APPLICATION ACCEPTED: January 9, 2009
DATE OF PUBLIC HEARING: March 24, 2009
TIME: 9:00 a.m.

County of Fairfax, Virginia

March 17, 2009

STAFF REPORT

SPECIAL PERMIT APPLICATION No. SP 2009-PR-002

PROVIDENCE DISTRICT

APPLICANTS & OWNERS:	Thomas R. and Sharon G. Morris
ZONING:	R-5
LOCATION:	3023 Oakton Meadows Court
SUBDIVISION:	Oakton Mains
ZONING ORDINANCE PROVISION:	8-914
TAX MAP:	47-2 ((27)) 12
LOT SIZE:	3,870 Sq. Ft.
SP PROPOSAL:	Reduction to minimum yard requirements based on error in building location to permit an existing deck greater than 3 feet in height to remain 1.1 feet from side lot line.

A copy of the BZA's Resolution setting forth this decision will be mailed within five (5) days after the decision becomes final.

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

Department of Planning and Zoning
Zoning Evaluation Division
12055 Government Center Parkway, Suite 801
Fairfax, Virginia 22035-5509
Phone 703-324-1290 FAX 703-324-3924
www.fairfaxcounty.gov/dpz/

Excellence * Innovation * Stewardship
Integrity * Teamwork * Public Service

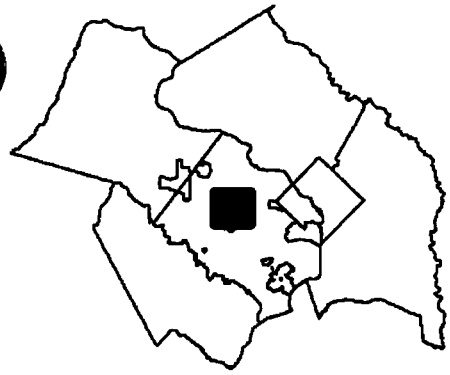
DEPARTMENT OF PLANNING & ZONING

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

Americans with Disabilities Act (ADA): Reasonable accommodation is available upon 7 days advance notice. For additional information on ADA call (703) 324-1334 or TTY 711 (Virginia Relay Center).

Special Permit

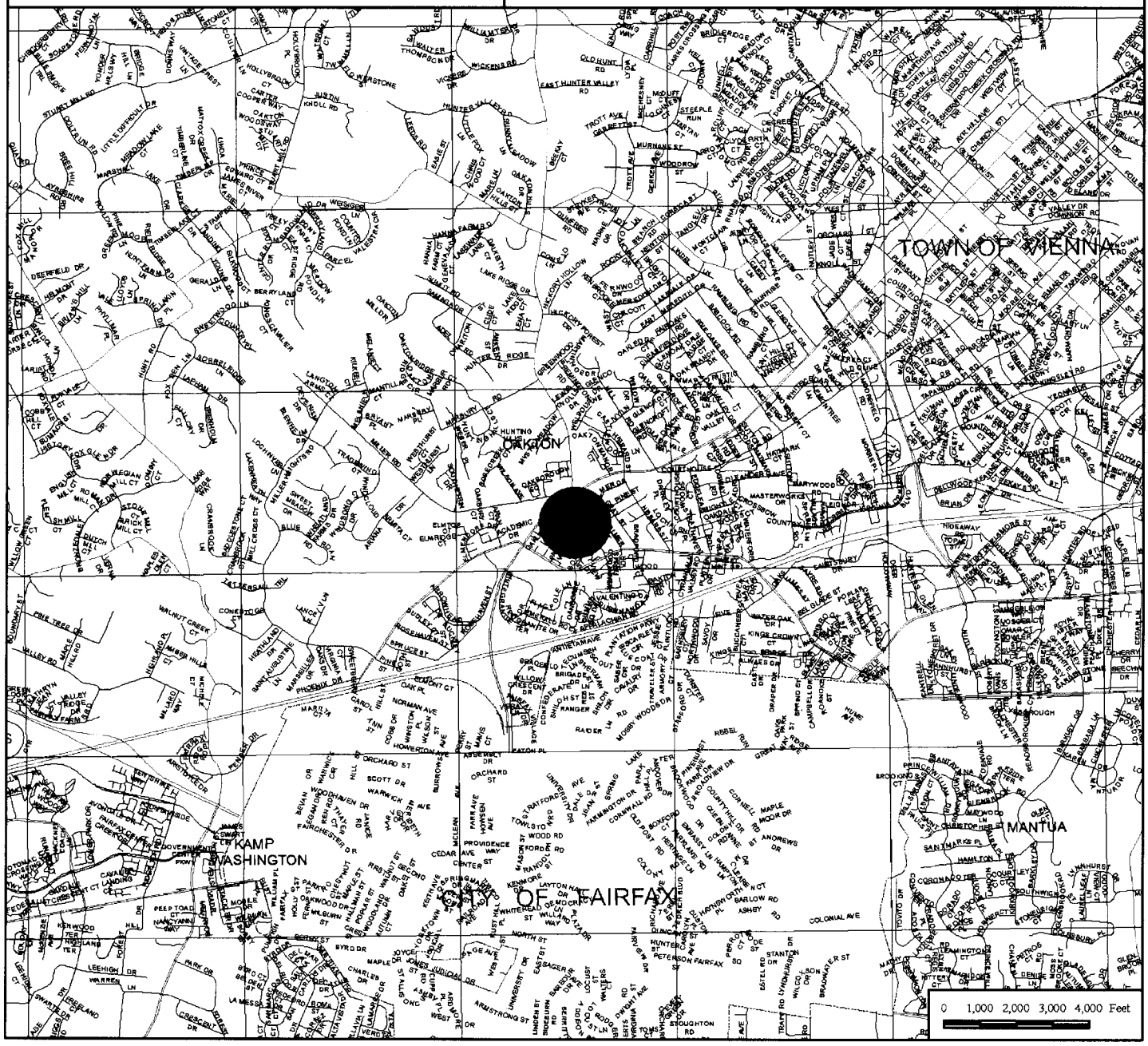
SP 2009-PR-002



Applicant: THOMAS R. AND SHARON G. MORRIS
Accepted: 01/09/2009
Proposed: REDUCTION TO MINIMUM YARD REQUIREMENTS BASED ON ERROR IN BUILDING LOCATION TO PERMIT OPEN DECK TO REMAIN 1.1 FEET FROM SIDE LOT LINE

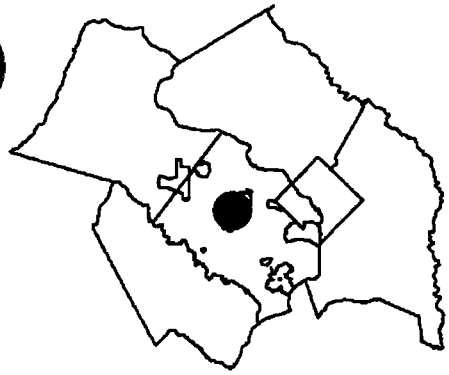
Area: 3,870 SF OF LAND; DISTRICT - PROVIDENCE

Zoning Dist Sect: 08-0914
Art 8 Group and Use: 9-13
Located: 3023 OAKTON MEADOWS COURT
Zoning: R- 5
Overlay Dist:
Map Ref Num: 047-2- /27/ /0012



Special Permit

SP 2009-PR-002



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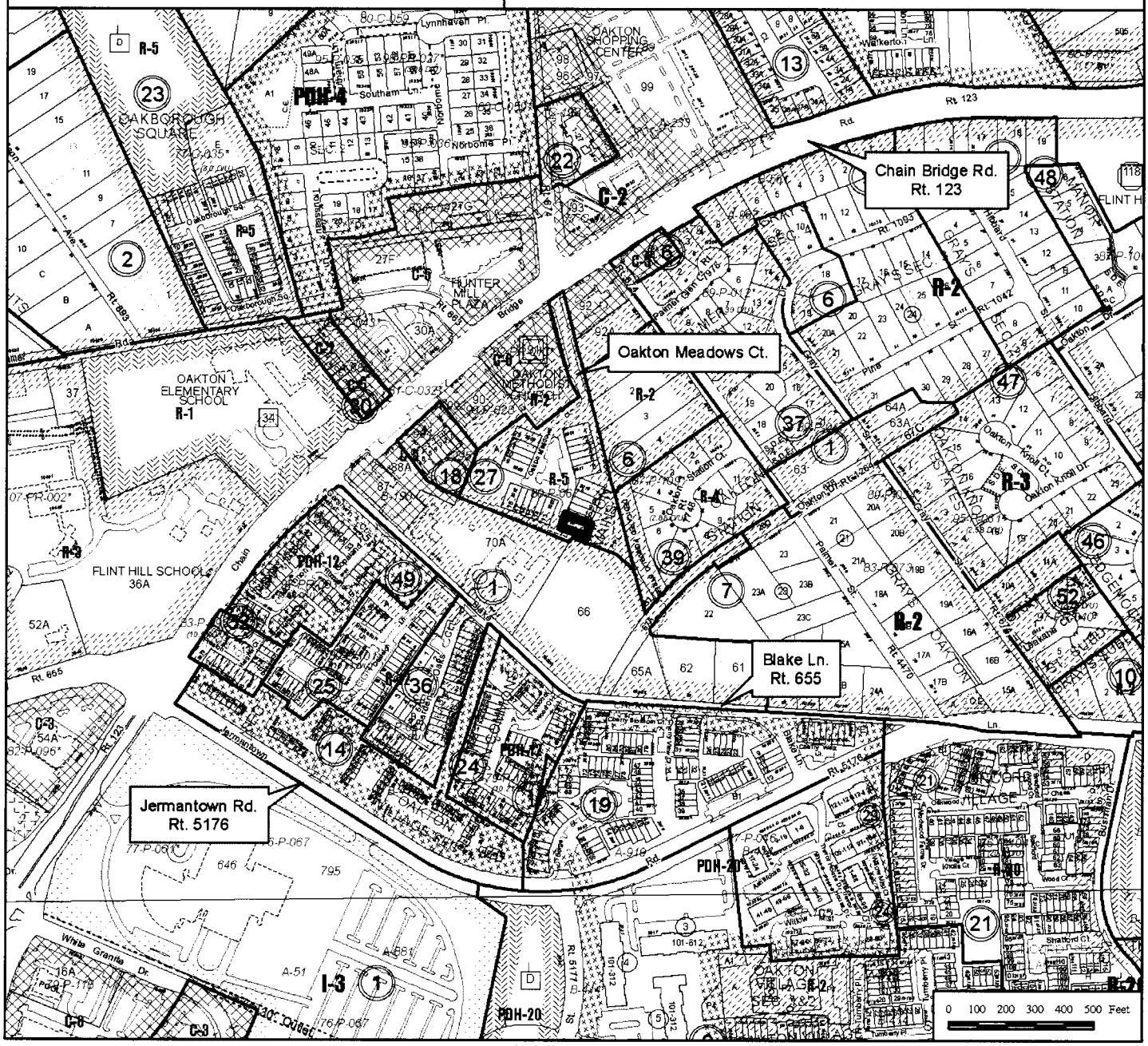
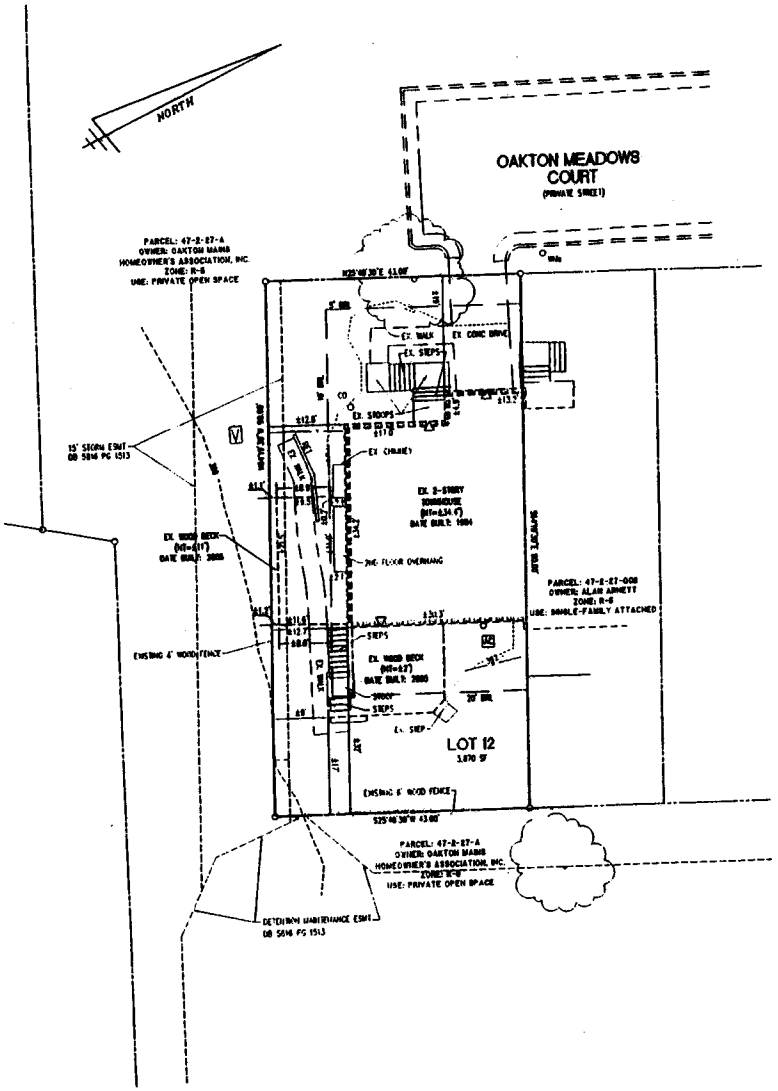
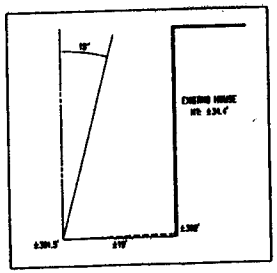




