



APPLICATION ACCEPTED: November 14, 2008
BOARD OF ZONING APPEALS: April 14, 2009
MOVED AT APPLICANT'S REQUEST
TIME: 9:00 a.m.

County of Fairfax, Virginia

April 7, 2009

STAFF REPORT

SPECIAL PERMIT APPLICATION NO. SP 2008-MA-097

MASON DISTRICT

APPLICANT: Anthony H. Nguyen
OWNERS: Anthony H. Nguyen and Linda H. Nguyen
SUBDIVISION: Barcroft Hills
STREET ADDRESS: 3811 Whispering Lane
TAX MAP REFERENCE: 61-3 ((13)) 241
LOT SIZE: 14,543 square feet
ZONING DISTRICT: R-2, HC
ZONING ORDINANCE PROVISIONS: 8-918
SPECIAL PERMIT PROPOSAL: Accessory Dwelling Unit

STAFF RECOMMENDATION: Staff recommends approval of SP 2008-MA-097, subject to the proposed development conditions contained in Appendix 1.

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

It should be further noted that the content of this report reflects the analysis and recommendations of staff; it does not reflect the position of the Board of Zoning Appeals. A copy of the BZA's Resolution setting forth this decision will be mailed within five (5) days after the decision becomes final.

O:\SMCKN\SP\Nguyen - SP 2008-MA-097\STAFF REPORT.doc

Shelby Johnson

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

For additional information, call Zoning Evaluation Division, Department of Planning and Zoning at 703-324-1280, 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.**

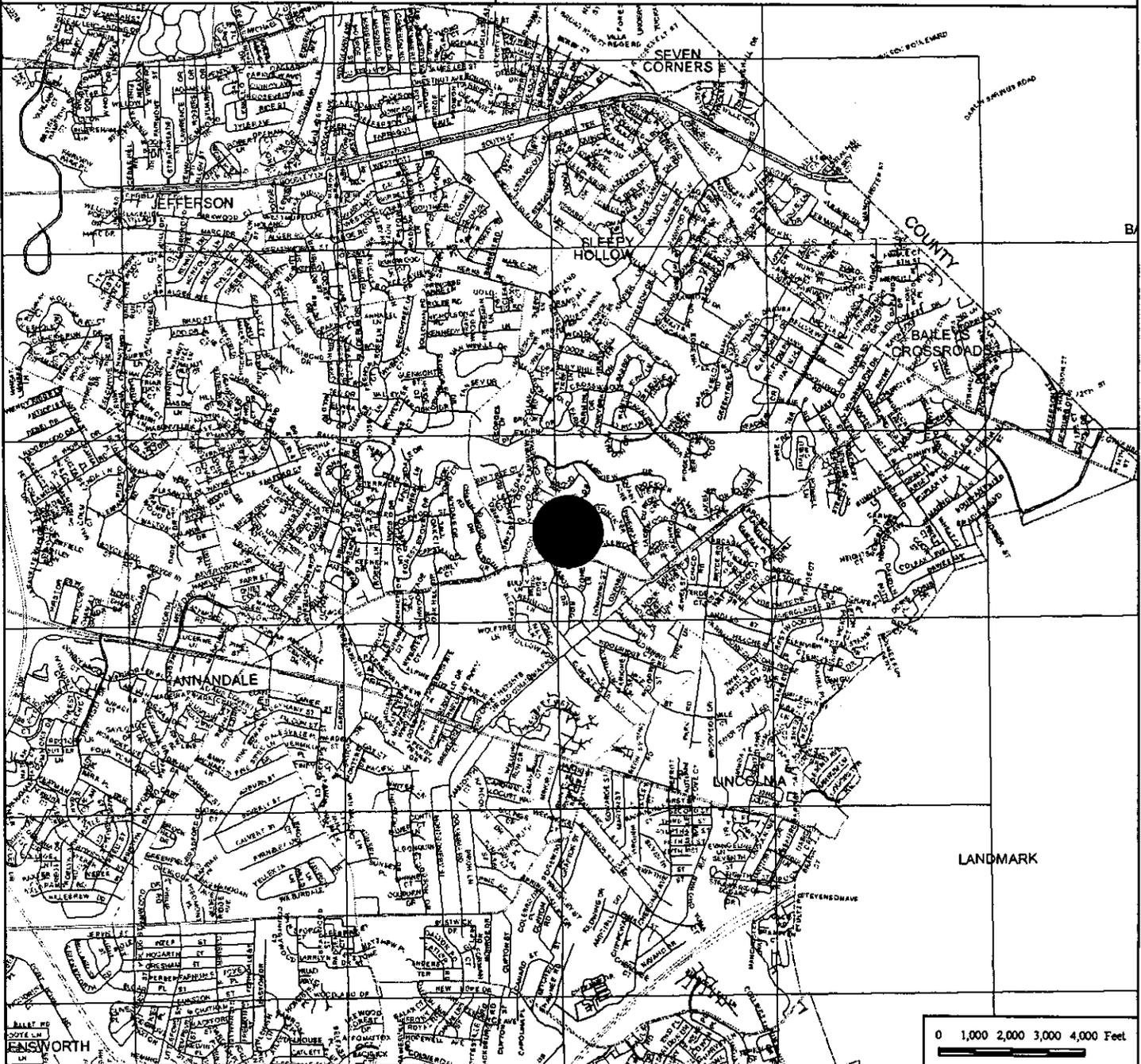
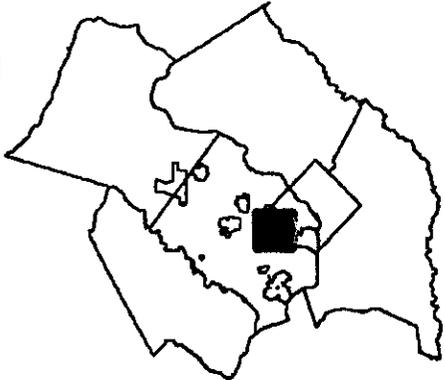


Americans with Disabilities Act (ADA): Reasonable accommodation is available upon 7 days advance notice. For additional information on ADA call (703) 324-1334 or TTY 711 (Virginia Relay Center).

Special Permit

SP 2008-MA-097

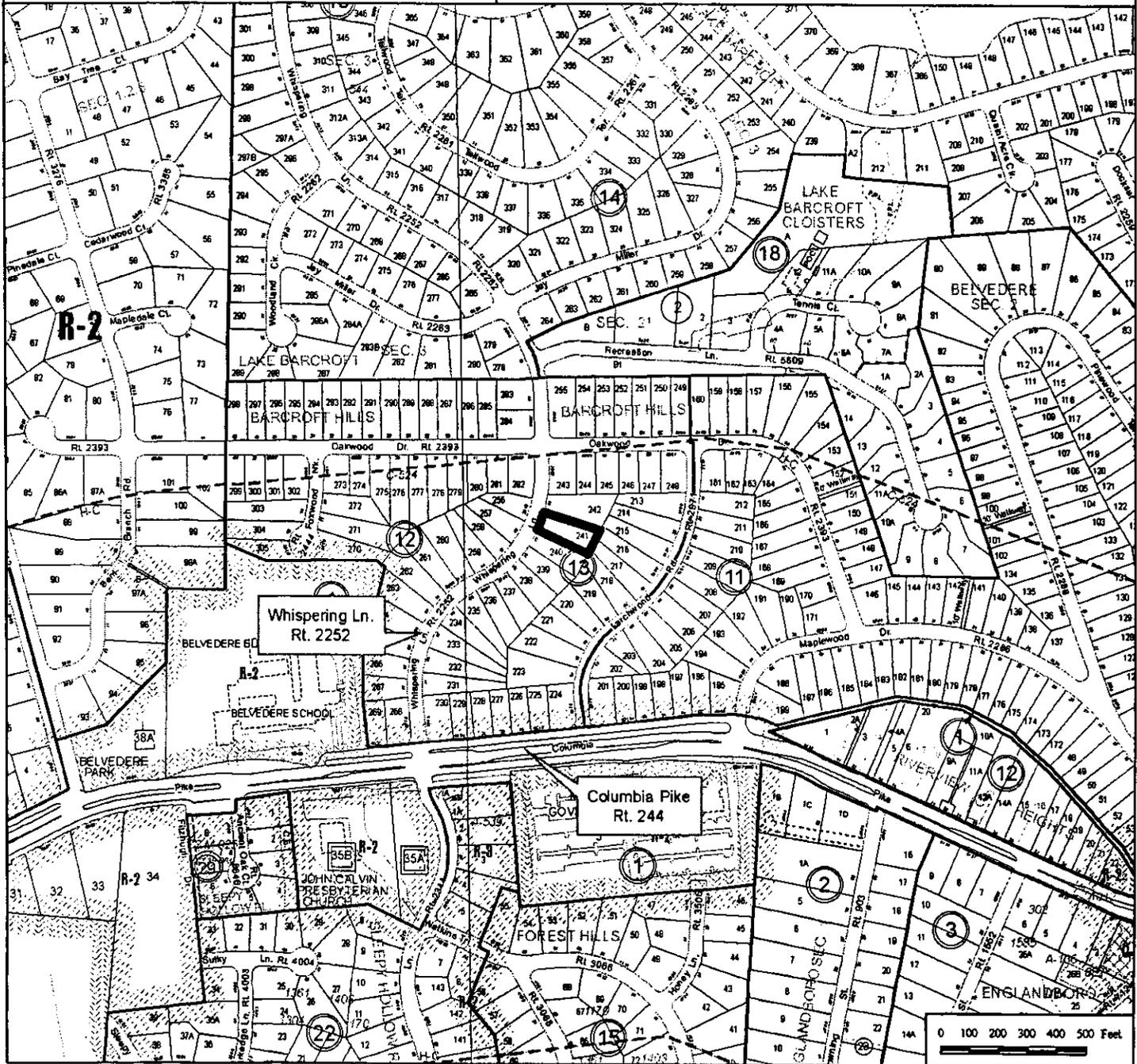
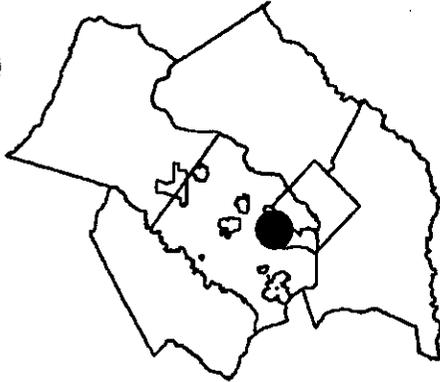
Applicant: ANTHONY NGUYEN
Accepted: 11/14/2008
Proposed: ACCESSORY DWELLING UNIT
Area: 14,543 SF OF LAND; DISTRICT - MASON
Zoning Dist Sect: 08-0918
Art 8 Group and Use: 9-17
Located: 3811 WHISPERING LANE
Zoning: R-2
Overlay Dist: HC
Map Ref Num: 061-3- /13/ /0241



