to-wall carpeting, window shades, blinds, window treatment hardware, smoke and heat detectors, antennas, exterior trees, and shrubs. Unless otherwise agreed to in writing, all surface or wall mounted electronic components/devices **DO NOT** convey; however, all related mounts, brackets and hardware **DO** convey. If more than one of an item convey, the number of items is noted.

The items marked YES below are currently installed or offered.

Yes	No	#	Items	Yes	No	#	Items	Yes	No	#	Items
<input type="checkbox"/>	<input checked="" type="checkbox"/>		Alarm System	<input type="checkbox"/>	<input checked="" type="checkbox"/>		Freezer	<input checked="" type="checkbox"/>	<input type="checkbox"/>		Satellite Dish
<input type="checkbox"/>	<input checked="" type="checkbox"/>		Built-in Microwave	<input checked="" type="checkbox"/>	<input type="checkbox"/>		Furnace Humidifier	<input type="checkbox"/>	<input checked="" type="checkbox"/>		Storage Shed
<input checked="" type="checkbox"/>	<input type="checkbox"/>		Ceiling Fan	<input type="checkbox"/>	<input checked="" type="checkbox"/>		Garage Opener	<input checked="" type="checkbox"/>	<input type="checkbox"/>		Stove or Range
<input type="checkbox"/>	<input checked="" type="checkbox"/>		Central Vacuum	<input type="checkbox"/>	<input checked="" type="checkbox"/>		w/ remote	<input type="checkbox"/>	<input checked="" type="checkbox"/>		Trash Compactor
<input checked="" type="checkbox"/>	<input type="checkbox"/>		Clothes Dryer	<input type="checkbox"/>	<input checked="" type="checkbox"/>		Gas Log	<input type="checkbox"/>	<input checked="" type="checkbox"/>		Wall Oven
<input checked="" type="checkbox"/>	<input type="checkbox"/>		Clothes Washer	<input type="checkbox"/>	<input checked="" type="checkbox"/>		Hot Tub, Equip & Cover	<input type="checkbox"/>	<input checked="" type="checkbox"/>		Water Treatment System
<input type="checkbox"/>	<input checked="" type="checkbox"/>		Cooktop	<input type="checkbox"/>	<input checked="" type="checkbox"/>		Intercom	<input type="checkbox"/>	<input checked="" type="checkbox"/>		Window A/C Unit
<input type="checkbox"/>	<input checked="" type="checkbox"/>		Dishwasher	<input type="checkbox"/>	<input checked="" type="checkbox"/>		Playground Equipment	<input type="checkbox"/>	<input checked="" type="checkbox"/>		Window Fan
<input type="checkbox"/>	<input checked="" type="checkbox"/>		Disposer	<input type="checkbox"/>	<input checked="" type="checkbox"/>		Pool, Equip, & Cover	<input type="checkbox"/>	<input checked="" type="checkbox"/>		Window Treatments
<input type="checkbox"/>	<input checked="" type="checkbox"/>		Electronic Air Filter	<input checked="" type="checkbox"/>	<input type="checkbox"/>		Refrigerator	<input type="checkbox"/>	<input checked="" type="checkbox"/>		Wood Stove
<input type="checkbox"/>	<input checked="" type="checkbox"/>		Fireplace Screen/Door	<input type="checkbox"/>	<input checked="" type="checkbox"/>		w/ ice maker				

**OTHER** \_\_\_\_\_

**FUEL TANKS.**  Fuel Tank(s) Leased # \_\_\_\_\_  Fuel Tank(s) Owned (Fuel Tank(s), if owned, convey) # \_\_\_\_\_. Unless otherwise agreed to in writing, any heating or cooking fuels remaining in supply tank(s) at Settlement will become the property of Buyer. \_\_\_\_\_

**LEASED ITEMS.** Any leased items, systems or service contracts (including, but not limited to, fuel tanks, water treatment systems, lawn contracts, security system monitoring, and satellite contracts) **DO NOT** convey absent an express written agreement by Buyer and Seller. The following is a list of the leased items within Property: N/A