(IN FEET)
1 INCH = 10'

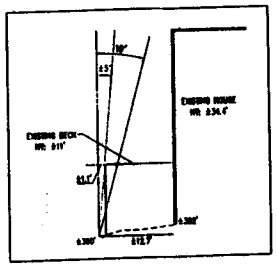
FRONT YARD ANGLE OF BULK PLANE

SCALE: 1" = 10'



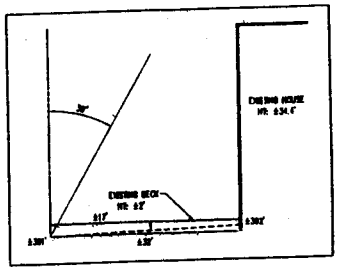
SIDE YARD ANGLE OF BULK PLANE

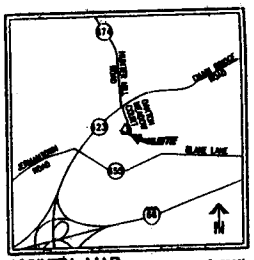
SCALE: 1" = 10'



REAR YARD ANGLE OF BULK PLANE

SCALE: 1" = 10'





VICINITY MAP SCALE: 1"=2000'

NOTES

1. OWNER/APPLICANT:
   THOMAS AND SHARON MOHRS
   3023 OAKTON MEADOWS COURT
   OAKTON, VIRGINIA 22124
2. THIS APPLICATION IS FOR A SPECIAL PERMIT, ERROR IN BUILDING LOCATION, TO ALLOW AN EXISTING DECK GREATER THAN 3 FEET IN HEIGHT, THE DIMENSIONS OF WHICH ARE SHOWN ON THE PLAT, TO WIT 11.8' X 21.5'.
3. THE PROPERTY IS DESIGNATED BY FAIRFAX COUNTY, VIRGINIA, AS HAVING TAX ASSESSMENT MAP NUMBERS 047-2-27-0012 AND IS ZONED R-5.
4. THIS PLAN WAS PREPARED BASED ON A CURRENT FIELD SURVEY BY THIS FIRM. CONTOUR INTERVAL IS 2 FEET.
5. TOTAL AREA OF THE PROPERTY IS 3,870 SQUARE FEET OR 0.0888 ACRES.
6. THERE ARE NO KNOWN UTILITY EASEMENTS ON THE PROPERTY HAVING A WIDTH OF 25 FEET OR MORE.
7. THE PROPERTY IS SERVED BY PUBLIC WATER AND SEWER.

ZONING TABULATION

EXISTING ZONE: R-5, RESIDENTIAL, 5 DU/AC
SITE AREA: ±3,870 SF OR ±0.0888 AC

	REQUIRED	EXISTING AND PROPOSED
MIN. LOT AREA:	NONE	±3,870 SF
MIN. LOT WIDTH:	18 FT	±43 FT
MAX. BLD. HT:	35 FT	±34.4 FT
MIN. YARD REQUIREMENTS:		
FRONT	15' AVP, BUT NOT LESS THAN 5 FT	±10 FT
SIDE	15' AVP, BUT NOT LESS THAN 10 FT	±10.5 FT (HOUSE) ±1.1 FT (DECK)
REAR	30' AVP, BUT NOT LESS THAN 20 FT	±32 FT (HOUSE) ±17 FT (DECK)
MAX. DENSITY:	5 DU/AC	±4.95 DU/AC*
MIN. OPEN SPACE:	25%	±53%*

*PER APPROVED PLAN (4761-SP-01-2)

RECEIVED
Department of Planning & Zoning
DEC 08 2000
Zoning Evaluation Division

WALTER L. PHILLIPS
INCORPORATED
CIVIL ENGINEERS LAND SURVEYORS PLANNERS LANDSCAPE ARCHITECTS
207 PARK AVENUE, FALLS CHURCH, VIRGINIA 22046 WWW.WLPINC.COM
(703) 532-1883 FAX (703) 532-1921