Special Permit

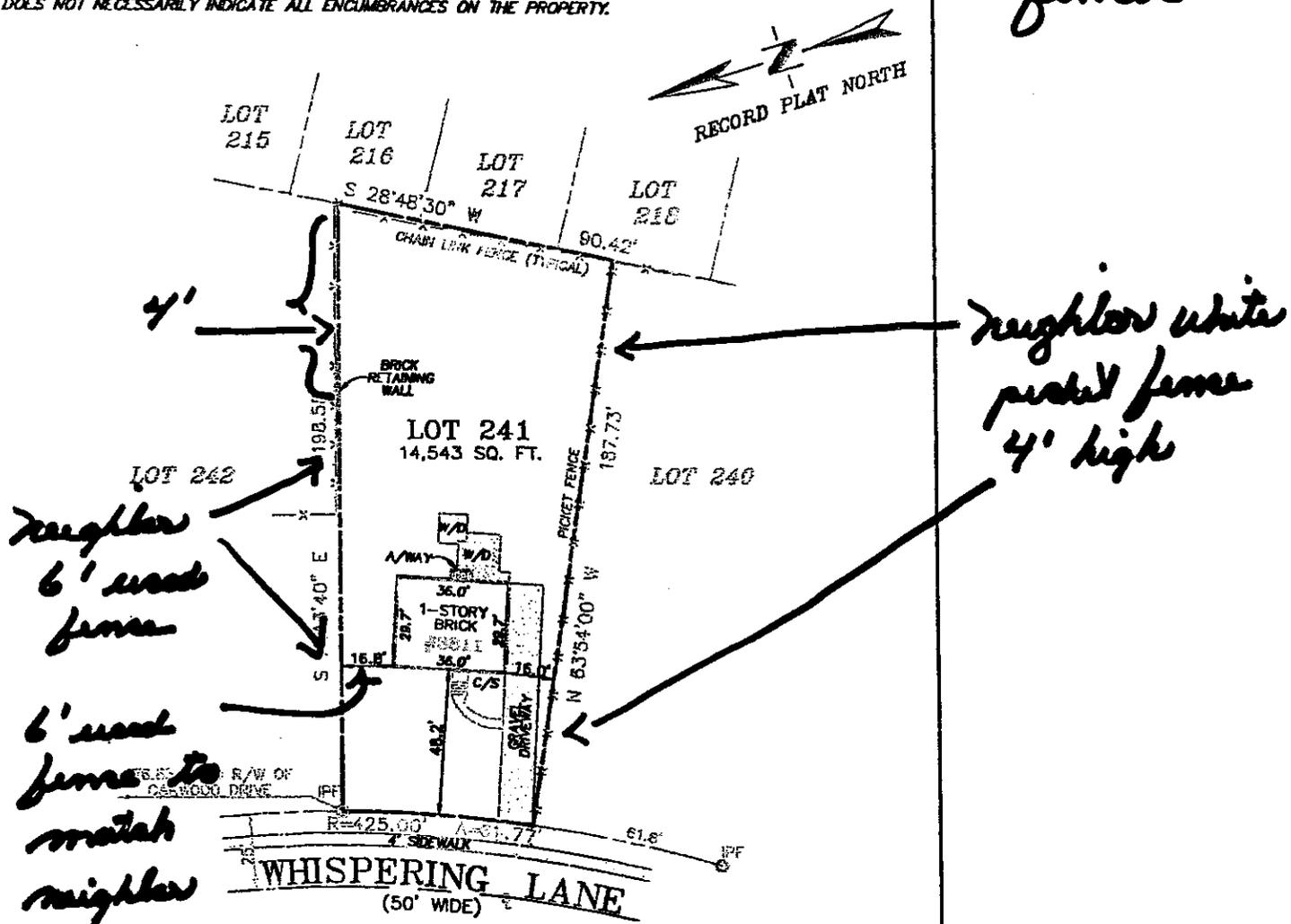
SP 2008-MA-097

Applicant: ANTHONY NGUYEN
Accepted: 11/14/2008
Proposed: ACCESSORY DWELLING UNIT
Area: 14,543 SF OF LAND; DISTRICT - MASON
Zoning Dist Sect: 08-0918
Art 8 Group and Use: 9-17
Located: 3811 WHISPERING LANE
Zoning: R-2
Overlay Dist: HC
Map Ref Num: 061-3- /13/ /0241



NOTE
 THIS PLAT HAS BEEN PREPARED WITHOUT THE BENEFIT OF A TITLE REPORT
 AND DOES NOT NECESSARILY INDICATE ALL ENCUMBRANCES ON THE PROPERTY.

fence



HOUSE LOCATION SURVEY
LOT 241
BARCROFT HILL
 MASON DISTRICT
 (PLAT SHOWN IN DEED BOOK 1079, AT PAGE 287)
 FAIRFAX COUNTY, VIRGINIA

THE ENGINEERING GROUPE, INC.
 D/D/A
ABSOLUTE SURVEYS
 3918 PROSPERITY AVENUE
 SUITE 319
 FAIRFAX, VIRGINIA 22031
 PHONE: (703)-641-0476 FAX: 641-0836

LEGEND

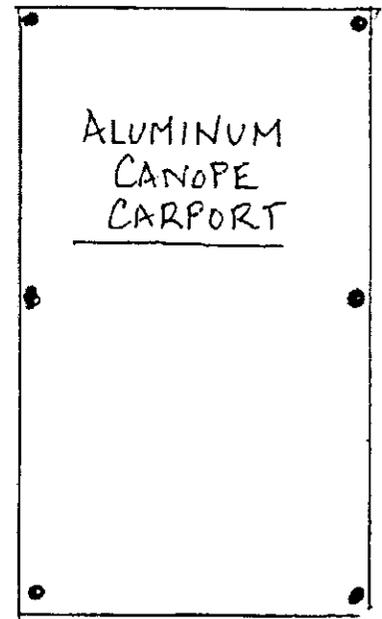
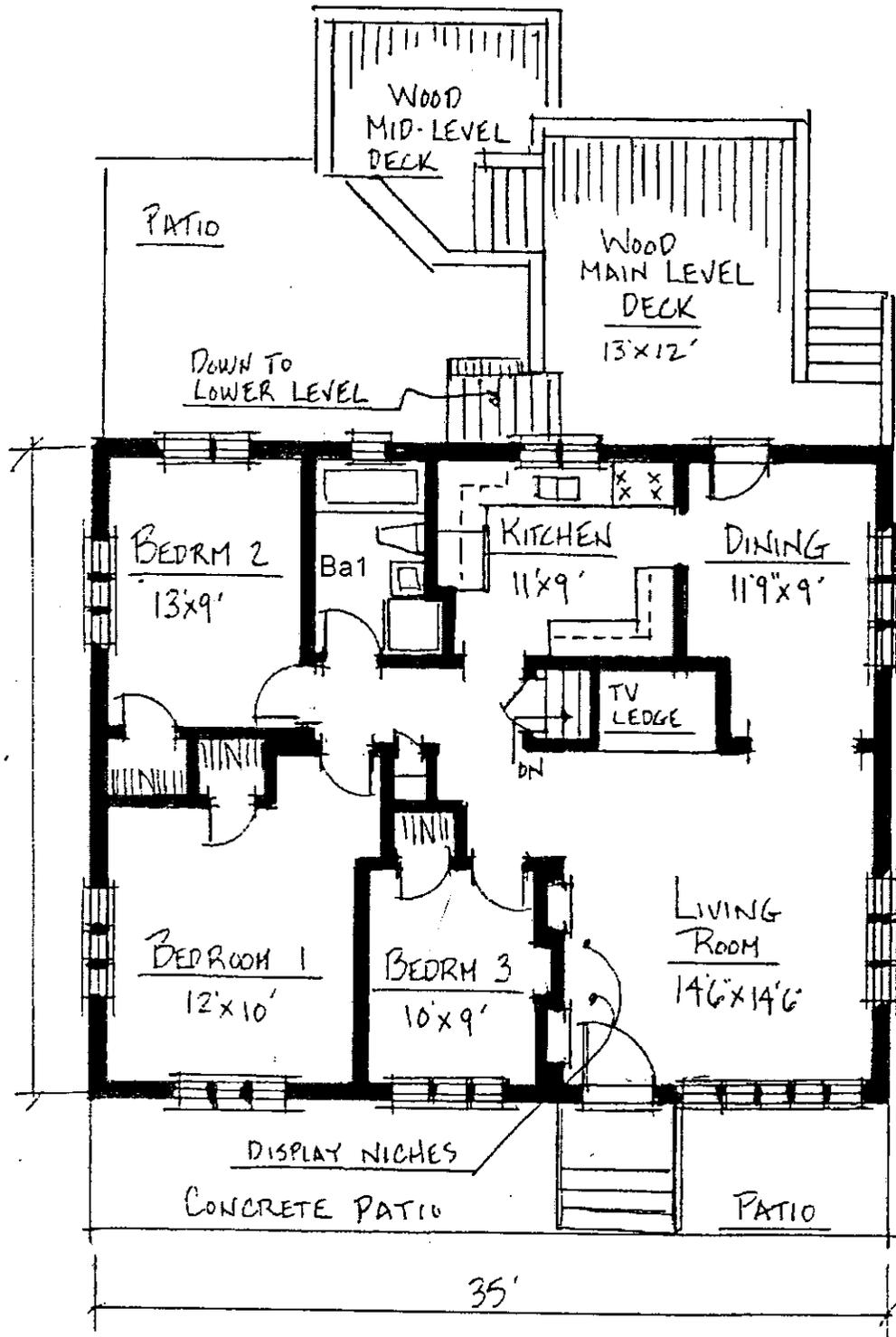
- C/S = CONCRETE STOOP
- CHM. = CHIMNEY
- AC = AIR CONDITIONER
- OHW = OVERHEAD WIRES
- BW = BAY OR BOX WINDOW
- OHG = OVERHANG
- IPF = IRON PIPE FOUND