14. **FIRPTA - WITHHOLDING TAXES FOR FOREIGN SELLER.** Seller is a US citizen or a Lawful Permanent Resident as defined by the Immigration and Nationality Act (Green Card Holder).  
 Yes OR  No. (If No, FIRPTA Addendum Attached)
15. **BUYER'S REPRESENTATIONS.** Buyer  will OR  will not occupy Property as Buyer's principal residence. Unless specified in a written contingency, neither this Contract nor the financing is dependent or contingent on the sale and settlement or lease of other real property. Buyer acknowledges that Seller is relying upon all of Buyer's representations, including without limitation, the accuracy of financial or credit information given to Seller, Broker, or the lender by Buyer.
16. **SMOKE DETECTORS.** Seller shall deliver Property with smoke detectors installed and functioning in accordance with the laws and regulations of Virginia.
17. **TARGET LEAD-BASED PAINT HOUSING.** Seller represents that any residential dwellings at Property  were OR  were not constructed before 1978. If the dwellings were constructed before 1978, then, unless exempt under 42 U.S.C. 4852d, Property is considered "target housing" under the statute and a copy of the "Sale: Disclosure and Acknowledgment of Information on Lead-Based Paint and/or Lead-Based Paint Hazards" has been attached and made a part of the Contract as required by law. Buyer  does OR  does not waive the right to a risk assessment or inspection of Property for the presence of lead-based paint and/or lead-based paint hazards. If not, a copy of the Sales Contract Addendum for Lead-Based Paint Testing is attached to establish the conditions for a lead-based paint risk assessment or inspections.
18. **WOOD-DESTROYING INSECT INSPECTION.**  NONE  Buyer at Buyer's expense OR  Seller at Seller's expense will furnish a written report from a pest control firm dated not more than 90 days prior to Settlement showing that all dwelling(s) and/or garage(s) within Property (excluding fences or shrubs not abutting garage(s) or dwelling(s)) are free of visible evidence of live wood-destroying insects, and free from visible damage. Any treatment and repairs for damage identified in the inspection report will be made at Seller's expense and Seller will provide written evidence of such treatment and/or repair prior to date of Settlement which shall satisfy the requirements of this Paragraph.
19. **DAMAGE OR LOSS.** The risk of damage or loss to Property by fire, act of God, or other casualty remains with Seller until the execution and delivery of the deed of conveyance to Buyer at Settlement.
20. **TITLE.** The title report and survey, if required, will be ordered promptly and, if not available on the Settlement Date, then Settlement may be delayed for up to ten (10) business days to obtain the title report and survey after which this Contract, at the option of Seller, may be terminated and Deposit will be refunded in full to Buyer according to the terms of the DEPOSIT paragraph. Fee simple title to Property, and everything that conveys with it, will be sold free of liens except for any loans assumed by Buyer.

Seller will convey title which is good, marketable, and insurable by a licensed title insurance company with no additional risk premium. In case action is required to perfect the title, such action must be taken promptly by Seller at Seller's expense. Title may be subject to commonly acceptable easements, covenants, conditions and restrictions of record, if any, as of Settlement Date. If title is not good and marketable, and insurable by a licensed title insurance company with no additional risk premium, on Settlement Date, Buyer may at



Buyer's option either (a) declare the Contract void in writing, or (b) pursue all available legal and equitable remedies. Nothing herein shall prohibit the parties from mutually agreeing to extend Settlement Date under terms acceptable by both parties.

Seller will convey Property by general warranty deed with English covenants of title ("Deed"). The manner of taking title may have significant legal and tax consequences. Buyer is advised to seek the appropriate professional advice concerning the manner of taking title.

Seller will sign such affidavits, lien waivers, tax certifications, and other documents as may be required by the lender, title insurance company, Settlement Agent, or government authority, and authorizes Settlement Agent to obtain pay-off or assumption information from any existing lenders. Unless otherwise agreed to in writing, Seller will pay any special assessments and will comply with all orders or notices of violations of any county or local authority, condominium unit owners' association, homeowners' or property owners' association or actions in any court on account thereof, against or affecting Property on Settlement Date. Broker is hereby expressly released from all liability for damages by reason of any defect in the title.

- 21. NOTICE OF POSSIBLE FILING OF MECHANICS' LIEN.** Code of Virginia Section 43-1 et seq. permits persons who have performed labor or furnished materials for the construction, removal, repair or improvement of any building or structure to file a lien against Property. This lien may be filed at any time after the work is commenced or the material is furnished, but not later than the earlier of (i) 90 Days from the last day of the month in which the lienor last performed work or furnished materials; or (ii) 90 Days from the time the construction, removal, repair or improvement is terminated. **AN EFFECTIVE LIEN FOR WORK PERFORMED PRIOR TO THE DATE OF SETTLEMENT MAY BE FILED AFTER SETTLEMENT. LEGAL COUNSEL SHOULD BE CONSULTED.**
- 22. POSSESSION DATE.** Unless otherwise agreed to in writing between Seller and Buyer, Seller will give possession of Property at Settlement, including delivery of keys, key fobs, codes, digital keys, if any. If Seller fails to do so and occupies Property beyond Settlement, Seller will be a tenant at sufferance of Buyer and hereby expressly waives all notice to quit as provided by law. Buyer will have the right to proceed by any legal means available to obtain possession of Property. Seller will pay any damages and costs incurred by Buyer including reasonable attorney fees.
- 23. FEES.** Fees for the preparation of the Deed, that portion of Settlement Agent's fee billed to Seller, costs of releasing existing encumbrances, Seller's legal fees and any other proper charges assessed to Seller will be paid by Seller. Fees for the title exam (except as otherwise provided), survey, recording (including those for any purchase money trusts) and that portion of Settlement Agent's fee billed to Buyer, Buyer's legal fees and any other proper charges assessed to Buyer will be paid by Buyer. Fees to be charged will be reasonable and customary for the jurisdiction in which Property is located. Grantor's tax and Regional Congestion Relief Fee (for Alexandria City, Arlington, Fairfax, Loudoun and Prince William Counties and all cities contained within) shall be paid by Seller. Buyer shall pay recording charges for the Deed and any purchase money trusts.
- 24. BROKER'S FEE.** Seller irrevocably instructs Settlement Agent to pay Broker compensation ("Broker's Fee") at Settlement as set forth in the listing agreement and to disburse the compensation offered by Listing Brokerage to Cooperating Brokerage in writing as of the Date of Offer, and the remaining amount of Broker's compensation to Listing Brokerage.
- 25. ADJUSTMENTS.** Rents, taxes, water and sewer charges, condominium unit owners' association, homeowners' and/or property owners' association regular periodic assessments (if any) and any other operating charges, are to be adjusted to the Date of Settlement. Taxes, general and special, are to be adjusted according to the most recent property tax bill(s) for Property issued prior to Settlement Date, except that

