



APPLICATION ACCEPTED: January 12, 2009

DATE OF PUBLIC HEARING: March 31, 2009

TIME: 9:00 a.m.

## County of Fairfax, Virginia

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March 24, 2009

### STAFF REPORT

SPECIAL PERMIT APPLICATION No. SP 2009-HM-005

### HUNTER MILL DISTRICT

**APPLICANTS & OWNERS:** Terry C. & Ellen P. Smith

**ZONING:** R-1

**LOCATION:** 2587 Babcock Road

**SUBDIVISION:** Acredale

**ZONING ORDINANCE PROVISION:** 8-914 & 8-922

**TAX MAP:** 38-3 ((3)) 2

**LOT SIZE:** 1 Acre

**SP PROPOSAL:** To permit reduction of certain yard requirements based on error in building location to permit dwelling to remain 16 feet from the side lot line and reduction of certain yard requirements to permit construction of addition 16.3 feet from the side lot line.

**STAFF RECOMMENDATION:** Staff recommends approval of SP 2009-HM-005 for the addition subject to the proposed development conditions contained in Appendix 1.

It should be noted that it is not the intent of staff to recommend that the Board, in adopting any conditions, relieve the applicant/owner from compliance with provisions of any applicable ordinances, regulations, or adopted standards.

*O:\Scaff2\Case Files\Special Permits\SP 2009-HM-005 TERRY & ELLEN SMITH\SMITH\_Cover.doc* Shannon Caffee

It should be further noted that the content of this report reflects the analysis and recommendations of staff; it does not reflect the position of the Board of Zoning Appeals. 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.

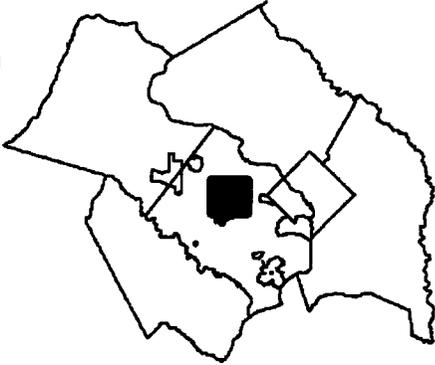
For additional information, call Zoning Evaluation Division, Department of Planning and Zoning at 324-1280, 12055 Government Center Parkway, Suite 801, Fairfax, Virginia 22035. **Board of Zoning Appeals' meetings are held in the Board Room, Ground Level, Government Center Building, 12000 Government Center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



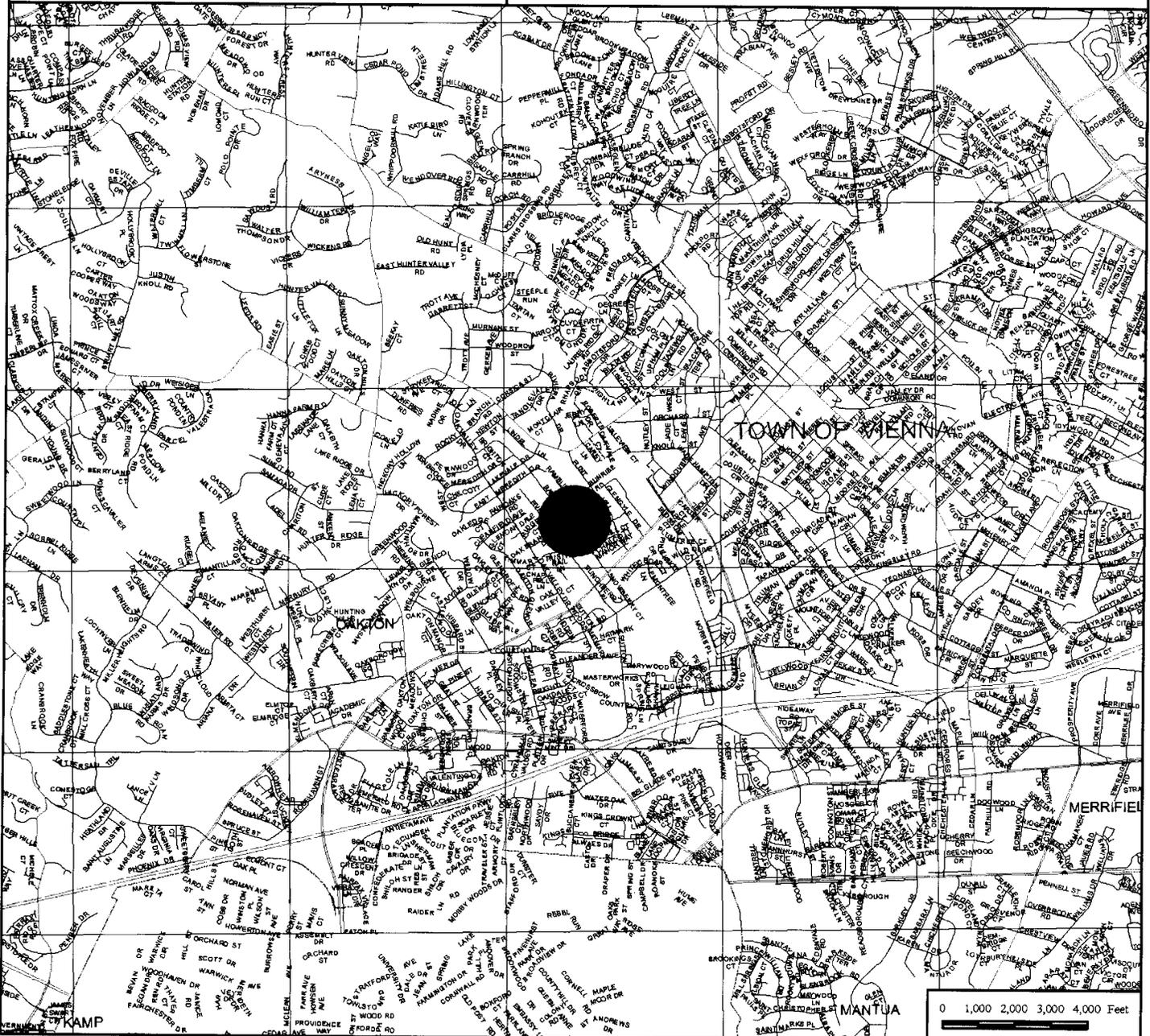
Americans with Disabilities Act (ADA): Reasonable accommodation is available upon 7 days advance notice. For additional information on ADA call (703) 324-1334 or TTY 711 (Virginia Relay Center).

**Special Permit**  
**SP 2009-HM-005**

**Applicant:** TERRY C AND ELLEN P SMITH  
**Accepted:** 01/12/2009  
**Proposed:** REDUCTION OF CERTAIN YARD REQUIREMENTS TO PERMIT ADDITION 16.3 FEET FROM THE SIDE LOT LINE AND REDUCTION TO MINIMUM YARD REQUIREMENTS BASED ON ERROR IN BUILDING LOCATION TO PERMIT DWELLING 16.0 FEET FROM SIDE LOT LINE



**Area:** 1 AC OF LAND; DISTRICT - HUNTER MILL  
**Zoning Dist Sect:** 08-922 08-0914  
**Art 8 Group and Use:** 9-21 9-13  
**Located:** 2587 BABCOCK ROAD  
**Zoning:** R-1  
**Overlay Dist:**  
**Map Ref Num:** 038-3- /03/ /0002

