



APPLICATION ACCEPTED: January 26, 2009

DATE OF PUBLIC HEARING: March 31, 2009

TIME: 9:00 a.m.

## County of Fairfax, Virginia

---

March 24, 2009

### STAFF REPORT

**SPECIAL PERMIT APPLICATION No. SP 2009-LE-007**

### LEE DISTRICT

**APPLICANT & OWNER:** Hermilio Machicao

**ZONING:** R-4

**LOCATION:** 5901 Amherst Avenue

**SUBDIVISION:** Springfield

**ZONING ORDINANCE PROVISION:** 8-914 & 8-923

**TAX MAP:** 80-4((4))(1)1

**LOT SIZE:** 11,268 Sq. Ft.

**SP PROPOSAL:** To permit reduction to minimum yard requirements based on error in building location to permit dwelling to remain 13.2 feet with eave 12.1 feet and roofed deck 25.4 feet from the front lot line of a corner lot and to permit fence greater than 4 feet in height in a front yard.

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).

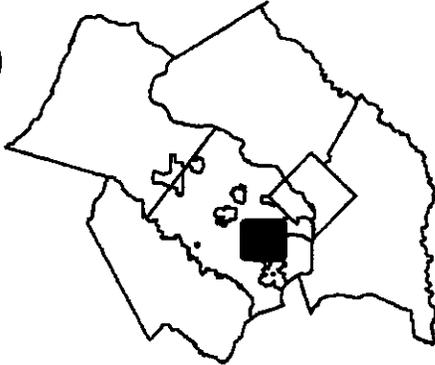
# Special Permit

SP 2009-LE-007

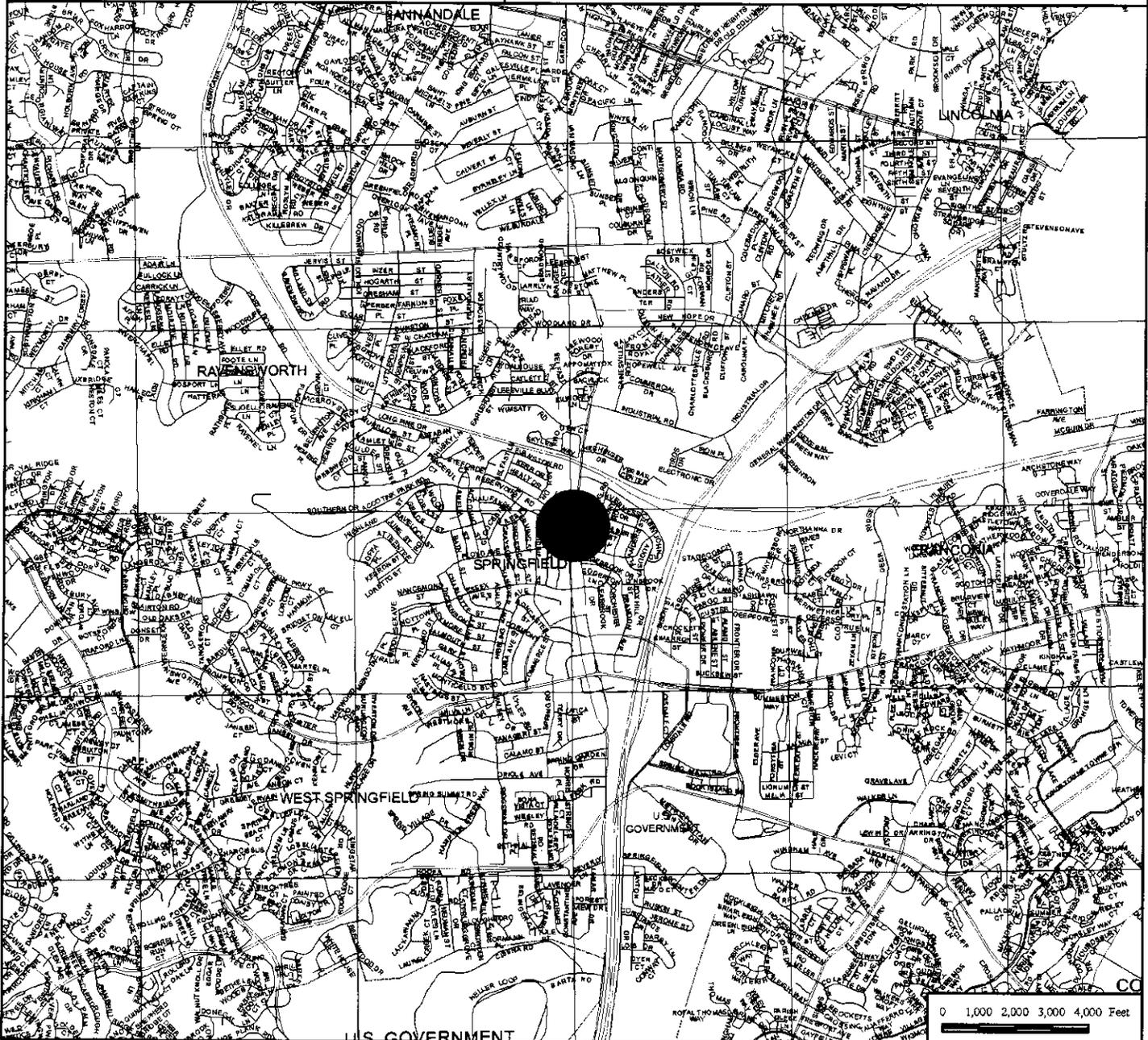
Applicant:  
Accepted:  
Proposed:

HERMILIO MACHICAO  
01/26/2009- AMENDED 01/27/2009

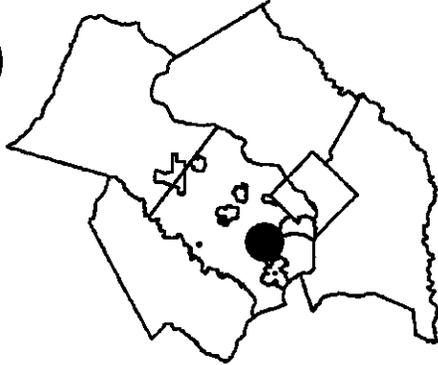
HERMILIO MACHICAO, SP 2008-LE-007 Appl. under Sect(s) 8-014 and 8-023 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit dwelling to remain 13.2 ft. with eave 12.1 ft. and roofed deck to remain 25.4 ft. from a front lot line and permit construction of fence greater than 4.0 ft. in height in the front yard of a corner lot. Located at 5901 Amherst Ave. on approx. 11,268 sq. ft. of land zoned R-4. Lee District. Tax Map 80-4 ((4)) (1) 1.



Area: 11,268 SF OF LAND; DISTRICT - LEE  
Zoning Dist Sect: 08-092308-0914  
Art 8 Group and Use: 9-22 9-13  
Located: 5901 AMHERST AVENUE  
Zoning: R- 4  
Overlay Dist:  
Map Ref Num: 080-4 /04/01/0001



**Special Permit**  
**SP 2009-LE-007**



**Applicant:** HERMILIO MACHICAO  
**Accepted:** 01/26/2009- AMENDED 01/27/2009  
**Proposed:**

HERMILIO MACHICAO, SP 2009-LE-007 Appl. under Sect(s). 8-914 and 8-923 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit dwelling to remain 13.2 ft. with eave 12.1 ft. and roofed deck to remain 25.4 ft. from a front lot line and permit construction of fence greater than 4.0 ft. in height in the front yard of a corner lot. Located at 5901 Amherst Ave. on approx. 11,268 sq. ft. of land zoned R-4. Lee District. Tax Map 80-4 ((4)) (1) 1.

**Area:** 11,268 SF OF LAND; DISTRICT - LEE  
**Zoning Dist Sect:** 08-0923 08-0914  
**Art 8 Group and Use:** 9-22 9-13  
**Located:** 5901 AMHERST AVENUE  
**Zoning:** R-4  
**Overlay Dist:**  
**Map Ref Num:** 080-4 /04/01/0001





**NOTES**

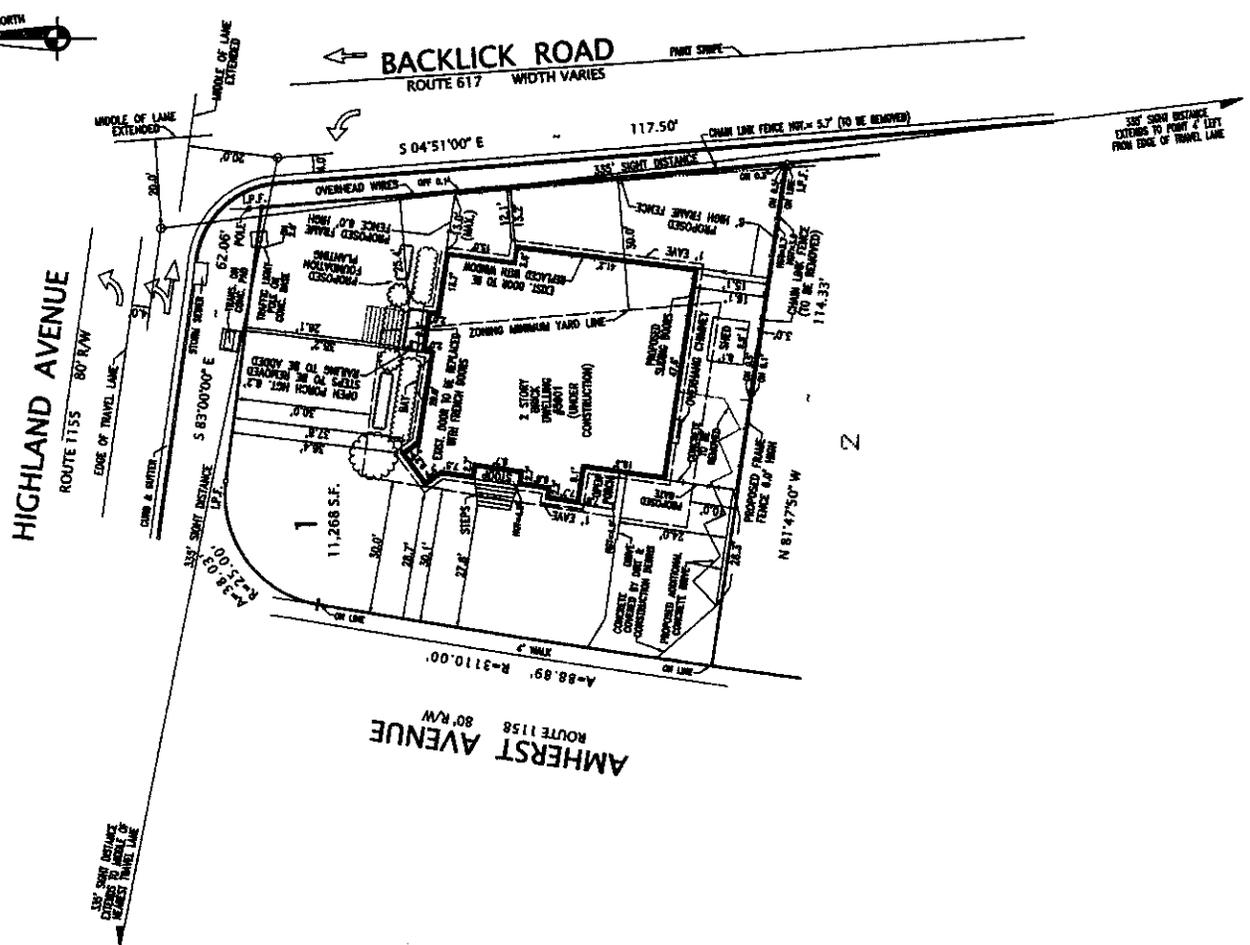
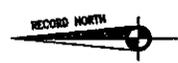
1. TAX MAP: 0804 (04010001)
2. ZONE: R-4
3. LOT AREA: 11,268 SQUARE FEET

YARDS:	REQUIRED	PROVIDED
FRONT:	30 FEET	30.1 FEET (AMHERST AVE)
SIDE:	30 FEET	35.2 FEET (HIGHLAND AVE)
REAR:	N/A	13.2 FEET (BACKLICK ROAD)
HEIGHTS:	10 FEET	N/A
DWELLING:	-	29 FEET
FENCES:	-	7.5 FEET
		AS NOTED

PROPOSED FENCE TYPE  
6 FOOT HIGH FRAME FENCE

6. THIS PROPERTY IS SERVED BY PUBLIC WATER AND SEWER.
7. THERE IS NO OBSERVABLE EVIDENCE OF GRAVE SITES OR BURIAL GROUNDS ON THIS PROPERTY.
8. ALL IMPROVEMENTS SHOWN ON THIS PLAT ARE EXISTING UNLESS DENOTED AS PROPOSED.
9. THE SURVEYOR IS NOT AWARE OF ANY UTILITY EASEMENTS 25 FEET IN WIDTH OR GREATER AFFECTING THIS PROPERTY.
10. THERE ARE NO FLOOD PLAINS, FLOOD HAZARD AREAS OR RESONANCE PROTECTION AREAS ON THIS PROPERTY.
11. BASED ON FIELD INSPECTION THE TOPOGRAPHY OF THE SITE IS RELATIVELY FLAT AND DOES NOT INTERFERE WITH THE SIGHT DISTANCE LINE SHOWN HEREON.
12. DEPICTION OF FOUNDATION PLANTING SHOWN HEREON IS GENERAL. ACTUAL PLANTING SHALL EXTEND ACROSS THE ENTIRE WALL AND FOLLOW NORMAL DESIGN STANDARDS FOR PLACEMENT AND PLANT SELECTION.
13. REAR YARD SETBACK AREA COVERAGE:  
10' REAR YARD = 574 S.F.  
EXISTING COVERED AREA = 248 S.F. (47.3%)  
PROPOSED COVERED AREA = 127 S.F. (24.2%)

PLAT  
SHOWING THE IMPROVEMENTS ON  
LOT 1 BLOCK 1 SECTION 2A  
**SPRINGFIELD**  
SPRINGFIELD DISTRICT  
FAIRFAX COUNTY, VIRGINIA  
SCALE: 1" = 20'  
MAY 15, 2008

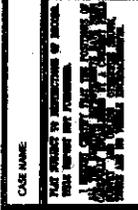


REVISIONS

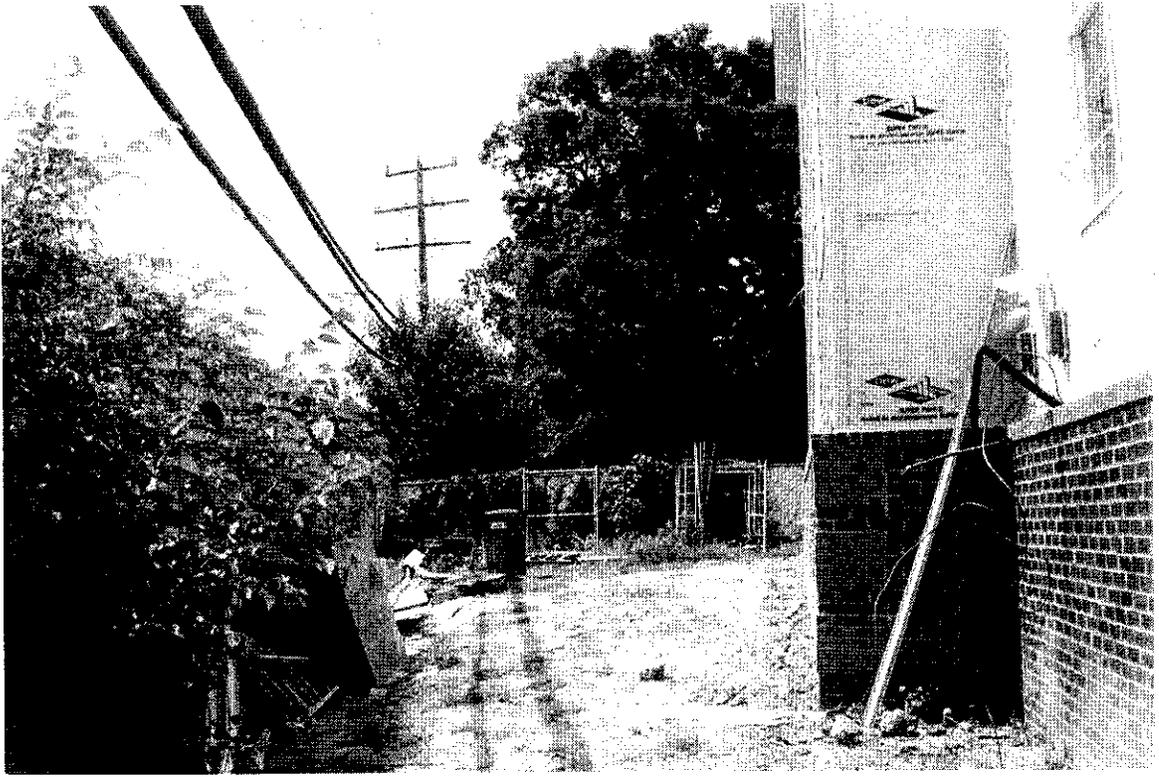
NO.	DATE	DESCRIPTION
1	05/15/08	ISSUED FOR PERMITS
2	05/15/08	ISSUED FOR PERMITS
3	05/15/08	ISSUED FOR PERMITS
4	05/15/08	ISSUED FOR PERMITS
5	05/15/08	ISSUED FOR PERMITS
6	05/15/08	ISSUED FOR PERMITS
7	05/15/08	ISSUED FOR PERMITS
8	05/15/08	ISSUED FOR PERMITS
9	05/15/08	ISSUED FOR PERMITS
10	05/15/08	ISSUED FOR PERMITS
11	05/15/08	ISSUED FOR PERMITS
12	05/15/08	ISSUED FOR PERMITS
13	05/15/08	ISSUED FOR PERMITS
14	05/15/08	ISSUED FOR PERMITS
15	05/15/08	ISSUED FOR PERMITS
16	05/15/08	ISSUED FOR PERMITS
17	05/15/08	ISSUED FOR PERMITS
18	05/15/08	ISSUED FOR PERMITS
19	05/15/08	ISSUED FOR PERMITS
20	05/15/08	ISSUED FOR PERMITS