SCALE: 1" = 10'
DATE: 10/11/00
DRAWN: GMC

LICENSED PROFESSIONAL ENGINEER
No. 011184
10/11/00

NO.	DESCRIPTION	DATE	BY	REV. BY	APPROVED	DATE

REVISION APPROVED BY

SPECIAL PERMIT PLAT

OAKTON MAINS - LOT 12

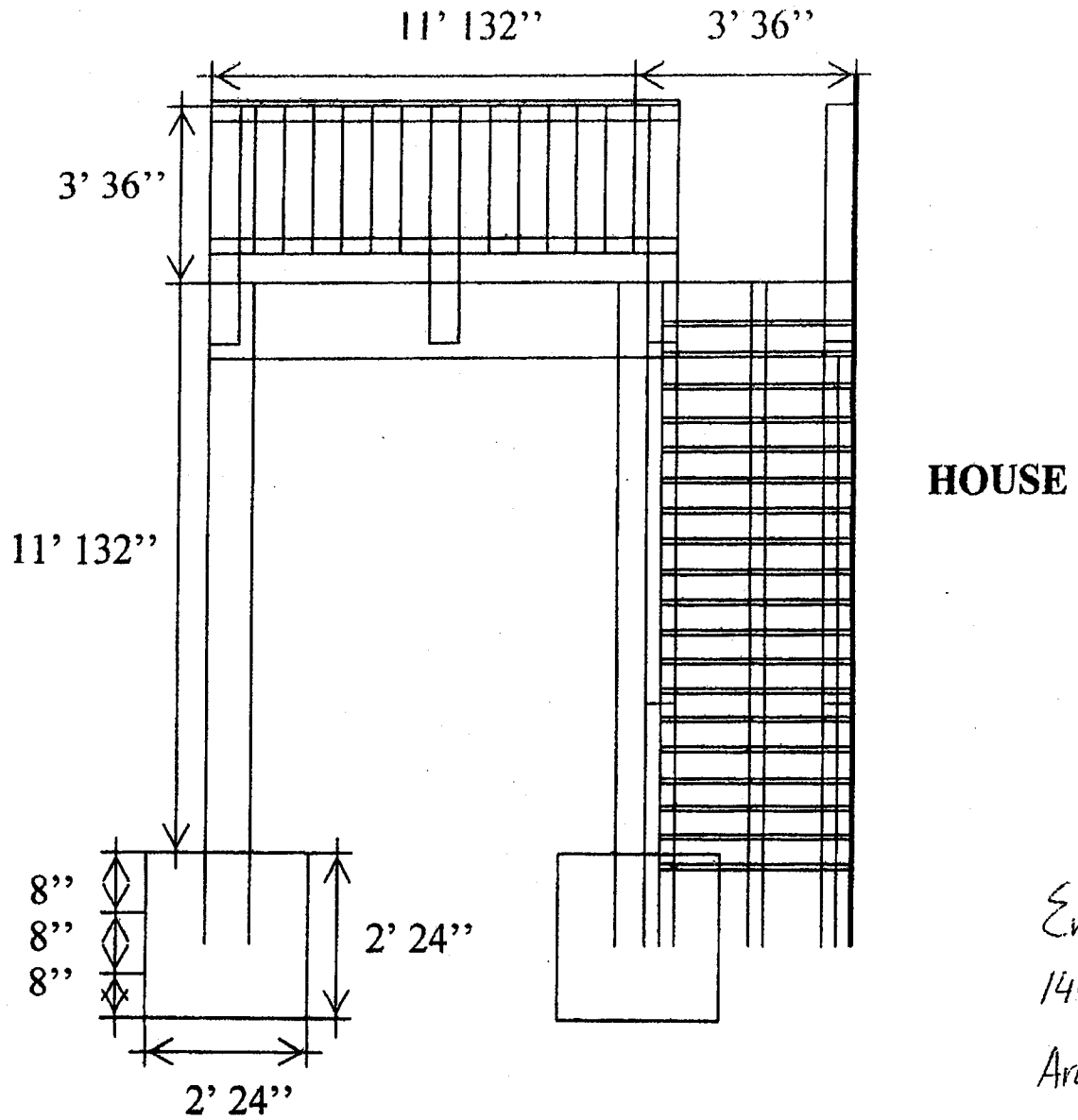
PROVIDENCE DISTRICT

FAIRFAX COUNTY, VIRGINIA

SHEET 1 OF 1

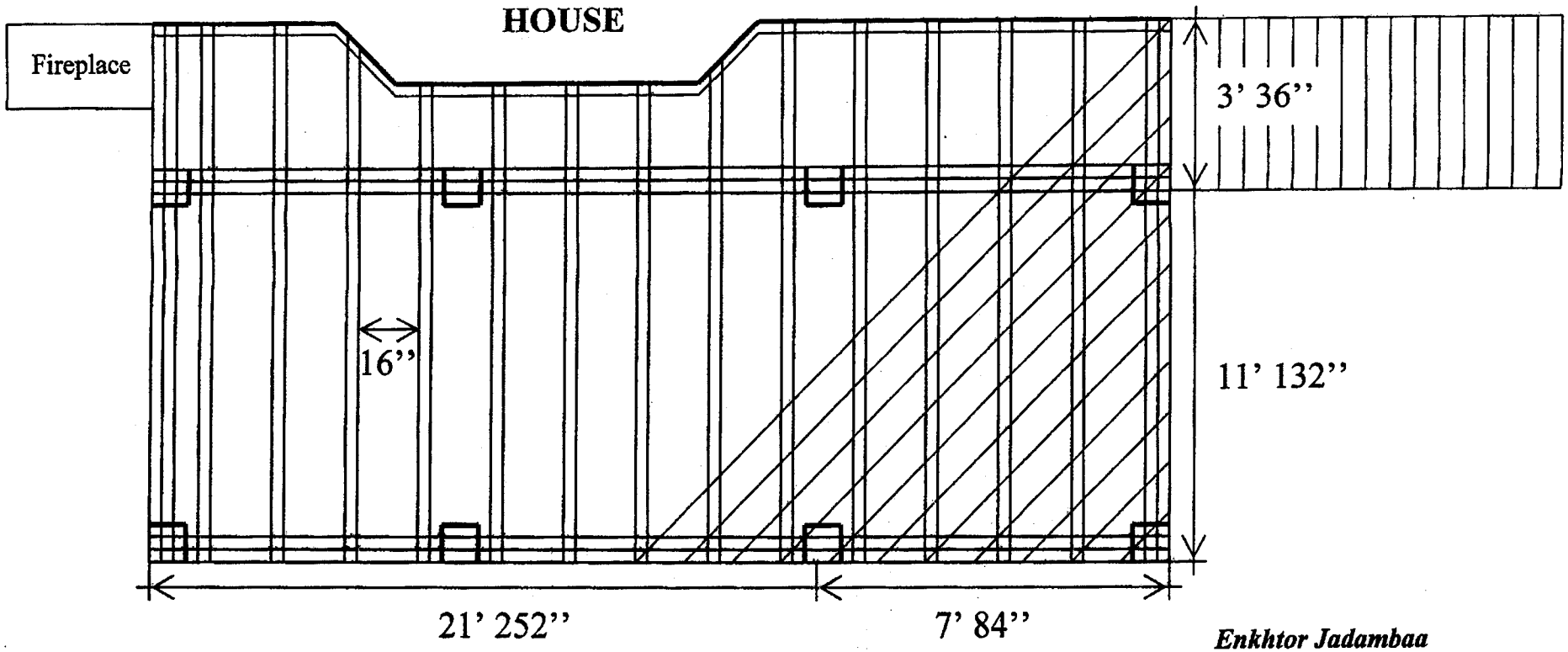
File No. 7H-17 Tax Map No. 47-2 Job No. 00000 Cadd Dwg. File: 00000P Xref:

ron Morris
3 Oakton Meadows Ct.
kton, VA 22124
: 703-591-3190

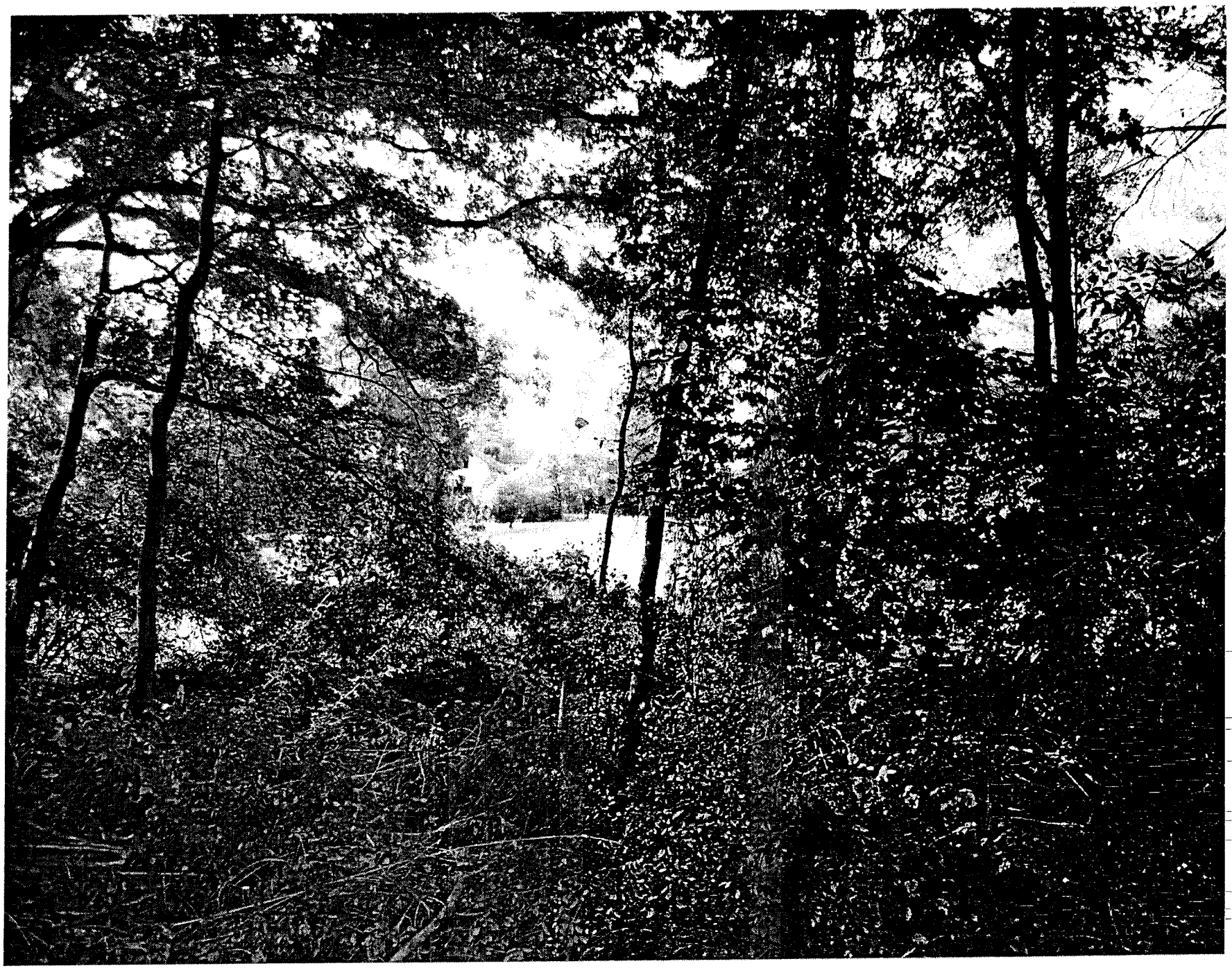


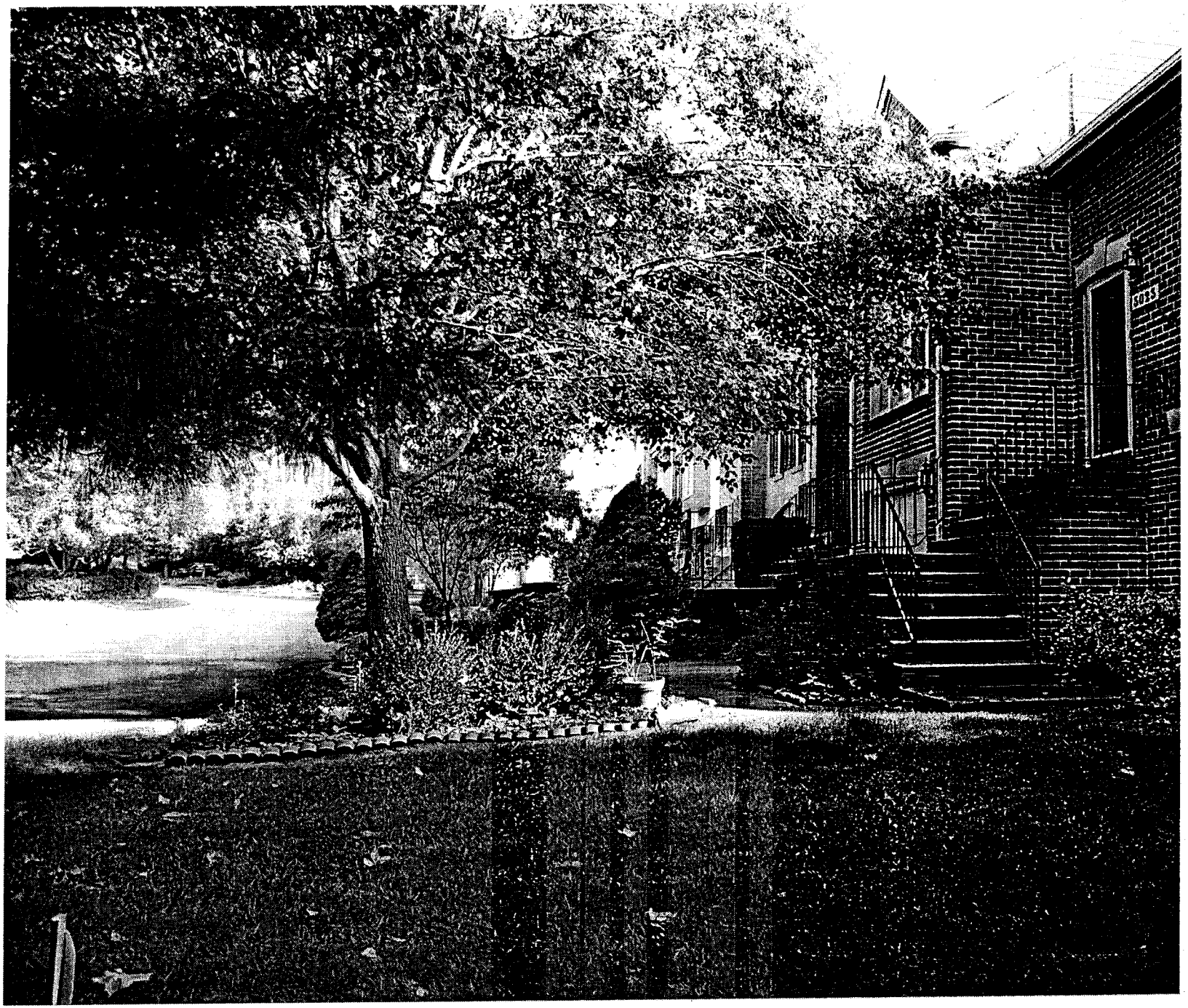
Enkhtor Jadambaa
1400 S. Joyce St # 626
Arlington, VA 22202