TAX MAP # 061-3-13-0041
CASE # 02-0392
WORK ORDER # 80271
OWNER: MYERS
PURCHR: NGUYEN
DATE: 09/19/02
SCALE: 1" = 40'

09/24/02
 RED A. MARSHALL
 R.C. 2016
Red A Marshall
 LAND SURVEYOR
 DRAFTED BY: L.H.

MAIN FLOOR

ALL ILLUSTRATIONS AND DIMENSIONS ARE APPROXIMATE AND MAY VARY FROM ACTUAL STRUCTURE.

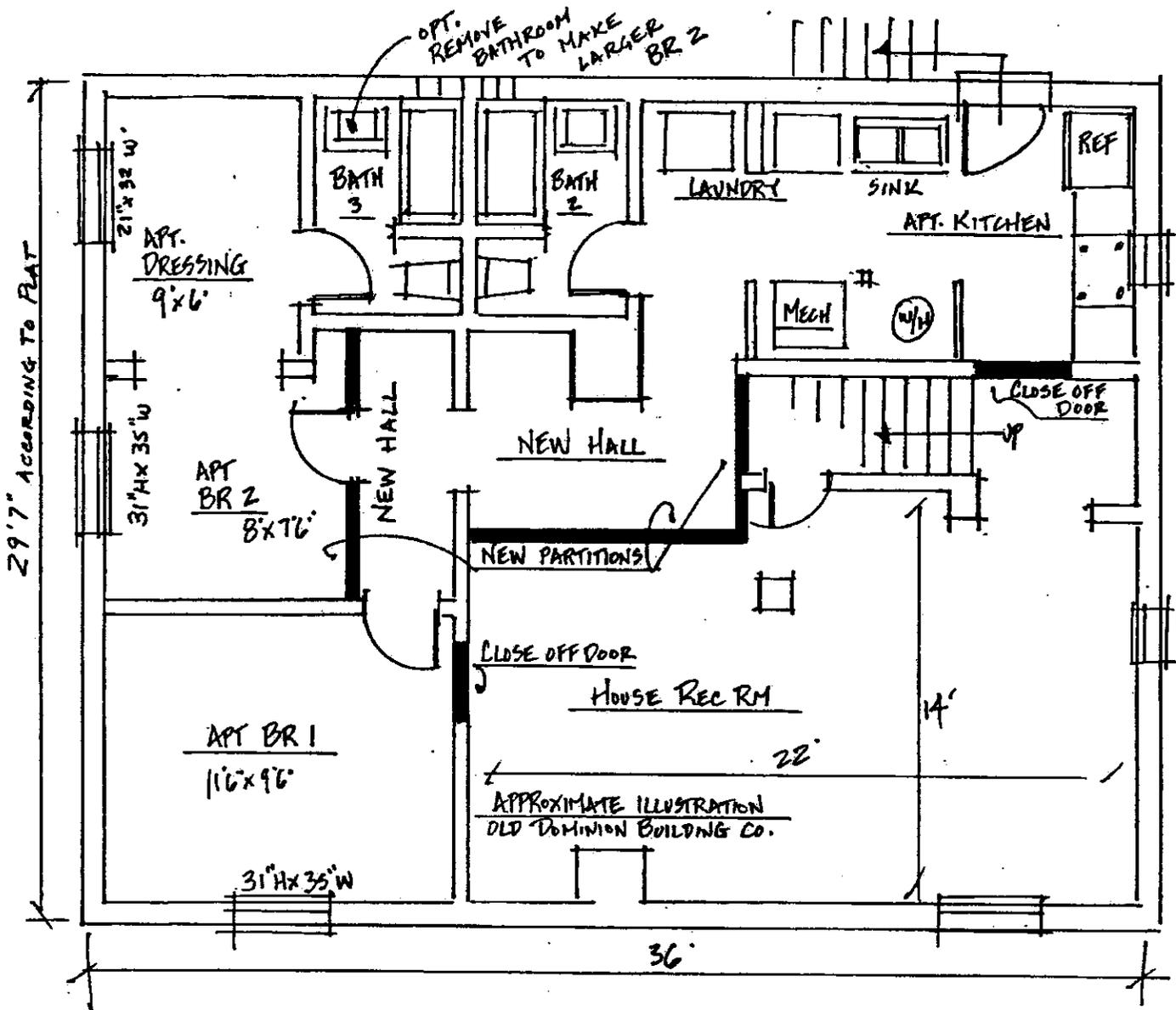


945 SQ FT

RECEIVED
Department of Planning & Zoning

MAR 03 2009

Zoning Evaluation Division



RECEIVED
Department of Planning & Zoning

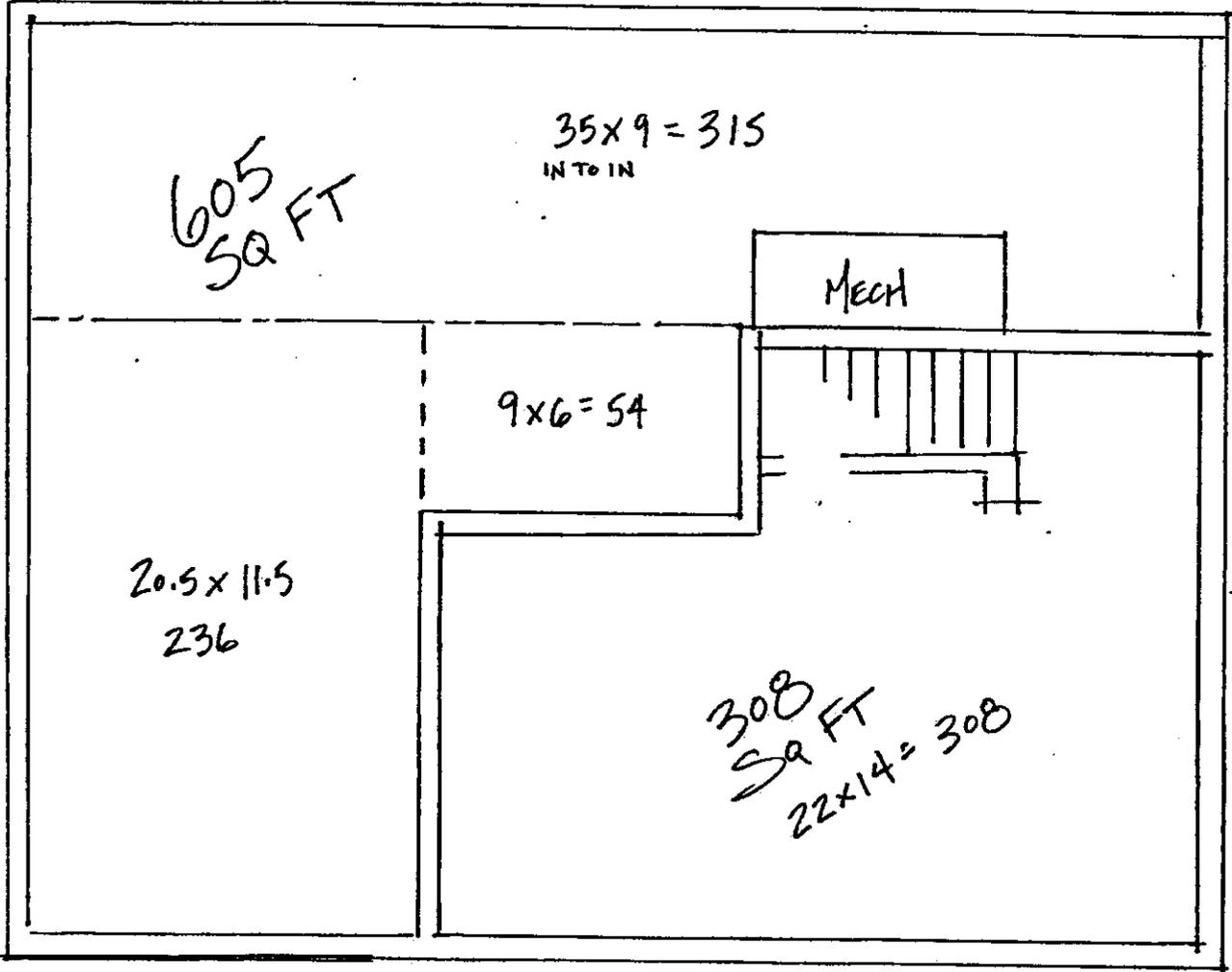
MAR 30 2009

Zoning Evaluation Division

ANTHONY VAN NGUYEN

anthony