CDE NAME

MACHICAD



**ALEXANDRIA SURVEYS**  
INTERNATIONAL LLC  
6110 NORTH BRICKS HIGHWAY ALEXANDRIA, VIRGINIA 22304  
TEL: (703) 960-9011 FAX: (703) 960-9012



1. Front yard (Backlick Road)



2. Front yard (Backlick Road)



3. Backlick Road side of dwelling



4. Highland Avenue frontage



5. Highland Avenue entrance



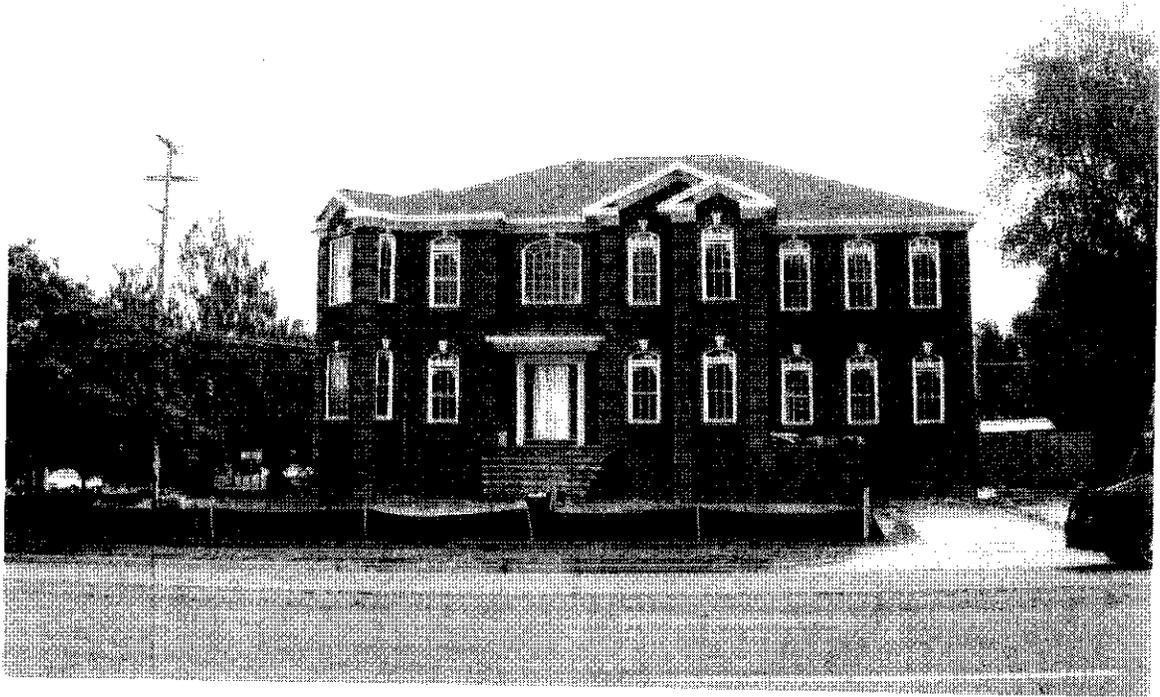
6. Highland Avenue frontage



7. Southern side of property



8. Southern side of property



9. Front of property (Amherst Ave.)



10. Front of property (Amherst Ave.)



11. Front of property (Amherst Ave.)



12. Front of property (Amherst Ave.)



13. Front yard (Amherst Ave.)

**DESCRIPTION OF THE APPLICATION**

The applicant is requesting approval of a reduction to the minimum yard requirements based on errors in building locations to permit 1) the dwelling to remain 13.2 feet with eave 12.1 feet from the eastern front lot line adjacent to Backlick Road, and 2) a roofed deck to remain 25.4 feet from the eastern front lot line adjacent to Backlick Road.

	Structure	Yard	Min. Yard Req.*	Permitted Extension **	Min. Allowed	Structure Location	Amount of Error	Percent of Error
<b>Special Permit 1</b>	<b>Dwelling</b>	Front (east)	30.0 feet	NA	30.0 feet	13.2 feet	16.8 feet	56%
<b>Special Permit 1</b>	<b>Eave</b>	Front (east)	30.0 feet	3.0 feet	27.0 feet	12.1 feet	14.9 feet	55%
<b>Special Permit 2</b>	<b>Roofed Deck</b>	Front (east)	30.0 feet	NA	30.0 feet	25.4 feet	4.6 feet	15%

\* Minimum yard requirement per Sect. 3-403

\*\* Permitted extension per Sect. 2-214

The applicant also requests approval of a special permit for the construction of a fence greater than 4 feet in height in the eastern front yard adjacent to Backlick Road. The Fairfax County Department of Transportation (DOT) has reviewed the submitted plat and confirmed that the proposed 6-foot high fence does not interfere with sight distance requirements as shown on the plat.

	Structure	Yard	Height Permitted By right *	Existing Height	Modification Requested
<b>Special Permit</b>	Fence	Front	4.0 feet	6.0 feet	2.0 feet

\* Maximum fence height per Sect. 10-104.

**CHARACTER OF THE AREA**

	<b>Zoning</b>	<b>Use</b>
<b>North</b>	R-4	Vacant; Lynbrook Elementary School
<b>South</b>	R-4	Single Family Detached Dwellings
<b>East</b>	R-4	Single Family Detached Dwellings
<b>West</b>	R-4	Single Family Detached Dwellings

**BACKGROUND**

- ❖ The property was developed with a one-story, brick, single family detached dwelling unit of approximately 1,200 square feet in size in 1953.
- ❖ On January 22, 2008, a building permit was issued to construct a two-story (height of 24 feet) single family dwelling partially on the existing foundation. The house location plat certifying less than 2,500 square feet of disturbed area, was prepared by J&M Homes Corp, dated November 12, 2007.
- ❖ On May 5, 2008, the applicant was issued a Stop Work Order by the Department of Public Works and Environmental Services (DPWES). County staff had determined that the application lot has frontage on three streets; thus the building permit was issued in error as it allowed the portion of the house on the new foundation to be located 13.0 feet from Backlick Road which does not meet the 30 foot minimum required front yard.
- ❖ On May 6, 2008, a Notice of Violation (NOV) was issued to the applicant indicating that the building permit was issued in error, thereby rendering the building permit null and void. The property is considered a corner lot requiring minimum front yards of 30 feet on three of its four sides. The Backlick Road front yard does not meet the Zoning Ordinance minimum requirements.
- ❖ On May 22, 2008, a Notice of Violation was issued to the appellant by DPWES for land-disturbing activity in excess of 2,500 square feet without the requisite grading permit.
- ❖ On May 30, 2008, the property owner filed Application for Appeal that the Zoning Administrator is barred from making a change in the designation of the minimum yard along Backlick Road to a 30 foot minimum front yard after 60 days pursuant to Virginia Code Ann. § 15.2-2311(C), as the property owner argued that such a determination was discretionary.

- ❖ On July 29, 2008, the Board of Zoning Appeals (BZA) heard the above noted appeal and voted to overturn to Zoning Administrator's decision. A copy of the appeal staff report is attached as Appendix 4 of this staff report.
- ❖ On August 20, 2008, the Board of Supervisors and the Zoning Administrator filed a Petition for Writ of Certiorari in the Fairfax County Circuit Court challenging the BZA's July 29, 2008, decision. On January 9, 2009, the Circuit Court entered a Final Order overturning the BZA's decision, and a copy of that Order is attached as Appendix 5. The Circuit Court specifically ruled in the Final Order that "[t]he Zoning Administrator correctly determined in the Notice of Violation that Machicao is in violation of Fairfax County Zoning Ordinance §§ 3-407(2)(A)(1) and 2-307(1) for constructing a dwelling on the subject property partially within the minimum required 30-foot, front-yard setback that applies to the subject property's frontage on Backlick Road, and the Notice of Violation was not barred by the 60-day limitation set forth in Va. Code Ann. § 15.2-2311(C) because the matters set forth therein are nondiscretionary." On February 4, 2009, the Applicant filed a Notice of Appeal to the Supreme Court of Virginia.

The Board has heard the following similar special permit applications in the vicinity of the application site for a reduction of the minimum yards or for the construction of fences greater than 4 feet in height in the front yard:

- ❖ Special Permit SP 2008-LE-058 was approved on August 5, 2008 for Tax Map 80-1 ((5)) (15) 513, zoned R-4, to permit reduction to certain yard requirements to permit roof deck 28.9 feet and deck 23.3 feet from front lot line of a corner lot, and reduction to minimum yard requirements based on error in building location to permit accessory storage structure to remain 1.5 feet from side lot line (10 feet minimum side yard required) and 2.2 feet from rear yard line (25 feet minimum rear yard required).
- ❖ Special Permit SP 01-L-037 was approved on March 6, 2002 for Tax Map 80-4 ((5)) (9) 17, zoned R-4, to permit reduction to minimum yard requirements based on error in building location to permit addition to remain 4.8 feet from side lot line and accessory dwelling unit (10 feet minimum side yard required).
- ❖ Special Permit SP 97-L-061 was approved on March 18, 1998 for Tax Map 80-4 ((3)) (1) 2, zoned R-4, home professional office and reduction to minimum yard requirements based on error in building location to permit awning to remain 4.1 feet from the side lot line.
- ❖ Special Permit SP 95-L-053 was approved on October 10, 1995 for Tax Map 80-3 ((2)) (19) 4, zoned R-4, to permit reduction to minimum yard requirements based on error in building location to permit addition to remain

4.0 feet from the side lot line (10 feet minimum side yard requirement).

- ❖ Special Permit SP 2005-LE-016 was approved on June 29, 2005 for Tax Map 80-3 ((2)) (12) 22, zoned R-4, to permit reduction to minimum yard requirements based on error in building location to permit addition to remain 0.4 feet from the side lot line (10 feet minimum side yard).

### **ZONING ORDINANCE REQUIREMENTS (See Appendix 5)**

- 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 Increase in Fence and/or Wall Height in Any Front Yard (Sect. 8-923)

### **CONCLUSION**

If it is the intent of the BZA to approve this application, staff suggests the BZA 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. Appeal Staff Report
5. Court Order
6. Zoning Ordinance Provisions

**PROPOSED DEVELOPMENT CONDITIONS**

**SP 2009-LE-007**

**March 24, 2009**

1. This special permit is approved for the location of the existing dwelling, covered deck, and proposed fence as shown on the plat prepared by Alexandria Surveys, dated May 15 2008, revised through March 3, 2009, and signed March 13, 2009 as submitted with this application and is not transferable to other land. All development onsite shall be in conformance with such plat.
2. Within three months of approval of this application, the applicant shall amend building permits for the dwelling to reflect the changes noted in Condition #3.
3. Prior to approval of final inspections and RUP issuance, the applicant shall make the following modifications to the dwelling as shown on the SP Plat: remove the front steps to the Highland Avenue porch entrance and replace the existing entrance door with French doors; replace the existing door along Backlick Road with a window; replace the garage door with sliding glass doors; and remove the concrete drive in the rear yard.
4. Prior to approval of final inspections and RUP issuance, foundation planting and shade trees shall be provided along the dwelling's entire Highland Avenue building frontage to soften the visual impact of the structure. The species, size and location shall be determined in consultation with and approval by Urban Forest Management Division (UFMD), DPWES.
5. The proposed six-foot high board-on-board fence shall be consistent with the inset picture on the SP Plat. The fence shall be maintained in good repair.

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: 12-16-2008  
 (enter date affidavit is notarized)

I, Jose Miguel Machicao, 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      103147

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.)

<b>NAME</b> (enter first name, middle initial, and last name)	<b>ADDRESS</b> (enter number, street, city, state, and zip code)	<b>RELATIONSHIP(S)</b> (enter applicable relationships listed in <b>BOLD</b> above)
Hermilio Machicao	7614 Dunston St. Springfield, VA 22151	Owner
Jose Miguel Machicao	7219 Highland St. Springfield, VA 22150	Applicant's Agent
Lawson, Tarter & Charvet P.C. William B. Lawson, Jr. Esquire Benjamin T. Danforth, Esquire	6045 Wilson Blvd, Suite 100 Arlington, VA 22205	Attorney/Agent Attorney/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)

Page Two

**SPECIAL PERMIT/VARIANCE AFFIDAVIT**

DATE: 12-16-2008  
(enter date affidavit is notarized)

103147

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)

Lawson, Tarter, & Charvet, P.C.  
6045 Wilson Blvd., Suite 100  
Arlington, VA 22205

**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)

William B. Lawson, Jr., Esq.  
P. David Tarter, Esq  
Ina C. Charvet, Esq

(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: 12-16-2008  
(enter date affidavit is notarized)

103147

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)

N/A

(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**)

N/A

(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.

**SPECIAL PERMIT/VARIANCE AFFIDAVIT**

DATE: 12-16-2008  
(enter date affidavit is notarized)

103147

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)

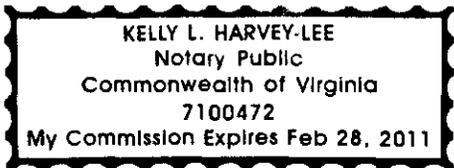
[ ] Applicant      [x] Applicant's Authorized Agent

Jose Miguel Machicao - Agent  
(type or print first name, middle initial, last name, and title of signee)

Subscribed and sworn to before me this 16 day of December 2008 in the State/Comm. of VA, County/City of FAIRFAX.

Kelly L. Harvey-Lee  
Notary Public

My commission expires: 2/28/11



JAN 13 2009

Zoning Evaluation Division

Friday, December 12, 2008

Hermilio Machicao  
7614 Dunston St.  
Springfield VA, 22151

### **Special Permit Statement of Justification**

RE: Board of Zoning Appeals  
5901 Amherst Avenue  
Springfield, VA 22150

I, Jose Miguel Machicao, represent the owner of the Property, Hermilio Machicao. I am writing this statement of Justification for the property located at 5901 Amherst Avenue, Springfield, VA 22150 (Tax Map 0804-04010001/Zone R-4). The Building Permit was approved and issued by Fairfax County on January 22, 2008, after completing all necessary requirements and steps for permit approval. The permit description was that of "allow construction of a single family dwelling on existing foundation". The house location plat submitted in connection with the building permit application clearly identified the structure's Backlick Rd setback at 13.9 feet at the time. Everything was done accordingly to the normal procedure for obtaining a Building Permit and Building Review approval. Following the issuance of the Building Permit, the home owner commenced construction via our company, J.A.M. Homes Corp in late January of 2008.

After three months of construction, and submitting and passing all necessary building inspections, including specific inspections that were asked to provide during the construction, such as wall checks and height inspections, the property owner was handed a stop work order on May, 5, 2008, nearly three months later since the date of issuance, and at this point, the property was at a 85% completion state. On that date, Fairfax County Zoning Staff finally determined that the Building Permit was issued in Error, nearly three months and various inspections later. The building in error justification by staff determined that the yard along Backlick Road as being a rear yard subject to a side yard setback instead of the required front yard setback, requiring a thirty (30) foot front yard setback requirement in compliance with the Fairfax County Zoning Ordinance. No yards were checked for compliance with the required setbacks, as the determination was not found until months later, and was not know at the time.

We, J.A.M. Homes Corp, and the home owner built the property in good faith, and invested significant resources in construction of the structure, in reliance on the approved building permit. The building façade includes the two proposed front yards at Amherst Avenue

and Highland St, built with a brick veneer, and the two adjacent sides, one facing Backlick Rd, with a vinyl siding façade. Mr. Hermilio Machicao, nor J.A.M. Homes Corp never intended to go against any zoning ordinance, and relied on the Building Permit Application Process for such mistakes to be found and corrected, if any, at the time of the application process.

Due to the irreparable harm to the property and its owners resulting from the construction delayed caused by the Zoning Administration, we would like to request a prompt and expedited hearing on the matter.