Sharon Morris
3023 Oakton Meadows Ct.
Oakton, VA 22124
Tel: 703-591-3190

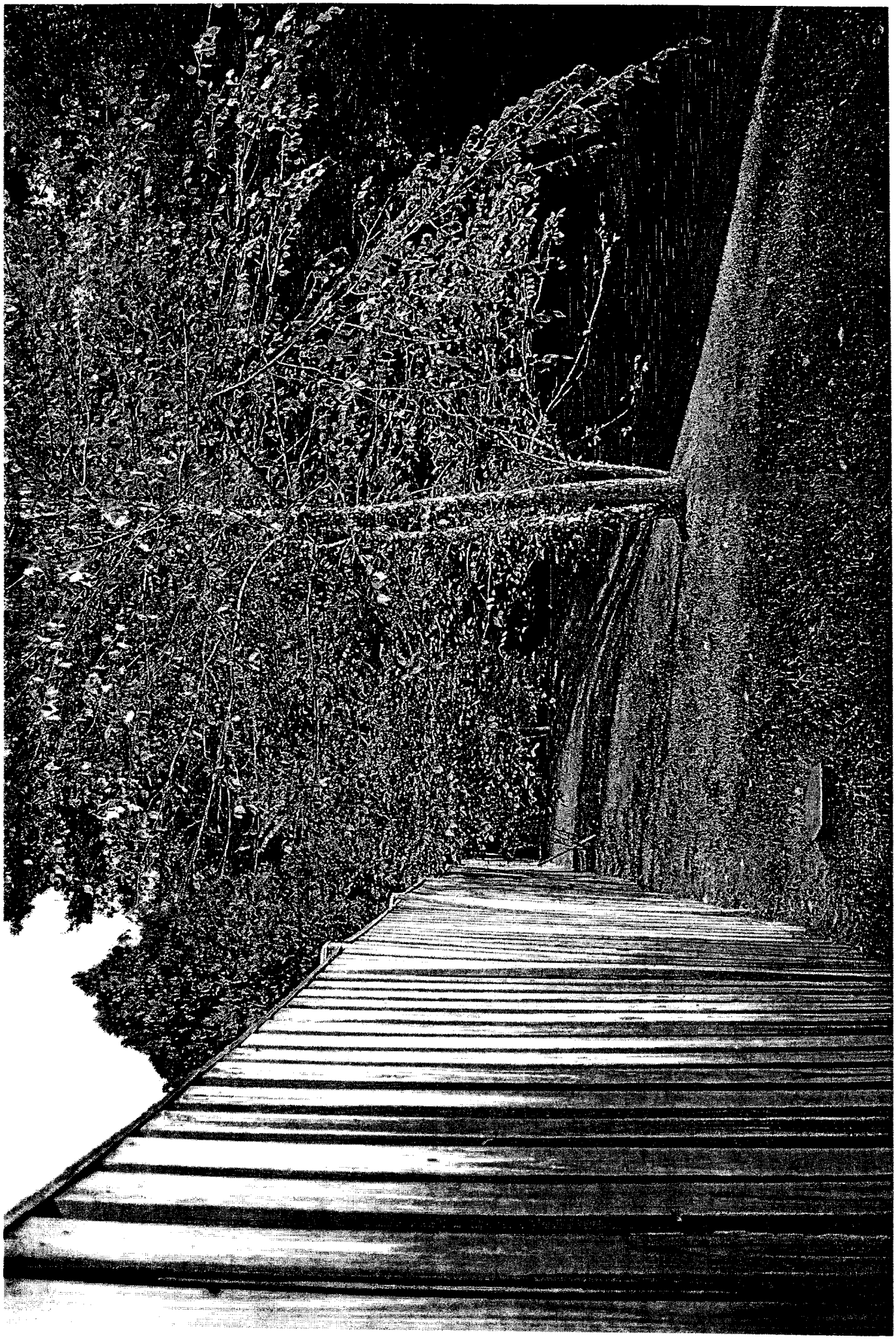


Enkhtor Jadambaa
1400 S Joyce St Apt 626
Arlington, VA
Tel: 202-250-0038




6033

5023



DESCRIPTION OF THE APPLICATION

The applicant is requesting approval of a special permit for a reduction of certain yard requirements based on error in building location to permit an open deck greater than 3 feet in height to remain 1.1 feet from the southern side lot line.

	Yard	Min. Yard Req.*	Permitted Extension **	Structure Location	Amount of Error	Percent of Error
Special Permit	Side	10	None	1.1	8.9	89 %

* Minimum side yard requirement per Section 3-507
** Permitted Extensions per 2-412

CHARACTER OF THE AREA

	Zoning	Use
North	R-5	Single Family Attached Dwellings
South	R-2	Assisted Living Facility and Open space
East	R-4	Single Family Detached Dwellings
West	R-5	Single Family Attached Dwellings

ANALYSIS OF SPECIAL PERMIT APPLICATION

- **Title of SP Plat:** Special Permit Plat, Oakton Mains, Lot 12
- **Prepared By:** Charles F. Dunlap, Walter L. Phillips, Inc. dated October 17, 2008
- **Building Permit Required for Deck:** Yes
- **Obtained:** No (One was applied for but never issued)

BACKGROUND

The existing single family attached dwelling was constructed in 1984. In July of 2005, building permit #05199B0140 was requested for an open deck and subsequently

denied due to the structure not meeting the minimum required side yard. A copy of this permit can be found in Appendix 4.

On June 13, 2007 a Notice of Violation was issued on the subject property for the open deck being constructed within the minimum required side yard and without a building permit. After the issuance of this Notice of Violation, others followed to more clearly address the issues on the subject property with the most recent dated July 24, 2008. Copies of all of the Notices of Violation can be found in Appendix 5.

The existing deck is located within a storm sewer easement and per the proposed development conditions contained in Appendix 1 of the staff report; the applicant will be required to gain approval for the deck to be located within the easement prior to the issuance of a building permit.

The Board of Zoning Appeals (BZA) heard the following applications in the neighborhood:

- Special Permit SP 2007-PR-033, granted on June 12, 2007, on Tax Map Number 47-2 ((27)) 19, on 3008 Oakton Meadows Court, zoned R-5, northwest of the subject property to permit reduction to minimum yard requirements based on error in building location to permit addition to remain 0.7 ft. from the side lot line.

ZONING ORDINANCE REQUIREMENTS (See Appendix 6)

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

CONCLUSION

If it is the intent of the BZA to approve this application, the BZA should condition its approval by requiring conformance with the conditions set forth in Appendix 1 of this report, Proposed Development Conditions.

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

APPENDICES

1. Proposed Development Conditions
2. Applicant's Affidavit
3. Applicant's Statement of Justification
4. Building Permit #05199B0140
5. Notice of Violation History
6. Zoning Ordinance Provisions

PROPOSED DEVELOPMENT CONDITIONS

SP 2009-PR-002

March 17, 2009

1. This special permit is approved for the location of existing deck as shown on the plat prepared by Charles F. Dunlap, Walter L. Phillips, Inc. dated October 17, 2008, submitted with this application and is not transferable to other land.

2. Prior to the issuance of a building permit, the applicant shall obtain written approval from the Department of Public Works and Environmental Services, Land Development Services Division, for the deck to remain within the storm sewer easement or the deck or portions thereof shall be removed from the easement.

3. Within 6 months of approval of this application, building permits and final inspections for the deck shall be obtained or the deck shall be removed or brought into compliance with Zoning Ordinance Requirements.

This approval, contingent upon the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations or adopted standards.

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

SPECIAL PERMIT/VARIANCE AFFIDAVIT

DATE: Nov. 25, 2008
(enter date affidavit is notarized)

I, Rachelle E. Hill, do hereby state that I am an
(enter name of applicant or authorized agent)

(check one) [ ] applicant
[✓] applicant's authorized agent listed in Par. 1(a) below 102250b

and that, to the best of my knowledge and belief, the following is true:

==========

1(a). The following constitutes a listing of the names and addresses of all **APPLICANTS, TITLE OWNERS, CONTRACT PURCHASERS,** and **LESSEES** of the land described in the application,* and, if any of the foregoing is a **TRUSTEE,**** each **BENEFICIARY** of such trust, and all **ATTORNEYS** and **REAL ESTATE BROKERS,** and all **AGENTS** who have acted on behalf of any of the foregoing with respect to the application:

(**NOTE**: All relationships to the application listed above in **BOLD** print must be disclosed. Multiple relationships may be listed together, e.g., **Attorney/Agent, Contract Purchaser/Lessee, Applicant/Title Owner**, etc. For a multiparcel application, list the Tax Map Number(s) of the parcel(s) for each owner(s) in the Relationship column.)

NAME (enter first name, middle initial, and last name)	**ADDRESS** (enter number, street, city, state, and zip code)	**RELATIONSHIP(S)** (enter applicable relationships listed in **BOLD** above)
Thomas R. Morris	10708 Rosehaven Street, Faifax, VA 22030	Title Owner/Applicant
Sharon G. Morris	10708 Rosehaven Street, Fairfax, VA 22030	Title Owner/Applicant
• Stephen K. Fox, P.C.	10511 Judicial Drive, Suite 112, Fairfax, VA 22030	Attorney/Agent
• Hale Carlson Penn, PLC	10511 Judicial Drive, Fairfax, VA 22030	Attorney/Agent
Stephen K. Fox.	10511 Judicial Drive, Suite 112, Fairfax, VA 22030	Attorney/Agent
Rachelle E. Hill	10511 Judicial Drive, Fairfax, VA 22030	Attorney/Agent
Bradley Smith	3023 Oakton Meadows Court, Oakton, VA 22124	Lessee
• Walter L. Phillips, Inc.	207 Park Avenue, Falls Church, VA 22046	Land Surveyor /Agent
Charles F. Dunlap	207 Park Avenue, Falls Church, VA 22046	Land Surveyor /Agent

(check if applicable) [ ] There are more relationships to be listed and Par. 1(a) is continued on a "Special Permit/Variance Attachment to Par. 1(a)" form.

* In the case of a condominium, the title owner, contract purchaser, or lessee of 10% or more of the units in the condominium.

** List as follows: Name of trustee, Trustee for (name of trust, if applicable), for the benefit of: (state name of each beneficiary).