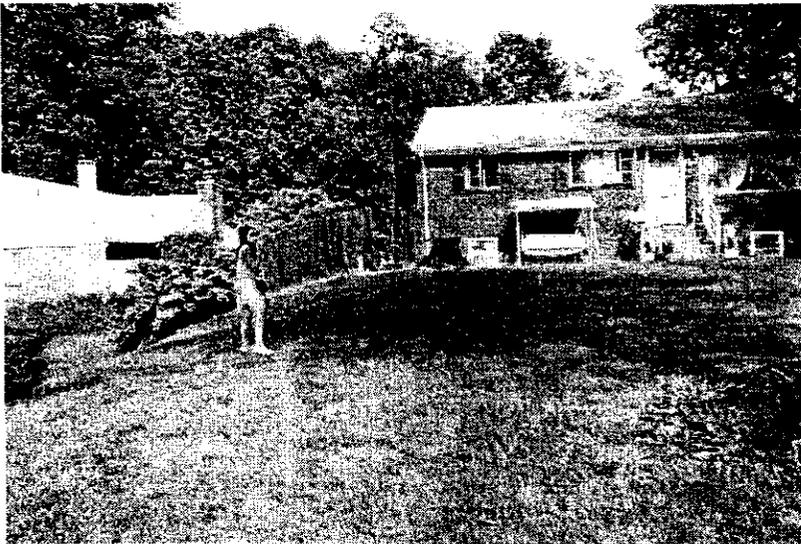
03-26-09



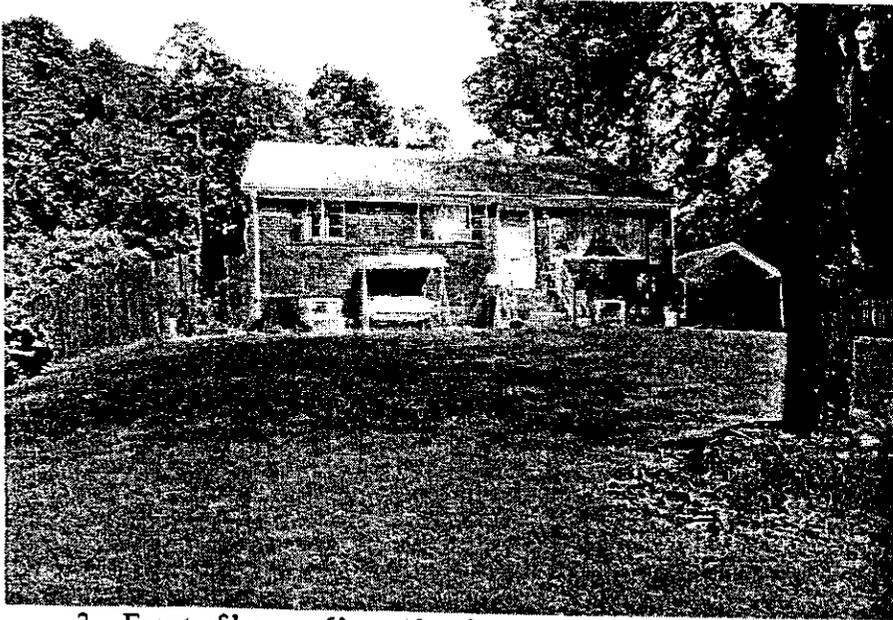
3811 Whispering Lane Falls Church, Virginia
(Note: All photos taken May 31, 2008)



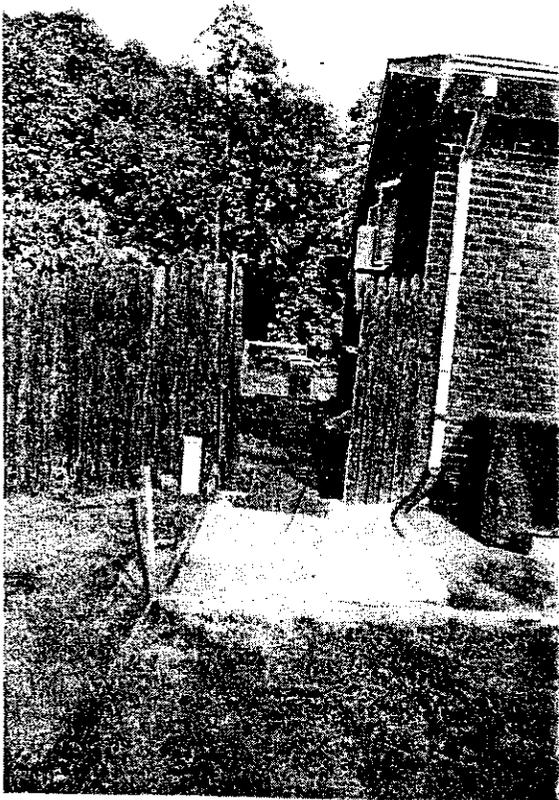
1. Front of house



2. View of front of subject house with 6' wooden fence



3. Front of house, 6' wooden fence, gate



4. View of left side of house, fence and gate



7. View of back of subject house



8. View of deck and entrance to basement



8A. View of basement entrance



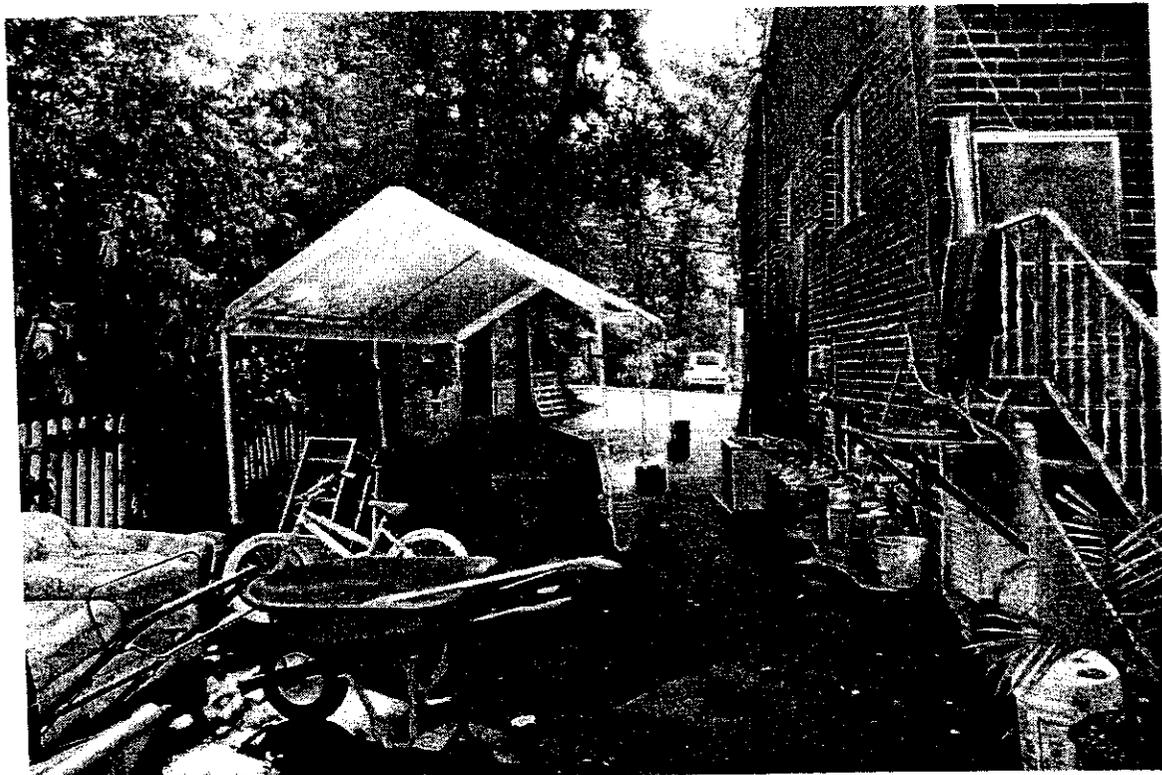
9. View of back of house and left side of house