Tuesday, January 13, 2009

RECEIVED  
Department of Planning & Zoning

JAN 13 2009

Zoning Evaluation Division

Hermilio Machicao  
5901 Amherst Avenue  
Springfield, VA 22150

## Proposed Demolition of Stairs

To who it may concern;

I, Hermilio Machicao, owner of the property located at 5901 Amherst Avenue, in Springfield, VA 22150, propose to demolish the stairs from the stoop/porch located alongside the Highland St. Entrance/Frontage .and only the stoop will remain, and will be simply used as a walk out balcony, for a visual description of the proposed demolition, one can refer to the house location plat given along with the Special Permit application for the error in building location matter. Since the addition of the 2<sup>nd</sup> entrance ever since the property was under construction, the fact that the property has a 2<sup>nd</sup> entrance has concerned and come into question as to the property's purpose from local neighbor associations, so in return we would like to address their concerns and simply remove that 2<sup>nd</sup> entrance, as mentioned, notably the stairs. Thank you for your time, and due to time constraints, we would like to request a prompt and expedited hearing on the matter.

Sincerely,

Hermilio Machicao

Tuesday, January 13, 2009

RECEIVED  
Department of Planning & Zoning

JAN 13 2009

Zoning Evaluation Division

Hermilio Machicao  
5901 Amherst Avenue  
Springfield, VA 22150

## Proposed Fence Height Increase

To whom it may concern;

I, Hermilio Machicao, owner of 5901 Amherst Avenue, in Springfield, Virginia propose to increase the fence height alongside Backlick Road from 4 Feet to 6 Feet. The proposed increase can be seen on the house location plat provided with the Special Permit Application for the error in building location matter. The addition of the proposed 6-foot fence will pose no impact to the current traffic flow, and most importantly it will not affect in any way the use and enjoyment of other properties located surrounding the property. The fence will meet the distance requirements from Sec. 2-505, and will be in character with the current site development, as well as being harmonious with the surrounding off-site uses in such terms as location, height, scale, among others. Thank you for your time, and due to time constraints, we would like to request a prompt and expedited hearing on the matter.

Sincerely,

Hermilio Machicao



# FAIRFAX COUNTY

## BOARD OF ZONING APPEALS

**PUBLIC HEARING DATE:** July 29, 2008

**TIME:** 9:30 a.m.

V I R G I N I A

**July 29, 2008**

### STAFF REPORT

#### APPEAL APPLICATION A 2008-LE-030

#### LEE DISTRICT

<b>APPELLANT:</b>	Hermilio Machicao
<b>LOCATION:</b>	5901 Amherst Avenue
<b>TAX MAP REF:</b>	80-4 ((4))(1) 1
<b>ZONING DISTRICTS:</b>	R-4
<b>SITE AREA:</b>	11,268 square feet
<b>NATURE OF APPEAL:</b>	Appeal of a determination that the property has a 30-foot minimum required front yard along its Backlick Road frontage in which the owner of the property contends that such determination is barred by Va. Code Ann. § 15.2-2311 (C) (Supp. 2007) because it was made more than 60 days after the issuance of a Building Permit for the construction of a single family detached dwelling located 13.9 feet from Backlick Road.

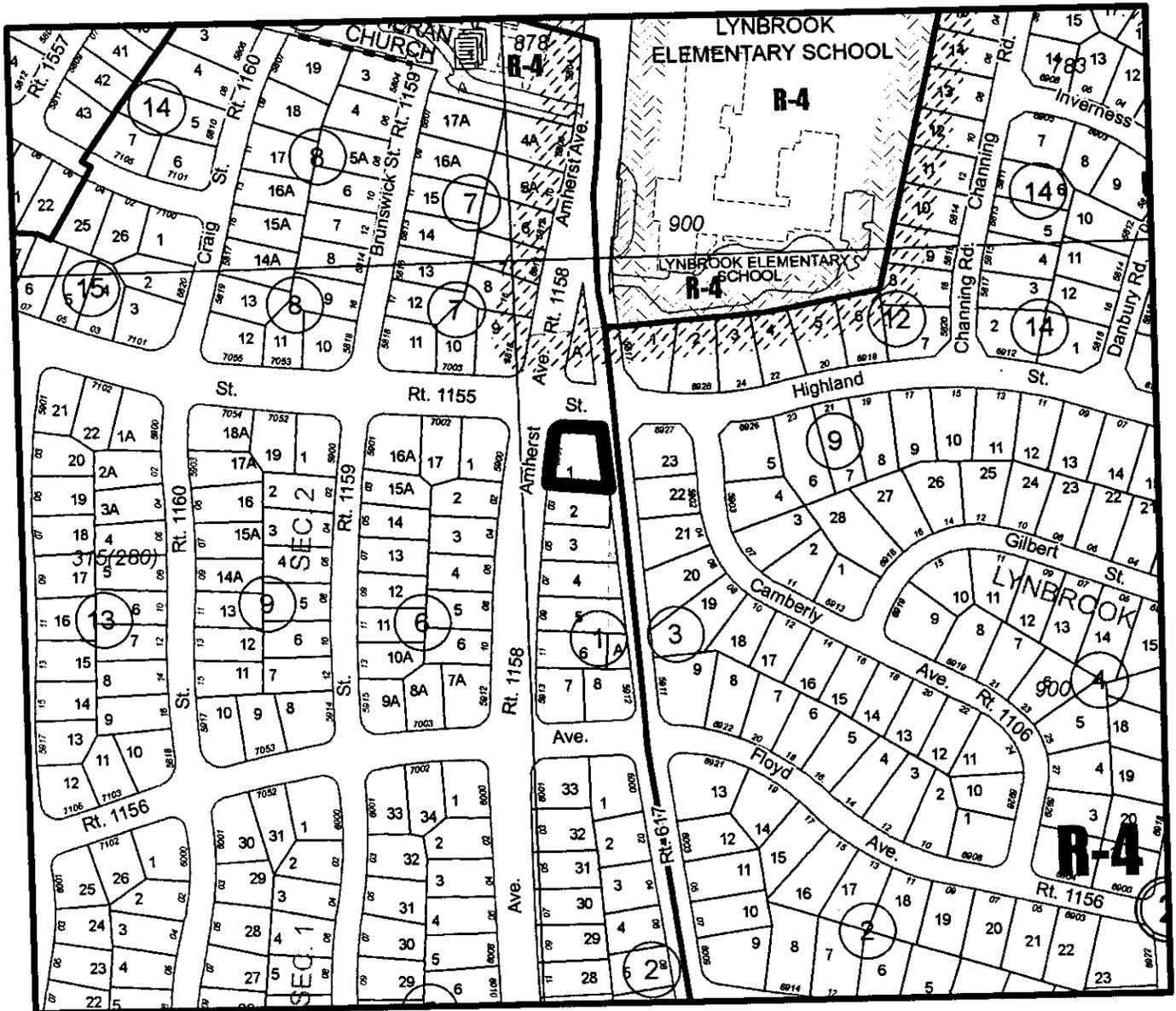
DP

For information, contact the Zoning Administration Division, Department of Planning and Zoning, 12055 Government Center Parkway, Suite 807, Fairfax, Virginia 22035-5505, 703-324-1314.

# APPEAL APPLICATION

A 2008-LE-030

HERMILIO MACHICAO, A 2008-LE-030 Appl. under sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that the property has a 30-foot minimum required front yard along its Backlick Road frontage in which the owner of the subject property contends that such determination is barred by Va. Code Ann. § 15.2-2311(C) (Supp. 2007) because it was made more than 60 days after the issuance of a Building Permit for the construction of a single family detached dwelling on the subject property located 13.9 feet from Backlick Road. Located at 5901 Amherst Av. on approx. 11,268 sq. ft. of land zoned R-4. Lee District. Tax Map 80-4 ((4)) (1) 1.



**DESCRIPTION OF APPEAL****Appellant:**

Hermilio Machicao

**Issue:**

Appeal of a determination that the property has a 30-foot minimum required front yard along its Backlick Road frontage in which the owner of the property contends that such determination is barred by Va. Code Ann. § 15.2-2311(C) (Supp. 2007) because it was made more than 60 days after the issuance of a Building Permit for the construction of a single family detached dwelling located 13.9 feet from Backlick Road.

**Property Description:**

The property that is the subject of this appeal is located at 5901 Amherst Avenue, in the Springfield Subdivision, Section 2A, Block 1, Lot 1. The property is bordered to the north by Highland Street (shown as Highland Avenue on some plats), to the east by Backlick Road, to the south by an abutting residential property and to the west by Amherst Avenue. The property is zoned R-4, Residential District, Four Dwelling Units/Acre and contains a lot area of 11,268 square feet. The property was developed with a one-story, brick, single family detached dwelling unit of approximately 1,200 square feet in size in 1953. A Building Permit was issued on January 22, 2008 to construct a two story (height of 24 feet) single family dwelling on the existing foundation. A copy of the zoning map sheet showing the location of the subject property is provided on the previous page.

**Appellant's Position:**

The appellant's application and basis for appeal are set forth in Attachment 1.

**ZONING ORDINANCE PROVISIONS**

The provisions of the Zoning Ordinance that are germane to this appeal are listed below. The complete text of these provisions is provided as Attachment 2.

- Par. 1 of Sect. 2-307, Bulk Regulations, General Regulations
- Par. 1 of Sect. 2-413, Yard Regulations for Residential Lots Having Reverse Frontage
- Paragraphs 1 and 3 of Sect. 2-601, Limitation on the Removal and Addition of Soil
- Par. 2 of Sect. 3-407, Bulk Regulations (R-4 District)

- Sect. 18-114, Permits Not to be Issued for Structures Which Would Violate Ordinance
- Par. 1 of Sect. 18-603, Limitations on Approval of Building Permits
- Definitions of CORNER LOT, INTERIOR LOT, REVERSE FRONTAGE LOT, THROUGH LOT, FRONT LOT LINE, REAR LOT LINE, SIDE LOT LINE, YARD, FRONT YARD, REAR YARD, AND SIDE YARD as set forth in Article 20 of the Zoning Ordinance.
- Appendix 3, Va. Code Ann. § 15.2-2311 (C) (Supp. 2007)

## BACKGROUND

- According to the Department of Tax Administration's property tax records, the dwelling unit on the subject property was constructed in 1953. The zoning property file contains a house location plat dated May 13, 1952, but contains no other records related to the construction of the original dwelling. A copy of the original house location survey is provided as Attachment 3.
- On January 3, 2008, The Zoning Permit Review Branch (ZPRB) of the Department of Planning and Zoning (DPZ) conducted a zoning review of Demolition Permit Number 80020158 to demolish the existing single family detached dwelling, leaving the foundation and basement walls. A copy of the Demolition Permit application is provided as Attachment 4.
- On January 22, 2008, ZPRB conducted a zoning review of Building Permit Number 80020162, to allow the construction of a single family detached dwelling, in part, on an existing foundation. ZPRB staff erroneously identified the yard along Backlick Road as being a rear yard subject to a side yard setback instead of the required front yard setback. As a result, ZPRB staff approved the Zoning review of the Building Permit application in error. A copy of the Building Permit application is provided as Attachment 5.
- On February 25, 2008, a complaint was received by telephone to the Zoning Enforcement Branch (ZEB) indicating that the new dwelling on the subject property was being built too close to an abutting dwelling located to the south of the subject property.
- On February 27, 2008, an inspection was conducted by ZEB to determine if there was a violation of the minimum yard requirement next to the abutting existing house to the south of the subject property. Records do not indicate that any other yards were checked for compliance with the requisite setbacks. It was determined that the new foundation for the dwelling (which was all that was constructed at the time) was located 16.5 feet from the southern lot line, which is greater than the required 10 foot setback, so it was determined that no violation existed on the southern property line and the case was closed.

- Subsequent to the initial zoning inspection, the Lee District Supervisor's office and various County departments received multiple phone inquiries related to the size of the structure and its location on the lot. As a result, Department of Public Works and Environmental Services (DPWES) inspectors ordered a Wall Check Survey to be completed to determine if the dwelling met the setbacks shown on the original plat submitted with the Building Permit. A copy of the Wall Check Survey dated April 16, 2008 is provided as Attachment 6. This Wall Check Survey was provided to DPZ in May 2008, after it was discovered that ZPRB staff had made an error in the designation of the front lot line. As noted on the Wall Check Survey, the footprint of the dwelling under construction is different from the plat submitted with the Building Permit. Among other things, there is a grand entrance on the portion of the dwelling that faces Highland Street with ten steps. Whether or not the ZPRB staff who reviewed the Building Permit request would have recognized the Highland Street frontage as the front lot line had this front entrance been shown on the Building Permit plat cannot be known, but certainly that information would have been helpful when reviewing the original permit request.
- Based on a telephone call from the Lee District Board of Supervisors' Office, a question was raised as to the dwelling's compliance with the maximum height limit of the R-4 District and concern was expressed that construction appeared to have expanded beyond that which was shown on the plat submitted with the Building Permit. On May 5, 2008 a follow-up inspection was conducted and based on a subsequent review of the plans submitted with the Building Permit application, it was determined that the setback along Backlick Road was erroneously approved as a rear yard with a side yard setback, with a dimension of only 13.9 feet instead of the requisite 30 feet. With regard to the height issue, a sight inspection determined that the dwelling under construction is significantly taller than the 24 feet that was indicated on the building plans approved by DPWES. Because finished grade has not yet been established since the house is still under construction, the finished height cannot be determined at this time and will be dependent upon the submission of a height certification from a licensed engineer or certified land surveyor upon establishment of the finished lot grade and prior to any occupancy of the dwelling. Copies of the photographs taken at the February 27, 2008 and May 5, 2008 inspections are provided as Attachment 7.
- On May 5, 2008, Diane Johnson-Quinn, Deputy Zoning Administrator for ZPRB, requested that Paul Lynch, Director of Residential Inspections Division, Land Development Services, DPWES issue a Stop Work Order for Building Permit #80020162 based on the fact that the permit was issued in error with regard to the minimum required yard along Backlick Road. A copy of this memorandum is provided as Attachment 8. On this date, the Stop Work Order was issued to JAM Homes Corporation and Jose Miguel Machicao (Agent), directing them to cease all construction activity at 5901 Amherst Avenue. A copy of this Stop Work Order is provided as Attachment 9.
- On May 6, 2008, via Sheriff's Letter, a Notice of Violation was issued to the appellant for construction of a single family dwelling in violation of the minimum front yard requirement in the R-4 District. The Notice indicated that the appellant could gain compliance with the applicable provisions by either obtaining approval of a Special Permit for an error in building location or by removing that portion of the structure that violates the 30 foot setback requirement. A copy of the Notice is provided as Attachment 10.

- On May 22, 2008, a Notice of Violation was issued to the appellant by DPWES for land-disturbing activity in excess of 2,500 square feet without the requisite grading permit and an approved conservation plan. Section 104-1-2 of the Fairfax County Code provides that “No person may engage in land-disturbing activity until he has submitted to the County a conservation plan for the land-disturbing activity and the plan has been reviewed and approved by the Director.” Sect. 2-601 of the Zoning Ordinance allows grading of up to 2,500 square feet without a requirement for a grading/conservation plan. It is noted that the house location plat submitted with the Building Permit request for this dwelling includes a delineation of the limits of clearing and grading and a certification by the land surveyor that the clearing and grading delineated on the plat accurately reflects the scope of the project and the proposed work can be performed within the limits. It was specifically stated that the total disturbed area would be 2,458 square feet. Upon inspection, it was found that the land disturbing activity exceeds by more than double the land area shown on the plat associated with the Building Permit. As such, a grading permit and conservation plan is required. A copy of this Notice is provided as Attachment 11.
- The subject appeal was submitted on May 30, 2008, accepted on June 12, 2008 and scheduled for public hearing before the Board of Zoning Appeals (BZA) on August 5, 2008.
- On June 10, 2008, the appellant’s counsel was present at the BZA’s regularly scheduled public hearing to request an out of turn public hearing on this appeal application. The BZA agreed to hear this matter at its public hearing on July 29, 2008.

### **ZONING ADMINISTRATOR’S POSITION**

The Zoning Administrator has concluded that the subject property’s Backlick Road frontage is a front yard and is, therefore subject to a minimum required front yard of 30 feet in the R-4 District. The Appellant is contesting this conclusion on the grounds that such determination was rendered more than 60 days from the date of issuance of a Building Permit that indicated that the Backlick Road frontage was subject to a minimum required rear yard with a side yard setback of not less than 10 feet in the R-4 District. The Appellant presents no argument or evidence to indicate that he is contesting the substantive basis for the Zoning Administrator’s determination that the Backlick Road frontage is, in fact, a front yard. The Appellant argues only that the Zoning Administrator is barred from making a change in the designation of minimum yard requirements, which the Appellant believes to be discretionary, after 60 days from the date of the original determination, pursuant to Va. Code Ann. § 15.2-2311 (C) (Supp. 2007).

The subject property is located at 5901 Amherst Avenue in the Springfield Subdivision, Section 2A, Block 1, Lot 1. The property is zoned R-4, Residential District, Four Dwelling Units/Acre. The property contained a one-story single family detached dwelling unit built in 1953, but that structure was demolished and a new two-story single family detached dwelling unit, partially utilizing the existing foundation, is under construction.