recorded assessments for improvements completed prior to Settlement, whether assessments have been levied or not, will be paid by Seller or allowance made at Settlement. If a loan is assumed, interest will be adjusted to the Settlement Date and Buyer will reimburse Seller for existing escrow accounts, if any.

## 26. ATTORNEY'S FEES.

A. If any Party breaches this Contract and a non-breaching Party retains legal counsel to enforce its rights hereunder, the non-breaching Party shall be entitled to recover against the breaching Party, in addition to any other damages recoverable against any breaching Party, all of its reasonable Legal Expenses incurred in enforcing its rights under this Contract, whether or not suit is filed, and in obtaining, enforcing and/or defending any judgment related thereto. Should any tribunal of competent jurisdiction determine that more than one party to the dispute has breached this Contract, then all such breaching Parties shall bear their own costs, unless the tribunal determines that one or more parties is a "Substantially Prevailing Party," in which case any such Substantially Prevailing Party shall be entitled to recover from any of the breaching parties, in addition to any other damages recoverable against any breaching Party, all of its reasonable Legal Expenses incurred in enforcing its rights under this Agreement, whether or not suit is filed, and in obtaining, enforcing and/or defending any judgment related thereto.

B. In the event a dispute arises resulting in the Broker (as used in this paragraph to include any agent, licensee, or employee of Broker) being made a party to any litigation by Buyer or by Seller, the Parties agree that the Party who brought Broker into litigation shall indemnify the Broker for all of its reasonable Legal Expenses incurred, unless the litigation results in a judgment against the Broker.

27. **PERFORMANCE.** Delivery of the required funds and executed documents to the Settlement Agent will constitute sufficient tender of performance. Funds from this transaction at Settlement may be used to pay off any existing liens and encumbrances, including interest, as required by lender(s) or lienholders.

28. **DEFAULT.** If Buyer fails to complete Settlement for any reason other than Default by Seller, Buyer shall be in Default and, at the option of Seller, Deposit may be forfeited to Seller as liquidated damages and not as a penalty. In such event, Buyer shall be relieved from further liability to Seller. If Seller does not elect to accept Deposit as liquidated damages, Deposit may not be the limit of Buyer's liability in the event of a Default. Buyer and Seller knowingly, freely and voluntarily waive any defense as to the validity of liquidated damages under this Contract, including Seller's option to elect liquidated damages or pursue actual damages, or that such liquidated damages are void as penalties or are not reasonably related to actual damages.

If Deposit is forfeited, or if there is an award of damages by a court or a compromise agreement between Seller and Buyer, Broker may accept, and Seller agrees to pay, Broker one-half of Deposit in lieu of Broker's Fee (provided Broker's share of any forfeited Deposit will not exceed the amount due under the listing agreement).

If Seller fails to perform or comply with any of the terms and conditions of this Contract or fails to complete Settlement for any reason other than Default by Buyer, Seller shall be in Default and Buyer will have the right to pursue all legal or equitable remedies, including specific performance and/or damages.

If either Seller or Buyer refuses to execute a release of Deposit ("Release") when requested to do so in writing and a court finds that such party should have executed the Release, the party who so refused to execute the Release will pay the expenses, including, without limitation, reasonable attorney's fees, incurred by the other party in the litigation. Seller and Buyer agree that no Escrow Agent will have any liability to any party on account of disbursement of Deposit or on account of failure to disburse Deposit, except only in the event of Escrow Agent's gross negligence or willful misconduct. The parties further agree that Escrow Agent will not be liable for the failure of any depository in which Deposit is placed and that Seller and

Buyer each will indemnify, defend and save harmless Escrow Agent from any loss or expense arising out of the holding, disbursement or failure to disburse Deposit, except in the case of Escrow Agent's gross negligence or willful misconduct.

If either Buyer or Seller is in Default, then in addition to all other damages, the defaulting party will immediately pay the costs incurred for the title examination, Appraisal, survey and the Broker's Fee in full.