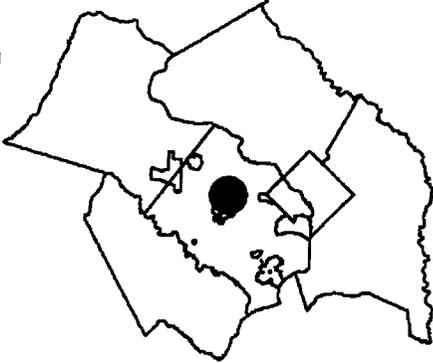


# Special Permit

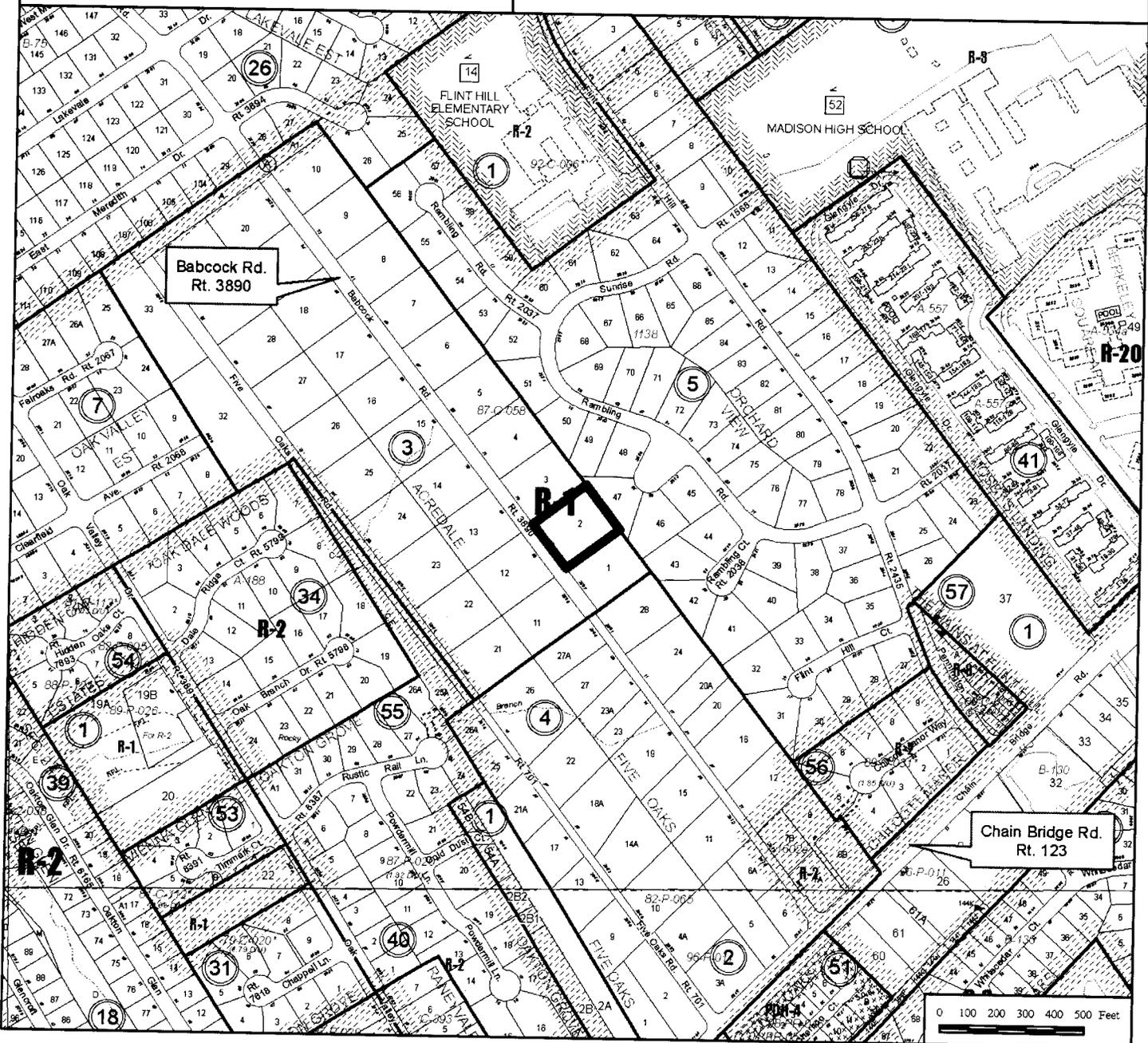
SP 2009-HM-005

Applicant:  
Accepted:  
Proposed:

TERRY C AND ELLEN P SMITH  
01/12/2009  
REDUCTION OF CERTAIN YARD REQUIREMENTS  
TO PERMIT ADDITION 16.3 FEET FROM THE  
SIDE LOT LINE AND REDUCTION TO  
MINIMUM YARD REQUIREMENTS BASED ON  
ERROR IN BUILDING LOCATION TO PERMIT  
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Art 8 Group and Use: 9-21 9-13  
Located: 2587 BABCOCK ROAD  
Zoning: R-1  
Overlay Dist:  
Map Ref Num: 038-3- /03/ /0002



N/F CHILCOTT

S 36° 30' E

191.88

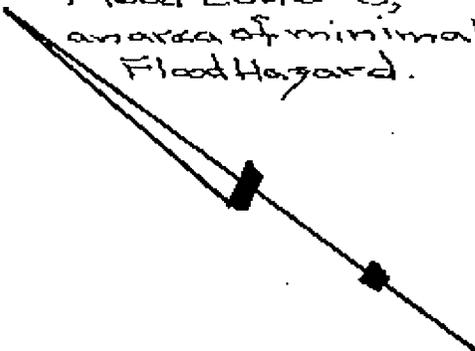
N/F CHILCOTT

LOT 2  
43,560 ±

**NOTES**

- 1.) Zone R-1
- 2.) Existing Floor Area is 3991 ±; Proposed Floor Area is 3307 ±  
∴ Percent add is 107%
- 3.) All walls have 1/2" Eaves except ①, ②, ③ which are 1'

Note: This Lot is within Flood Zone "C" an area of minimal Flood Hazard.



40 BUILDING RESTRICTING LINE

I.P.F.

N 36° 30' W

191.88

BABCOCK ROAD (50' R/W)