The primary provision relevant to the appellant’s position can be found in Va. Code Ann. § 15.2-2311 (C) (Supp. 2007), and Appendix 3 of the Zoning Ordinance, which incorporates the

enabling legislation for zoning from the Code of Virginia into the Zoning Ordinance. This provision states that:

“In no event shall a written order, requirement, decision or determination made by the zoning administrator or other administrative officer be subject to change, modification or reversal by any zoning administrator or other administrative officer after 60 days have elapsed from the date of the written order, requirement, decision or determination where the person aggrieved has materially changed his position in good faith reliance on the action of the zoning administrator or other administrative officer unless it is proven that such written order, requirement, decision or determination was obtained through malfeasance of the zoning administrator or other administrative officer or through fraud. The 60 day limitation period shall not apply in any case where, with the concurrence of the attorney for the governing body, modification is required to correct clerical or other nondiscretionary errors.”

The only issue in this appeal is whether the 60 day time limitation would preclude the Zoning Administrator from identifying the frontage along Backlick Road as a front yard instead of a rear yard with a side yard setback, as was indicated on the approved Building Permit. It is the position of the Zoning Administrator that the statute explicitly allows her to modify the earlier application of a side yard setback because such action is required to correct a nondiscretionary error.

In order to determine if the 60 day time limitation applies in this case, it is necessary to first determine the application of the lot line and minimum yard requirements of the Zoning Ordinance. Lot lines and yards are identified by comparing the specific lot configuration with the definitions and other provisions of the Zoning Ordinance. It is the position of the Zoning Administrator that there is no discretion allowed or needed in the designation of lot lines and yards, that the frontage along Backlick Road is very clearly categorized as a front yard pursuant to the applicable definitions, that the modification is necessary based on a nondiscretionary error, and that the 60 day time limitation does not apply, all based upon the following findings:

**1. The type of lot must first be identified in order to determine the minimum required yards.**

A lot can be either a *corner lot* or an *interior lot*. A corner lot is specifically defined as “a lot at the junction of and abutting on two (2) or more intersecting streets when the interior angle of intersection does not exceed 135 degrees; provided, however, that when one of the intersecting streets is an interstate highway, the resultant lot shall not be deemed a corner lot.” An interior lot is defined as “any lot, including a through lot, other than a corner lot.” Since the subject property is at the junction of two or more intersecting streets, none of the interior angles of those intersections exceeds 135 degrees and none of the abutting streets is an interstate highway, the subject property is a corner lot by definition. The designation of the subject property as a corner lot is not a discretionary conclusion since the Zoning Ordinance very clearly sets forth the definition of such lot.

2. **Once the main lot type is determined, there are two other lot classification categories that must be considered when a lot abuts more than one street, specifically a through lot and reverse frontage lot.**

The definition of a *through lot* specifies that the lot must be an interior lot and not a corner lot; therefore this designation cannot apply in this case since the lot has already been identified as a corner lot. This is not a discretionary conclusion.

A *reverse frontage lot* is defined as a “residential through or corner lot, intentionally designed so that the front lot line faces a local street rather than facing a parallel major thoroughfare.” In order for the subject property to be a reverse frontage lot, the location of the front lot line must first be identified and then such front lot line must be found to be parallel to an abutting street that is classified as a major thoroughfare. A *front lot line* is defined as a “street line which forms the boundary of a lot; or, in the case where a lot does not abut a street other than by its driveway, or is a through lot, that lot line which faces the principal entrance of the main building. On a corner lot, the shorter street line shall be deemed to be the front lot line, regardless of the location of the principal entrance or approach to the main building.” By definition, the shortest street line is the front lot line for a corner lot. According to the plat dated November 12, 2007, prepared by David L. Mayne, Land Surveyor, the street frontage along Highland Street is 87.05 feet, the Amherst Avenue street frontage is 107.9 feet and the Backlick Road street frontage is 117.5 feet. When applying the definition of a front lot line to the subject property, it is clear that the Highland Street frontage has the shortest street line and; therefore, is the front lot line and not the lot line along Amherst Avenue. This is not a discretionary decision, as it is based upon the measurement of street frontage along the abutting streets.

With the front lot line determined to be along Highland Street, in order to determine whether the subject property is a reverse frontage corner lot or simply a corner lot depends upon whether there is an abutting major thoroughfare lying parallel to the front lot line. In this case, the lot line that is most nearly parallel to Highland Street is abutting residential property, not a street. As such, the subject property is not a reverse frontage corner lot, but simply a corner lot with three street frontages. This is not a discretionary conclusion, as the regulations clearly define a reverse frontage lot as having a major thoroughfare parallel to the front lot line.

3. **Application of the minimum required yards.**

The R-4 District regulations require a minimum front yard of not less than 30 feet, side yards of not less than 10 feet and a rear yard of not less than 25 feet. All of the lot lines that abut a street require a minimum front yard of not less than 30 feet. For the subject property, the lot lines along Highland Street, Amherst Avenue, and Backlick Road all abut a street and require a minimum front yard of not less than 30 feet. This conclusion is based on the plain language of the Zoning Ordinance and does not involve the exercise of any discretion.

A *rear lot line* is defined, in part, as that lot line that is most distant and most nearly parallel to the front lot line; therefore, the lot line which abuts the residential property to

the south is the rear lot line. In the R-4 District, the minimum required rear yard is 25 feet; however, the definition of a rear yard includes special provisions for corner lots. On a corner lot, the setback along a rear lot line may be of a dimension that is not less than the required side yard for the applicable zoning district. For the R-4 District, the minimum required side yard is 10 feet, so the setback along the rear lot line is a minimum of 10 feet. It is noted that the plat submitted with the Building Permit identifies this yard dimension as 16.5 feet, so it complied with the 10 foot minimum requirement. The application of yards as dictated by this lot configuration is not a discretionary act, as the definitions and R-4 District regulations clearly identify the minimum dimensions for each applicable yard.

It is clear based on the application of the definitions set forth in Article 20 that the subject property is a corner lot with three front yards and a rear yard. As such, the R-4 District regulations establish the minimum required yards for the construction of the proposed dwelling, which are 30 feet along Amherst Avenue, Highland Street and Backlick Road and 10 feet along the abutting residential parcel to the south.

The appellant argues that these decisions are discretionary and, as such, the Zoning Administrator is barred from modifying the earlier, mistaken, approval of a rear yard with a side yard setback along Backlick Road because more than 60 days have elapsed and the aggrieved party has materially changed position in reliance on that decision. However, Va. Code Ann. § 15.2-2311(C) (Supp. 2007) provides that the "60 day limitation period shall not apply in any case where, with the concurrence of the attorney for the governing body, modification is required to correct clerical or other nondiscretionary errors." Therefore, despite the passage of more than 60 days from the date of issuance of the Building Permit allowing construction to occur within 13.9 feet from Backlick Road, it is the position of the Zoning Administrator that the Zoning Ordinance definitions, as applied to the subject property, are clear on their face, without the need or opportunity for discretion. Staff has no authority to allow a front yard setback of only 10 feet in the R-4 District when the Zoning Ordinance clearly provides for a 30 foot setback. As required by Va. Code Ann. § 15.2-2311(C) (Supp. 2007), staff has consulted with the Office of the County Attorney regarding this matter, and this conclusion was made with the concurrence of that Office. Staff believes that the application of the provisions of the Zoning Ordinance in this matter clearly offer no opportunity for discretion when determining the applicable lot lines and minimum required yards, thus exempting this situation from the 60 day limitation period specified in the Code of Virginia. The zoning approval of a Building Permit showing the setback along Backlick Road as less than the required 30 feet was a mistake, the building permit was thus issued in error and is void, and plainly an error made by staff charged with the administration of an ordinance cannot be permitted to override the mandates of the Zoning Ordinance. See *Segaloff v. City of Newport News*, 209 Va. 259, 261, 163 S.E.2d 135, 137 (1968); *WANV v. Houff*, 219 Va. 57, 63, 244 E.E.2d 760, 763 (1978); *Foster v. Geller*, 248 Va. 563, 568, 449 S.E.2d 802, 806 (1994). See also *Bd. of Supervs. V. Booher*, 232 Va. 478, 481, 352 S.E.2d 319, 321 (1987); *Gwinn v. Alward*, 235 Va. 616, 621, 369 S.E.2d 410, 413 (1988) (both observing that a local government may not be estopped or legally barred from discharging its government functions.) In accordance with these decisions from the Supreme Court of Virginia and the explicit language in Va. Code Ann. § 15.2-2311(C) (Supp. 2007), relating to the correction of non-discretionary errors, the building permit issued in this case in error was void from the time of its approval.

In conclusion, the situation presented by this appeal is the result of a nondiscretionary error made by staff at the time of issuance of a Building Permit for this dwelling. The designation of lot type and the application of applicable yards are not discretionary determinations under the Zoning Ordinance and, as a result, the error is not subject to the 60 day limitation. Therefore, staff recommends that the BZA uphold the Zoning Administrator's determination as set forth in the Notice of Violation dated May 6, 2008.

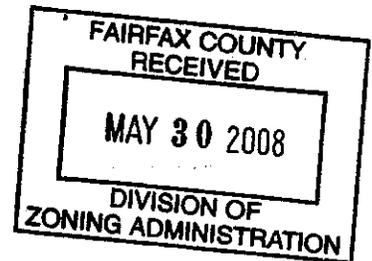
**ATTACHMENTS:**

1. Appellant's Application and Basis for Appeal
2. Applicable Zoning Ordinance Provisions
3. 1952 House Location Plat
4. Demolition Permit
5. Building Permit Application, including plat
6. Wall Check Survey Dated April 16, 2008
7. Photographs Taken During February 27, 2008 and May 5, 2008 Inspections
8. ZPRB Request for Issuance of a Stop Work Order
9. Stop Work Order Issued May 5, 2008
10. Notice of Violation Dated May 6, 2008 for Setbacks
11. Notice of Violation Dated May 22, 2008 for Grading



COMMONWEALTH OF VIRGINIA  
COUNTY OF FAIRFAX  
APPLICATION FOR APPEAL

Please type or  
Print in Black Ink



APPLICATION NO. A 2008 LE-030  
(Assigned by Staff)

NAME OF APPELLANT: Hermilio Machicao

**NATURE OF THE APPEAL:**

Appeal of zoning determination collectively set forth in a May 5, 2008, memorandum from Diane Johnson Quinn to Paul Lynch; a Notice of Violation dated May 6, 2008; and a Stop Work Order dated May 5, 2008 (copies attached), which asserts that the subject property's Backlick Road frontage is a front yard. The zoning determination is barred by the Code of Virginia Section 15.2-2311(c), as more fully set forth in the attached statement of appeal.

**DATE OF ORDER, REQUIREMENT, DECISION, DETERMINATION OR NOTICE OF VIOLATION WHICH IS SUBJECT TO THE APPEAL** May 5, 2008, and May 6, 2008

**HOW IS THE APPELLANT AN AGGRIEVED PERSON?:**

The appellant is the owner of the subject property.

**IF APPEAL RELATES TO A SPECIFIC PROPERTY, PROVIDE THE FOLLOWING INFORMATION:**

**POSTAL ADDRESS OF PROPERTY:** 5901 Amherst Avenue

**TAX MAP DESCRIPTION:** 0804 04 01 0001

The undersigned has or has not (circle one) the authority to allow and does or does not (circle one) authorize Fairfax County staff representatives on official business to enter on the subject property as necessary to process the application.

Type or Print Name of Appellant or Agent

Benjamin T. Danforth Attorney/Agent

Signature of Appellant or Agent

BTD

Address

6045 Wilson Boulevard, Suite 100 Arlington, VA 22205

Telephone No.

703.534.4800

Home

Work

Please provide name and phone number of contact person if different from above.

**DO NOT WRITE IN THIS SPACE**

Subdivision Name: Springfield Lt-1 BIK. 1 Sec. 2A

Total Area (Acres/Square Feet): 11,268 sq. ft.

Present Zoning: R-4

Supervisor District: Lee

Date application received: 5/30/08

Application Fee Paid: \$ 375.00

Date application accepted: 6/12/08

May 30, 2008

**VIA HAND DELIVERY**

Fairfax County Board of Zoning Appeals  
12055 Government Center Parkway  
Suite 801  
Fairfax, Virginia 22035

RE: Appeal (the "Appeal") of Zoning Determination regarding  
minimum yard requirement  
5901 Amherst Avenue (the "Property")

Dear Board of Zoning Appeals:

I represent Mr. Hermilio Machicao, the owner (the "Owner") of the Property. The Owner contests and appeals the zoning determination collectively set forth in a May 5, 2008, memorandum from Diane Johnson Quinn to Paul Lynch (copy attached), the Notice of Violation dated May 6, 2008 (copy attached), and the Stop Work Order dated May 5, 2008 (copy attached) (collectively, the "Zoning Determination"). In particular, the Owner contests the Zoning Determination's assertion that the Property's Backlick Road frontage is a front yard and that the Owner must bring the structure (the "Structure") on the Property into compliance with the Fairfax County Zoning Ordinance's thirty (30) foot front yard setback requirement.<sup>1</sup>

The house location plat (the "Plat") submitted in connection with the building permit application clearly identifies the Structure's Backlick Road setback as 13.9 feet (a fact admitted in the Zoning Determination). The building permit was approved and issued by Fairfax County on January 22, 2008, permitting the Structure to be constructed as shown on the Plat. Following the issuance of the building permit, the Owner commenced construction on the Structure, and the Structure is now substantially complete.

Consequently, since over sixty days have elapsed since the issuance of the building permit, the Fairfax County Zoning Administrator, nor any other Fairfax County administrative office, has the authority to reverse any of the

---

<sup>1</sup>The Structure is being constructed by J.A.M. Homes, Corp., a corporation owned and operated by the Owner's family.

determinations reflected in the approved building permit, including the non-clerical determination that the Structure, as shown on the Plat, complied with all minimum yard requirements.

The County is precluded from reversing any of these determinations because Section 15.2-2311(c) of the Code of Virginia provides that:

"In no event shall a written order, requirement, decision or determination made by the zoning administrator or other administrative officer be subject to change, modification or reversal by any zoning administrator or other administrative officer after 60 days have elapsed from the date of the written order, requirement, decision or determination where the person aggrieved has materially changed his position in good faith reliance on the action of the zoning administrator or other administrative officer unless it is proven that such written order, requirement, decision or determination was obtained through malfeasance of the zoning administrator or other administrative officer or through fraud. The 60 day limitation period shall not apply in any case where, with the concurrence of the attorney for the governing body, modification is required to correct clerical or other nondiscretionary errors."

Well over sixty days elapsed between the issuance of the building permit (1/22/08) and the Zoning Determination (5/5/08). During that time, the Owner has, in good faith, invested significant resources in the construction of the Structure, in reliance on the approved building permit. Consequently, the determinations contained in the Zoning Determination should be reversed, the stop work order should be rescinded, and construction of the Structure should be allowed to continue.

Due to the irreparable harm to the Owner resulting from the construction delay caused by the Zoning Determination, the Owner requests an expedited hearing on this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "BTD", with a long horizontal line extending to the right.

Benjamin T. Danforth

Enclosures as stated

cc: Hermilio Machicao (w/o encls.)

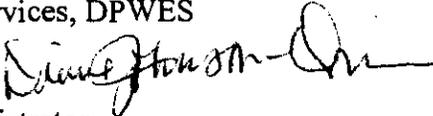


# County of Fairfax, Virginia

## MEMORANDUM

**DATE:** May 5, 2008

**TO:** Paul Lynch, Director  
Residential Inspections Division  
Land Development Services, DPWES

**FROM:** Diane Johnson-Quinn   
Deputy Zoning Administrator  
Zoning Permit Review Branch, DPZ

**SUBJECT:** Building Permit # 80020162  
5901 Amherst Avenue  
Springfield, Sec. 2A, Blk 1, Lot 1  
Tax Map Ref: 080 - 4 ((04)) (01) 0001  
Zoning District: R-4

This is to respectfully request that you issue a Stop Work Order for the referenced Building Permit which has been issued for construction of a new two-story single family dwelling on an existing foundation and existing basement, with a two-story portion of the new house on a new foundation.

The property has frontage on three streets: Amherst Avenue on its western boundary, Highland Avenue on its northern boundary, and Backlick Road on the east. This property is a corner lot with minimum front yards on three of its four sides. The minimum front yard requirement in the R-4 District is 30 feet. The house location plat shows that the house was to be located 31.9 feet from the Amherst front lot line, 41.3 feet from the Highland front lot line, and 13.9 feet from the Backlick front lot line. The Building Permit was issued in error as it allowed the portion of the house on the new foundation to be located 13.9 feet from Backlick Road, which does not meet the bulk regulations as outlined in Par. 2A(1) of Sect. 3-407 of the Zoning Ordinance (30 foot minimum required front yard). Therefore, the permit was approved in error and pursuant to Sect. 18-114 of the Zoning Ordinance the zoning approval of the permit is null and void. A copy of the approved Building Permit and Plat are enclosed

We are in the process of issuing a Notice of Violation to the property owner, thus advising by letter that the permit was approved in error and outlining the possible remedies available to correct the error. Given that the improvements are substantially underway, it is crucial to ensure no further construction is permitted.