**29. OTHER DISCLOSURES.** Buyer and Seller should carefully read this Contract to be sure that the terms accurately express their respective understanding as to their intentions and agreements. Broker can counsel on real estate matters, but if legal advice is desired by either party, such party is advised to seek legal counsel. Buyer and Seller are further advised to seek appropriate professional advice concerning the condition of Property or tax and insurance matters. The following provisions of this Paragraph disclose some matters which the parties may investigate further. These disclosures are not intended to create a contingency. Any contingency must be specified by adding appropriate terms to this Contract. The parties acknowledge the following disclosures:

- A. Property Condition.** Various inspection services and home warranty insurance programs are available. Broker is not advising the parties as to certain other issues, including without limitation: water quality and quantity (including but not limited to, lead and other contaminants); sewer or septic; soil condition; flood hazard areas; possible restrictions of the use of Property due to restrictive covenants, zoning, subdivision, or environmental laws, easements or other documents; airport or aircraft noise; planned land use, roads or highways; and construction materials and/or hazardous materials, including but without limitation flame retardant treated plywood (FRT), radon, urea formaldehyde foam insulation (UFFI), mold, polybutylene pipes, synthetic stucco (EIFS), underground storage tanks, defective drywall, asbestos and lead-based paint. Information relating to these issues may be available from appropriate government authorities.
- B. Legal Requirements.** All contracts for the sale of real property must be in writing to be enforceable. Upon ratification and Delivery, this Contract becomes a legally binding agreement. Any changes to this Contract must be made in writing for such changes to be enforceable.
- C. Financing.** Mortgage rates and associated charges vary with financial institutions and the marketplace. Buyer has the opportunity to select the lender and the right to negotiate terms and conditions of the financing subject to the terms of this Contract. The financing may require substantial lump sum (balloon) payments on the due dates. Buyer has not relied upon any representations regarding the future availability of mortgage money or interest rates for the refinancing of any such lump sum payments.
- D. Broker.** Buyer and Seller acknowledge that Broker is being retained solely as a real estate agent and not as an attorney, tax advisor, lender, appraiser, surveyor, structural engineer, mold or air quality expert, home inspector, or other professional service provider. Broker may from time to time engage in the general insurance, title insurance, mortgage loan, real estate settlement, home warranty and other real estate-related businesses and services. Therefore, in addition to Broker's Fee specified herein, Broker may receive compensation related to other services provided in the course of this transaction pursuant to the terms of a separate agreement/disclosure.
- E. Property Taxes.** Your property tax bill could substantially increase following settlement. For more information on property taxes contact the appropriate taxing authority in the jurisdiction where Property is located.
- F. Property Insurance.** Obtaining property insurance is typically a requirement of the lender in order to secure financing. Insurance rates and availability are determined in part by the number and nature of claims and inquiries made on a property's policy as well as the number and nature of claims made by a prospective Buyer. Property insurance has become difficult to secure in some cases. Seller should consult an insurance professional regarding maintaining and/or terminating insurance coverage.



**G. Title Insurance.** Buyer may, at Buyer's expense, purchase owner's title insurance. Depending on the particular circumstances of the transaction, such insurance could include affirmative coverage against possible mechanics' and materialmen's liens for labor and materials performed prior to Settlement and which, though not recorded at the time of recordation of Buyer's deed, could be subsequently recorded and would adversely affect Buyer's title to Property. The coverage afforded by such title insurance would be governed by the terms and conditions thereof, and the premium for obtaining such title insurance coverage will be determined by its coverage.

Buyer may purchase title insurance at either "standard" or "enhanced" coverage rates. For purposes of owner's policy premium rate disclosure by Buyer's lender(s), if any, Buyer and Seller require that enhanced rates be quoted by Buyer's lender(s). Buyer understands that nothing herein obligates Buyer to obtain any owner's title insurance coverage at any time, including at Settlement, and that the availability of enhanced coverage is subject to underwriting criteria of the title insurer.

**30. ASSIGNABILITY.** This Contract may not be assigned without the written consent of Buyer and Seller. If Buyer and Seller agree in writing to an assignment of this Contract, the original parties to this Contract remain obligated hereunder until Settlement.

**31. DEFINITIONS.**

- A. "Date of Ratification" means the date of Delivery of the final acceptance in writing by Buyer and Seller of all the terms of this Contract to Buyer and Seller (not the date of the expiration or removal of any contingencies).
- B. "Appraisal" means a written appraised valuation of Property.
- C. "Day(s)" or "day(s)" means calendar day(s) unless otherwise specified in this Contract.
- D. All reference to time of day shall refer to the time of day in the Eastern Time Zone of the United States.
- E. For the purpose of computing time periods, the first Day will be the Day following Delivery and the time period will end at 9 p.m. on the Day specified.
- F. For "Delivery" see DELIVERY paragraph.
- G. The masculine includes the feminine and the singular includes the plural.
- H. For "Possession Date" see POSSESSION DATE paragraph.
- I. "Legal Expenses" means attorney fees, court costs, and litigation expenses, if any, including, but not limited to, expert witness fees and court reporter fees.
- J. "Notices" ("Notice", "notice", or "notify") means a unilateral communication from one party to another. All Notices required under this Contract will be in writing and will be effective as of Delivery. Written acknowledgment of receipt of Notice is a courtesy but is not a requirement.
- K. "Buyer" and "Purchaser" may be used interchangeably in this Contract and any accompanying addenda or notices.
- L. "Seller Subsidy" is a payment from Seller towards Buyer's charges (including but not limited to loan origination fees, discount points, buy down or subsidy fees, prepaids or other charges) as allowed by lender(s), if any. It is Buyer's responsibility to confirm with any lender(s) that the entire credit provided herein may be utilized. If lender(s) prohibits Seller from the payment of any portion of this credit, then said credit shall be reduced to the amount allowed by lender(s).