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

SPECIAL PERMIT/VARIANCE AFFIDAVIT

DATE: Nov. 25, 2008 102250 b
(enter date affidavit is notarized)

==========

1(b). The following constitutes a listing*** of the **SHAREHOLDERS** of all corporations disclosed in this affidavit who own 10% or more of any class of stock issued by said corporation, and where such corporation has 10 or less shareholders, a listing of all of the shareholders:

(**NOTE:** Include **SOLE PROPRIETORSHIPS, LIMITED LIABILITY COMPANIES,** and **REAL ESTATE INVESTMENT TRUSTS** herein.)

CORPORATION INFORMATION

NAME & ADDRESS OF CORPORATION: (enter complete name, number, street, city, state, and zip code)
Stephen K. Fox, P.C., 10511 Judicial Drive, Suite 112, Fairfax, VA 22030

DESCRIPTION OF CORPORATION: (check one statement)

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

NAMES OF SHAREHOLDERS: (enter first name, middle initial, and last name)
Stephen K. Fox

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

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

Application No.(s): _____

(county-assigned application number(s), to be entered by County Staff)

Special Permit/Variance Attachment to Par. 1(b)

DATE: Nov. 25, 2008

(enter date affidavit is notarized)

1022506

==========

NAME & ADDRESS OF CORPORATION: (enter complete name, number, street, city, state, and zip code)
Hale Carlson Penn, PLC, 10511 Judicial Drive, Fairfax, VA 22030

DESCRIPTION OF CORPORATION: (check one statement)

[✓] There are 10 or less shareholders, and all of the shareholders are listed below.

[ ] There are more than 10 shareholders, and all of the shareholders owning 10% or more of any class of stock issued by said corporation are listed below.

[ ] There are more than 10 shareholders, but no shareholder owns 10% or more of any class of stock issued by said corporation, and no shareholders are listed below.

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

John C. Hale, Steve Y. Yun,
Harold H. Hughlett, R. Craig Anderson,
Dana J. Carlson, Megan S. Chung,
Ryan M. Mattson, Kimberley A. Murphy,
Carleton Penn III

==========

NAME & ADDRESS OF CORPORATION: (enter complete name, number, street, city, state, and zip code)

DESCRIPTION OF CORPORATION: (check one statement)

[ ] There are 10 or less shareholders, and all of the shareholders are listed below.

[ ] There are more than 10 shareholders, and all of the shareholders owning 10% or more of any class of stock issued by said corporation are listed below.

[ ] There are more than 10 shareholders, but no shareholder owns 10% or more of any class of stock issued by said corporation, and no shareholders are listed below.

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

==========

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

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

Special Permit/Variance Attachment to Par. 1(b)

DATE: Nov. 25, 2008 102250b
(enter date affidavit is notarized)

NAME & ADDRESS OF CORPORATION: (enter complete name, number, street, city, state, and zip code)
Walter L. Phillips, Inc.
207 Park Avenue
Falls Church, VA 22046

DESCRIPTION OF CORPORATION: (check one statement)

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

NAMES OF THE SHAREHOLDERS: (enter first name, middle initial, and last name)
Jeffrey L. Stuchel, President
Brian G. Baillargeon, Exec. Vice President

NAME & ADDRESS OF CORPORATION: (enter complete name, number, street, city, state, and zip code)

DESCRIPTION OF CORPORATION: (check one statement)

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

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

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

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

SPECIAL PERMIT/VARIANCE AFFIDAVIT

DATE: Nov. 25, 2008 102250b
(enter date affidavit is notarized)

==========

1(c). The following constitutes a listing*** of all of the **PARTNERS,** both **GENERAL** and **LIMITED**, in any partnership disclosed in this affidavit:

PARTNERSHIP INFORMATION

PARTNERSHIP NAME & ADDRESS: (enter complete name, number, street, city, state, and zip code)

(check if applicable) [ ] The above-listed partnership has no limited partners.

NAMES AND TITLE OF THE PARTNERS (enter first name, middle initial, last name, and title, e.g. **General Partner, Limited Partner, or General and Limited Partner**)

(check if applicable) [ ] There is more partnership information and Par. 1(c) is continued on a "Special Permit/Variance Attachment to Par. 1(c)" form.

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

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

SPECIAL PERMIT/VARIANCE AFFIDAVIT

DATE: Nov. 25, 2008
(enter date affidavit is notarized)

102250

==========

1(d). One of the following boxes **must** be checked:

[ ] In addition to the names listed in Paragraphs 1(a), 1(b), and 1(c) above, the following is a listing of any and all other individuals who own in the aggregate (directly and as a shareholder, partner, and beneficiary of a trust) 10% or more of the **APPLICANT, TITLE OWNER, CONTRACT PURCHASER,** or **LESSEE*** of the land:

[✓] Other than the names listed in Paragraphs 1(a), 1(b), and 1(c) above, no individual owns in the aggregate (directly and as a shareholder, partner, and beneficiary of a trust) 10% or more of the **APPLICANT, TITLE OWNER, CONTRACT PURCHASER,** or **LESSEE*** of the land.

2. That no member of the Fairfax County Board of Zoning Appeals, Planning Commission, or any member of his or her immediate household owns or has any financial interest in the subject land either individually, by ownership of stock in a corporation owning such land, or through an interest in a partnership owning such land.

EXCEPT AS FOLLOWS: (**NOTE**: If answer is none, enter "**NONE**" on the line below.)
NONE

(check if applicable) [ ] There are more interests to be listed and Par. 2 is continued on a "Special Permit/Variance Attachment to Par. 2" form.

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

SPECIAL PERMIT/VARIANCE AFFIDAVIT

DATE: Nov. 25, 2008 102250b
(enter date affidavit is notarized)

3. That within the twelve-month period prior to the public hearing of this application, no member of the Fairfax County Board of Zoning Appeals, Planning Commission, or any member of his or her immediate household, either directly or by way of partnership in which any of them is a partner, employee, agent, or attorney, or through a partner of any of them, or through a corporation in which any of them is an officer, director, employee, agent, or attorney or holds 10% or more of the outstanding bonds or shares of stock of a particular class, has, or has had any business or financial relationship, other than any ordinary depositor or customer relationship with or by a retail establishment, public utility, or bank, including any gift or donation having a value of more than $100, singularly or in the aggregate, with any of those listed in Par. 1 above.

EXCEPT AS FOLLOWS: (NOTE: If answer is none, enter "**NONE**" on line below.)
NONE

(NOTE: Business or financial relationships of the type described in this paragraph that arise after the filing of this application and before each public hearing must be disclosed prior to the public hearings. See Par. 4 below.)

(check if applicable) [ ] There are more disclosures to be listed and Par. 3 is continued on a "Special Permit/Variance Attachment to Par. 3" form.

4. **That the information contained in this affidavit is complete, that all partnerships, corporations, and trusts owning 10% or more of the APPLICANT, TITLE OWNER, CONTRACT PURCHASER, or LESSEE* of the land have been listed and broken down, and that prior to each and every public hearing on this matter, I will reexamine this affidavit and provide any changed or supplemental information, including business or financial relationships of the type described in Paragraph 3 above, that arise on or after the date of this application.**

WITNESS the following signature: _____

(check one) [ ] Applicant [✓] Applicant's Authorized Agent

Rachelle E. Hill
(type or print first name, middle initial, last name, and title of signee)

Subscribed and sworn to before me this 25th day of November 2008, in the State/Comm. of Virginia, County/City of Fairfax.

Bianca M. Duckwitz
Notary Public

My commission expires: 11/30/2012

NOTARY PUBLIC
COMMONWEALTH OF VIRGINIA
BIANCA M. DUCKWITZ
REGISTRATION NO. 125410
MY COMM. EXPIRES 11/30/2012

HALE CARLSON PENN, PLC
ATTORNEYS AT LAW
10511 JUDICIAL DRIVE
FAIRFAX, VIRGINIA 22030-5172

(703) 591-4900
FAX: 703-591-5082
WEB PAGE: www.valawyers.com
E-MAIL: hcp@valawyers.com

RECEIVED
Department of Planning & Zoning
OCT 20 2008
Zoning Evaluation Division

October 20, 2008

Eileen McLane, Zoning Administrator
ATTN: Regina Coyle
Department of Planning and Zoning
12055 Government Center Parkway, Suite 801
Fairfax, Virginia 22035

Re: **Statement of Justification**; Thomas R. and Sharon G. Morris; 3023 Oakton Meadows Court, Oakton, VA 22124; Tax Map. No. 47-2 ((27)) 12; Request for Special Permit (Section 8-914), Error in Building Placement

Dear Ms. Coyle:

This letter is written on behalf of the applicants, Thomas R. and Sharon G. Morris, owners of the above property, to support their application for a Special Permit for Error in Building Placement as set forth in Section 8-914 of the Zoning Ordinance pertaining to the above property. The request is to permit an existing deck greater than 3 feet in height to remain 1.1 feet from the side lot line.

Background

The residence constructed on the property lies in the R-5 Zoning District. The principal structure was constructed in the late 1980's. The attached deck was constructed in 2005. The subject property is an end unit in an attached single-family district that abuts common open space and a field in a neighboring lot. The Morris's purchased the property in 2000 and have used it as a rental unit since 2003. Mr. Morris is a Foreign Service Officer with the U.S. Agency for International Development. As a result of his employment, Mr. Morris is often posted overseas on foreign assignments and his family accompanies him. From the time period of 2003 through 2008 the Morris's were out of the country, except for a period of two (2) months from July through August 2005. In July 2005 Mrs. Morris engaged the services of a Mr. Enkhtor Jadambaa d/b/a Mastercraft Builders to build a deck on the property, requesting that he build the larges legal deck thereon. Attached hereto is the design plan for the deck that Mr. Jadambaa prepared. Shortly thereafter, Mr. Jadambaa had Mrs. Morris sign a document that she believes was a request for a building permit. In actuality, it was a document empowering him to pursue permits in the owner's name. He told her that this would allow him to proceed with obtaining the necessary permits for the deck. Mr. Jadambaa was responsible for obtaining the permit and he assured Mrs. Morris that he would handle the process. Mrs. Morris then left the United States to rejoin her husband at an overseas location.

This was the only discussion Mr. Jadambaa had with Mrs. Morris about the permits. Mr. Jadambaa never informed Mrs. Morris that the building permit was denied. The Morris's did not learn until July 21, 2008, long after the deck was constructed, that the County denied the permit. Mrs. Morris's affidavit stating the foregoing is attached hereto.

On July 21, 2008, the Morris's received Notice of Violation for maintaining the deck in its current form. They now seek to abate that violation by this Application for a Special Permit based upon an error in building placement. Section 10-104 at page 2-23 states that an open deck shall not extend into the side yard if its floor is higher than 3 feet above finished ground level.