PROPOSED ADDITION &  
HOUSE LOCATION  
LOT 2

ACREDALE

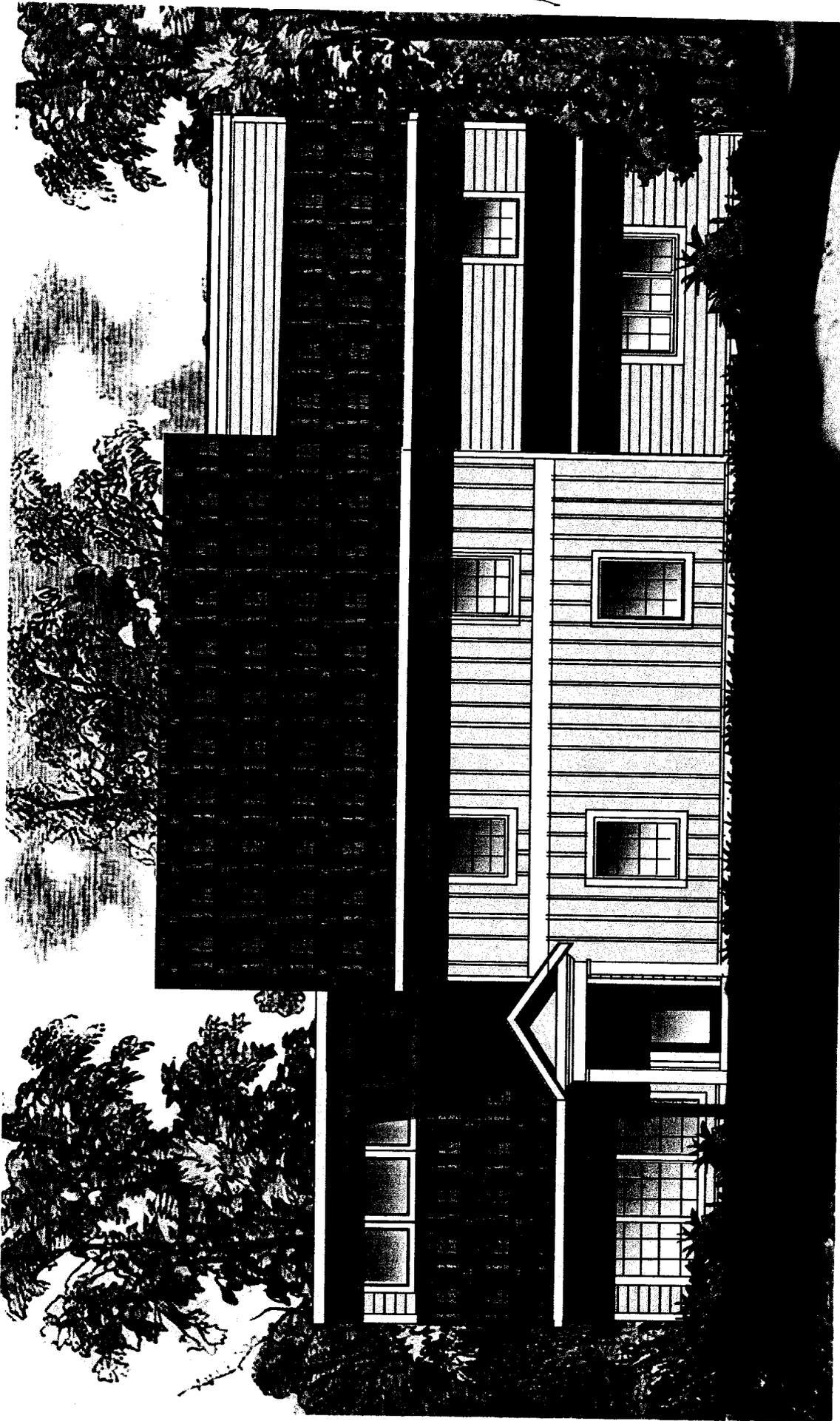
FAIRFAX COUNTY, VIRGINIA

SCALE: 1"=30' SEPT. 12, 2008

PETER R. MORAN  
LAND SURVEYOR  
VIENNA, VIRGINIA  
REV. 12/11/8 PM

5.07  
930.20

Metal  
roof

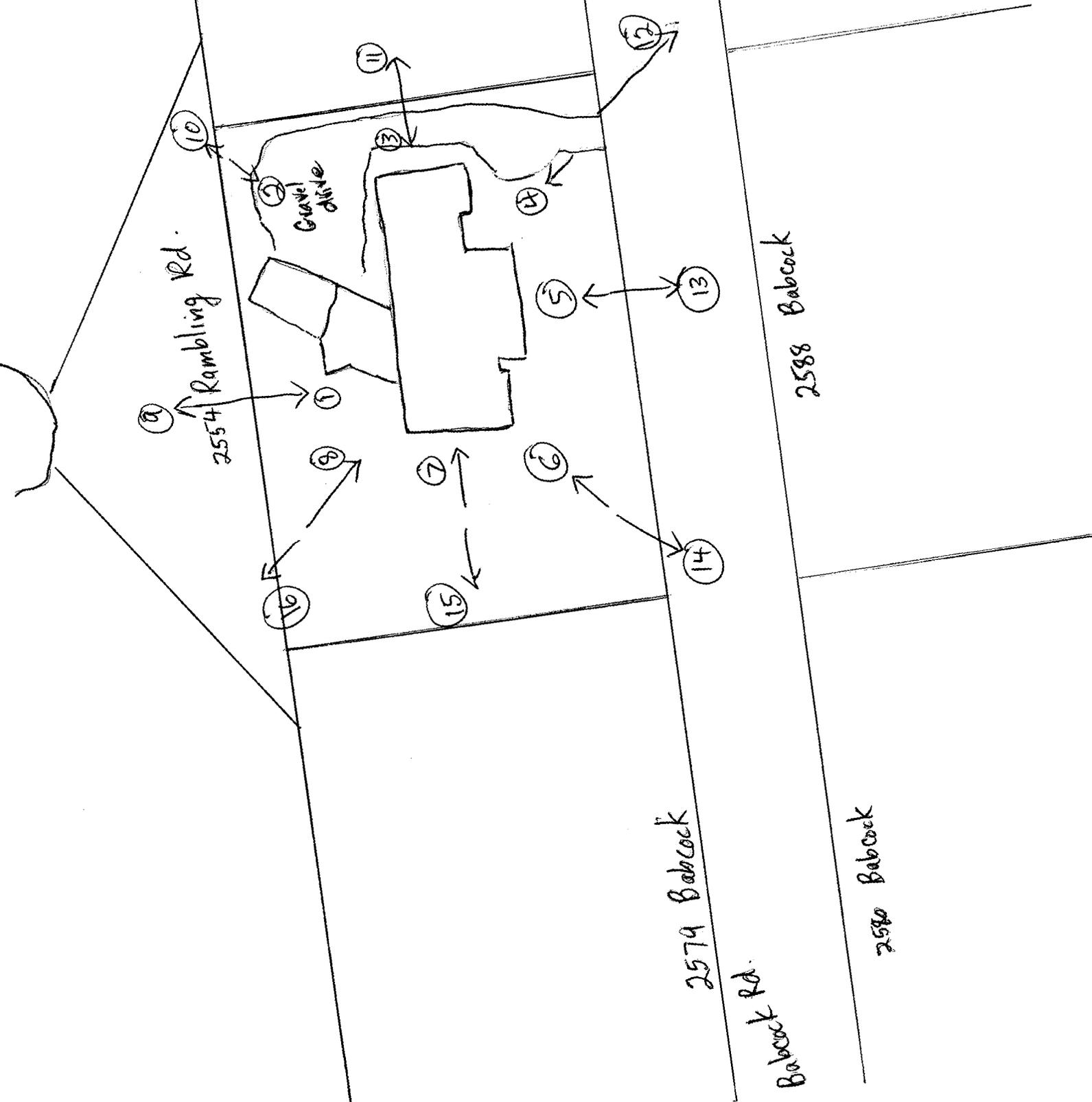


Siding will be Fibercement Siding  
on all sides. Roof is asbestos shingles.  
Additional roof will be metal.  
Windows are Andersen.

SEP 29 2008

RECEIVED

Department of Planning & Zoning



①



From rear yard of back yard

②



From side yard of rear yard

RECEIVED  
Department of Planning & Zoning

SEP 29 2008

Zoning Evaluation Division

2587 Babcock Rd.

Sept 03, 2008

3



From side yard adjoining 2597 Babcock Rd

4



From side yard of front yard

RECEIVED  
Department of Planning & Zoning  
SEP 29 2008  
Zoning Evaluation Division