Department of Planning and Zoning  
Zoning Administration Division  
Zoning Permit Review Branch  
12055 Government Center Parkway, Suite 250  
Fairfax, Virginia 22035-5508  
Phone 703-324-1359 FAX 703-324-2301  
[www.fairfaxcounty.gov/dpz/](http://www.fairfaxcounty.gov/dpz/)

Paul Lynch  
May 5, 2008  
Page 2

Your cooperation in this matter is greatly appreciated. If you have any questions, please call me at ext. 4-1387 or Leslie Johnson at ext. 4-1223.

Attachment: A/S

cc: Ray Pylant, Building Official, DPWES  
Eileen M. McLane, Zoning Administrator  
Leslie B. Johnson, Senior Deputy Zoning Administrator  
Michael R. Congleton, Senior Deputy Zoning Administrator  
Chip Moncure, Senior Zoning Inspector  
Hermilio Machicao, Property Owner  
J A M Homes, Corp., Contractor



# County of Fairfax, Virginia

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

May 6, 2008

## NOTICE OF VIOLATION

### SHERIFF LETTER

Hermilio Machicao  
7614 Dunston Street  
Springfield, Virginia 22151

Re: 5901 Amherst Avenue  
Springfield, Section 2A, Block 1, Lot 1  
Tax Map Ref: 80-4 ((4)) (1) 1  
Zoning Districts: R-4

Dear Mr. Machicao:

A zoning inspection and subsequent investigation by this office at 5901 Amherst Avenue, has shown there was a Building Permit # 80020162 for construction of a two story single family dwelling on the existing foundation with bump outs. This permit was issued in error based on review of the house location plat submitted for this construction. The plat shows the distance from the foundation to the lot line on Amherst Avenue (west boundary) to be 31.9 feet. The distance from the foundation to the lot line on Highland Street (north boundary) is 41.3 feet. The distance from the foundation to the Backlick Road (east boundary) lot line is 13.9 feet. This property is considered a corner lot requiring minimum front yards on three of its four sides. The minimum required front yard in the R-4 District is 30 feet. This information has been verified by a field inspection. The Zoning Ordinance bulk regulations for minimum required front yards in the R-4 District is stated as follows:

#### **3-407 Bulk Regulations**

- 1. Maximum building height**
  - A. Single family dwellings: 35 feet**
  - B. All other structures: 60 feet**
  
- 2. Minimum yard requirements**
  - A. Single family dwellings**
    - (1) Conventional subdivision lot**
      - (a) Front yard: 30 feet**
      - (b) Side yard: 10 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/



(c) Rear yard: 25 feet

As a result and in accordance with Par. 1 of Sect. 2-307 the above referenced property is a violation as stated in part:

---

1. **Except as may be qualified by the provisions of this Ordinance, no structure or part thereof shall hereafter be built or moved on a lot which does not meet all of the minimum bulk regulations presented for the zoning district in which the structure is located, and no structure shall hereafter be used, occupied or arranged for use on a lot which does not meet all of the minimum bulk regulations presented for the zoning district in which such structure is located.**

Compliance shall be accomplished by:

- Applying for and successfully obtaining a Special Permit to allow the dwelling to remain in its current configuration and location; or
- Removing the portion of the structure that violates the 30 foot minimum front yard on the Backlick Road (east boundary) side of the property.

Specific instructions and requirements relative to permits can be obtained by contacting the Zoning Evaluation Division, 12055 Government Center Parkway, Fairfax, Virginia, telephone 703-324-1290, between the hours of 8:00A.M. and 4:30 P.M., Monday through Friday.

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 within thirty (30) days of the date of this notice shall result in the initiation of appropriate legal action to gain compliance with the Zoning Ordinance.

Hermilico Machicao

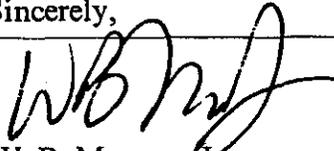
May 6, 2008

Page 3

Should you have any questions regarding this notice or need additional information, please do not hesitate to contact me at 703-324-1335 or 703-324-1300.

Sincerely,

---



W. B. Moncure Jr.  
Senior Zoning Inspector

WBM/seg



# County of Fairfax, Virginia

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

## LEGAL NOTICE

### STOP WORK ORDER

**ISSUED TO:**

J A M Homes Corp  
Jose Miguel Machicao, Registered Agent  
5516 Ivor Street  
Springfield, Virginia 22151

**LOCATION OF VIOLATION:**

5901 Amherst Avenue  
Springfield, Virginia 22151

**TAX MAP NUMBER:**

080-4 ((04)) (01) 0001

**ORDER:** Pursuant to Section 114 (Stop Work Order) of the Virginia Uniform Statewide Building Code (USBC), 2006 Edition, you are hereby directed to cease all construction activity at the cited location.

**EXPLANATION:** Section 114.1 –Issuance of order—When the building official or his agent/s find that work on any building or structure is being executed contrary to the provision of this code or any pertinent laws or ordinances, or in a manner endangering the general public, a written stop work order may be issued.

On May 1, 2008, county staff determined that the above referenced lot at 5901 Amherst Avenue Springfield, Virginia has frontage on three streets. Thus, the Building Permit was issued in error as it allowed the portion of the house on the new foundation to be located 13.0 feet from Backlick Road which does not meet the bulk regulations as outlined in Par. 2A (1) of Section 3-407 of the Zoning Ordinance (30 foot minimum required front yard). Therefore, the permit was approved in error and pursuant to Section 18-114 of the Zoning Ordinance the Zoning approval of the permit is null and void.

**CORRECTIVE ACTION:**

You are directed to contact Michael Congleton, Senior Deputy Zoning Administrator, at 703 324-1300. Further you are to comply with the Notice of Violation to be issued by the Zoning Enforcement Branch of the Department of Planning and Zoning.

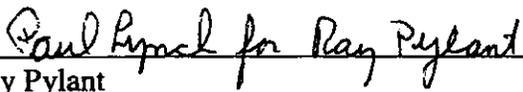
Failure to cease construction activity as directed by the **STOP WORK ORDER** and take corrective action may result in this department initiating the appropriate legal action.

Department of Public Works and Environmental Services  
Land Development Services, County Building Official  
12055 Government Center Parkway, Suite 444  
Fairfax, VA 22035  
Phone: 703-324-1780, 703-324-1980 TTY: 711, Fax: 703-324-1847



J A M Homes Corp  
5901 Amherst Avenue  
Page 2 of 2

Questions regarding this matter should be directed to Paul Lynch, at (703) 324-1972.

  
\_\_\_\_\_  
Ray Pylant  
Building Official

**DATE OF ISSUANCE:** May 5, 2008

cc: Ray Pylant, Building Official, DPWES  
Eileen M. McLane, Zoning Administrator  
Leslie B. Johnson, Senior Deputy Zoning Administrator  
Michael R. Congleton, Senior Deputy Zoning Administrator  
Diane Johnson-Quinn, Deputy Zoning Administrator  
Chip Moncure, Senior Zoning Inspector  
Hermilio Machicao, Property Owner

## **ZONING ORDINANCE PROVISIONS**

### **Paragraph 1 of Sect. 2-307, Bulk Regulations, General Regulations**

1. Except as may be qualified by the provisions of this Ordinance, no structure or part thereof shall hereafter be built or moved on a lot which does not meet all of the minimum bulk regulations presented for the zoning district in which the structure is located, and no structure shall hereafter be used, occupied or arranged for use on a lot which does not meet all of the minimum bulk regulations presented for the zoning district in which such structure is located.

### **Paragraph 1 of Sect. 2-413, Yard Regulations for Residential Lots Having Reverse Frontage**

1. Notwithstanding any other provision of this Ordinance, on any residential lot designed to have reverse frontage along a major thoroughfare, the minimum front yard requirements as set forth for a given zoning district shall be deemed to apply to that yard in front of the principal entrance or containing the approach to the primary building occupying the lot. The opposing yard shall be deemed to be the rear yard and shall be subject to the requirements set forth for such yards unless such requirements are qualified below.

### **Paragraphs 1 and 3 of Sect. 2-601, Limitation on the Removal and Addition of Soil**

No soil shall be removed from or added to any lot in any zoning district except in accordance with one of the following provisions:

1. Sod and soil may be removed from or added to any lot to a depth of not more than eighteen (18) inches but only in an area not exceeding 2500 square feet; provided, however, that this provision shall not apply to the temporary storage of top soil by plant nurseries and further provided that any sod and soil removal or addition within a major underground utility easement shall only be permitted in accordance with Sect. 515 above. In a floodplain, sod and soil may be removed in accordance with this paragraph, however, the addition of sod and soil shall only be permitted in accordance with the provisions of Part 9 below, or
3. Grading of land shall be permitted in accordance with a grading plan approved by the Director. The Director shall determine that the amount of soil removal or fill and proposed grading is necessary for the establishment of a use permitted in the zoning district in which located, and that the grading plan shall provide for even finished grades which meet adjacent properties' grades and do not substantially alter natural drainage, and which plans include siltation and erosion control measures in conformance with the provisions of Chapter 104 of The Code; or

**Paragraph 2 of Sect. 3-407, Bulk Regulations (R-4 District)**

2. Minimum yard requirements

A. Single family dwellings

(1) Conventional subdivision lot

(a) Front yard: 30 feet

(b) Side yard: 10 feet

(c) Rear yard: 25 feet

**Section 18-114, Permits Not To Be Issued for Structures Which Would Violate Ordinance**

No officer, board, agency or employee of the County shall issue, grant or approve any permit, license, certificate or other authorization for the erection of any building or for any use of any land or building that would not be in full compliance with the provisions of this Ordinance. Any such permit, license, certificate or other authorization issued, granted or approved in violation of any of the provisions of this Ordinance shall be null and void and of no effect without the necessity of any proceedings for revocation or nullification thereof, and any work undertaken or use established pursuant to any such permit, license, certificate or authorization shall be unlawful. No action shall be taken by any officer, board, agency or employee of the County, including the BZA, purporting to validate any such violation.

**Section 18-603, Limitations on Approval of Building Permits**

1. No Building Permit shall be issued for the erection of any building or structure on a lot or addition or modification to a building or structure that is in violation of any of the provisions of Chapter 101, Chapter 116 or Chapter 118 of The Code, this Ordinance, all other applicable laws and ordinances, any proffered conditions, or any development conditions of any approved rezoning, special permit, special exception or variance. Appeals of decisions made pursuant to Chapter 118 of The Code which are appealable shall be processed in accordance with Article 8 of Chapter 118.

**Article 20, Definitions of CORNER LOT, INTERIOR LOT, REVERSE FRONTAGE LOT, THROUGH LOT, FRONT LOT LINE, REAR LOT LINE,**

**SIDE LOT LINE, YARD, FRONT YARD, REAR YARD, AND SIDE YARD  
as set forth in Article 20 of the Zoning Ordinance.**

**LOT, CORNER:** A lot at the junction of and abutting on two (2) or more intersecting streets when the interior angle of intersection does not exceed 135 degrees; provided, however, that when one of the intersecting streets is an interstate highway, the resultant lot shall not be deemed a corner lot.

**LOT LINE, FRONT:** A street line which forms the boundary of a lot; or, in the case where a lot does not abut a street other than by its driveway, or is a through lot, that lot line which faces the principal entrance of the main building.

On a corner lot, the shorter street line shall be deemed to be the front lot line, regardless of the location of the principal entrance or approach to the main building. (Reference Illustration 3 in Appendix 2)

**LOT, INTERIOR:** Any lot, including a through lot, other than a corner lot.

**LOT LINE, REAR:** That lot line that is most distant from, and is most nearly parallel with, the front lot line. If a rear lot line is less than ten (10) feet in length, or if the lot comes to a point at the rear, the rear lot line shall be deemed to be a ten (10) foot line parallel to the front lot line, lying wholly within the lot for the purpose of establishing the required minimum rear yard. (Reference Illustration 3 in Appendix 2)

**LOT LINE, SIDE:** A lot line which is neither a front lot line nor a rear lot line as defined herein. (Reference Illustration 3 in Appendix 2)

**LOT, REVERSE FRONTAGE:** A residential through or corner lot, intentionally designed so that the front lot line faces a local street rather than facing a parallel major thoroughfare.

**LOT, THROUGH:** An interior lot, but not a corner lot, abutting on two (2) or more public streets, but not including an alley. For the purpose of this Ordinance, a through lot shall be subject to the regulations of an INTERIOR LOT.

**YARD:** Any open space on the same lot with a building or building group lying between the building or building group and the nearest lot line, unobstructed from the ground upward and unoccupied except by specific uses and structures allowed in such open space by the provisions of this Ordinance. On any lot which is occupied by an attached dwelling, no minimum required yard shall be occupied by any part of a vehicular travel way or parking space that is owned and maintained by a homeowner's association, condominium, or by the public.

For the purpose of this Ordinance, there shall be a distinction between 'yard' and 'minimum yard required'. The minimum yard requirements set forth in this

Ordinance represent that minimum distance which the principal building(s) shall be set back from the respective lot lines.

- YARD, FRONT: A yard extending across the full width of a lot and lying between the front lot line and the principal building.

On a corner lot, the two (2) yards lying between the principal building and the intersecting streets shall both be deemed to be front yards.

On a through lot, the two (2) yards lying between the principal building and the two (2) or more public streets shall be deemed to be front yards and shall be controlled by the provisions for same, except as qualified in Sect. 2-413 for residential lots having reverse frontage, and except in those instances where one (1) of the public streets is an alley.

On a pipestem lot or a lot abutting a pipestem driveway, any yard contiguous to the pipestem driveway shall be deemed a front yard and shall be subject to the provisions of Sect. 2-416.

- YARD, REAR: A yard extending across the full width of the lot and lying between the rear lot line of the lot and the principal building group.

On a corner lot, the rear yard shall be that yard on the opposite side of the building from the front lot line, which extends from the front yard line on the one side to the opposite side lot line. Where corner lots are designed for single family detached dwellings in the R-E through R-8 Districts, the rear yard may be of such minimum dimension as the side yard requirements for that district. (Reference Illustration 3 in Appendix 2)

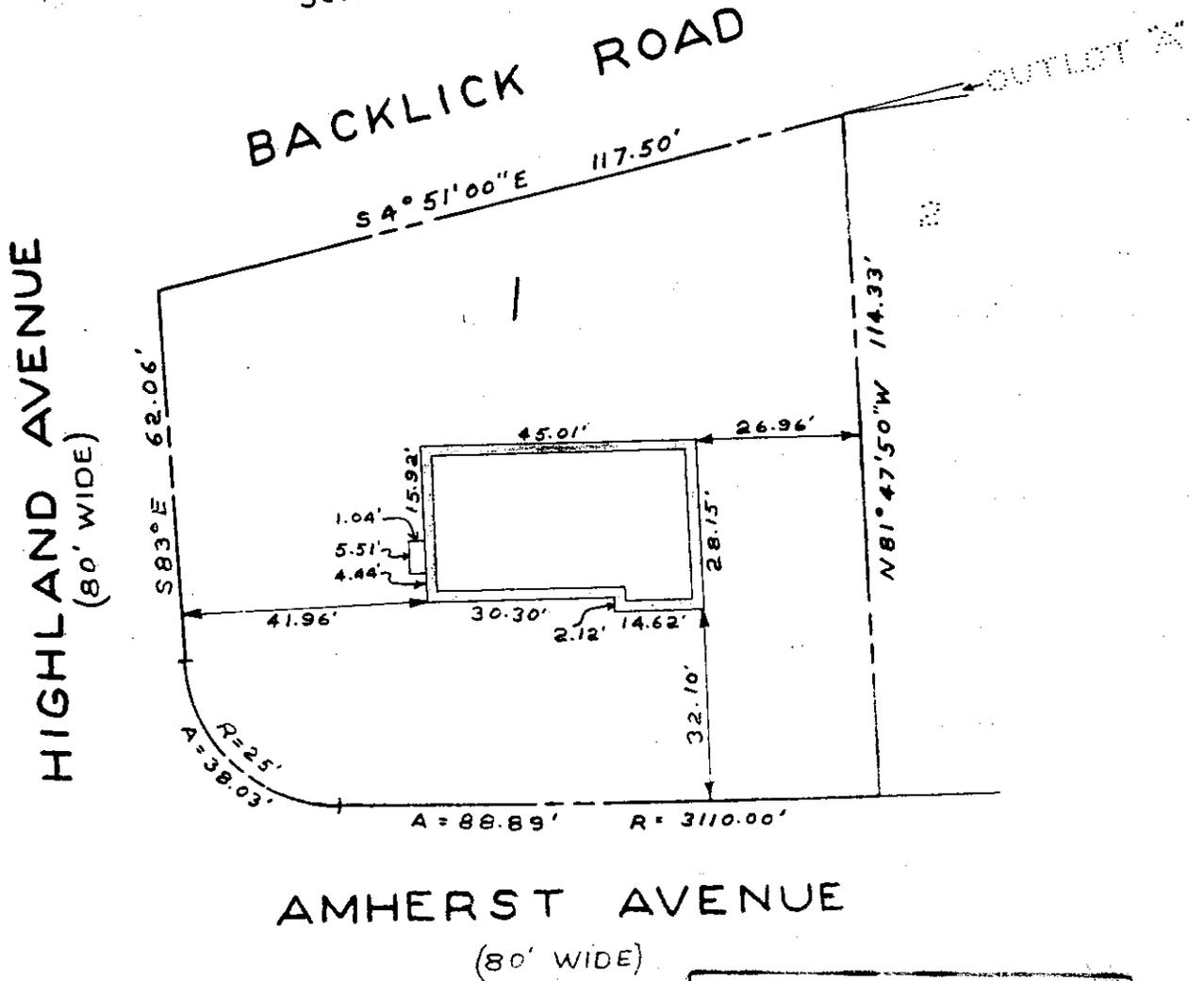
- YARD, SIDE: A yard between the side lot line of the lot and the principal building, and extending from the front yard to the rear yard, or, in the absence of either of such yards, to the front or rear lot lines, as may be. (Reference Illustration 3 in Appendix 2)

**Appendix 3, Excerpt from Section 15.2-2311 (c) of the Code of Virginia, as amended**

- C. In no event shall a written order, requirement, decision or determination made by the zoning administrator or other administrative officer be subject to change, modification or reversal by any zoning administrator or other administrative officer after 60 days have elapsed from the date of the written order, requirement, decision or determination where the person aggrieved has materially changed his position in good faith reliance on the action of the zoning administrator or other administrative officer unless it is proven that such written order, requirement, decision or determination was obtained through malfeasance of the zoning administrator or other administrative officer or through fraud. The 60-day limitation period shall not apply in any case where, with the concurrence of the attorney for the governing body, modification is required to correct clerical or other nondiscretionary errors.