**32. MISCELLANEOUS.** This Contract may be signed in one or more counterparts, each of which is deemed to be an original, and all of which together constitute one and the same instrument. Documents obtained via facsimile machines will also be considered as originals. Typewritten or handwritten provisions included in this Contract will control all pre-printed provisions that are in conflict.

**33. VOID CONTRACT.** If this Contract becomes void and of no further force and effect, without Default by either party, both parties will immediately execute a release directing that Deposit be refunded in full to Buyer according to the terms of the DEPOSIT paragraph.

34. HOME WARRANTY.  Yes OR  No  
Home Warranty Policy Selected by  Buyer or  Seller and paid for and provided at Settlement by:  
 Buyer or  Seller. Cost not to exceed \$ \_\_\_\_\_, Warranty provider to be \_\_\_\_\_

35. TIME IS OF THE ESSENCE. Time is of the essence means that the dates and time frames agreed to by the parties must be met. Failure to meet stated dates or time frames will result in waiver of contractual rights or will be a Default under the terms of the Contract.

If this Contract is contingent on financing, and the contingency has not been removed or satisfied, any delay of the Settlement Date necessary to comply with Buyer's lender's obligations pursuant to the RESPA-TILA Integrated Disclosure rule, is not a Default by Buyer; but, Seller may declare the Contract void in writing. Nothing herein shall prohibit the parties from mutually agreeing in writing to extend Settlement Date under terms acceptable by both parties.

36. ARBITRATION. Nothing in this Contract shall preclude arbitration under the Code of Ethics and Standards of Practice of the National Association of REALTORS®.

37. REAL ESTATE LICENSED PARTIES. The parties acknowledge that Marqui S. Simmons  
\_\_\_\_\_ is an  active OR  inactive licensed real estate agent in  Virginia and/or  Other  
\_\_\_\_\_ and is either the  Buyer OR  Seller OR  is related to one of the parties in this transaction.

38. ENTIRE AGREEMENT. This Contract will be binding upon the parties, and each of their respective heirs, executors, administrators, successors, and permitted assigns. The provisions not satisfied at Settlement will survive the delivery of the deed and will not be merged therein. This Contract, unless amended in writing, contains the final and entire agreement of the parties and the parties will not be bound by any terms, conditions, oral statements, warranties or representations not herein contained. The interpretation of this Contract will be governed by the laws of the Commonwealth of Virginia.

39. ADDITIONS. The following forms, if ratified and attached, are made a part of this Contract. (This list is not all inclusive of addenda that may need to be attached).

- |   |   |   |                             |
|---|---|---|-----------------------------|
| <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No | Home Inspection/Radon Testing Contingency | <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No | Private Well and/or Septic  |
| <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No | Lead-Based Paint Inspection Contingency   | <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No | Post-Settlement Occupancy   |
| <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No | Contingency and Clauses                   | <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No | Lead-Based Paint Disclosure |
| <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No | Pre-Settlement Occupancy                  | <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No | VA/FHA/USDA Financing       |
| <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No | Residential Property Disclosure           | <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No | Other (specify): _____      |
| <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No | FHA Home Inspection Notice                |   |                             |
| <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No | Conventional Financing                    |   |                             |
| <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No | FIRPTA Addendum                           |   |                             |

40. DISCLOSURE OF SALES PRICE TO APPRAISER. Listing Broker and Selling Broker are hereby authorized to release the Sales Price listed in PRICE AND SPECIFIED FINANCING Paragraph to any appraiser who contacts them to obtain the information.

41. OTHER TERMS. \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_



Date of Ratification (see DEFINITIONS)

Oct. 7, 2019

SELLER:

10/03/2019 04:51 PM GMT

Date Signature Katherine A Whittaker

Date Signature

Date Signature

Date Signature

BUYER:

10/2/2019

Date Signature Stephen C. Simmons

10/2/2019 Date Signature Marqui S. Simmons

Date Signature

Date Signature

For information purposes only:

Listing Brokerage's Name and Address: City and County Real Estate 2 East Washington Street Lexington, VA 24450

Brokerage Phone #: (540)463-7400

Bright MLS Broker Code:

VA Firm License #: 0226021251

Agent Name: Connie Clark

Agent Email: connie@cityandcountyrealestate.com

Agent Phone #: (540)570-7157

MRIS Agent ID #

VA Agent License #: 0225132836

Team Name:

Team Business Entity License #:

Cooperating Brokerage's Name and Address: Sheridan-MacMahon, Ltd. P.O. Box 1380 Middleburg, VA 20118

Brokerage Phone #: (703)774-6109

Bright MLS Broker Code: SHM1

VA Firm License #: 0226012294

Agent Name: Marqui S. Simmons

Agent Email: brynsim@msn.com

Agent Phone #: (703)774-6109

MRIS Agent ID # 3019050

VA Agent License #: 0225194599

Team Name:

Team Business Entity License #:

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### FHA FINANCING CONTINGENCY ADDENDUM

This Addendum is made on October 2, 2019, to a sales contract ("Contract") offered on October 2, 2019, between Stephen C. Simmons, Marqui S. Simmons

Katherine A Whittaker

("Buyer") and

("Seller") for the purchase and sale of the Property:

207 Diamond Steet, Lexington, VA 24450-2633

**NOTICE: The parties should not include a separate appraisal contingency in this Contract, since the federally mandated appraisal language for FHA loans is contained in the FHA Amendatory Clause below.**

**1. SPECIFIED FINANCING** "Specified Financing" means the terms set forth in Paragraphs 2A and 2B of this Contract and the following loan terms:

- A. **First Trust.** Buyer will  **Obtain OR**  **Assume a**  **Fixed OR** an  **Adjustable** rate First Deed of Trust loan amortized over 30 years. The interest rate for this loan is at an (initial) interest rate not to exceed 3.900 % per year.
- B. **Second Trust.** Buyer will  **Obtain OR**  **Assume a**  **Fixed OR** an  **Adjustable** rate Second Deed of Trust loan amortized over \_\_\_\_\_ years. The interest rate for this loan is at an (initial) interest rate not to exceed \_\_\_\_\_ % per year.

Buyer shall pay upfront and monthly mortgage insurance premiums ("MIP") as required by FHA regulations. Subject to lender's approval, Buyer reserves the right to finance any upfront MIP, in which event such amount shall be added to the loan amount.


Assumption fee, if any, and all charges related to the assumption will be paid by Buyer. If Buyer assumes Seller's loan(s), Buyer and Seller  will **OR**  will not obtain a release of Seller's liability to the U.S. Government for the repayment of the loan by Settlement. Balances of any assumed loans, secondary financing and cash down payments are approximate.

**2. ALTERNATIVE FINANCING.** This financing contingency shall not apply to any Alternative Financing. "Alternative Financing" means any change to the financing terms in the Specified Financing, including but not limited to Down Payment amount, the amount financed, loan type (i.e., Conventional, FHA, VA, USDA or Other), term of any loan, interest rate, or loan program (i.e., assumption, fixed or adjustable rate).

Buyer may substitute Alternative Financing for the Specified Financing. However, Buyer shall obtain Seller's written consent and shall execute a new financing addendum (if applicable) if Buyer wishes to retain the protection of a financing contingency. Should Buyer pursue Alternative Financing without Seller's written consent, Buyer shall waive the protection of this financing contingency.

Buyer's substitution of lender(s) to which written application has been made under Paragraph 2D of this Contract shall not: (a) constitute a change in the Specified Financing; or (b) constitute Buyer Default provided there is no additional expense to Seller and Settlement Date is not delayed.

(Select Paragraph 3 OR 4)

Seller: KA / W Buyer: SCS MSS 

3. FINANCING CONTINGENCY WITH AUTOMATIC EXTENSION.

A. This Contract is contingent on Buyer Delivering to Seller by 9 p.m. 30 Days after Date of Ratification ("Financing Deadline") written conditional commitment(s) for Specified Financing.

B. If Buyer has not Delivered the written conditional commitment(s) by Financing Deadline, this contingency will continue up to, and including, Settlement Date. However, upon expiration of Financing Deadline, Seller may at Seller's option Deliver Notice to Buyer that Buyer has three (3) days to void the Contract. If Buyer does not void the Contract within three (3) days following Delivery of Seller's Notice, this financing contingency is removed and the Contract will remain in full force and effect without this financing contingency.

C. Buyer may void this Contract by Delivering to Seller, prior to the satisfaction or removal of this contingency, a written rejection from the lender(s) to whom Buyer has applied for Specified Financing. However, Buyer will be in Default whether or not this financing contingency has been removed if Settlement does not occur on Settlement Date for any reason other than Default by Seller.

D. Nothing herein shall prohibit the parties from mutually agreeing to terms acceptable to both parties in writing.

4. FINANCING CONTINGENCY WITH AUTOMATIC EXPIRATION.

A. This Contract is contingent on Buyer Delivering to Seller by 9 p.m. Days after Date of Ratification ("Financing Dcadline") written conditional commitment(s) for Specified Financing.

B. If the Buyer has not Delivered the written conditional commitment(s) by Financing Deadline, this financing contingency will expire.

C. Buyer may void this Contract by delivering to Seller, prior to the satisfaction or expiration of this contingency, a written rejection from the lender(s) to whom Buyer has applied for Specified Financing. However, Buyer will be in Default whether or not this financing contingency has been removed if Settlement does not occur on Settlement Date for any reason other than Default by Seller.