5



From front yard

6



From side yard of front yard

RECEIVED  
Department of Planning & Zoning

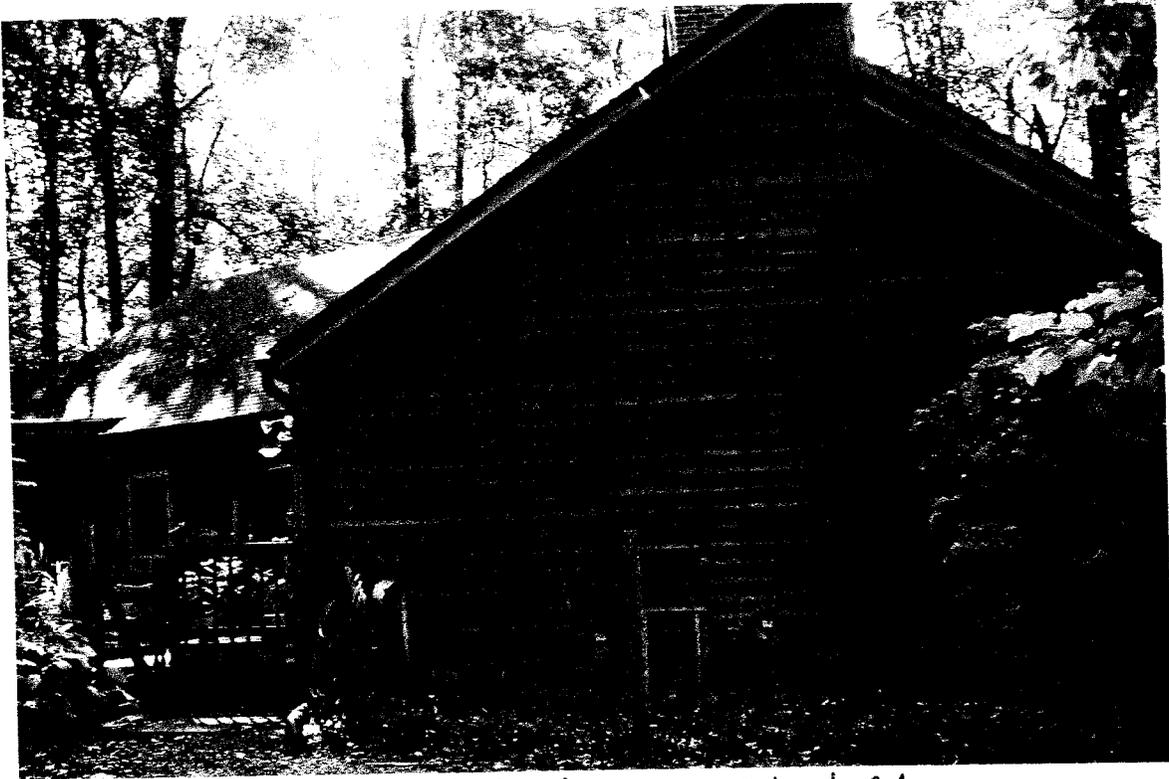
SEP 29 2008

Zoning Evaluation Division

2587 Babcock Rd.

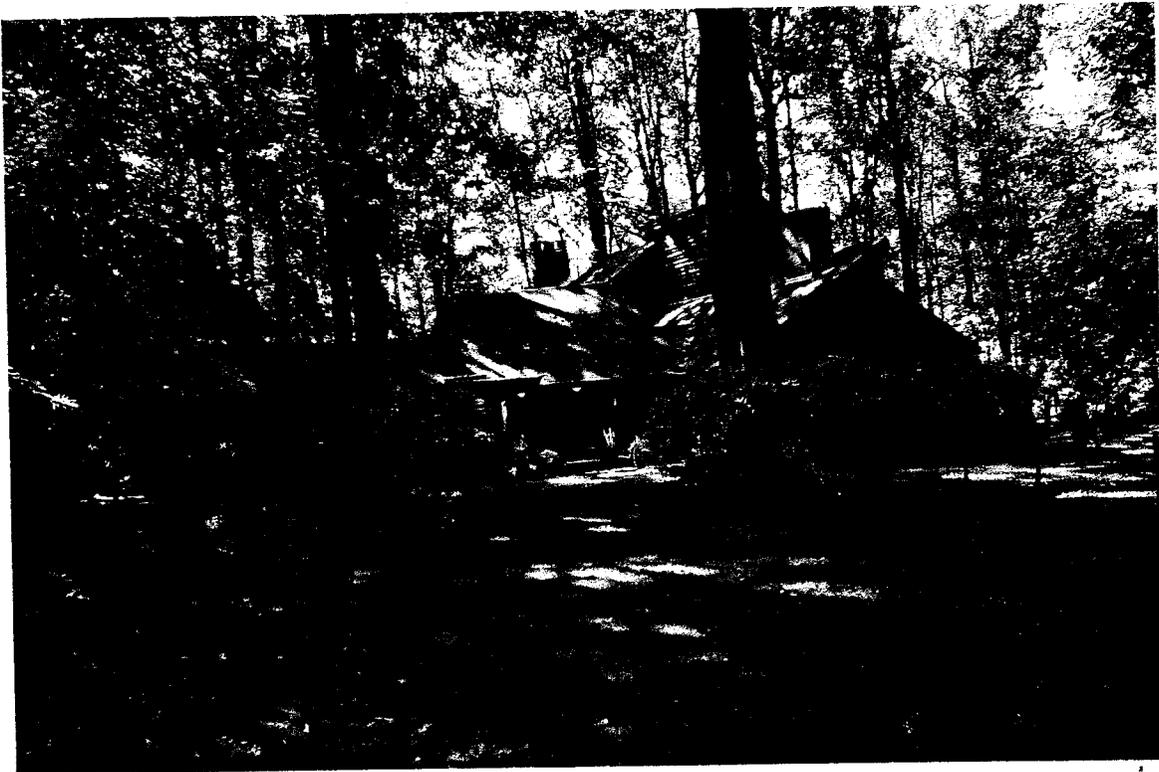
Sept 03, 2008

7



From side yard closest to 2579 Babcock Rd

8



From side yard of rear yard closest to 2579 Babcock Rd

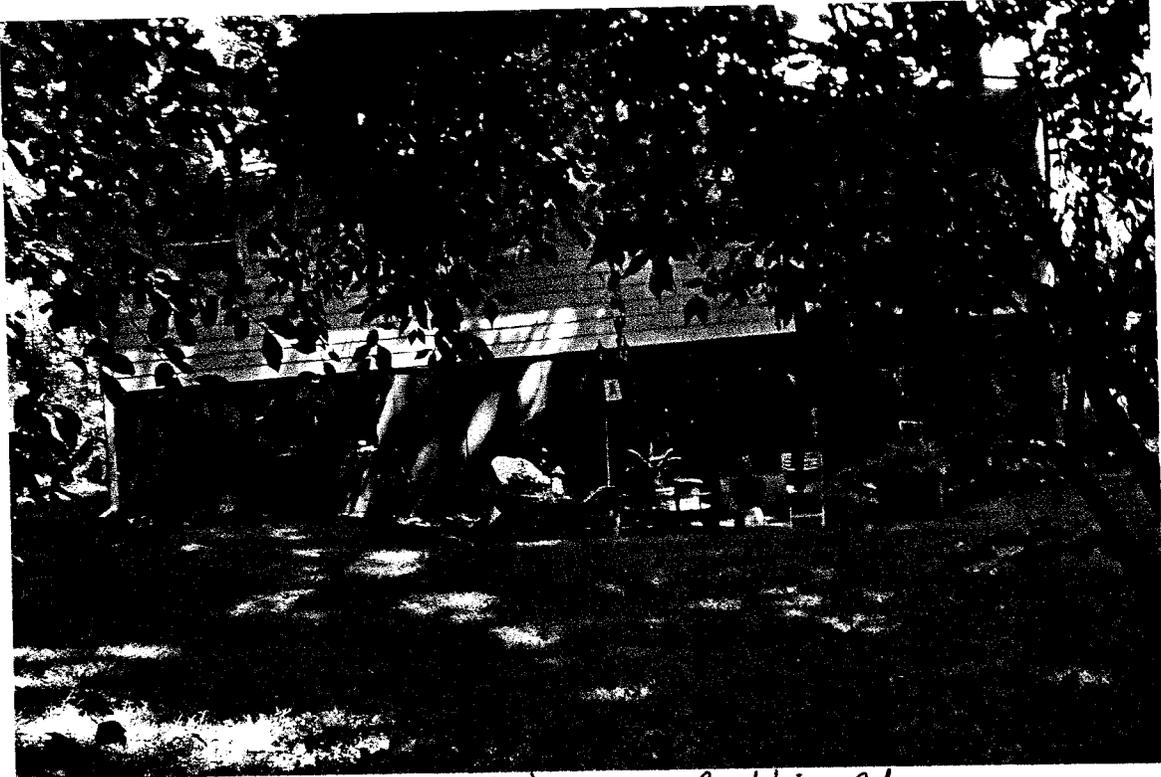
RECEIVED  
Department of Planning & Z

SEP 29 2008

Zoning Evaluation Divisic

Sept 03, 2008

9



From back yard facing 2554 Rambling Rd

10



From back yard facing 2554 Rambling Rd and near corner of 2597 Babcock Rd

RECEIVED  
Department of Planning & Zoning

SEP 29 2008

Zoning Evaluation Division

Sept 03, 2008

11



From side yard facing 2597 Babcock Rd

12



From side yard of front yard facing Babcock Rd  
and house at 2598 Babcock Rd

RECEIVED  
Department of Planning & Zoning

SEP 29 2008

Zoning Evaluation Division

Sept 03, 2008

13



From middle of front yard facing Babcock Rd and house at 2588 Babcock Rd

14



From side yard of front yard facing Babcock Rd. and house at 2580 Babcock Rd.