10. View of back of house, left side of house and fence on left side



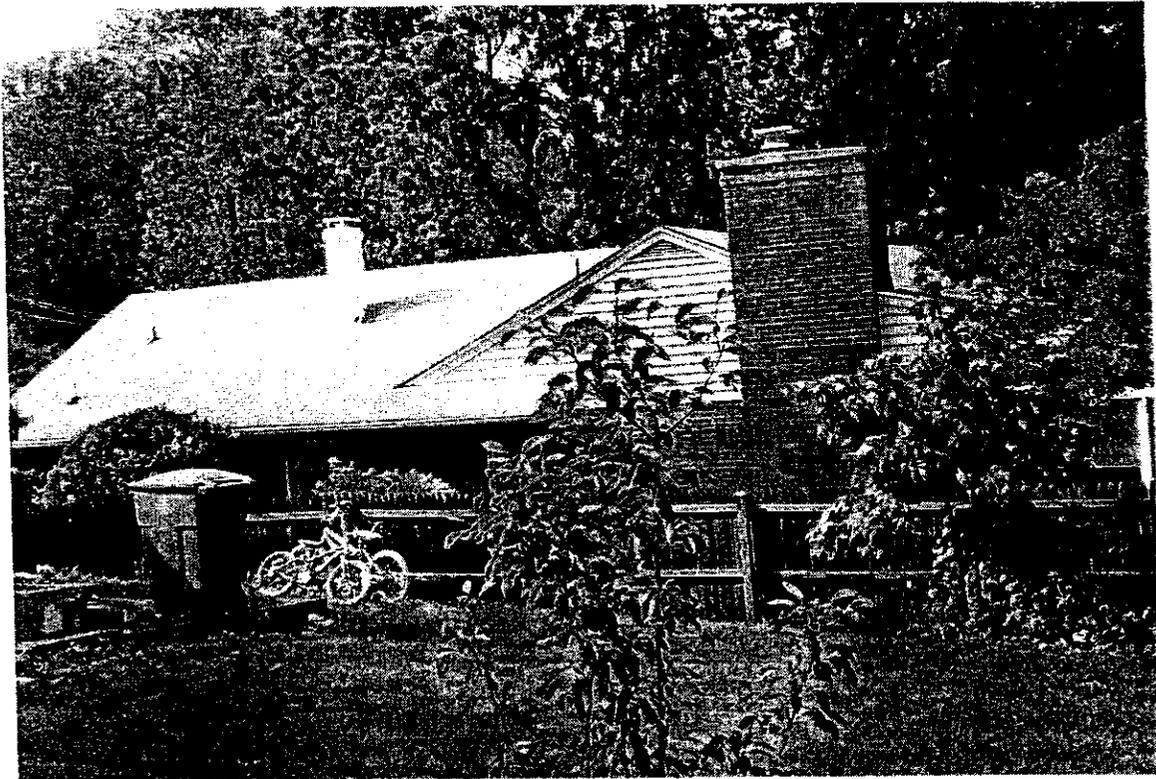
11. View of left side of house and fence on left side



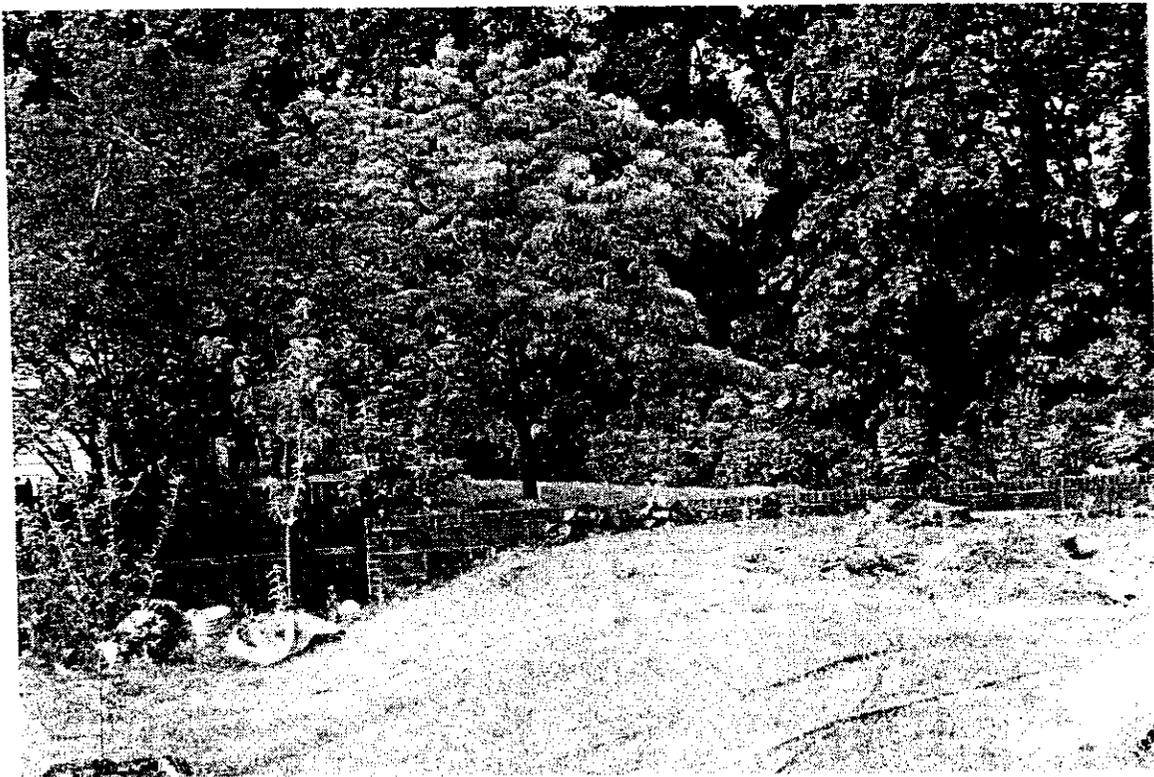
17. View of driveway and right side of house and the fence on the right



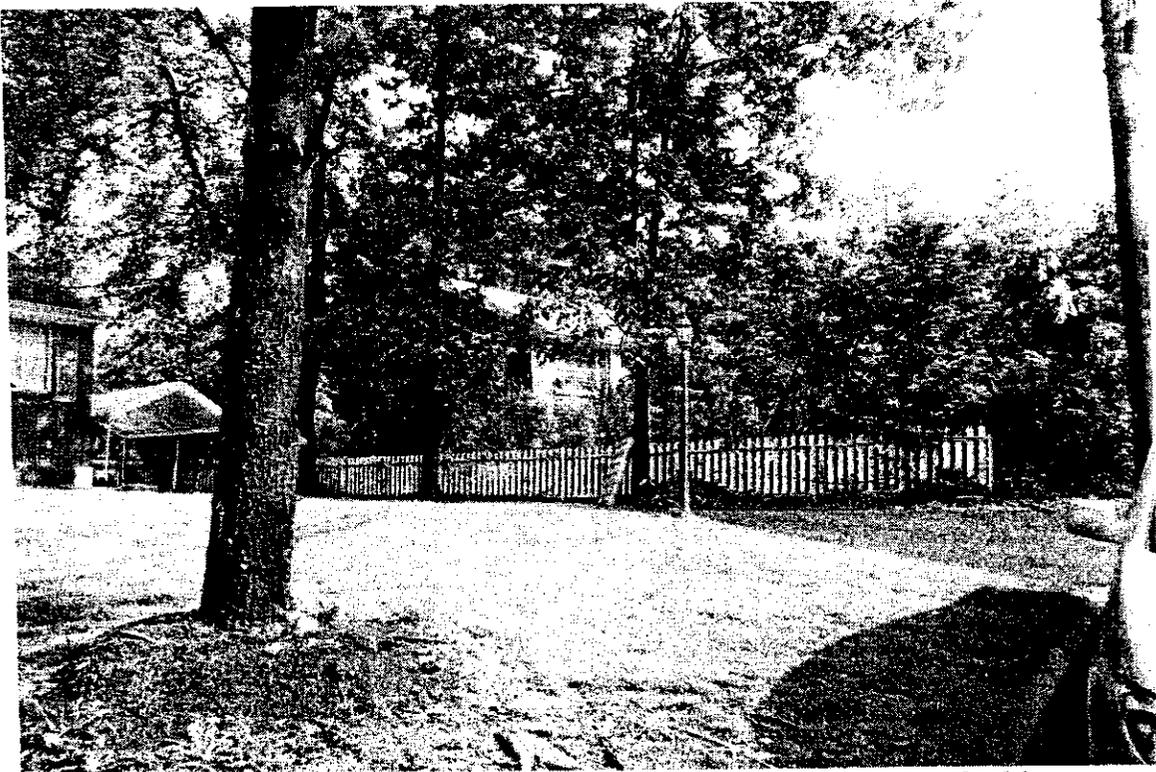
18. View of house on the left with driveway