HOUSE LOCATION SURVEY  
 LOT 1 BLK. 1 SEC. 2-A  
**SPRINGFIELD**

MT. VERNON MAGISTERIAL DISTRICT  
 FAIRFAX COUNTY, VIRGINIA



APPROVED *[Signature]*  
 Zoning Administrator  
 Date JUN 4 1952

CERTIFIED CORRECT

*Robert F. Kurock*  
 CERTIFIED LAND SURVEYOR  
 May 19 1952

EDWARD S. HOLLAND

Professional Civil Engineer  
 Certified Land Surveyor  
 316 SC. WASHINGTON ST.  
 ALEXANDRIA, VA.

SCALE 1" = 30'

DATE 5-13-52

DRAWN BY JEE

CHK'D BY RFK

JOB NO. VA-705

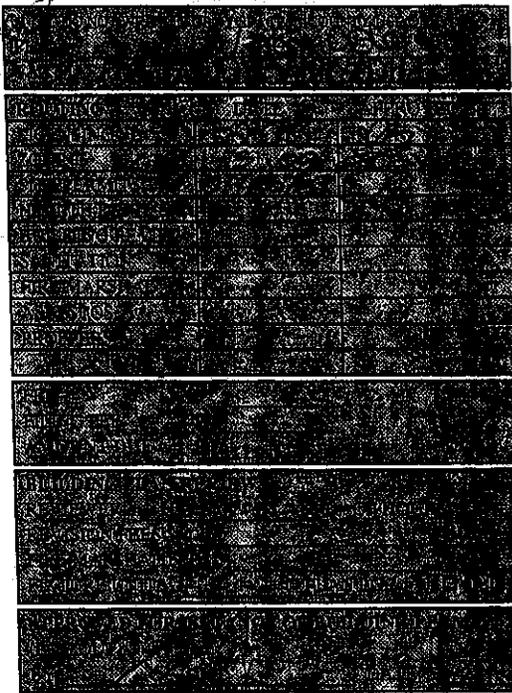
FIELD 294 PAGE 2  
 600'

**BUILDING PERMIT APPLICATION**

**FAIRFAX COUNTY GOVERNMENT  
PERMIT APPLICATION CENTER**  
12055 Government Center Parkway, 2nd Floor  
Fairfax, Virginia 22035-5504  
Telephone: 703-222-0801  
Web site: <http://www.fairfaxcounty.gov/perm>

**PERMIT #** 80000158  
FOR INSPECTIONS CALL 703-222-6455 (see back for more information)  
OR VISIT US ON THE WEB AT  
[http://www.fairfaxcounty.gov/lanet/inspection\\_sched.asp](http://www.fairfaxcounty.gov/lanet/inspection_sched.asp)

002



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

**JOB LOCATION**  
ADDRESS 5901 Amherst Ave.  
LOT # 1 BUILDING \_\_\_\_\_  
FLOOR \_\_\_\_\_ SUITE \_\_\_\_\_  
SUBDIVISION Springfield Sec 2A Bk 1  
TENANT'S NAME \_\_\_\_\_  
EMAIL \_\_\_\_\_  
CONTACT ID \_\_\_\_\_

**OWNER INFORMATION** OWNER  TENANT   
NAME Hernando Machicao  
ADDRESS 7614 DUNSTON ST  
CITY Springfield STATE VA ZIP 22151  
TELEPHONE 703-582-6640  
EMAIL \_\_\_\_\_  
CONTACT ID \_\_\_\_\_

**CONTRACTOR INFORMATION** SAME AS OWNER   
CONTRACTORS MUST PROVIDE THE FOLLOWING:  
COMPANY NAME J.A.M. Homes CORP  
ADDRESS 5516 INVER ST  
CITY Springfield STATE VA ZIP 22151  
TELEPHONE 703-678-7769  
EMAIL JAMHOMES@RPIWORLDWIDE.COM  
STATE CONTRACTORS LICENSE # 2705 103979A  
COUNTY BPOL # 06-8239  
CONTACT ID 329375

**APPLICANT**  
NAME JOSE MACHICAO  
ADDRESS 7614 DUNSTON ST  
CITY Springfield STATE VA ZIP 22151  
TELEPHONE 703-678-7769  
EMAIL \_\_\_\_\_  
CONTACT ID \_\_\_\_\_

**DESCRIPTION OF WORK**  
Demol of existing house, but  
leaving foundation with basement walls

**HOUSE TYPE** SFD  
**ESTIMATED COST OF CONSTRUCTION** 37,006.00  
**USE GROUP OF BUILDING** \_\_\_\_\_  
**TYPE OF CONSTRUCTION** \_\_\_\_\_  
**DESIGNATED MECHANICS' LIEN AGENT**  
(Residential Construction Only)  
NAME \_\_\_\_\_  
ADDRESS \_\_\_\_\_  
NONE DESIGNATED  PHONE \_\_\_\_\_

**ZONING REVIEW**  
USE SFD  
ZONING DISTRICT \_\_\_\_\_ HISTORICAL DISTRICT \_\_\_\_\_  
ZONING CASE # \_\_\_\_\_  
GROSS FLOOR AREA OF TENANT SPACE \_\_\_\_\_  
YARDS: FRONT \_\_\_\_\_ L SIDE \_\_\_\_\_ R SIDE \_\_\_\_\_ REAR \_\_\_\_\_  
GARAGE 1  2  3   
OPTIONS YES  NO   
REMARKS Demol SFD  
Not in an HD  
Diagonal

**REMARKS**  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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 of Owner or Agent \_\_\_\_\_ Date 1-2-08

Printed Name and Title JOSE MACHICAO - OWNER  
(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, \_\_\_\_\_  
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)

**BUILDING PERMIT APPLICATION**

**FAIRFAX COUNTY GOVERNMENT  
PERMIT APPLICATION CENTER**  
12055 Government Center Parkway, 2nd Floor  
Fairfax, Virginia 22035-5504  
Telephone: 703-222-0801  
Web site: <http://www.fairfaxcounty.gov/dpwes>

**PERMIT #** 80000162

FOR INSPECTIONS CALL 703-222-9455 (see back for more information)  
OR VISIT US ON THE WEB AT  
[http://www.fairfaxcounty.gov/permit/inspection\\_sched.asp](http://www.fairfaxcounty.gov/permit/inspection_sched.asp)

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

**JOB LOCATION**

ADDRESS 5901 Amherst Avenue  
LOT # \_\_\_\_\_ BUILDING \_\_\_\_\_  
FLOOR \_\_\_\_\_ SUITE \_\_\_\_\_  
SUBDIVISION Springfield Sec 2A  
TENANT'S NAME RLK I  
EMAIL \_\_\_\_\_  
CONTACT ID \_\_\_\_\_

**OWNER INFORMATION** OWNER  TENANT   
NAME Hermilio Machicao  
ADDRESS 7614 DUNSTON ST  
CITY Springfield STATE VA ZIP 22151  
TELEPHONE 703-582-6640  
EMAIL \_\_\_\_\_  
CONTACT ID \_\_\_\_\_

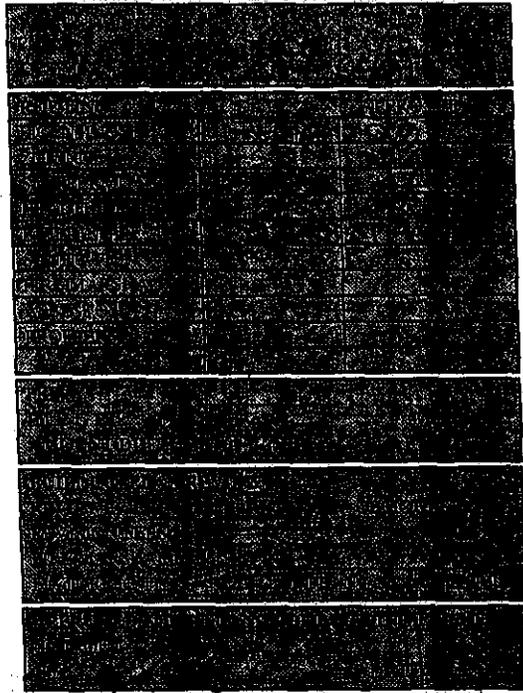
**CONTRACTOR INFORMATION** SAME AS OWNER   
CONTRACTORS MUST PROVIDE THE FOLLOWING:  
COMPANY NAME J.A.M. Homes Corp  
ADDRESS 5516 IVOR ST  
CITY Springfield STATE VA ZIP 22151  
TELEPHONE 703-678-7769  
EMAIL JAMHOMESCORP@YAHOO.COM  
STATE CONTRACTORS LICENSE # 2705 103979A  
COUNTY BPOL # 06-8239  
CONTACT ID 329375

**APPLICANT**  
NAME Jose Machicao  
ADDRESS 7614 DUNSTON ST  
CITY Springfield STATE VA ZIP 22151  
TELEPHONE 703-627-5694  
EMAIL \_\_\_\_\_  
CONTACT ID \_\_\_\_\_

**DESCRIPTION OF WORK**  
New SFD home on existing foundation with bumpouts and existing basement being re-finished, two-story addition

HOUSE TYPE SFD  
ESTIMATED COST OF CONSTRUCTION \$ 350,000.00  
USE GROUP OF BUILDING \_\_\_\_\_  
TYPE OF CONSTRUCTION NEW

**DESIGNATED MECHANICS' LIEN AGENT**  
(Residential Construction Only)  
NAME \_\_\_\_\_  
ADDRESS \_\_\_\_\_  
NONE DESIGNATED  PHONE \_\_\_\_\_



**ZONING REVIEW**

USE SFD R-4  
ZONING DISTRICT \_\_\_\_\_ HISTORICAL DISTRICT \_\_\_\_\_  
ZONING CASE # \_\_\_\_\_  
GROSS FLOOR AREA OF TENANT SPACE \_\_\_\_\_

YARDS: <u>0</u>	GARAGE	1 <input type="checkbox"/>	2 <input type="checkbox"/>	3 <input type="checkbox"/>
FRONT <u>31.7</u>	OPTIONS	YES <input type="checkbox"/>	NO <input type="checkbox"/>	
FRONT <u>41.3</u>	REMARKS	<u>Perms</u>		
L SIDE <u>13.9</u>		<u>Signed</u>		
R SIDE <u>16.5</u>		<u>24' + roll</u>		
REAR _____		<u>corner lot</u>		

**REMARKS**  
Build new SFD on existing foundation  
Per Plans with bumpouts  
1st  
attached

This permit is approved with the understanding that the wet bar will not contain permanent cooking facilities and will not be used in conjunction with a bedroom, bathroom and other living space in a manner that would constitute the establishment of a separate dwelling unit.

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] 1-2-08  
Signature of Owner or Agent Date  
Jose Machicao AGENT  
Printed Name and Title  
(Notarization of signature is required if owner is listed as the contractor and is not present at time of application)

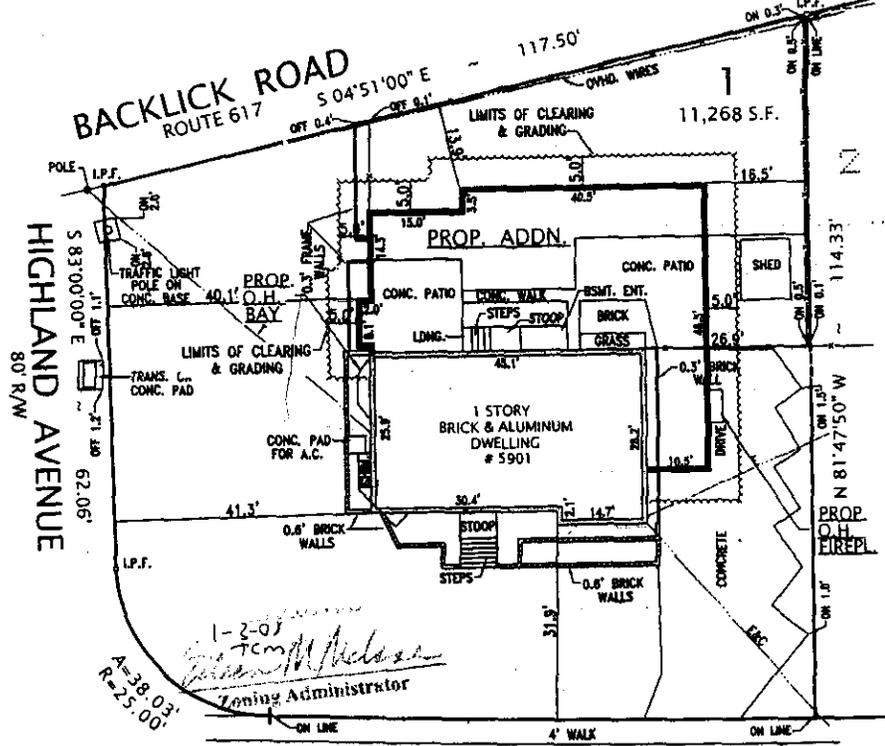
**NOTARIZATION (if required)**

State (or territory or district) of \_\_\_\_\_  
County (or city) of \_\_\_\_\_ to wit: I, \_\_\_\_\_  
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)

COPYRIGHT BY ALEXANDRIA SURVEYS INTERNATIONAL, LLC THE INFORMATION CONTAINED ON THIS DOCUMENT MAY NOT BE COPIED, REPRODUCED OR ALTERED IN ANY FORM WITHOUT PERMISSION IN WRITING FROM THE COPYRIGHT OWNER.

I, DAVID L. MAYNE HEREBY CERTIFY THAT THE CLEARING AND GRADING DELINEATED ON THIS LAND DISTURBANCE PLAT PREPARED FOR THE PROPERTY LOCATED AT 5901 AMHERST AVE. ACCURATELY REFLECTS THE SCOPE OF THIS PROJECT AND THAT THE PROPOSED WORK CAN BE PERFORMED WITHIN THE LIMITS OF CLEARING AND GRADING AS SHOWN. I FURTHER CERTIFY THAT THE TOTAL DISTURBED LAND AREA THAT WILL BE ASSOCIATED WITH THE CONSTRUCTION OF THE PROPOSED ADDITION WILL NOT EXCEED 2,500 S.F.

TOTAL DISTURBED AREA = 2,458 S.F.



A=88.89' R=3110.00'

DIPW4ES  
LAND DEVELOPMENT SERVICES  
SITE FORMS & ADDRESSING CENTER  
APPROVED FOR  
*Deanna Str. Lease For*  
BY  
DATE

### AMHERST AVENUE

80' R/W

TOTAL EARTH DISTURBANCE ON THIS LOT SHALL NOT EXCEED 2500 SQ. FT.  
EXCAVATED MATERIAL SHALL BE REMOVED FROM SITE.

NOTE: FENCES ARE CHAIN LINK.

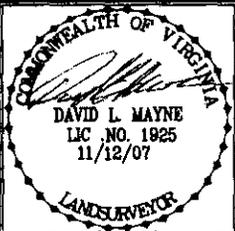
SHOWING PROPOSED LAND DISTURBANCE ON LOT 1, BLOCK 1, SECTION 2A

### SPRINGFIELD

FAIRFAX COUNTY, VIRGINIA

SCALE: 1" = 20' NOVEMBER 12, 2007

CASE NAME: J&M HOMES CORP.



BY PROVISIONS OF THE VIRGINIA CODE: NO CORNER MARKERS SET, BOUNDARY SURVEY NOT PERFORMED. PLAT SUBJECT TO RESTRICTIONS OF RECORD AND NO TITLE REPORT IS FURNISHED.