Sept 03, 2008

15



From side yard facing house at 2579 Babcock Rd.

16



From side yard of back yard toward corner of  
lots 2579 Babcock + 2554 Rambling

RECEIVED  
Department of Planning & Zoning

SEP 29 2008

Zoning Evaluation Division

## DESCRIPTION OF THE APPLICATION

The applicant seeks approval of two special permits for the subject property. The first is for an error in building location to permit the existing dwelling to remain 16 feet from the side lot line.

	Yard	Min. Yard Req.*	Structure Location	Amount of Error	Percent of Error
<b>Special Permit 2</b>	Side	20 feet	16 feet	4 feet	20 %

\* Minimum yard requirement per Section 3-107

The second request special permit request is for a reduction of certain yard requirements to permit construction of a one-story addition with living space 16.3 feet from the side lot line.

	Structure	Yard	Min. Yard Required *	Proposed Location	Proposed Reduction	Percent of Reduction Requested
<b>Special Permit 1</b>	Addition	Side	20 feet	16.3 feet	3.7 feet	18.5 %

\* Minimum yard requirement per Section 3-107

## LOCATION AND CHARACTER

### Existing Site Description

The site is currently zoned R-1 and contains a two story single family detached dwelling which was built in 1974. The lot consists of 43,560 square feet (1 acre) and is surrounded by single family detached homes on all sides.

**Character of the Area**

	<b>Zoning</b>	<b>Use</b>
<b>North</b>	R-1	Single Family Detached Dwellings
<b>South</b>	R-1	Single Family Detached Dwellings
<b>East</b>	R-1	Single Family Detached Dwellings
<b>West</b>	R-1	Single Family Detached Dwellings

**BACKGROUND**

The existing two story single family detached dwelling was constructed in 1974. Variance V-178-79 was granted on August 7, 1979 on the subject property for the construction of an addition 16.2 feet from the side lot line. Subsequently a building permit was obtained and the addition was constructed 16 feet from the lot line versus the approved 16.2 feet. Copies of the variance resolution, approved plat and the building permit for the addition can be found in Appendix 4.

The Board of Zoning Appeals (BZA) has not heard other land use applications in the neighborhood.

**ANALYSIS OF SPECIAL PERMIT APPLICATION**

- **Title of SP Plat:** Proposed Addition and House Location, Lot 2, Acredale
- **Prepared By:** Peter R. Moran, Land Surveyor, dated September 18, 2008, revised through December 11, 2008.
- **Building Permit Required for Dwelling:** Yes
- **Building Permit Obtained for Dwelling:** Yes
- **Location and Error Made By:** Owner

**Proposal**

The applicants propose to construct a one story addition which is a minor bump out (approximately 216 sq. feet) from the main level and will not extend beyond the plane of the existing house. The addition will be constructed using vinyl siding and a metal roof in order to match the existing house. The applicant also seeks approval of a special permit for the existing dwelling which was constructed closer than allowed per the variance granted in 1979.

**ZONING ORDINANCE REQUIREMENTS** (See Appendix 4)

- 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)
- Provisions for Reduction of Certain Yard Requirements (Sect. 8-922)

**Sect. 8-006 General Special Permit Standards**

Staff believes that the application for the addition meets all of the 8 General Special Permit Standards with notes regarding standard 3.

General Standard 3 requires that the proposed uses be harmonious with and not adversely affect the use or development of neighboring properties in accordance with the applicable zoning district regulations and the adopted comprehensive plan. *Staff believes that the special permit application satisfies this condition based on the fact that the proposed addition is minor and will not extend beyond the plane of the existing house. The property is also filled with dense vegetation and trees which serve as a buffer to neighboring properties. Therefore, the proposed reduction will not adversely affect neighboring properties.*

**Sect. 8-922 Provisions for Reduction of Certain Yard Requirements**

This special permit application must satisfy all of the provisions contained in Sect. 8-922, Provisions for Reduction of Certain Yard Requirements. Standards 1, 2, 3, 11 and 12 relate to submission requirements and were satisfied at the time of submission. Standard 5 relates to accessory structures, which does not apply to this application and Standard 10 allows the BZA to impose development conditions. Staff believes that the application has met all the remaining standards, specifically Standards 4, 6, 7, 8, and 9.

*Standard 4 states that the resulting gross floor area of an addition to an existing principal structure may be up to 150 percent of the total gross floor area of the principal structure that existed at the time of the first yard reduction request. In such instance, if a portion of the principal structure is to be removed; no more than fifty (50) percent of the gross floor area of the existing principal structure at the time of the first yard reduction shall be removed. The existing structure is 3,091 square feet in size. Therefore 150% of the total gross floor area could result in an addition up to 4,636.5 square feet; which makes a combined total of 7,727.5 square feet. The proposed addition will be 216 square feet in size for a total of 3,307 square feet for the existing house and addition. Therefore the application meets this provision.*

*Standard 6 states that the BZA shall determine that the proposed development will be in character with the existing on-site development in terms of the location, height, bulk and scale of the existing structure(s) on the lot. The proposed addition will be one story and the existing single family dwelling is 2.5 stories. The proposed addition will also be constructed to match that of the existing dwelling per the architectural rendering submitted with this application. The size of the proposed addition is 216 square feet*

*and the existing house is 3,091 square feet; therefore staff believes that application meets this provision.*

*Standard 7 states that the BZA shall determine that the proposed development is harmonious with the surrounding off-site uses and structures in terms of location, height, bulk and scale of surrounding structures, topography, existing vegetation and the preservation of significant trees as determined by the director. The proposed addition will be harmonious with the surrounding neighborhood since this is just a minor modification and because the neighborhood is constructed of mixed housing types and on large lots where there are trees to provide screening. No significant trees are proposed to be harmed by the requested expansion. Therefore, staff believes the application meets this provision.*

*Standard 8 states that the BZA shall determine that the proposed development shall not adversely impact the use and/or enjoyment of any adjacent property with regard to issues such as noise, light, air, safety, erosion, and stormwater runoff. No downstream complaints have been indicated by DPWES and there is a minimal increase of impervious area due to the small scale of the proposed addition. Also, the property is surrounded by dense vegetation which will adequately screen the proposed addition from the adjacent property. Staff believes that the proposed addition shall not have any adverse impact on neighboring properties.*

*Standard 9 states that the BZA shall determine that the proposed reduction represents the minimum amount of reduction necessary to accommodate the proposed structure on the lot. Specific factors to be considered include, but are not limited to, the layout of the existing structure; availability of alternate locations for the addition; orientation of the structure(s) on the lot; shape of the lot and the associated yard designations on the lot; environmental characteristics of the site, including presence of steep slopes, floodplains and/or Resource Protection areas; preservation of existing vegetation and significant trees as determined by the Director; location of a well and/or septic field; location of easements; and/or preservation of historic resources. The proposed addition is an expansion of the existing main level and will not extend beyond the closest point of the current house to the lot line. The addition is designed to fit into a cut-out area of the front of the house and will be used as living space. Even though there is area on the northern side of the house to locate an addition without approval of a special permit, there is dense vegetation and trees that would have to be removed in doing so. This is also the most logical location due to the applicants wish to expand the existing living room on the southern side of the existing house. There are no floodplains or Resource Protection Areas on the subject property.*

## **CONCLUSION**

Staff believes that the subject application for the addition is in conformance with the applicable Zoning Ordinance provisions with the implementation of the Proposed Development Conditions contained in Appendix 1 of the staff report.