Request for Special Permit

It is submitted that the circumstances of this situation merit relief pursuant to Section 8-914 of the Zoning Ordinance. The structure has been in place for more than 3 years without complaint. In accordance with the standards set forth in the Ordinance, we urge the Board of Zoning Appeals to review this matter in conjunction with the following criteria and to grant a Special Permit:

A. The error exceeds ten (10) percent of the measurement involved, and

* The open deck is 1.1 feet from the side lot line. As part of the principal building, a set back of 10 feet is required. The Zoning Ordinance does not permit any extension into the side yard under these circumstances, namely where the extension is more than 3 feet above ground level. The error exceeds 10 percent.

B. The non-compliance was done in good faith, or through no fault of the property owner or was the result of an error in the relocation of the building subsequent to the issuance of a Building Permit, if such was required, and

* See above, Background. The Morris's did not personally install the deck. Instead they hired a professional builder to construct it in their absence. All actions taken by the Morris's were done in good faith. The deck has remained in place without complaint for a period of approximately 3 years.

C. *Such reduction will not impair the purpose and intent of this Ordinance, and*

* The reduction will not impair the purpose of the Ordinance inasmuch as the application of the Ordinance to this situation is insignificant. This end townhome unit abuts an adjoining open space owned by the

homeowners association, which provides a more than adequate buffer between the structure and the nearest residential unit.

D. ***It will not be detrimental to the use and enjoyment of other property in the immediate vicinity, and***

* See; C, above. The Homeowners' Association has signed a Statement in support of this Application (attached).

E. ***It will not create an unsafe condition with respect to both other property and public streets, and***

* See; C, above. The dimension does not create an unsafe condition relative to the street.

F. ***To force compliance with the minimum yard requirements would cause unreasonable hardship upon the owner, and***

* To force compliance will cause economic waste, and will not serve to provide a greater visual buffer which is significant. The adjoining owners have lived with this situation for over 3 years without complaint.

G. ***The reduction will not result in an increase in density or floor area ratio from that permitted by the applicable zoning density regulations.***

* The current proposal does not exceed allowable density.

The proposed development conforms to the provisions of all applicable ordinances, regulations and adopted standards except as noted herein.

Request for Waiver of Submission Requirement (if necessary)

Applicant herewith submits 4 copies of a special permit plat depicting the deck in its relation to the side yard line. Applicant submits that the enclosed plats adequately depict the existing condition, as well as the request for the Special Permit to allow the deck to extend into the side yard. To the extent, if any, that the enclosed plat presents an adequate depiction for a determination of the issues presented, but does not meet all the technical requirements of the Ordinance, Applicant requests the Zoning Administrator to accept the enclosed plat, waiving any requirements unmet.

Conclusion

On behalf of the Morris's, we hereby request Zoning Staff to review this matter and the supporting materials submitted herewith, scheduling this request for hearing before the Board of Zoning Appeals with its recommendation for grant of a Special Permit for Error in Building Placement pursuant to Section 8-914 of the Zoning Ordinance.

Thank you for your review of this matter.

Very truly yours,

Rachelle E. Hill

Enclosures

cc: Thomas R. and Sharon G. Morris

HALE CARLSON PENN, PLC
ATTORNEYS AT LAW
10511 JUDICIAL DRIVE
FAIRFAX, VIRGINIA 22030-5172

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RECEIVED
Department of Planning & Zoning
OCT 20 2008
Zoning Evaluation Division

October 20, 2008

Eileen McLane, Zoning Administrator
ATTN: Regina Coyle
Department of Planning and Zoning
12055 Government Center Parkway, Suite 801
Fairfax, Virginia 22035

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Background

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It is submitted that the circumstances of this situation merit relief pursuant to Section 8-914 of the Zoning Ordinance. The structure has been in place for more than 3 years without complaint. In accordance with the standards set forth in the Ordinance, we urge the Board of Zoning Appeals to review this matter in conjunction with the following criteria and to grant a Special Permit:

A. The error exceeds ten (10) percent of the measurement involved, and

* The open deck is 1.1 feet from the side lot line. As part of the principal building, a set back of 10 feet is required. The Zoning Ordinance does not permit any extension into the side yard under these circumstances, namely where the extension is more than 3 feet above ground level. The error exceeds 10 percent.

B. The non-compliance was done in good faith, or through no fault of the property owner or was the result of an error in the relocation of the building subsequent to the issuance of a Building Permit, if such was required, and

* See above, Background. The Morris's did not personally install the deck. Instead they hired a professional builder to construct it in their absence. All actions taken by the Morris's were done in good faith. The deck has remained in place without complaint for a period of approximately 3 years.

C. Such reduction will not impair the purpose and intent of this Ordinance, and

* The reduction will not impair the purpose of the Ordinance inasmuch as the application of the Ordinance to this situation is insignificant. This end townhome unit abuts an adjoining open space owned by the

homeowners association, which provides a more than adequate buffer between the structure and the nearest residential unit.

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* See; C, above. The Homeowners' Association has signed a Statement in support of this Application (attached).

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G. ***The reduction will not result in an increase in density or floor area ratio from that permitted by the applicable zoning density regulations.***

* The current proposal does not exceed allowable density.

The proposed development conforms to the provisions of all applicable ordinances, regulations and adopted standards except as noted herein.

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Thank you for your review of this matter.

Very truly yours,

Rachelle E. Hill

Enclosures

cc: Thomas R. and Sharon G. Morris

APPENDIX 4

BUILDING PERMIT APPLICATION

FAIRFAX COUNTY OFFICE OF BUILDING CODE SERVICES
PERMIT APPLICATION CENTER
12055 Government Center Parkway, 2nd Floor, Fairfax, Virginia 22035-5504
Telephone: 703-222-0001
Web site: www.fairfaxcounty.gov/dpwes

PERMIT # 05199B0140

FOR INSPECTIONS CALL 703-222-0455 (see back for more information)

FILL IN ALL APPROPRIATE INFORMATION IN THIS COLUMN
(PLEASE PRINT OR TYPE)

JOB LOCATION
ADDRESS 3023 Oakton Meadows Ct
LOT # 12 BUILDING
FLOOR SUITE
SUBDIVISION Oakton Mains
TENANT'S NAME Sharon Morris

OWNER INFORMATION OWNER ☑ TENANT ☐
NAME Sharon Morris
ADDRESS 3023 Oakton Meadows Ct
CITY Oakton STATE VA ZIP 22124
TELEPHONE 703 591 3190

CONTRACTOR INFORMATION SAME AS OWNER ☒
CONTRACTORS MUST PROVIDE THE FOLLOWING:
COMPANY NAME
ADDRESS
CITY STATE ZIP
TELEPHONE
STATE CONTRACTORS LICENSE #
COUNTY BPOL #

APPLICANT Enkhtor Jadambaa

DESCRIPTION OF WORK
deck w/steps No H, Tub
AFFID ATTACH

HOUSE TYPE townhouse
ESTIMATED COST OF CONSTRUCTION $5000
BLDG AREA (SQ FT OF FOOTPRINT)
USE GROUP OF BUILDING
TYPE OF CONSTRUCTION
SEWER SERVICE PUBLIC ☑ SEPTIC ☐ OTHER ☐
WATER SERVICE PUBLIC ☑ WELL ☐ OTHER ☐
OTHER PLEASE SPECIFY

DESIGNATED MECHANICS' LIEN AGENT
(Residential Construction Only)
NAME Enkhtor Jadambaa
ADDRESS 1400 S. Joyce St # 626
Arlington, VA 22202
NONE DESIGNATED ☐ PHONE 202 250 0038

CHARACTERISTICS FOR NEW SFD, TH, APT & CONDOS

# KITCHENS		EXTER. WALLS	
# BATHS		INTER. WALLS	
# HALF BATHS		ROOF MATERIAL	
# BEDROOMS		FLOOR MATERIAL	
# OF ROOMS		FIN. BASEMENT	%
# STORIES		HEATING FUEL	
BUILDING HEIGHT		HEATING SYSTEM	
BUILDING AREA		# FIREPLACES	
BASEMENT			

DO NOT WRITE IN GRAY SPACES - COUNTY USE ONLY
PLAN # W-05-04441
TAX MAP # 047-2-27-0012

ROUTING	DATE	APPROVED BY
LICENSING		
1 ZONING		
2 SITE PERMITS		
HEALTH DEPT.		
3 BUILDING REVIEW		
SANITATION		
FIRE MARSHAL		
ASBESTOS		
PROFFERS		

FEE $
FILING FEE - $
AMOUNT DUE = $ 65.00

BUILDING PLAN REVIEW
REVIEWER # OF HOURS
REVISION FEES $
FIRE MARSHAL FEES $
FIXTURE UNITS PLAN LOC: J ☐ R ☐

APPROVED FOR ISSUANCE OF BUILDING PERMIT
(LOG OUT)
4 BY DATE

ZONING REVIEW
USE TH
ZONING DISTRICT R-5 HISTORICAL DISTRICT
ZONING CASE #
GROSS FLOOR AREA OF TENANT SPACE

YARDS:	
FRONT	
FRONT	
L SIDE	
R SIDE	
REAR	

GARAGE 1 ☐ 2 ☐ 3 ☐
OPTIONS YES ☐ NO ☐
REMARKS Build deck (open) w/ steps / No HTB per plan

GRADING AND DRAINAGE REVIEW
SOILS # A ☐ B ☐ C ☐
AREA TO BE DISTURBED (TOTAL SQ FT THIS PERMIT)
IMPERVIOUS AREA (TOTAL SQ FT THIS PERMIT)
PLAN # APPR. DATE

STAMPS
(See reverse side of application)