D. Nothing herein shall prohibit the parties from mutually agreeing to terms acceptable to both parties in writing.

5. APPRAISAL PROVISIONS.

A. FHA Amendatory Clause. It is expressly agreed that notwithstanding any other provisions of this Contract, Buyer shall not be obligated to complete the purchase of Property or to incur any penalty by forfeiture of deposit or otherwise unless Buyer has been given in accordance with HUD/FHA or VA requirements a written statement by the Federal Housing Commissioner, Department of Veterans Affairs, or a Direct Endorsement Lender setting forth the appraised value of Property of not less than \$ 110,000.00 . Buyer shall have the privilege and option to proceed with consummation of this Contract without regard to the amount of the appraised value. The appraised value is arrived at to determine the maximum mortgage the Department of Housing and Urban Development ("HUD") will insure. HUD does not warrant the value or the condition of Property. Buyer should satisfy himself/herself that the price and condition of Property are acceptable.

NOTICE: The dollar amount to be inserted in the Amendatory Clause is the purchase price as stated in this Contract. If Buyer and Seller agree to adjust the purchase price in response to an appraised value that is less than the purchase price, a new Amendatory Clause is not required.

Seller: KAW / Buyer: SCS / MSS


**B. Procedure in the event of a low appraisal.** In the event that the written statement setting forth the appraised value of Property ("Written Statement") indicates a value less than the Sales Price, Buyer shall Deliver Notice to Seller (1) stating that Buyer elects to proceed to Settlement at the Sales Price in the Contract; or (2) requesting that Seller change the Sales Price to a specified lower amount of not less than the appraised value ("Buyer's Notice"); or (3) voiding this Contract based on the low appraisal. Buyer's Notice shall include a copy of the Written Statement. In the event Buyer's Notice requests a price reduction, Notices delivered subsequent to the delivery of Buyer's Notice shall be treated as follows:

Within three Days after Notice Delivery from one party, the other party may:

- 1) Deliver Notice accepting the terms contained in the other party's Notice; **OR**
- 2) Deliver Notice continuing negotiations by making another offer; **OR**
- 3) Deliver Notice that this Contract shall become void at 9:00 p.m. on the third Day following Delivery, unless the recipient Delivers to the other party Notice of acceptance of the last Delivered offer prior to that date and time, in which case, this Contract will remain in full force and effect.

**FAILURE OF EITHER PARTY TO RESPOND WITHIN THREE DAYS OF NOTICE DELIVERY WILL RESULT IN THIS CONTRACT BECOMING VOID.**

- 6. **WOOD-DESTROYING INSECT INSPECTION.** Fences and outbuildings shall be included in the inspection and certification.
- 7. **LENDER REQUIRED REPAIRS.** If, as a condition of providing financing under this Contract, the lender requires repairs to be made to Property, then Buyer will give Notice to Seller of the lender's required repairs. Within five Days after such Notice, Seller will give Notice to Buyer as to whether Seller will make the repairs. If Seller will not make the repairs, Buyer will give Notice to Seller within five Days after Seller's Notice as to whether Buyer will make the repairs. If neither Seller nor Buyer will make the repairs, then this Contract will become void. This clause will not release Seller from any responsibilities set forth in the paragraphs titled UTILITIES WATER, SEWAGE, HEATING AND CENTRAL AIR CONDITIONING; PERSONAL PROPERTY AND FIXTURES; or WOOD-DESTROYING INSECT INSPECTION; or in the Private Well and/or Septic System Addendum or any terms specifically set forth in this Contract and any addenda.
- 8. **CERTIFICATION.** Seller, Buyer and Broker(s) hereby certify that the terms of this Contract to which this Addendum is attached are true to the best of their knowledge and belief. Any other agreement(s) entered into between the parties with respect to the purchase and sale of Property has been fully disclosed and is attached to the Contract.
- 9. **FHA REQUIRED NOTICE.** Buyer acknowledges receipt of HUD form #92564-CN entitled: For Your Protection: Get a Home Inspection.

BUYER'S INITIALS:           <sup>DS</sup> SCS / <sup>DS</sup> MSS           

Seller:           KA  
W           / Buyer:           <sup>DS</sup> SCS / <sup>DS</sup> MSS 



**SELLER:**

10/03/2019 04:51 PM GMT

Date

Katherine A Whittaker

Signature

**Katherine A Whittaker**



**BUYER:**

10/2/2019

Date

Signature

**Stephen C. Simmons**

DocuSigned by:

Stephen C Simmons

84D0580FE1854CE

10/2/2019

Date

Signature

**Marqui S. Simmons**

DocuSigned by:

Marqui S Simmons

D6C93289204B47F



Date

Signature

Date

Signature

Date

Signature

Date

Signature

Date

Signature

\*\*\*\*\*

**AGENT/BROKER:**

10-3-19

Date

Signature

[Signature]

**AGENT/BROKER:**

10/2/2019

Date

Signature

**Marqui S. Simmons**

DocuSigned by:

Marqui S Simmons

D6C93289204B47F



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# SALE: DISCLOSURE AND ACKNOWLEDGMENT OF INFORMATION ON LEAD-BASED PAINT AND/OR LEAD-BASED PAINT HAZARDS

For the sale of the Property at: **207 Diamond Steet, Lexington, VA 24450-2633**

### Lead Warning Statement

Every purchaser of any interest in residential real property on which a residential dwelling was built prior to 1978 is notified that such property may present exposure to lead from lead-based paint that may place young children at risk of developing lead poisoning. Lead poisoning in young children may produce permanent neurological damage, including learning disabilities, reduced intelligence quotient, behavioral problems, and impaired memory. Lead poisoning also poses a particular risk to pregnant women. The seller of any interest in residential real property is required to provide the buyer with any information on lead-based paint hazards from risk assessments or inspections in the seller's possession and notify the buyer of any known lead-based paint hazards. A risk assessment or inspection for possible lead-based paint hazards is recommended prior to purchase.