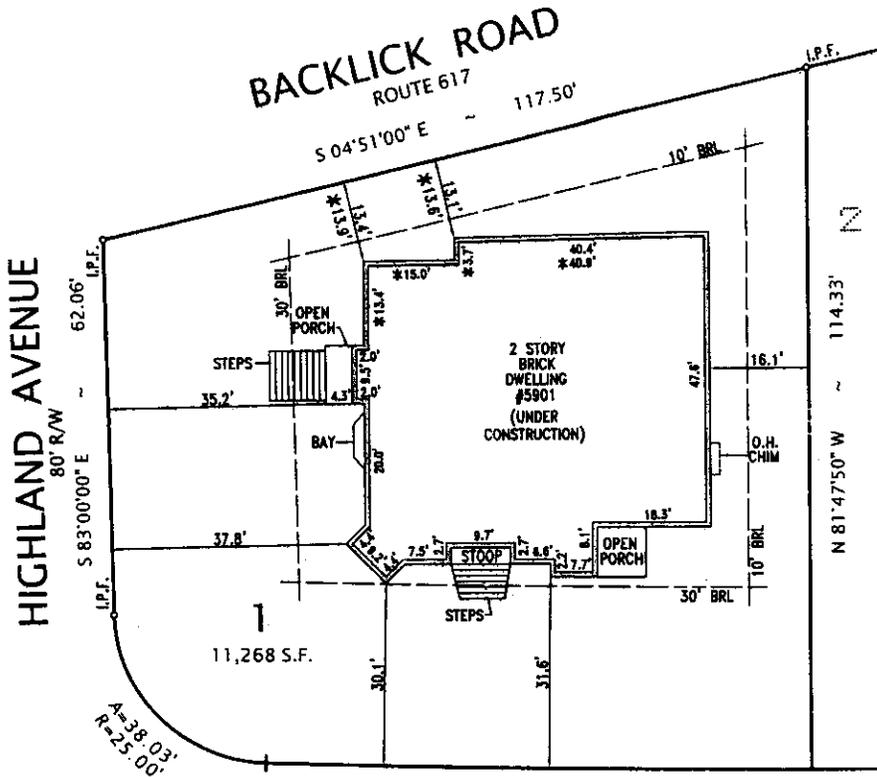
I HEREBY CERTIFY THAT THE POSITIONS OF ALL THE EXISTING IMPROVEMENTS HAVE BEEN CAREFULLY ESTABLISHED BY A CURRENT FIELD SURVEY, AND UNLESS OTHERWISE SHOWN, THERE ARE NO VISIBL ENCROACHMENTS.  
DAVID L. MAYNE, I.S.

REQUESTED BY:  
J&M HOMES CORP.  
ALEXANDRIA SURVEYS INTERNATIONAL, LLC  
6343 SOUTH KINGS HIGHWAY ALEXANDRIA, VIRGINIA 22306  
TEL. NO. 703-660-6615 FAX NO. 703-768-7764

E:\001 Amherst Ave\50811008-LOC.dwg

#50811008

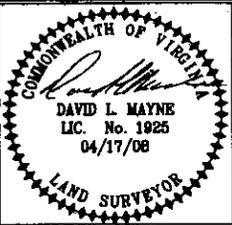
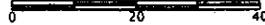
\* INDICATES DIMENSION FROM WOOD FRAME  
BRICK VENEER NOT IN PLACE.



A=88.89' R=3110.00'  
AMHERST AVENUE  
80' R/W

PLAT  
SHOWING WALL CHECK SURVEY ON  
LOT 1 BLOCK 1 SECTION 2A  
SPRINGFIELD  
FAIRFAX COUNTY, VIRGINIA  
SCALE: 1" = 20' APRIL 16, 2008

GRAPHIC SCALE



PLAT SUBJECT TO RESTRICTIONS OF RECORD, TITLE REPORT NOT FURNISHED.

REQUESTED BY:

J & M HOMES CORP.

ALEXANDRIA SURVEYS  
INTERNATIONAL, LLC

6210 NORTH KINGS HIGHWAY ALEXANDRIA, VIRGINIA 22303  
TEL. NO. 703-660-6615 FAX NO. 703-768-7764

ATTACHMENT 7

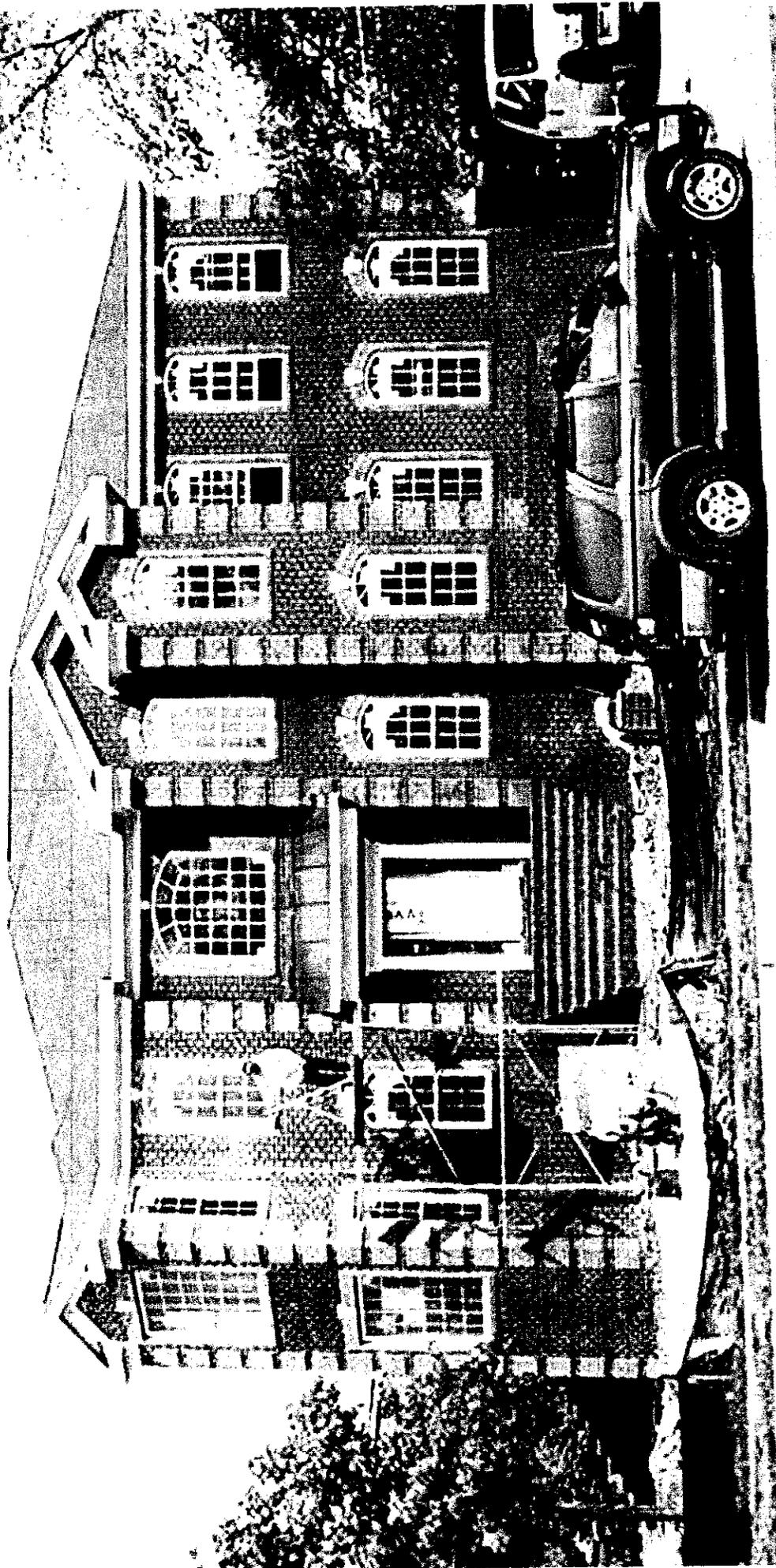
Photo # 1









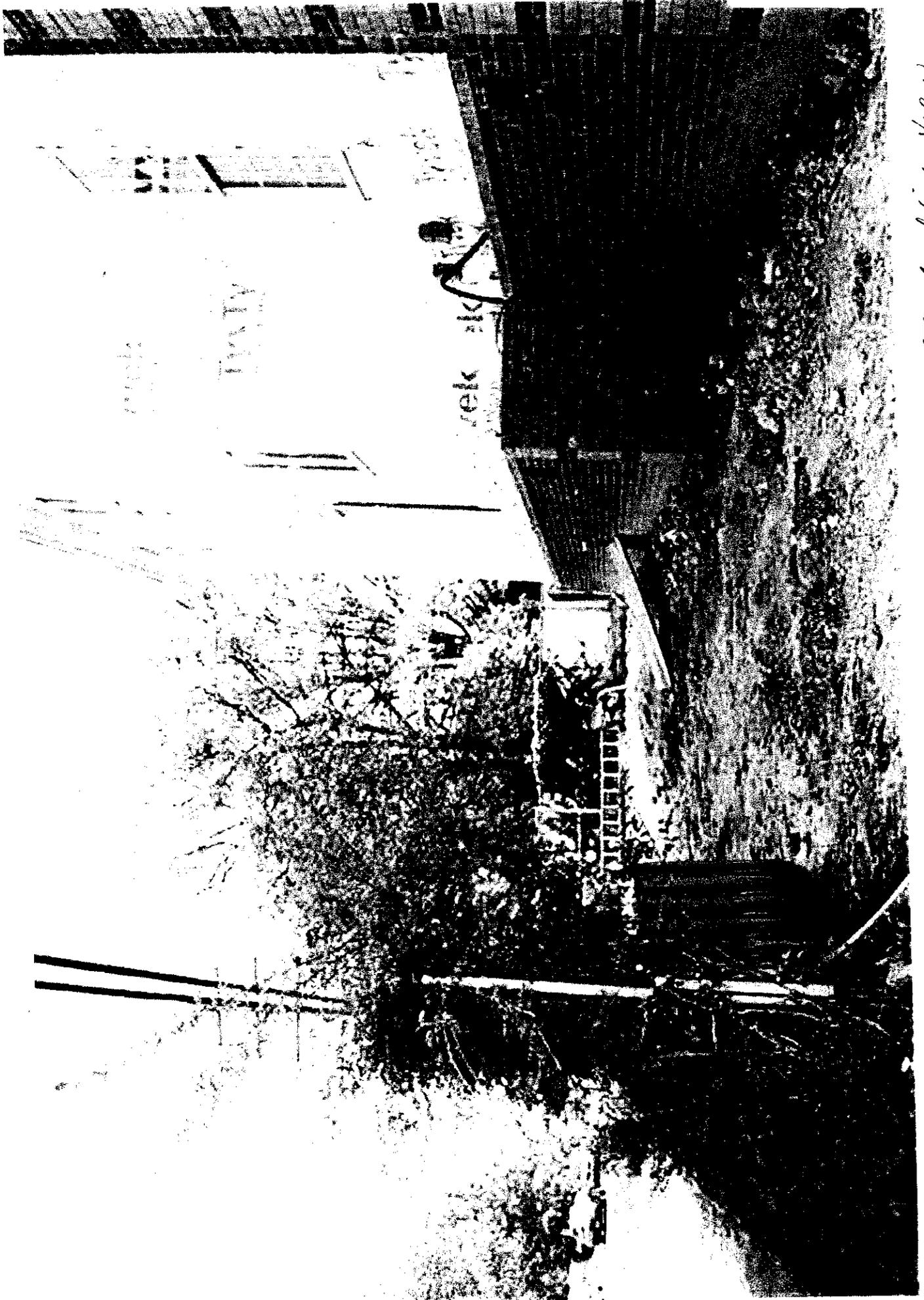


↑ Amherst View

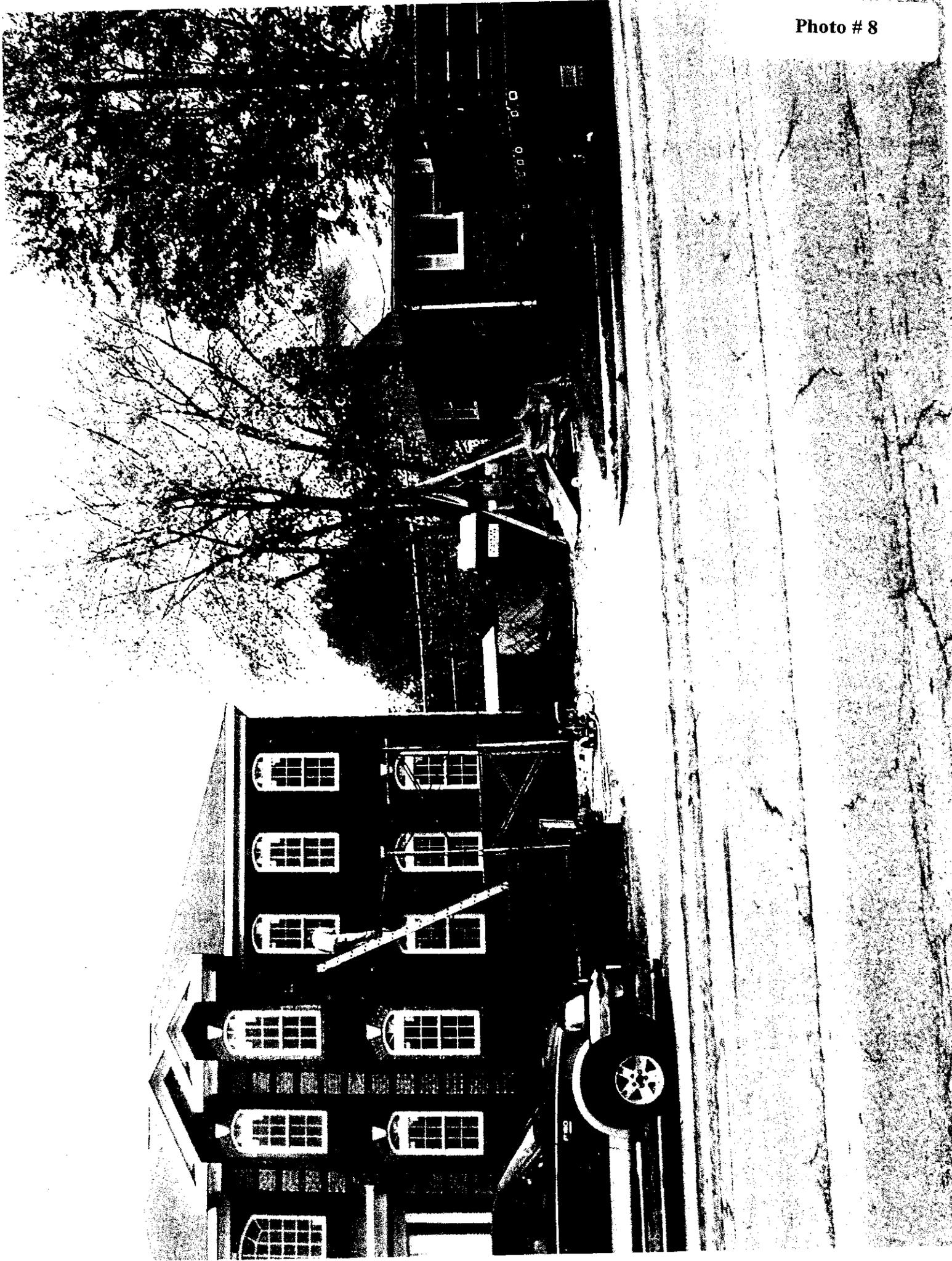
↑ Highland (left side)



HIGH AND NEW



*Back View*



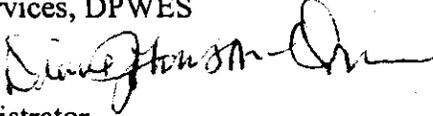


## County of Fairfax, Virginia

**MEMORANDUM**

**DATE:** May 5, 2008

**TO:** Paul Lynch, Director  
Residential Inspections Division  
Land Development Services, DPWES

**FROM:** Diane Johnson-Quinn   
Deputy Zoning Administrator  
Zoning Permit Review Branch, DPZ

**SUBJECT:** Building Permit # 80020162  
5901 Amherst Avenue  
Springfield, Sec. 2A, Blk 1, Lot 1  
Tax Map Ref: 080 - 4 ((04)) (01) 0001  
Zoning District: R-4

This is to respectfully request that you issue a Stop Work Order for the referenced Building Permit which has been issued for construction of a new two-story single family dwelling on an existing foundation and existing basement, with a two-story portion of the new house on a new foundation.