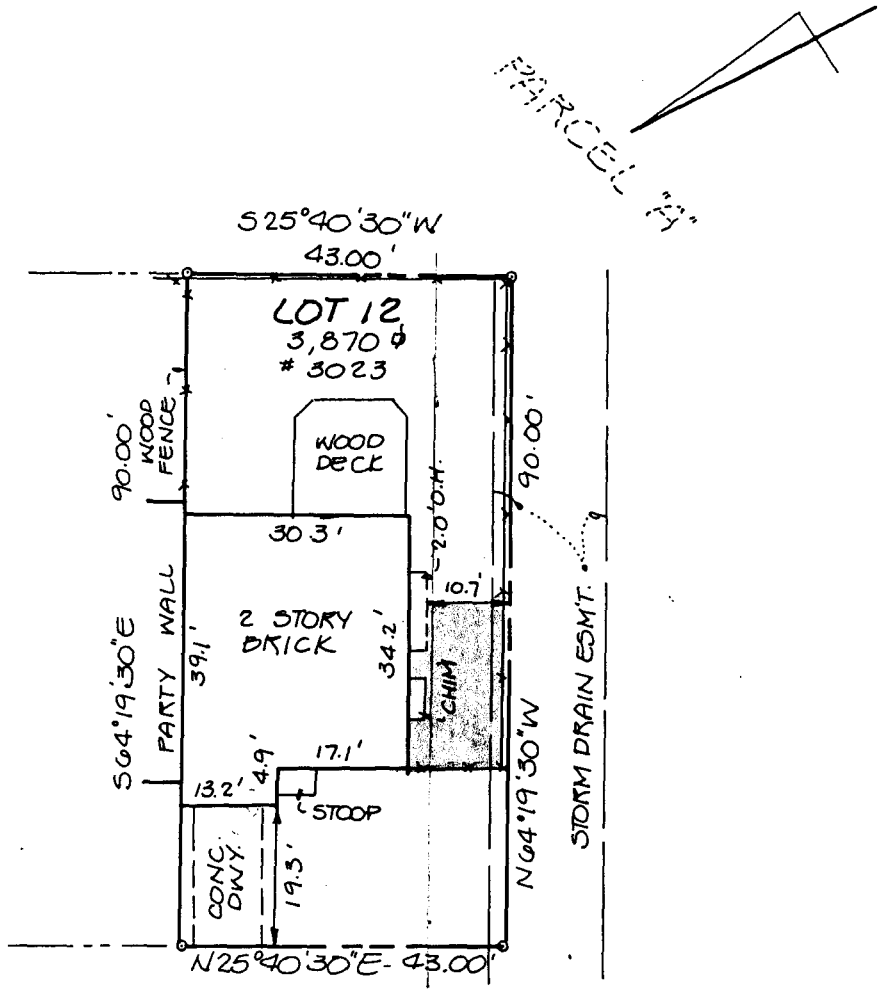
REMARKS
need Plat to Scale
7-18-05
needs to meet Side Setback (denied)

Any and all information and/or stamps on the reverse side of this form are a part of this application and must be complied with. I hereby certify that I have authority of the owner to make this application, that the information is complete and correct, and that the construction and/or use will conform to the building code, the zoning ordinance and other applicable laws and regulations which relate to the property.

[signature] 7/18/05
Signature of Owner or Agent Date

Enkhtor Jadambaa
Printed Name and Title
(Notarization of signature is required if owner is listed as the contractor and is not present at time of application)

NOTARIZATION (if required)
State (or territory or district) of _____,
County (or city) of _____, to wit: I, _____, a
Notary Public in the State and County aforesaid, do certify that _____
whose name is signed to this application, appeared before me in the State and County aforesaid and executed this affidavit.
Given under my hand this _____ day of _____, 20____. My commission expires the _____ day of _____, 20____.
_____
(Notary Signature)



OAKTON MEWS COURT
(PRIVATE STREET)

PARCEL "A"

PURCHASER: MORRIS

HOUSE LOCATION SURVEY
LOT 12
OAKTON MAINS
PROVIDENCE DISTRICT
FAIRFAX COUNTY, VIRGINIA

This property is not located in a flood hazard area.

COMMONWEALTH OF VIRGINIA
ANDREW P. DUNN
LAND SURVEYOR

Certified Correct

Date 10-15-00
Scale 1" = 20'

ANDREW P. DUNN
LAND SURVEYING-PLANNING
P.O. BOX 1279
HERNDON, VIRGINIA 20172
703-437-1136

N569676

County of Fairfax, Virginia

To protect and enrich the quality of life for the people, neighborhoods and diverse communities of Fairfax County

June 13, 2007

FAIRFAX COUNTY
RECEIVED
JUN 12 2007
DIVISION OF
ZONING ADMINISTRATION

NOTICE OF VIOLATION

AIR MAIL/PAR AVION

Thomas R. Morris
Sharon G. Morris
American Embassy - Jakarta
Unit 8135 – USAID
FBO – AP96520

Re: 3023 Oakton Meadows Court
Oakton, Virginia 22124
Tax Map Ref: 47-2 ((27)) 12
Zoning District: R-5

Dear Mr. and Mrs. Morris:

A zoning inspection of the above-referenced property, on May 30, 2007, revealed an open deck that is greater than three (3) feet in height has been built onto the southern side of the house. This open deck is approximately one (1) foot from the side lot line. This property is zoned R-5 District and the bulk regulations, for this district, include minimum yard requirements for a single family attached dwelling, which are delineated in Par. 2B of Sect. 3-507 of the Fairfax County Zoning Ordinance, which states, in part:

Minimum yard requirements

B. Single family attached dwellings:

(1) Front yard: Controlled by a 15° angle of bulk plane, but not less than 5 feet

(2) Side yard: Controlled by a 15° angle of bulk plane, but not less than 10 feet

(3) Rear yard: Controlled by a 30° angle of bulk plane, but not less than 20 feet

Department of Planning and Zoning
Zoning Administration Division
Zoning Enforcement Branch
12055 Government Center Parkway, Suite 829
Fairfax, Virginia 22035-5508
Phone 703-324-1300 FAX 703-324-1343
www.fairfaxcounty.gov/dpz/

- Applying for and ultimately obtaining approval of a Group 9 Special Permit from the BZA that would allow for a reduction to the minimum yard requirements based on error in building location and obtain approval of a building permit for the side yard addition and obtaining Building Permit approval.

A follow-up inspection will be made at the expiration of this time. Failure to comply, with this Notice, **shall** result in the initiation of appropriate legal action to gain compliance with the Zoning Ordinance. You may have the right to appeal this Notice of Zoning Violation within thirty (30) days of the date of this letter in accordance with Sec. 15.2-2311 of the Code of Virginia. This decision shall be final and unappealable if it is not appealed within such thirty (30) days. Should you choose to appeal, the appeal must be filed with the Zoning Administrator and the Board of Zoning Appeals (BZA) in accordance with Part 3 of Article 18 of the Fairfax County Zoning Ordinance. Those provisions require the submission of an application form, written statement setting forth the decision being appealed, date of decision, the grounds for the appeal, how the appellant is an aggrieved party and any other information you may wish to submit and a **$375.00** filing fee. Once an appeal application is accepted, it is scheduled for public hearing and decision before the BZA.

Failure to comply, with this notice, may result in the initiation of appropriate legal action to gain compliance with the Zoning Ordinance.

An application, for a special permit, is enclosed for your convenience should it be the option that you wish to pursue. Specific instructions and requirements relative to the application can be obtained by contacting the Zoning Evaluation, Zoning Permit, 12055 Government Center Parkway, Fairfax, Virginia, telephone (703) 324-1290 between the hours of 8:00 a.m. and 4:00 p.m., Monday through Friday.

Should you have any questions or need additional information, please do not hesitate to contact me at (703) 324-1388 or (703) 324-1300.

Sincerely,

Susan M. Epstein
Property Maintenance/Zoning Enforcement Inspector

SME/seg
Attachment: A/S

Street File

County of Fairfax, Virginia

To protect and enrich the quality of life for the people, neighborhoods and diverse communities of Fairfax County.

NOTICE OF VIOLATION

DATE OF ISSUANCE: July 21, 2008

AIR MAIL/PAR AVION

CASE #: 21892

LEGAL NOTICE ISSUED TO: Thomas R. and Sharon G. Morris
LOCATION OF VIOLATION: 3023 Oakton Meadows Court
Oakton, VA 22124-2638
Oakton Mains, Lot 12
TM# 0472 27 0012
Zoning District: R-5

PROPERTY OWNER(S): Thomas R. Morris and Sharon G. Morris
MAILING ADDRESS: Thomas R. Morris,
U.S. Government Representative to Aceh & N. Sumatra Reconstruction
c/o Governor's Office Building
3rd Floor
Jl. Teuku Nyak Arief No. 219
Banda Aceh 23114
Nanggroe Aceh Darussal
Indonesia

FAIRFAX COUNTY
RECEIVED
JUL 23 2008
DIVISION OF
ZONING ADMINISTRATION

Dear Mr. and Mrs. Morris:

Zoning inspection of the above-referenced property, on May 30, 2007, and January 15, 2008, revealed an open deck that is greater than three (3) feet in height has been built onto the southern side of the house. This open deck is approximately one (1) foot from the side lot line. This property is zoned R-5 District and the bulk regulations, for this district, include minimum yard requirements for a single family attached dwelling, which are delineated in Par. 2B of Sect. 3-507 of the Fairfax County Zoning Ordinance, which states, in part:

Minimum yard requirements

B. Single family attached dwellings:

(1) Front yard: Controlled by a 15° angle of bulk plane, but not less than 5 feet

(2) Side yard: Controlled by a 15° angle of bulk plane, but not less than 10 feet

(3) Rear yard: Controlled by a 30° angle of bulk plane, but not less than 20 feet

In addition, the Zoning Ordinance allows for certain permitted extensions into the minimum required yards. Par. 3(B) of Sect. 2-412 of the Zoning Ordinance states:

B. Any open deck with any part of its floor higher than three (3) feet above finished ground level may extend into minimum required yards as follows:

1. Front yard: No extension

2. Side yard: No extension

3. Rear yard: 12 feet, but not closer than five (5) feet to the rear lot line. Notwithstanding the above, on lots with rear yards of seventeen (17) feet or less, a deck with a depth of twelve (12) feet may be permitted, but not closer than two (2) feet to the rear lot line, if such lot line abuts open space or an utility easement, not less than ten (10) feet in width. In addition, on lots with a minimum required side yard, not closer to that side lot line than a distance equal to such minimum required yard.

Therefore, the open deck is in violation of the Par. 3B (2) of Sect. 2-412 of the Zoning Ordinance as stated above.

Additionally, a review of Fairfax County Land Records indicates that Building Permit #05199B0140 to construct an open deck was denied on July 15, 2005, and an open deck was subsequently constructed without the Zoning Administrator's approval of a building permit, which is a violation of Sect. 18-601 of the Fairfax County Zoning Ordinance, which states:

> The erection of all buildings and all structures, as well as additions, deletions and modifications thereto, shall be subject to the provisions of Chapter 61 of The Code, Buildings. No building or structure which is required to have a Building Permit pursuant to Chapter 61 of The Code shall be erected until a Building Permit Application has been approved by the Zoning Administrator.

You, as the property owners, are hereby, directed to clear these violations within thirty (30) days of receipt of this notice. Compliance can be accomplished by:

- Removing the deck entirely from the property; or

- Applying for and ultimately obtaining approval of a Group 9 Special Permit from the Fairfax County Board of Zoning Appeals (BZA) that would allow for a reduction of certain yard requirements which would allow that the deck to remain closer than five (5) feet from the side lot line and obtaining Building Permit approval; or

- Applying for and ultimately obtaining approval of a Group 9 Special Permit from the BZA that would allow for a reduction to the minimum yard requirements based on error in building location and obtaining Building Permit approval for the deck.

A follow-up inspection will be made at the expiration of this time. Failure to comply, with this Notice, **shall** result in the initiation of appropriate legal action to gain compliance with the Zoning Ordinance. You may have the right to appeal this Notice of Zoning Violation within thirty (30) days of the date of this letter in accordance with Sec. 15.2-2311 of the Code of Virginia. This decision shall be final and unappealable if it is not appealed within such thirty (30) days. Should you choose to appeal, the appeal must be filed with the Zoning Administrator and the Board of Zoning Appeals (BZA) in accordance with Part 3 of Article 18 of the Fairfax County Zoning Ordinance. Those provisions require the submission of an application form, written statement setting forth the decision being appealed, date of decision, the grounds for the appeal, how the appellant is an aggrieved party and any other information you may wish to submit and a **$375.00** filing fee. Once an appeal application is accepted, it is scheduled for public hearing and decision before the BZA.