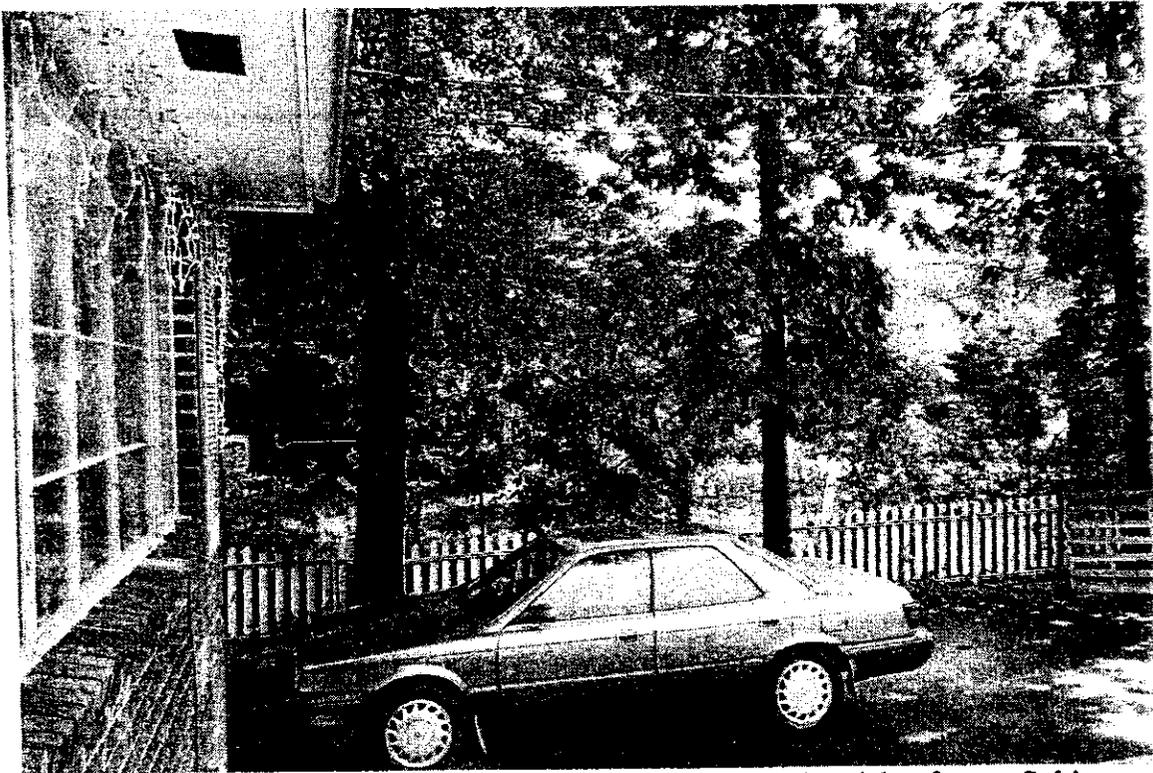
21. View of side yard, fence (belongs to neighbor) and house to left



22. View of neighbor's 6' wooden fence. View of cinderblock wall of subject property. Cinderblock wall is 4' high.



23. View of neighbor's white picket fence. This is on right side of subject property.



24. View of neighbor house on right and neighbor white picket fence. Subject property driveway.



25. View of neighbor white picket fence on right side of property



26. View of property on right and neighbor white picket fence

DESCRIPTION OF THE APPLICATION

Special Permit Request: To permit an accessory dwelling unit to be located in the basement of the principle structure.

Size of Principal Dwelling: 1,858 square feet

Size of Accessory Dwelling Unit: 605 square feet (Lower level is 913 s.f.)

Lot Size: 14,543 square feet

LOCATION AND CHARACTER

Existing Site Description: The subject property is located on the east side of Whispering Lane at 3811 Whispering Lane, south of its intersection with Oakwood Drive and north of the intersection of Whispering Lane and Columbia Pike. The 14,543 square foot lot is developed with a brick, one-story, single family detached dwelling, with a finished basement apartment. Vehicular access is provided via a paved driveway from Whispering Lane. The driveway extends along the southern side yard and terminates at the rear plane of the dwelling. A tent-like carport has been erected over the driveway at the end of the drive. The applicant intends to remove the structure as it does not meet the minimum required side yard. Two multi-level decks and a concrete patio are located at the rear of the house with a back door entrance to the primary dwelling; a separate external entrance to the basement is located below the deck. A brick paved walkway borders the decks and patios and extends along the northern property line to a gated entrance located at the front plane of the house. The subject property has a large landscaped lawn and contains a variety of small and medium shrubs and trees.

Surrounding Area Description:

Direction	Use	Zoning	Plan
North	Single Family Dwellings	R-2	Residential, 2-3 du/ac
South	Single Family Dwellings	R-2	Residential, 2-3 du/ac
East	Single Family Dwellings	R-2	Residential, 2-3 du/ac
West	Single Family Dwellings	R-2	Residential, 2-3 du/ac

BACKGROUND

Site History

County records indicate that the dwelling was originally constructed in 1954. On January 20, 2008, a site inspection was conducted which revealed a second dwelling unit in the basement of the principle structure. On January 29, 2008, the property owners were issued a notice of violation for multiple dwelling units on the site, in violation of Sect. 2-501 of the Fairfax County Zoning Ordinance (Appendix 4).

COMPREHENSIVE PLAN PROVISIONS

Plan Area: Bailey's Planning District; Area I
Planning Sector: Barcroft Community Planning Sector (B5)
Plan Map: Residential, 2-3 du/ac

ANALYSIS

Special Permit Plat (Copy at front of staff report)

Title of SP Plat: House Location Survey, Lot 241, Barcroft Hill, Mason District, Fairfax County, Virginia
Prepared By: The Engineering Group, Inc., D/B/A Absolute Surveys, with notes by the applicant
Dated: September 19, 2002, signed by Ned Marshall, Land Surveyor
September 24, 2002

Proposed Use

The applicant is requesting approval of a special permit for an accessory dwelling unit. The lower level of the principle dwelling consists of 913 square feet. The applicant proposes to modify the design of the lower level in order to restrict the total floor area designated to the accessory dwelling unit. The applicant proposes to partition off the current recreation room area (308 square feet) from the accessory dwelling unit by removing the current doorway along the western wall and constructing a new partition wall in its place, as well as construct a partition wall to the north. Another partition will replace the doorway from the stairway to the kitchen, limiting access from the recreation room to only the principle dwelling. The 605 square foot accessory unit is to be located on the basement level of the existing one-story dwelling. The accessory dwelling unit includes two bedrooms, two bathrooms, a shared laundry/utility room and a full kitchen; thus comprising 33 percent of the total square feet in the dwelling. The applicant's 77 year old mother is one of the occupant's of this space.

Land Use Analysis

The Comprehensive Plan recommends residential uses with a density of 2-3 dwelling units per acre. In staff's opinion, the proposed accessory dwelling is in harmony with the Comprehensive Plan recommendations for this site, and there are no design or compatibility issues posed by the development plan.

ZONING ORDINANCE PROVISIONS

The existing single family dwelling with accessory dwelling unit on site currently meets all bulk regulations for the R-3 Zoning District.

OTHER ZONING ORDINANCE REQUIREMENTS

Special Permit Requirements (See Appendix 5)

- General Special Permit Standards (Sect. 8-006)
- Group Standards for All Group 9 Uses (Sect. 8-903)
- Additional Standards for Accessory Dwelling Units (Sect. 8-918)

Summary of Zoning Ordinance Provisions

All applicable standards for the accessory dwelling unit have been satisfied with the proposed development conditions.

CONCLUSIONS

Staff concludes that the subject application for an accessory dwelling unit is in harmony with the Comprehensive Plan and in conformance with the applicable Zoning Ordinance provisions with the implementation of the Proposed Development Conditions contained in Appendix 1 of the Staff Report.

RECOMMENDATIONS

Staff recommends approval subject to the Proposed Development Conditions in Appendix 1.

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

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

APPENDICES

1. Proposed Development Conditions with Attachment 1
2. Affidavit
3. Statement of Justification and Attachments (Neighbors' Petition of Support)
4. Notice of Violation
5. Applicable Zoning Ordinance Provisions

PROPOSED DEVELOPMENT CONDITIONS**April 7, 2009**

If it is the intent of the Board of Zoning Appeals to approve SP 2008-MA-097 located at Tax Map 61-3 ((13)) 241, to permit an accessory dwelling unit under Section 8-918 of the Fairfax County Zoning Ordinance, staff recommends that the Board condition the approval by requiring conformance with the following development conditions.