### Seller's Disclosure (initial)

- W / \_\_\_\_\_ (a) Presence of lead-based paint and/or lead-based paint hazard (check one below):  
 Known lead-based paint and/or lead-based paint hazards are present in the housing (explain): \_\_\_\_\_
- KA / \_\_\_\_\_  Seller has no knowledge of lead-based paint and/or lead-based paint hazards in the housing.  
 (b) Records and Reports available to the seller (check one below):  
 Seller has provided the purchaser with all available records and reports pertaining to lead-based paint and/or lead-based paint hazards in the housing (list documents below): \_\_\_\_\_
- Seller has no reports or records pertaining to lead-based paint and/or lead-based paint hazards in the housing.

### Purchaser's Acknowledgment (initial)

- SCS / \_\_\_\_\_  Purchaser has received and had an opportunity to review copies of all information listed above.  
 (d) Purchaser has received the pamphlet *Protect Your Family From Lead in Your Home*.  
 (e) Purchaser has (check one below):  
 Received a 10-day opportunity (or mutually agreed upon period) to conduct a risk assessment or inspection for the presence of lead-based paint or lead-based paint hazards; or  
 Waived the opportunity to conduct a risk assessment or inspection for the presence of lead-based paint and/or lead-based paint hazards.

### Sales Associates Acknowledgments (initial)

- 10 / \_\_\_\_\_  Listing and Selling Sales Associates are aware of their duty to ensure compliance with 42 U.S.C. 4852d. These Associates have informed the Seller of the Seller's obligations under this law as evidenced by Seller and Purchaser having completed this form.

### Certification of Accuracy

The undersigned have reviewed the information above and certify that to the best of their knowledge the information they have provided is true and accurate.

**SELLER:**  
 10/03/2019 04:51 PM GMT  
 Date: \_\_\_\_\_ Signature: Katherine A Whittaker  
 Date: \_\_\_\_\_ Signature: \_\_\_\_\_  
 Date: 10-3-19 Signature of Listing Associate: Connie Clark

**PURCHASER:**  
 10/2/2019  
 Date: \_\_\_\_\_ Signature: Stephen S. Simmons  
 Date: 10/2/2019 Signature: Stephen S. Simmons  
 Date: \_\_\_\_\_ Signature: Marqui S. Simmons  
 Date: 10/2/2019 Signature of Selling Associate: Marqui S. Simmons

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Virginia Real Estate Board  
[http://www.dpor.virginia.gov/Consumers/Disclosure\\_Forms/](http://www.dpor.virginia.gov/Consumers/Disclosure_Forms/)

## RESIDENTIAL PROPERTY DISCLOSURE STATEMENT

### ACKNOWLEDGEMENT BY SELLER AND PURCHASER

The Virginia Residential Property Disclosure Act (§ 55-517 et seq. of the *Code of Virginia*) requires the owner of certain residential real property whenever the property is to be sold or leased with an option to buy—to provide notification to the purchaser of any disclosures required by the Act and to refer the purchaser to the Real Estate Board website referenced below for additional information. Certain transfers of residential property are excluded from this requirement (see § 55-518).

207 Diamond Steet, Lexington, VA 24450-2633

PROPERTY ADDRESS/  
LEGAL DESCRIPTION:

The purchaser is advised to consult the **RESIDENTIAL PROPERTY DISCLOSURE STATEMENT** webpage ([http://www.dpor.virginia.gov/Consumers/Residential\\_Property\\_Disclosures](http://www.dpor.virginia.gov/Consumers/Residential_Property_Disclosures)) for important information about disclosures required by law that may affect the buyer's decision to purchase the real property described above.

The owner(s) hereby provides notification as required under the Virginia Residential Property Disclosure Act (§ 55-517 et seq. of the *Code of Virginia*) and, if represented by a real estate licensee as provided in § 55-523, further acknowledges having been informed of the rights and obligations under the Act.

Katherine A Whittaker



Owner  
Katherine A Whittaker

10/03/2019 04:51  
PM GMT

Date

Owner

Date

The purchaser(s) hereby acknowledges receipt of notification of disclosures as required under the Virginia Residential Property Disclosure Act (§ 55-517 et seq. of the *Code of Virginia*). In addition, if the purchaser is (i) represented by a real estate licensee or (ii) not represented by a real estate licensee but the owner is so represented as provided in § 55-523, the purchaser further acknowledges having been informed of the rights and obligations under the Act.

DocuSigned by:

Stephen C Simmons

84D0580FE1854CB

Purchaser  
Stephen C. Simmons

10/2/2019

Date

DocuSigned by:

Marqui S Simmons

D6C93289204B47F...

Purchaser  
Marqui S. Simmons

10/2/2019

Date