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Property Maintenance/Zoning Enforcement Inspector

County of Fairfax, Virginia

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JUL 23 2008
DIVISION OF
ZONING ADMINISTRATION

DATE OF ISSUANCE: July 21, 2008

SHERIFF'S LETTER

CASE #: 21892

LEGAL NOTICE ISSUED TO: Thomas R. and Sharon G. Morris
LOCATION OF VIOLATION: 3023 Oakton Meadows Court
Oakton, VA 22124-2638
Oakton Mains, Lot 12
TM# 0472 27 0012
Zoning District: R-5

PROPERTY OWNER(S): Thomas R. and Sharon G. Morris
ADDRESS: 3023 Oakton Meadows Court
Oakton, Virginia 22124

Dear Mr. and Mrs. Morris:

Zoning inspection of the above-referenced property, on May 30, 2007, and January 15, 2008, revealed an open deck that is greater than three (3) feet in height has been built onto the southern side of the house. This open deck is approximately one (1) foot from the side lot line. This property is zoned R-5 District and the bulk regulations, for this district, include minimum yard requirements for a single family attached dwelling, which are delineated in Par. 2B of Sect. 3-507 of the Fairfax County Zoning Ordinance, which states, in part:

Minimum yard requirements

B. Single family attached dwellings:

(1) Front yard: Controlled by a 15° angle of bulk plane, but not less than 5 feet

(2) Side yard: Controlled by a 15° angle of bulk plane, but not less than 10 feet

(3) Rear yard: Controlled by a 30° angle of bulk plane, but not less than 20 feet

In addition, the Zoning Ordinance allows for certain permitted extensions into the minimum required yards. Par. 3(B) of Sect. 2-412 of the Zoning Ordinance states:

B. Any open deck with any part of its floor higher than three (3) feet above finished ground level may extend into minimum required yards as follows:

1. Front yard: No extension

2. Side yard: No extension

3. Rear yard: 12 feet, but not closer than five (5) feet to the rear lot line. Notwithstanding the above, on lots with rear yards of seventeen (17) feet or less, a deck with a depth of twelve (12) feet may be permitted, but not closer than two (2) feet to the rear lot line, if such lot line abuts open space or an utility easement, not less than ten (10) feet in width. In addition, on lots with a minimum required side yard, not closer to that side lot line than a distance equal to such minimum required yard.

Therefore, the open deck is in violation of the Par. 3B (2) of Sect. 2-412 of the Zoning Ordinance as stated above.

Additionally, a review of Fairfax County Land Records indicates that Building Permit #05199B0140 to construct an open deck was denied on July 15, 2005, and an open deck was subsequently constructed without the Zoning Administrator's approval of a building permit, which is a violation of Sect. 18-601 of the Fairfax County Zoning Ordinance, which states:

> The erection of all buildings and all structures, as well as additions, deletions and modifications thereto, shall be subject to the provisions of Chapter 61 of The Code, Buildings. No building or structure which is required to have a Building Permit pursuant to Chapter 61 of The Code shall be erected until a Building Permit Application has been approved by the Zoning Administrator.

You, as the property owners, are hereby, directed to clear these violations within thirty (30) days of receipt of this notice. Compliance can be accomplished by:

- Removing the deck entirely from the property; or

- Applying for and ultimately obtaining approval of a Group 9 Special Permit from the Fairfax County Board of Zoning Appeals (BZA) that would allow for

a reduction of certain yard requirements which would allow that the deck to remain closer than five (5) feet from the side lot line and obtaining Building Permit approval; or

- Applying for and ultimately obtaining approval of a Group 9 Special Permit from the BZA that would allow for a reduction to the minimum yard requirements based on error in building location and obtaining Building Permit approval for the deck.

A follow-up inspection will be made at the expiration of this time. Failure to comply, with this Notice, **shall** result in the initiation of appropriate legal action to gain compliance with the Zoning Ordinance. You may have the right to appeal this Notice of Zoning Violation within thirty (30) days of the date of this letter in accordance with Sec. 15.2-2311 of the Code of Virginia. This decision shall be final and unappealable if it is not appealed within such thirty (30) days. Should you choose to appeal, the appeal must be filed with the Zoning Administrator and the Board of Zoning Appeals (BZA) in accordance with Part 3 of Article 18 of the Fairfax County Zoning Ordinance. Those provisions require the submission of an application form, written statement setting forth the decision being appealed, date of decision, the grounds for the appeal, how the appellant is an aggrieved party and any other information you may wish to submit and a **$375.00** filing fee. Once an appeal application is accepted, it is scheduled for public hearing and decision before the BZA.

Failure to comply, with this notice, may result in the initiation of appropriate legal action to gain compliance with the Zoning Ordinance.

Specific instructions and requirements relative to the application can be obtained by contacting the Zoning Evaluation, Zoning Permit, 12055 Government Center Parkway, Fairfax, Virginia, telephone (703) 324-1290 between the hours of 8:00 a.m. and 4:00 p.m., Monday through Friday.

Should you have any questions or need additional information, please do not hesitate to contact me at (703) 324-1388 or (703) 324-1300.

Sincerely,

Susan M. Epstein
Property Maintenance/Zoning Enforcement Inspector

County of Fairfax, Virginia

To protect and enrich the quality of life for the people, neighborhoods and diverse communities of Fairfax County.

NOTICE OF VIOLATION

FAIRFAX COUNTY
RECEIVED
JUL 25 2008
DIVISION OF
ZONING ADMINISTRATION

DATE OF ISSUANCE: July 24, 2008

CERTIFIED MAIL
Return Receipt Requested
Receipt #7008 0150 0000 4650 6639

CASE #: 21892

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LOCATION OF VIOLATION: 3023 Oakton Meadows Court
Oakton, VA 22124-2638
Oakton Mains, Lot 12
TM# 0472 27 0012
Zoning District: R-5

PROPERTY OWNER(S): Thomas R. Morris and Sharon G. Morris
MAILING ADDRESS: c/o U.S. Department of State
2201 C. Street, NW
Washington, DC 20520
Attn: Thomas R. Morris,
U.S. Government Representative to Aceh & N. Sumatra Reconstruction
c/o Governor's Office Building
3rd Floor
Jl. Teuku Nyak Arief No. 219
Banda Aceh 23114
Nanggroe Aceh Darussal
Indonesia

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Sincerely,

Susan M. Epstein
Property Maintenance/Zoning Enforcement Inspector

8-006 General Standards

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

1. The proposed use at the specified location shall be in harmony with the adopted comprehensive plan.

2. The proposed use shall be in harmony with the general purpose and intent of the applicable zoning district regulations.

3. The proposed use shall be such that it will be harmonious with and will not adversely affect the use or development of neighboring properties in accordance with the applicable zoning district regulations and the adopted comprehensive plan. The location, size and height of buildings, structures, walls and fences, and the nature and extent of screening, buffering and landscaping shall be such that the use will not hinder or discourage the appropriate development and use of adjacent or nearby land and/or buildings or impair the value thereof.

4. The proposed use shall be such that pedestrian and vehicular traffic associated with such use will not be hazardous or conflict with the existing and anticipated traffic in the neighborhood.

5. In addition to the standards which may be set forth in this Article for a particular group or use, the BZA shall require landscaping and screening in accordance with the provisions of Article 13.

6. Open space shall be provided in an amount equivalent to that specified for the zoning district in which the proposed use is located.

7. Adequate utility, drainage, parking, loading and other necessary facilities to serve the proposed use shall be provided. Parking and loading requirements shall be in accordance with the provisions of Article 11.

8. Signs shall be regulated by the provisions of Article 12; however, the BZA, under the authority presented in Sect. 007 below, may impose more strict requirements for a given use than those set forth in this Ordinance.

8-903 Standards for all Group 9 Uses

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

1. All uses shall comply with the lot size and bulk regulations of the zoning district in which located, except as may be qualified below.

2. All uses shall comply with the performance standards specified for the zoning district in which located.

3. Before establishment, all uses, including modifications or alterations to existing uses, shall be subject to the provisions of Article 17, Site Plans, or other appropriate submission as determined by the Director.

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

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

1. Notwithstanding Par. 2 of Sect. 011 above, all applications shall be accompanied by ten (10) copies of a plat and such plat shall be presented on a sheet having a maximum size of 24" x 36", and one 8 ½" x 11" reduction of the plat. Such plat shall be drawn to a designated scale of not less than one inch equals fifty feet (1" = 50'), unless a smaller scale is required to accommodate the development. Such plat shall be certified by a professional engineer, land surveyor, architect, or landscape architect licensed by the State of Virginia and such plat shall contain the following information:

   A. Boundaries of entire property, with bearings and distances of the perimeter property lines and of each zoning district.

   B. Total area of the property and of each zoning district in square feet or acres.

   C. Scale and north arrow, with north, to the extent feasible, oriented to the top of the plat and on all supporting graphics.

   D. Location of all existing structures, with dimensions, including height of any structure and penthouse, and if known, the construction date(s) of all existing structures.

   E. All required minimum yards to include front, side and rear, and a graphic depiction of the angle of bulk plane, if applicable, and the distances from all existing structures to lot lines.

   F. Means of ingress and egress to the property from a public street(s).

   G. For nonresidential uses, the location of parking spaces, indicating minimum distance from the nearest property line(s).

   H. If applicable, the location of well and/or septic field.

   I. For nonresidential uses, a statement setting forth the maximum gross floor area and FAR for all uses.

J. Location of all existing utility easements having a width of twenty-five (25) feet or more, and all major underground utility easements regardless of width.

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

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

2. The BZA determines that:

   A. The error exceeds ten (10) percent of the measurement involved, and

   B. The noncompliance was done in good faith, or through no fault of the property owner, or was the result of an error in the relocation of the building subsequent to the issuance of a Building Permit, if such was required, and

   C. Such reduction will not impair the purpose and intent of this Ordinance, and

   D. It will not be detrimental to the use and enjoyment of other property in the immediate vicinity, and

   E. It will not create an unsafe condition with respect to both other property and public streets, and

   F. To force compliance with the minimum yard requirements would cause unreasonable hardship upon the owner.

   G. The reduction will not result in an increase in density or floor area ratio from that permitted by the applicable zoning district regulations.

3. In granting such a reduction under the provisions of this Section, the BZA shall allow only a reduction necessary to provide reasonable relief and may, as deemed advisable, prescribe such conditions, to include landscaping and screening measures, to assure compliance with the intent of this Ordinance.

4. Upon the granting of a reduction for a particular building in accordance with the provisions of this Section, the same shall be deemed to be a lawful building.

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