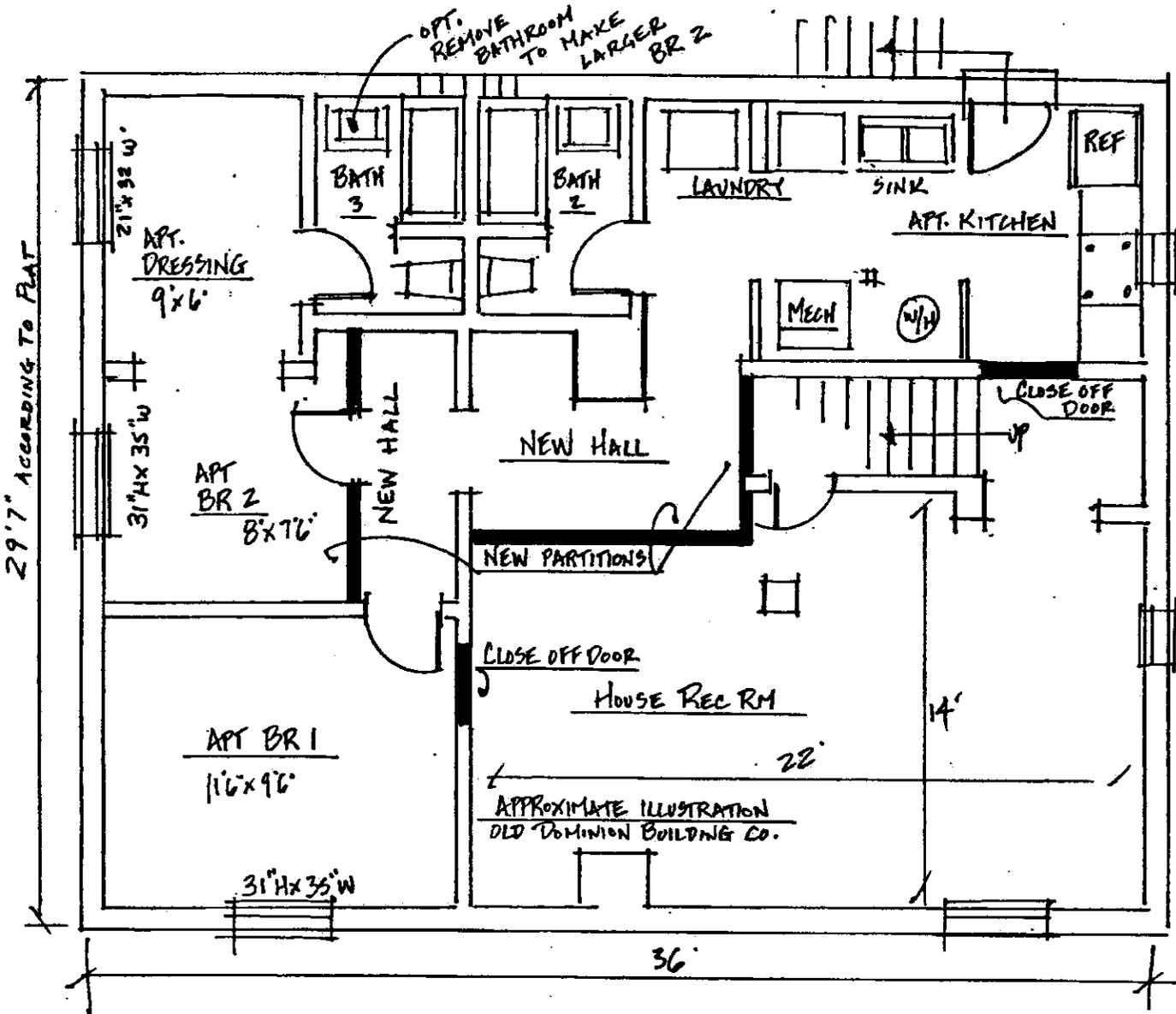
1. This approval is granted to the applicant only, Anthony H. Nguyen, and is not transferable without further action of this Board, and is for the location indicated on the application, 3811 Whispering Lane (14,543 square feet), and is not transferable to other land.
2. This special permit is granted only for the purpose(s), structures and/or use(s) indicated on the house location survey plat prepared by The Engineering Groupe, Inc., D/B/A Absolute Surveys, dated September 19, 2002, signed September 24, 2002, and approved with this application, as qualified by these development conditions.
3. A copy of this special permit SHALL BE POSTED in a conspicuous place on the property of the use and made available to all departments of the County of Fairfax during the hours of operation of the permitted use.
4. The occupant(s) of the principal dwelling and the accessory dwelling unit shall be in accordance with Par. 5 of Sect. 8-918 of the Zoning Ordinance.
5. The accessory dwelling unit shall contain a maximum of 605 square feet, including a maximum of two bedrooms as shown on Attachment 1.
6. The applicant shall remove the carport structure from any minimum required yards, or bring it into conformance with the Zoning Ordinance within 30 days of approval of this special permit.
7. Provisions shall be made for the inspection of the property by County personnel during reasonable hours upon prior notice and the accessory dwelling unit shall meet the applicable regulation for building, safety, health and sanitation.
8. The accessory dwelling unit shall be approved for a period of five (5) years from the final approval date of the special permit and may be extended for five (5) year periods with prior approval of the Zoning Administrator in accordance with Section 8-012 of the Zoning Ordinance.
9. If the use of the accessory dwelling unit ceases and/or the property is sold or otherwise conveyed, the accessory structure shall be converted to a use permitted by the Zoning Ordinance or if the property is sold or conveyed, a special permit amendment may be submitted to permit the continued use of an accessory dwelling unit.

10. A building permit and final inspections shall be obtained if necessary for the new partitions in the accessory unit. If access is required by building code from the recreation room to the outside basement stairs, a door shall be installed between the recreation room and the kitchen.

11. Parking shall be provided as shown on the special permit plat.

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

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



ANTHONY VAN NGUYEN

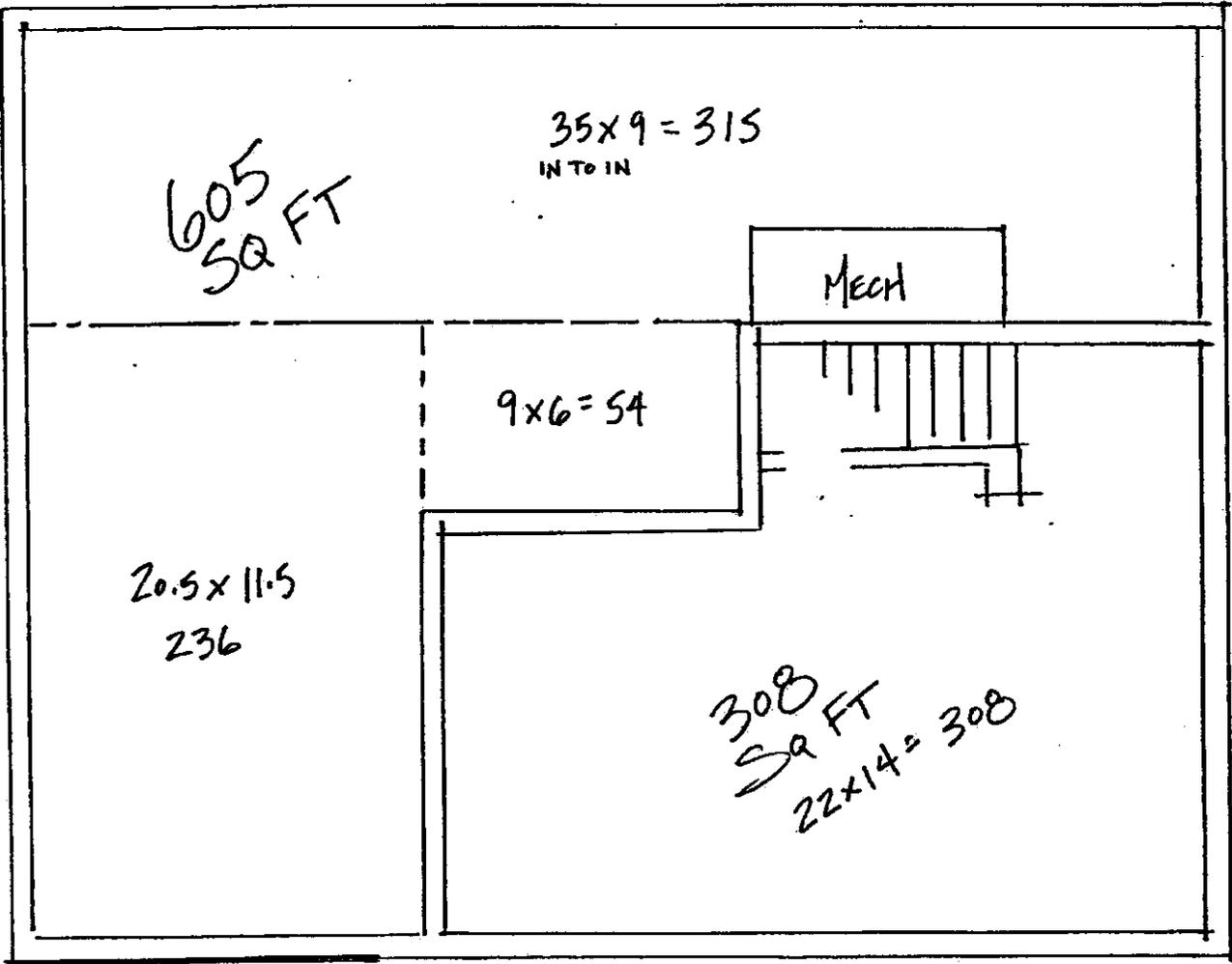
anthony

03-26-09

RECEIVED
Department of Planning & Zoning

MAR 30 2009

Zoning Evaluation Division



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

SPECIAL PERMIT/VARIANCE AFFIDAVIT

DATE: 6/3/08
(enter date affidavit is notarized)

I, ANTHONY NGUYEN, 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 100360

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

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

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

NAME (enter first name, middle initial, and last name)	ADDRESS (enter number, street, city, state, and zip code)	RELATIONSHIP(S) (enter applicable relationships listed in BOLD above)
ANTHONY H. NGUYEN	3811 Whispering Lane Falls Church, VA 22041	spouse & Applicant & Title owner
LINDA H. NGUYEN*	same as above	spouse & Title Owner

* ALSO KNOWN OF RECORD AS Tuyet Linh H. Nguyen.

(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).