## **RECOMMENDATION**

Staff recommends approval of special permit application SP 2009-HM-005 for the addition subject to the proposed development conditions contained in Appendix 1 of the staff report.

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. Variance V-178-79 and Building Permit for Addition
5. Zoning Ordinance Provisions

**PROPOSED DEVELOPMENT CONDITIONS****SP 2009-HM-005****March 24, 2009**

If it is the intent of the Board of Zoning Appeals to approve SP 2009-HM-005 located at Tax Map Number 38-3 ((3)) 2 (2587 Babcock Rd.), to permit reduction of certain yard requirements pursuant to 8-914 & 8-922 of the Fairfax County Zoning Ordinance, staff recommends the Board condition the approval by requiring conformance with the following development conditions.

1. These conditions shall be recorded by the applicant among the land record of Fairfax County for this lot prior to the issuance of a building permit. A certified copy of the recordation shall be provided to the Zoning Permit Review Branch, Department of Planning and Zoning.
2. This special permit is approved for the location and size of a proposed addition and existing dwelling as shown on the plat prepared by Peter R. Moran, Land Surveyor, dated September 18, 2008, revised through December 11, 2008, submitted with this application and is not transferable to other land.
3. Pursuant to Provision 4 of Section 8-922 of the Zoning Ordinance, the resulting gross floor area of the existing principle structures may be up to 150 percent of the gross floor area of the dwelling that existed at the time of the first expansion (3,091 square feet existing + 4,636.5 (150%) = 7,727.5 permitted) regardless of whether such addition complies with the minimum yard requirement or is the subject of a subsequent yard reduction, special permit or variance. Notwithstanding the definition of gross floor area as set forth in the Ordinance, the gross floor area of a single family dwelling for the purpose of this paragraph shall be deemed to include the floor area of any attached garage. Subsequent additions that meet minimum yard requirements shall be permitted without an amendment to this special permit.
4. The addition shall be consistent with the architectural renderings and materials included in Attachment 1 to these conditions.

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.

Pursuant to Sect. 8-015 of the Zoning Ordinance, this special permit shall automatically expire, without notice, thirty (30) months after the date of approval unless construction has commenced and been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the special permit. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

5,077  
930.20

Metal  
roof

# ATTACHMENT 1



Siding will be Fiber Cement siding  
on all sides. Roof is asbestos shingles.  
Additional roof will be metal.  
Windows are Anderson.

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

**SPECIAL PERMIT/VARIANCE AFFIDAVIT**

DATE: September 4, 2008  
 (enter date affidavit is notarized)

I, Terry C. and Ellen P. Smith, 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      101940

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 <b>BOLD</b> above)
Terry C. Smith	2587 Babcock Rd. Vienna, VA 22181	Spouse - Applicant/Title owner
Ellen P. Smith	2587 Babcock Rd. Vienna, VA 22181	Spouse - Applicant/Title owner

(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: September 4, 2008  
(enter date affidavit is notarized)

101940

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)

NA

**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)

(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 AFFIDAVIT**

DATE: September 4, 2008  
(enter date affidavit is notarized)

101940

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)

NA

(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: September 4, 2008  
(enter date affidavit is notarized)

101940

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: September 4, 2008  
(enter date affidavit is notarized)

101940

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.

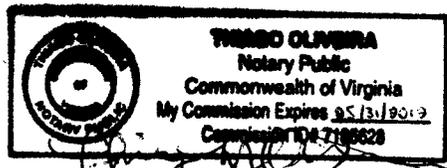
4. That the information contained in this affidavit is complete, that all partnerships, corporations, and trusts owning 10% or more of the APPLICANT, TITLE OWNER, CONTRACT PURCHASER, or LESSEE\* of the land have been listed and broken down, and that prior to each and every public hearing on this matter, 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: Terry C. Smith Terry C. Smith  
Ellen P. Smith Ellen P. Smith  
(check one)  Applicant  Applicant's Authorized Agent  
Terry C. Smith, Applicant  
Ellen P. Smith, Applicant  
(type or print first name, middle initial, last name, and title of signee)

Subscribed and sworn to before me this 04<sup>th</sup> day of SEPTEMBER 20 08, in the State/Comm. of VIRGINIA, County/City of FAIRFAX.

TERRA OLIVERA  
Notary Public

My commission expires: MAY 31<sup>st</sup> 2012



**Special Permit Application  
Terry C and Ellen P Smith**

**RECEIVED**  
Department of Planning & Zoning  
**DEC 29 2008**  
Zoning Evaluation Division

**Response to List of Deficiencies**

Item 1.00 – Application form revised per staff instructions and four (4) copies included with resubmission.

Item 5.07 – The addition will be made to look like the rest of the house. The siding will be fiber cement material and the roof of the addition will be metal. All windows will be trimmed in white. A computer-generated drawing of the house with addition is included with this package.

Item 5.08 – Other than normal household items such as gas stored in cans for lawn equipment, paint cans and supplies, lawn pesticide materials, etc., there are no other hazardous or toxic substances generated, utilized, stored, treated, and/or disposed of on site. In addition, there are no existing or proposed storage tanks or containers.

Item 5.09 – The proposed addition conforms to the provisions of all applicable ordinances, regulations, and adopted standards.

Item 7.00 – One 8 1/2" x 11" reduction of the plat is included with this package.

Item 911.00 – Ten (10) copies of a revised plat reduced in size to 8 1/2" x 11" are included with this package. A bigger scale of 1" = 30' has been drawn to make the plat more readable. This scale, which is different from DPZ instructions, was discussed by our surveyor with a staff member and approved as being acceptable.

Items 911.01, 911.04, 911.05, and 911.11 – All of these items are addressed in the revised plat.

Item 911.10 – We began construction of our house in 1973 and moved into it in October 1974. We have a plat dated October 28, 1974 that shows the house being 33 feet, 8 inches from the side lot line currently in question (the right side of the house).

In 1979, we wanted to build an addition to the house. At that time, we still had a septic field that limited our options for building the addition on the left side of the house where we had much more room on the lot. So, we sought a Variance with the Board of Zoning Appeals to allow construction of an addition to our existing house to within 16 feet, 2 inches from the side lot line, V-178-79. Our request was subsequently approved and a building permit issued to us on August 8, 1979. While construction was ongoing, we were never made aware, either by the contractor or any inspectors, that the addition was not properly situated any closer than 16 feet, 2 inches from the side lot line. In addition, based on house records we have in our possession, a survey was not completed around the 1979-1980 time period of construction showing the location of the completed addition

from the side lot line. Therefore, we always thought that we were in compliance with the Variance approved for construction.

In 1992, we obtained a building permit to build a garage, screened porch, and ground-level deck on the back side of the house. We have a plat dated June 26, 1993 showing the house with all of the additions (1979 and 1992) completed; the addition on the right side is shown being 16 feet, 3 inches from the side lot line and therefore, in compliance with the 1979 Variance.

We now move forward to our current situation in 2008 seeking a Special Permit for an addition 16 feet, 3 inches from the side lot line. When the house survey was submitted with our Application, staff noted that the survey shows the back right corner of the 1979 addition is located 16 feet from the side lot line and the front right corner (where the new addition would be placed) is 16 feet, 3 inches from the side lot line. This means, according to the surveyor, that the 1979 addition was not built parallel to the side lot line as was intended and that we have been unaware of for some 29-plus years.