The property has frontage on three streets: Amherst Avenue on its western boundary, Highland Avenue on its northern boundary, and Backlick Road on the east. This property is a corner lot with minimum front yards on three of its four sides. The minimum front yard requirement in the R-4 District is 30 feet. The house location plat shows that the house was to be located 31.9 feet from the Amherst front lot line, 41.3 feet from the Highland front lot line, and 13.9 feet from the Backlick front lot line. The Building Permit was issued in error as it allowed the portion of the house on the new foundation to be located 13.9 feet from Backlick Road, which does not meet the bulk regulations as outlined in Par. 2A(1) of Sect. 3-407 of the Zoning Ordinance (30 foot minimum required front yard). Therefore, the permit was approved in error and pursuant to Sect. 18-114 of the Zoning Ordinance the zoning approval of the permit is null and void. A copy of the approved Building Permit and Plat are enclosed

We are in the process of issuing a Notice of Violation to the property owner, thus advising by letter that the permit was approved in error and outlining the possible remedies available to correct the error. Given that the improvements are substantially underway, it is crucial to ensure no further construction is permitted.

Department of Planning and Zoning  
Zoning Administration Division  
Zoning Permit Review Branch  
12055 Government Center Parkway, Suite 250  
Fairfax, Virginia 22035-5508  
Phone 703-324-1359 FAX 703-324-2301  
[www.fairfaxcounty.gov/dpz/](http://www.fairfaxcounty.gov/dpz/)

Paul Lynch  
May 5, 2008  
Page 2

Your cooperation in this matter is greatly appreciated. If you have any questions, please call me at ext. 4-1387 or Leslie Johnson at ext. 4-1223.

Attachment: A/S

cc: Ray Pylant, Building Official, DPWES  
Eileen M. McLane, Zoning Administrator  
Leslie B. Johnson, Senior Deputy Zoning Administrator  
Michael R. Congleton, Senior Deputy Zoning Administrator  
Chip Moncure, Senior Zoning Inspector  
Hermilio Machicao, Property Owner  
J A M Homes, Corp., Contractor



# County of Fairfax, Virginia

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

## LEGAL NOTICE

## STOP WORK ORDER

*mailed*  
MAY - 5 2008

**ISSUED TO:** Hermilio Machicao, Property Owner  
5516 Ivor Street  
Springfield, Virginia 22151

**LOCATION OF VIOLATION:** 5901 Amherst Avenue  
Springfield, Virginia 22151

**TAX MAP NUMBER:** 080-4 ((04)) (01) 0001

**ORDER:** Pursuant to Section 114 (Stop Work Order) of the Virginia Uniform Statewide Building Code (USBC), 2006 Edition, you are hereby directed to cease all construction activity at the cited location.

**EXPLANATION:** Section 114.1 –Issuance of order—When the building official or his agent/s find that work on any building or structure is being executed contrary to the provision of this code or any pertinent laws or ordinances, or in a manner endangering the general public, a written stop work order may be issued.

On May 1, 2008, county staff determined that the above referenced lot at 5901 Amherst Avenue Springfield, Virginia has frontage on three streets. Thus, the Building Permit was issued in error as it allowed the portion of the house on the new foundation to be located 13.0 feet from Backlick Road which does not meet the bulk regulations as outlined in Par. 2A (1) of Section 3-407 of the Zoning Ordinance (30 foot minimum required front yard). Therefore, the permit was approved in error and pursuant to Section 18-114 of the Zoning Ordinance the Zoning approval of the permit is null and void.

### CORRECTIVE ACTION:

You are directed to contact Michael Congleton, Senior Deputy Zoning Administrator, at 703 324-1300. Further you are to comply with the Notice of Violation to be issued by the Zoning Enforcement Branch of the Department of Planning and Zoning. Failure to cease construction activity as directed by the **STOP WORK ORDER** and take corrective action may result in this department initiating the appropriate legal action.

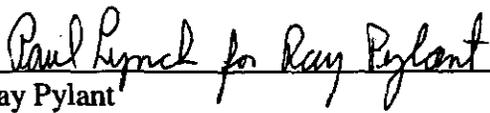
Department of Public Works and Environmental Services  
Land Development Services, County Building Official  
12055 Government Center Parkway, Suite 444  
Fairfax, VA 22035

Phone: 703-324-1780, 703-324-1980 TTY: 711, Fax: 703-324-1847  
www.fairfaxcounty.gov/dpwes/lvs



Hermilio Machicao  
5901 Amherst Avenue  
Page 2 of 2

Questions regarding this matter should be directed to Paul Lynch, at (703) 324-1972.

  
\_\_\_\_\_  
Ray Pylant  
Building Official

**DATE OF ISSUANCE:** May 5, 2008

cc: Ray Pylant, Building Official, DPWES  
Eileen M. McLane, Zoning Administrator  
Leslie B. Johnson, Senior Deputy Zoning Administrator  
Michael R. Congleton, Senior Deputy Zoning Administrator  
Diane Johnson-Quinn, Deputy Zoning Administrator  
Chip Moncure, Senior Zoning Inspector  
Jose Miguel Machicao Registered Agent J A M Homes Corp.



# County of Fairfax, Virginia

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

May 6, 2008

## NOTICE OF VIOLATION

### SHERIFF LETTER

Hermilio Machicao  
7614 Dunston Street  
Springfield, Virginia 22151

Re: 5901 Amherst Avenue  
Springfield, Section 2A, Block 1, Lot 1  
Tax Map Ref: 80-4 ((4)) (1) 1  
Zoning Districts: R-4

Dear Mr. Machicao:

A zoning inspection and subsequent investigation by this office at 5901 Amherst Avenue, has shown there was a Building Permit # 80020162 for construction of a two story single family dwelling on the existing foundation with bump outs. This permit was issued in error based on review of the house location plat submitted for this construction. The plat shows the distance from the foundation to the lot line on Amherst Avenue (west boundary) to be 31.9 feet. The distance from the foundation to the lot line on Highland Street (north boundary) is 41.3 feet. The distance from the foundation to the Backlick Road (east boundary) lot line is 13.9 feet. This property is considered a corner lot requiring minimum front yards on three of its four sides. The minimum required front yard in the R-4 District is 30 feet. This information has been verified by a field inspection. The Zoning Ordinance bulk regulations for minimum required front yards in the R-4 District is stated as follows:

#### **3-407 Bulk Regulations**

1. **Maximum building height**
  - A. **Single family dwellings: 35 feet**
  - B. **All other structures: 60 feet**
2. **Minimum yard requirements**
  - A. **Single family dwellings**
    - (1) **Conventional subdivision lot**
      - (a) **Front yard: 30 feet**
      - (b) **Side yard: 10 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/



(c) Rear yard: 25 feet

As a result and in accordance with Par. 1 of Sect. 2-307 the above referenced property is a violation as stated in part:

---

1. **Except as may be qualified by the provisions of this Ordinance, no structure or part thereof shall hereafter be built or moved on a lot which does not meet all of the minimum bulk regulations presented for the zoning district in which the structure is located, and no structure shall hereafter be used, occupied or arranged for use on a lot which does not meet all of the minimum bulk regulations presented for the zoning district in which such structure is located.**

Compliance shall be accomplished by:

- Applying for and successfully obtaining a Special Permit to allow the dwelling to remain in its current configuration and location; or
- Removing the portion of the structure that violates the 30 foot minimum front yard on the Backlick Road (east boundary) side of the property.

Specific instructions and requirements relative to permits can be obtained by contacting the Zoning Evaluation Division, 12055 Government Center Parkway, Fairfax, Virginia, telephone 703-324-1290, between the hours of 8:00A.M. and 4:30 P.M., Monday through Friday.

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 within thirty (30) days of the date of this notice shall result in the initiation of appropriate legal action to gain compliance with the Zoning Ordinance.

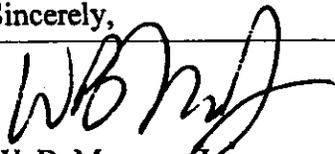
Hermilico Machicao

May 6, 2008

Page 3

Should you have any questions regarding this notice or need additional information, please do not hesitate to contact me at 703-324-1335 or 703-324-1300.

Sincerely,

A handwritten signature in black ink, appearing to read 'W. B. Moncure Jr.', written over a horizontal line.

W. B. Moncure Jr.

Senior Zoning Inspector

WBM/seg



# 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

**VIOLATION ISSUED TO:** Hermilio Machicao  
 5516 Ivor Street  
 Springfield, Virginia 22151

**LOCATION OF VIOLATION:** 5901 Amherst Avenue

**COMPLAINT NUMBER:** 33308  
**MAP REFERENCE:** 0804 04 01 0001

On May 21, 2008, I inspected the above referenced site and found the following violation:

**Land-disturbing activity in excess of 2500 square feet without a permit and an approved conservation plan. The land-disturbing activity went beyond the limits of clearing and grading as delineated in the certified plat.**

This is a violation of Section 104-1-2 of the Fairfax County Code which requires:

No person may engage in land-disturbing activity until he has submitted to the County a conservation plan for the land-disturbing activity and the plan has been reviewed and approved by the Director.

You are directed to correct this violation within thirty (30) days of receipt of this Notice of Violation. No additional work is permitted until the required corrective action is completed. The following corrective action is required:

1. Immediately, cease and desist all land disturbing activities.
2. Immediately, install erosion and sediment control measures to protect waterways and off-site properties.
3. Immediately, seed and mulch all denuded areas.
4. Submit and obtain the required permit and conservation plan approved by Fairfax County to remedy the violation.

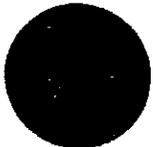
Failure to correct the violation within the prescribed time limit may result in further legal action under the applicable state and county codes.

ISSUED BY: \_\_\_\_\_

*John Zemplan*  
 John Zemplan, Senior Engineering Inspector  
 12055 Government Center Parkway  
 Fairfax, Virginia 22035-5503  
 Phone: (703) 324-1937  
 Email: [john.zemplan@fairfaxcounty.gov](mailto:john.zemplan@fairfaxcounty.gov)

**DATE ISSUED:** May 22, 2008





**VIRGINIA :**

**IN THE CIRCUIT COURT FOR THE COUNTY OF FAIRFAX**

<b>BOARD OF SUPERVISORS OF FAIRFAX</b>	:	
<b>COUNTY, VIRGINIA, <i>et al.</i>,</b>	:	
	:	
<b>Petitioners,</b>	:	
	:	
<b>v.</b>	:	<b>CASE NO. CL-2008-0010800</b>
	:	
<b>HERMILIO MACHICAO, <i>et al.</i>,</b>	:	
	:	
<b>Respondents.</b>	:	
	:	

**FINAL ORDER**

Noted

THIS CAUSE came before the Court on January 9, 2009, for the entry of an Order reflecting the Court's decision from the bench in this case on December 5, 2008, upon the Petition for Writ of Certiorari filed in this case by the Petitioners, the Board of Supervisors of Fairfax County, Virginia (the "Board"), and Eileen M. McLane, Fairfax County Zoning Administrator (the "Zoning Administrator"), against the Respondents, Hermilio Machicao ("Machicao") and the Fairfax County Board of Zoning Appeals ("BZA"); and

IT APPEARING TO THE COURT that the property at issue in this case is located at 5901 Amherst Avenue, Springfield, Virginia (Tax Map No. 80-4((4))(1) parcel 1) ("subject property"), which is owned by Machicao; and

IT FURTHER APPEARING TO THE COURT that the Zoning Administrator issued a Notice of Violation on May 6, 2008 ("Notice of Violation"), determining that constructing a dwelling on the subject property partially within the minimum required 30-foot, front-yard setback applicable to the subject property's frontage on Backlick Road violates Fairfax County Zoning Ordinance ("Zoning Ordinance") §§ 3-407(2)(A)(1) and 2-307(1); and

IT FURTHER APPEARING TO THE COURT that Machicao thereafter appealed the Notice of Violation to the BZA, and on July 29, 2008, the BZA reversed the determinations of the Zoning Administrator in the Notice of Violation on the ground that such determinations were barred by the 60-day limitation set forth in Va. Code Ann. § 15.2-2311(C) (2008); and

IT FURTHER APPEARING TO THE COURT that the Board and the Zoning Administrator thereafter timely filed a Petition for Writ of Certiorari pursuant to Va. Code Ann. § 15.2-2314 (2008), the BZA duly returned the record of its proceedings to the Court within 60 days after entry of the Writ of Certiorari, and the Court held a hearing upon the issues presented in the Petition for Writ of Certiorari on December 5, 2008; and

IT FURTHER APPEARING TO THE COURT that the decision of the BZA on July 29, 2008, should be reversed, and all of the orders, requirements, decisions, and determinations of the Zoning Administrator in the Notice of Violation, which formed the basis for a Stop Work Order issued by the Fairfax County Building Official on May 5, 2008 (“Stop Work Order”), should be affirmed; and

IT FURTHER APPEARING TO THE COURT that the 60-day limitation set forth in Va. Code Ann. § 15.2-2311(C) does not apply to the Zoning Administrator’s orders, requirements, decisions, and determinations in the Notice of Violation because the matters set forth therein are nondiscretionary; now, therefore, it is hereby

ADJUDGED and ORDERED as follows:

1. The July 29, 2008, decision of the BZA in Appeal Application No. A 2008-LE-030 is reversed.
2. The orders, requirements, decisions, and determinations set forth in the May 6, 2008, Notice of Violation of the Zoning Administrator, which formed the basis for the May 5, 2008,

Stop Work Order, are affirmed. The Zoning Administrator correctly determined in the Notice of Violation that Machicao is in violation of Fairfax County Zoning Ordinance §§ 3-407(2)(A)(1) and 2-307(1) for constructing a dwelling on the subject property partially within the minimum required 30-foot, front-yard setback that applies to the subject property's frontage on Backlick Road, and the Notice of Violation was not barred by the 60-day limitation set forth in Va. Code Ann. § 15.2-2311(C) because the matters set forth therein are nondiscretionary.

3. The Motion for Reconsideration filed by Machicao on December 30, 2008, is denied.

AND THIS CAUSE IS FINAL.

ENTERED this 9 day of January 2009.



HONORABLE LESLIE M. ALDEN

WE ASK FOR THIS:

DAVID P. BOBZIEN  
COUNTY ATTORNEY

By Elizabeth D. Teare

Elizabeth D. Teare (VSB No. 31809)

Assistant County Attorney

12000 Government Center Parkway, Suite 549

Fairfax, Virginia 22035

Telephone: (703) 324-2421

Facsimile: (703) 324-2665

Counsel for the Petitioners, the Board of Supervisors of Fairfax County,  
Virginia, and Eileen M. McLane, Fairfax County Zoning Administrator

SEEN: *not objected to: on basis that decision was*  
*descriptive of Mass VA Code §*  
LAWSON, TARTER & CHARVET *15.2-2311 (c)*

By William B. Lawson, Jr.

William B. Lawson, Jr. (VSB No. 22240)

Benjamin T. Danforth (VSB No. 70927)

6045 Wilson Boulevard, Suite 100

Arlington, Virginia 22205-1546

Telephone: (703) 534-4800

Facsimile: (703) 534-8225

Counsel for the Respondent, Hermilio Machicao

A COPY TESTE:  
JOHN T. FREY, CLERK

BY: Barbara Hyles  
Deputy Clerk

4 Date: 2-6-09

Original retained in the office of  
the Clerk of the Circuit Court of  
Fairfax County, Virginia

**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.

**8-923 Provisions for Increase in Fence and/or Wall Height in Any Front Yard**

The BZA may approve a special permit to allow an increase in fence and/or wall height in any front yard subject to all of the following:

1. The maximum fence and/or wall height shall not exceed six (6) feet and such fence and/or wall shall not be eligible for an increase in fence and/or wall height pursuant to Par. 3l of Sect. 10-104.
2. The fence and/or wall shall meet the sight distance requirements contained in Sect. 2-505.
3. The BZA shall determine that the proposed fence and/or wall height increase is warranted based upon such factors to include, but not limited to, the orientation and location of the principal structure on the lot, the orientation and location of nearby off-site structures, topography of the lot, presence of multiple front yards, and concerns related to safety and/or noise.
4. The BZA shall determine that the proposed fence and/or wall height increase will be in character with the existing on-site development and will be harmonious with the surrounding off-site uses and structures in terms of location, height, bulk, scale and any historic designations.
5. The BZA shall determine that the proposed fence and/or wall height increase shall not adversely impact the use and/or enjoyment of other properties in the immediate vicinity.
6. The BZA may impose such conditions as it deems necessary to satisfy these criteria, including but not limited to imposition of landscaping or fence and/or wall design requirements.
7. Notwithstanding Par. 2 of Sect. 011 above, all applications shall be accompanied by fifteen (15) 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. 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. The location, dimension and height of any building or structure, to include existing or proposed fences and/or walls.
- E. All required minimum yards to include front, side and rear, 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 a well and/or septic field.
- I. If applicable, existing gross floor area and floor area ratio.
- 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. The location, type and height of any existing and proposed landscaping and screening.
- L. Approximate delineation of any floodplain designated by the Federal Insurance Administration, United States Geological Survey, or Fairfax County, the delineation of any Resource Protection Area and Resource Management Area, and the approximate delineation of any environmental quality corridor as defined in the adopted comprehensive plan, and, if applicable, the distance of any existing and proposed structures from the

floodplain, Resource Protection Area and Resource Management Area, or environmental quality corridor.

- M. Seal and signature of professional person certifying the plat.
8. Architectural depictions of the proposed fence and/or wall to include height, building materials and any associated landscaping shall be provided.