We believe it would not be cost effective for us to remedy this error after all this time. The portion of the house that is not in compliance with the Variance is two stories high, contains heating and air conditioning ductwork, and contains finished rooms on both floors adjacent to the outside wall. All of this would have to somehow be torn down and reconstructed in order to “shave” at least 2 inches off the side of the house. We think the construction challenges of doing this would be very expensive and quite possibly put in jeopardy our chances of remodeling and reconfiguring the house so that we may remain in it as we continue to age (see our original Statement of Justification, item number 9). In addition, we believe in the interest of fairness that we should not be required to erase an error that we and our neighbors have lived with without any issues for all these years and that was created without our knowledge and participation.

We had the addition built with the expectation of good faith compliance with applicable Fairfax County codes, ordinances and regulations. In fact, Fairfax County records would show that we have always made changes to the house by applying for the appropriate permits. We have not tried to hide anything when making house improvements. Therefore, we feel that our past compliance actions deserve strong consideration by zoning staff in recommending approval of a Special Permit.

Item 930.10, 930.11, 930.15, 930.18, and 930.19 – All of these items are addressed in the revised plat.

Item 930.14 – There is no well and septic field on the lot.

Item 930.16 – There are no utility easements on the lot.

Item 930.17 – The revised plat depicts the distance of the addition from the side lot line will be 16’ 3”.

Item 930.20 – Please see the included computer-generated picture of the house with addition once construction has been completed. No existing trees will be removed; only foundation plantings will be changed.

## VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Application No. V-178-79 by TERRY C. & ELLEN C. SMITH under Section 18-401 of the Zoning Ordinance to permit construction of addition to existing dwelling on property located at 2587 Babcock Road, tax map reference 38-3(3)2, County of Fairfax, Virginia, Mr. DiGiulian moved that the Board of Zoning Appeals adopt the following resolution:

*Accredate, Lot 2*

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on August 7, 1979; and

WHEREAS, the Board has made the following findings of fact:

1. That the owner of the property is the applicant.
2. The present zoning is R-1.
3. The area of the lot is 43,560 sq. ft.
4. That the applicant's property has an unusual condition in the location of the existing buildings on the subject property.

AND, WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of the reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is GRANTED with the following limitations:

1. This approval is granted for the location and the specific structure indicated in the plats included with this application only, and is not transferable to other land or to other structures on the same land.
2. This variance shall expire one year from this date unless construction has started and is diligently pursued or unless renewed by action of this Board prior to any expiration.

Mr. Yaremchuk seconded the motion.

The motion passed by a vote of 4 to 0 with 1 abstention (Mr. Smith).

A COPY TESTE:

*Andrew J. Heits*  
Clerk, Board of Zoning Appeals

11:25 - TERRY C. & ELLEN P. SMITH, appl. under Sect. 18-401 of the Ord. to allow construction of addition to existing dwelling 16'2" from side lot line (20 ft. min. side yard req. by Sect. 3-107), located 2587 Babcock Road, Aredale Subd., 38-3((3))2, Centreville Dist., 43,560 sq. ft., R-1, V-178-79.

Mr. Terry Smith informed the Board that he was requesting a variance in order to build a two story addition to his home that would be located 16 ft. from the side property line. He informed the Board that he was caught in the changes of the side yard setbacks that changed in April. He stated that the addition could not be built elsewhere as he is building onto his family room. Another important feature is that with the two story addition, they would be able to use the existing stairway in the house. The septic field and tank is located on the opposite side of the house. He stated that they have just hooked up to the sewer so that is not a problem anymore.

There was no one to speak in favor of the application and one one to speak in opposition.

Page 352, August 7, 1979  
TERRY C. & ELLEN P. SMITH

Board of Zoning Appeals

R E S O L U T I O N

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Page 353, August 7, 1979  
TERRY C. & ELLEN C. SMITH  
(continued)

Board of Zoning Appeals

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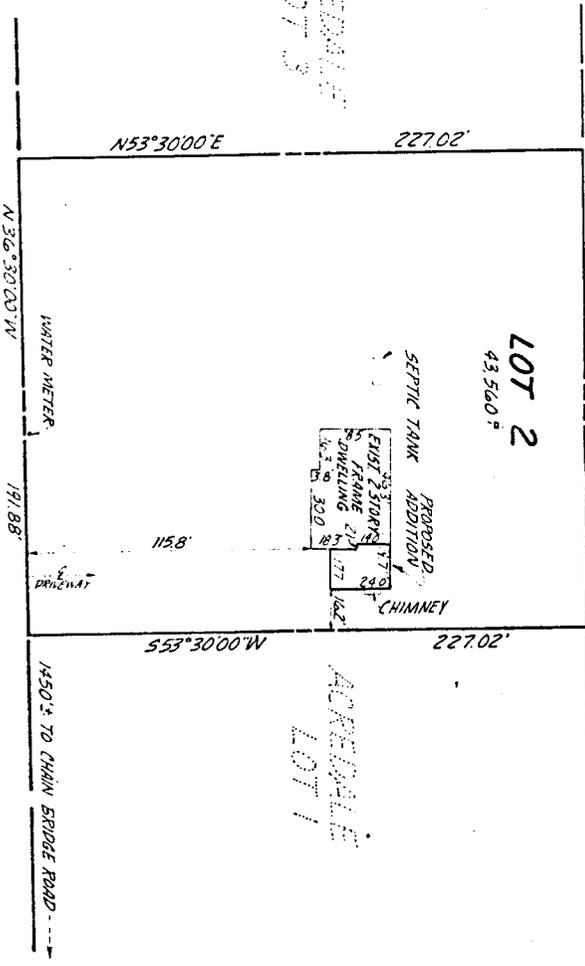
Mr. Yaremchuk seconded the motion.

The motion passed by a vote of 4 to 0 with 1 absention (Mr. Smith).

OCEAN VIEW  
LOT 47

S36°30'00"E 191.88'

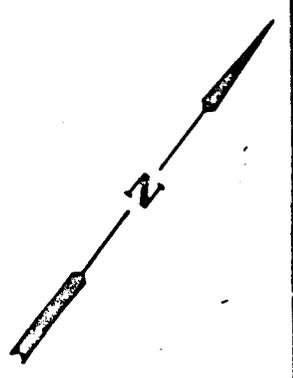
LOT 2  
43,560 ±



ACREDALE  
LOT 1

BABCOCK ROAD RTE. 3890  
(50 WIDE)

Approved for proposed location of building as shown. Final approval subject to well check.



**NOTES:**

- 1) THE PROPERTY DELINEATED ON THIS PLAT IS LOCATED ON ASSESSMENT MAP 38 - 3 (3) LOT 2 AND IS NOW IN THE NAME OF TERRY C. & ELLEN P. SMITH AS RECORDED IN DEED BOOK 3908 AT PAGE 327 AMONG THE LAND RECORDS OF FAIRFAX COUNTY, VIRGINIA.
- 2) PROPERTY IS SERVED BY PUBLIC WATER AND PRIVATE SANITARY SEWER.
- 3) PROPERTY IS ZONED R-1  
SETBACKS: FRONT: 40'  
SIDE: 20'  
REAR: 25'
- 4) BOUNDARY INFORMATION TAKEN FROM EXISTING LAND RECORDS
- 5) NO TITLE REPORT FURNISHED.

OFFICIAL ACTION  
BOARD OF ZONING-APPEALS  
*David H. [Signature]*  
CHAIRMAN 8/1/79

VARIANCE PLAT  
FOR PROPOSED ADDITION  
LOT 2  
ACREDALE

CENTREVILLE DISTRICT  
FAIRFAX COUNTY, VIRGINIA  
SCALE 1"=50' JUNE 29, 1979  
DATTANI HARBIN DIST. 2111V

MAP REFERENCE				
Plot Number	Subd. Des.	Blk. or Sec.	Parcel or Lot	
383	3		2	

COUNTY OF FAIRFAX, VIRGINIA  
DEPARTMENT OF ENVIRONMENTAL MANAGEMENT  
Application for Building Permit

APPLICATION NO. 7906 B1786  
DATE \_\_\_\_\_ 19\_\_\_\_ PERMIT NO. \_\_\_\_\_

To: BUILD  ALTER OR REPAIR  ADD TO  DEMOLISH  MOVE

JOB LOCATION	Street <u>2587 Babcock Road</u>	DESCRIPTION <u>3</u> <u>For two-story addition consisting of family room, mud room, bedroom bath and storage room</u>
	Lot No. <u>2</u>	
	Subdivision <u>Ascedale</u>	
OWNER	Corp. Name <u>Terry C and Ellen P. Smith</u>	No. of Bldgs. _____ Est. Const. Cost \$ <u>30,000</u>
	Name (Reg. Agent) _____	No. of Units _____ No. of Stories _____
	Address <u>2587 Babcock Rd</u>	No. of Kitchens _____ Penthouse _____
ARCHITECT ENGINEER	City <u>Vienna Va 22180</u>	No. of Baths _____ Ht. of Bldg. _____ ft.
	Telephone Number <u>703-938-8376</u>	No. of Rooms _____ Bldg. Area _____ sq. ft.
	Name _____	(Exclude Kit. & Bam)
CONTRACTOR	Address _____	Basement <input type="checkbox"/> Slab <input type="checkbox"/> Crawl <input type="checkbox"/> Soil: Solid <input type="checkbox"/>
	City <u>McLean Va</u>	Fill <input type="checkbox"/>
	County Reg # _____ State Reg # _____	Fig: Concrete <input type="checkbox"/> Pile <input type="checkbox"/> Caisson <input type="checkbox"/>

I hereby certify that I have the authority to make this application, that the information given is correct, and that the use and construction shall conform to the County Health Regulations, the Building and Zoning Ordinances, and private deed restrictions, if any, which are imposed on the property.

June 27, 1979. Ellen P. Smith  
Phone No. \_\_\_\_\_ Date \_\_\_\_\_ Signature of Owner or Authorized Agent \_\_\_\_\_

APPLICANT: DO NOT WRITE BELOW THIS LINE

PLAN APPROVAL	Use Group of Building <u>R3</u>	Area of Bldg. _____ @ _____ per Sq. Ft. \$ _____
	Type of Construction <u>413</u>	@ _____ \$ _____
	Fire District <u>2</u>	@ _____ \$ _____
	Date Checked <u>8/8</u> 19 <u>79</u> By <u>Lange</u>	TOTAL FEE \$ <u>2300</u>

ROUTING	OFFICE	DATE	APPROVED BY	OFFICE	DATE	APPROVED BY
	Land Office	6-27-79	[Signature]	Fire Marshal	6-27-79	[Signature]
	Zoning Administrator	6-27-79	[Signature]	Design Review	6-27-79	[Signature]
	Public Works	7/30/79	[Signature]	Housing & License	6-27-79	[Signature]
	Health Dept.	6-27-79	[Signature]	Assessments		

I hereby certify to the following statement:  
1. All materials used for work performed under this permit will be paid directly to the supplier by the property owner.  
2. All compensation will be on an hourly basis and paid by the property owner directly to the person(s) performing work under this permit.  
Date June 27, 1979 By Ellen P. Smith Property Owner  
By \_\_\_\_\_ Authorized Agent

Supervisor of Assessments \_\_\_\_\_  
Property is listed in name of Terry C. Smith  
Magisterial District Cen Deed Book Reference 3908-327  
V-178-79 Supervisor Jamuel A. Patton

Subdivision Ascedale Lot No. 2 Block \_\_\_\_\_ Section \_\_\_\_\_ Zone R34  
Street Address Two story addition family room, bedroom, bath and storage room  
Use of Bldg. Family room, bedroom, bath and storage room  
BZA 8/1/79 No. Families \_\_\_\_\_  
Set Back: Front \_\_\_\_\_ Rt. Side 10.2' Left Side \_\_\_\_\_ Rear \_\_\_\_\_

**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.

## 8-922 Provisions for Reduction of Certain Yard Requirements

The BZA may approve a special permit to allow a reduction of certain yard requirements subject to all of the following:

1. Only the following yard requirements shall be subject to such special permit:
  - A. Minimum required yards, as specified in the residential, commercial, industrial and planned development districts in Articles 3, 4, 5 and 6, provided such yards are not subject to proffered conditions or development conditions related to yards and/or such yards are not depicted on an approved conceptual development plan, final development plan, development plan, special exception plat, special permit plat or variance plat.
  - B. Yard regulations for pipestem lots and lots contiguous to pipestem driveways set forth in Sect. 2-416.
  - C. Accessory structure location requirements set forth in Sect. 10-104.
  - D. Regulations on permitted extensions into a minimum required yard as set forth in Sect. 2-412.

Approval of a reduction of yard requirements specified in Paragraphs A, B and C above shall not result in any yard that is less than fifty (50) percent of the requirement and shall not result in any yard of less than five (5) feet, as measured from the lot line to the closest point of the proposed structure.

Approval of a reduction of yard requirements specified in Par. D above shall not result in an extension that exceeds the applicable distances set forth in Sect. 2-412 by more than fifty (50) percent. Where no extension is permitted by the provisions of Sect. 2-412, the BZA shall not approve a special permit that results in a structure that extends into a minimum required yard by more than fifty (50) percent.

2. Such reduction shall not result in the placement of a detached accessory structure in a front yard where the placement of such accessory structure is not otherwise permitted in that yard.
3. This special permit shall only apply to those lots that contain a principal structure and use that complied with the minimum yard requirements in effect when the use or structure was established.
4. The resulting gross floor area of an addition to an existing principal structure may be up to 150 percent of the total gross floor area of the principal structure that existed at the time of the first expansion request. The resulting gross floor area of any subsequent addition is limited to 150 percent of the gross floor area of the dwelling that existed at the time of the first expansion request, regardless of whether such addition complies with the minimum yard

requirements or is the subject of a subsequent yard reduction special permit. If a portion of a single family detached dwelling is to be removed, no more than fifty (50) percent of the gross floor area of the existing dwelling at the time of the first yard reduction shall be removed. Notwithstanding the definition of gross floor area, as set forth in this Ordinance, the gross floor area of a single family dwelling for the purpose of this paragraph shall be deemed to include the floor area of any attached garage.

5. The resulting gross floor area of an existing accessory structure and any addition to it shall be clearly subordinate in purpose, scale, use and intent to the principal structure on the site.
6. The BZA shall determine that the proposed development will be in character with the existing on-site development in terms of the location, height, bulk and scale of the existing structure(s) on the lot.
7. The BZA shall determine that the proposed development is harmonious with the surrounding off-site uses and structures in terms of location, height, bulk and scale of surrounding structures, topography, existing vegetation and the preservation of significant trees as determined by the Director.
8. The BZA shall determine that the proposed development shall not adversely impact the use and/or enjoyment of any adjacent property with regard to issues such as noise, light, air, safety, erosion, and stormwater runoff.
9. The BZA shall determine that the proposed reduction represents the minimum amount of reduction necessary to accommodate the proposed structure on the lot. Specific factors to be considered include, but are not limited to, the layout of the existing structure; availability of alternate locations for the addition; orientation of the structure(s) on the lot; shape of the lot and the associated yard designations on the lot; environmental characteristics of the site, including presence of steep slopes, floodplains and/or Resource Protection Areas; preservation of existing vegetation and significant trees as determined by the Director; location of a well and/or septic field; location of easements; and/or preservation of historic resources.