SPECIAL PERMIT/VARIANCE AFFIDAVIT

DATE: 6/3/08 100360
(enter date affidavit is notarized)

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

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

CORPORATION INFORMATION

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

Not applicable

DESCRIPTION OF CORPORATION: (check one statement)

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

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

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

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

This page not applicable

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

Page Three

SPECIAL PERMIT/VARIANCE AFFIDAVIT

DATE: 8/3/08
(enter date affidavit is notarized)

100360

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)

Not applicable

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

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

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

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

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

SPECIAL PERMIT/VARIANCE AFFIDAVIT

DATE: 6/3/08 100360
(enter date affidavit is notarized)

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

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

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

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

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

none

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

Application No.(s): _____

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

SPECIAL PERMIT/VARIANCE AFFIDAVIT

DATE: 6/3/08
(enter date affidavit is notarized)

100360

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 *Anthony* Applicant's Authorized Agent

ANTHONY H. NGUYEN - CO-OWNER WITH WIFE
(type or print first name, middle initial, last name, and title of signee)

Subscribed and sworn to before me this 3rd day of June, 2008, in the State/Comm. of Virginia, County/City of Fairfax

[Signature]
Notary Public

My commission expires: _____

My Commission Expires. Oct. 31, 2012
My Registration No. 136146

June 1, 2008

County of Fairfax
Department of Planning & Zoning
12055 Government Center Parkway, Suite 807
Fairfax, Virginia 22035

RE: Application for a Special Permit for an Accessory Dwelling Unit
At 3811 Whispering Lane, Falls Church, Fairfax County, Virginia

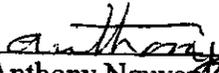
WRITTEN STATEMENT OF JUSTIFICATION

1. Anthony Nguyen is the primary property owner with his wife (Linda Nguyen) requesting the construction of a single accessory dwelling unit within the existing single family house.
2. When Anthony Nguyen and his wife purchased the property in 2002, the second kitchen and bath were already installed in the basement within the single family home. They had planned to use that kitchen and bath for family members and guests coming to visit them. It was the main reason they purchased the home.
3. Two tiny rooms plus the second kitchen and one full bath in the basement of the existing home were already there when the property was purchased in 2002. The owners were not advised by their Realtor that this space required any special permits when they purchased the home; nor were they advised that the County had to approve this use. The Lender also did not tell them that the second kitchen was a problem.
4. There is an external entrance to the basement and second kitchen from the rear of the property by means of a separate entrance.
5. There is a separate front entrance to the home.
6. There is a staircase within the home to the basement.
7. Occupancy:
 - a. Anthony Nguyen and Linda Nguyen and their two daughters live in the primary dwelling unit with bedrooms on the first floor
 - b. Nguyen parents -- Samh Nguyen age 64 and Thu Duong age 61 -- are currently visiting and using the basement area, including the kitchen.

RECEIVED
Department of Planning & Zoning
JUN 03 2008
Zoning Evaluation Division

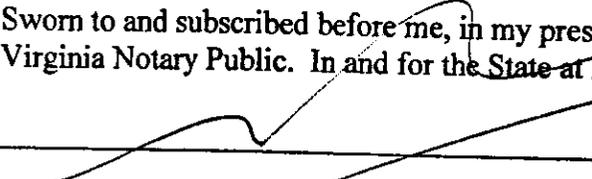
- c. When the parents go back to Viet Nam for a visit, other relatives may occasionally come to visit 3811 Whispering Lane.
8. The parents are not disabled. They have uninterrupted access through the primary front entrance of the house and the back entrance available through the paved driveway on the right of the house or through the gated fence on the left side of the house with a paved pathway.
 9. The parents do not have a car.
 10. Anthony Nguyen and Linda Nguyen have three cars which they park in the driveway. There is plenty of space on the street to park two more cars in front of the residence without impeding traffic.
 11. There are no proposed changes to the exterior of the house.
 12. Keeping the second kitchen and bath will allow the parents, the owners and children to each have some privacy. The elderly parents have a different diet and schedule than the younger owners and their family living upstairs. Keeping this kitchen permits the elderly parents lives to be less stressful.
 13. There is no request or requirement to subdivide the property.
 14. Anthony Nguyen will be 55 next April 2009.
 15. Provisions will be made to allow inspections of the property by Fairfax County personnel during reasonable hours upon prior notice.

Property Owner
 3811 Whispering Lane
 Falls Church, Virginia


 Anthony Nguyen

NOTARY:

Sworn to and subscribed before me, in my presence this 3rd day of June 2008. A Virginia Notary Public. In and for the State at Large.


 Notary Public

My commission expires: _____ Commission #: _____

My Commission Expires. Oct. 31, 2012
My Registration No. 136146

NEIGHBORS' PETITION

When Anthony Nguyen and his wife, Linda Nguyen, purchased the house at 3811 Whispering Lane, Falls Church, Virginia in 2002, the house had a second kitchen in the basement. Mr. and Mrs. Nguyen have since learned that they need a Special Permit to continue to have this second kitchen. We agree that they should be allowed to keep it:

<u>NAME</u>	<u>ADDRESS</u>	<u>SIGNATURE</u>
Noella BALATBAT	3813 Whispering Lane Falls Church Va. 22041	
THANH NGUYEN	3818 WHISPERING LANE FALLS CHURCH VA 22041	
Victoria Smith	3902 Whispering Lane Falls Church VA 22041	
Kathy Kelly	3900 WHISPERING LN. Falls Church, VA 22041	

RECEIVED
Department of Planning
JUN 03 2008
Zoning Evaluation



County of Fairfax, Virginia

110001179
APPENDIX 4

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

January 29, 2008

NOTICE OF VIOLATION

CERTIFIED MAIL

Return Receipt Requested

Receipt #7099 3400 0007 0874 3698

Antony V. Nguyen
Tuyetlinh T. Nguyen
3811 Whispering Lane
Falls Church, VA 22041

Re: 3811 Whispering Lane
Bracraft Hills, Lot 241
Tax Map Ref.: 61-3 ((13)) 241
Zoning District: R-2

Dear Mr. and Mrs. Nguyen:

A zoning inspection of the above referenced property, and a conversation with you on January 20, 2008, revealed the basement on the above property has been converted into a second dwelling unit consisting of an independent living facility, which includes: permanent provisions for living, sleeping, eating, cooking, and sanitation. For your information and review, a dwelling unit is defined in Part 3 of Article 20 of the Fairfax County Zoning Ordinance defines a dwelling unit as:

One (1) or more rooms in a residential building or residential portion of a building which are arranged, designed, used, or intended for use as a complete, independent living facility which includes permanent provisions for living, sleeping, eating, cooking and sanitation. Occupancy shall be in accordance with the provisions of Sect. 2-502.

The maintenance of two (2) or more separate dwelling units, on this lot, is a violation of Sect. 2-501 of the Fairfax County Zoning Ordinance, which states, in part:

There shall be not more than one (1) dwelling unit on any one (1) lot, nor shall a dwelling unit be located on the same lot with any other principal building.....

Department of Planning and Zoning
Zoning Administration Division
Zoning Enforcement Branch
12055 Government Center Parkway, Suite 82
Fairfax, Virginia 22035-550
Phone 703-324-1300 FAX 703-324-134
www.fairfaxcounty.gov/dp

You are, hereby, directed to clear this violation within thirty (30) days of receipt of this notice. Compliance can be accomplished as follows:

Removing all facilities which serve to establish any more than one (1) dwelling unit. This requires that you do the following, at a minimum, with respect to the second kitchen on the premises:

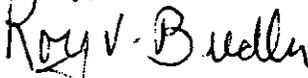
- Remove the stove;
- Remove the stove exhaust vent;
- Remove the sink;
- Remove the cabinets; and
- Arrange the interior of the singled family dwelling so as to provide unrestricted internal access throughout the dwelling by removing all partitions or locked doors which create a separate dwelling unit.

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

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

Should you have any questions or need additional information, please do not hesitate to contact me at (703) 324-1331 or (703) 324-1300.

Sincerely,



Roy V. Biedler
Senior Zoning Inspector

RVB/seg

CHECKLIST FOR APPEAL APPLICATIONS

REMEMBER TO:

- ✓ Submit four (4) copies total (original plus three copies) of a completed and signed application form and four (4) copies total (original plus three copies) of a signed statement setting forth the following information:
 - The order, requirement, decision, determination or notice of violation which is the subject of the appeal. Please attach a copy of the document which sets forth the determination at issue.
 - The date upon which the decision being appealed was made.
 - The grounds for the appeal.
 - Specifically how the appellant is an aggrieved person.
 - Any additional supportive data such as plats, plans, drawings, charts or other related material. If supportive data is oversized, at least one copy no larger in size than 8 ½" X 11" should be provided.
- ✓ Submit the \$375 application fee, in the form of a check, made payable to the County of Fairfax. Cash or credit card is not acceptable.
- ✓ File the appeal as follows:
 - **With the Zoning Administrator:** Original *plus* two copies of the appeal application package and the \$375 application fee to:

Zoning Administrator
Zoning Administration Division
Department of Planning and Zoning
12055 Government Center Parkway, Suite 807
Fairfax, Virginia 22035
703-324-1314

- **With the Clerk to the Board of Zoning Appeals (BZA):** One copy of the appeal application package to:

Clerk, Board of Zoning Appeals
Zoning Evaluation Division
Department of Planning and Zoning
12055 Government Center Parkway, Suite 801
Fairfax, Virginia 22035
703-324-1280

If appeal is not filed in *both* locations, it will be considered improperly filed and may not be accepted. Appeal must be filed within **30 days of the date of the order** to be timely and considered for acceptance.

PLEASE NOTE:

- ✓ The appellant will be notified in writing as to whether the appeal has been accepted. If accepted, the appellant will be notified of the date and time for the public hearing in the acceptance letter.
- ✓ The Appeal Application Form is available on our website www.fairfaxcounty.gov/dpz/bza or from the Zoning Administration Division.
- ✓ If you have any questions about the appeal procedure, please call the Zoning Administration Division at 703-324-1314.

GENERAL INFORMATION FOR APPEALS TO THE BOARD OF ZONING APPEALS

INTRODUCTION

The Fairfax County Board of Zoning Appeals (BZA) was established pursuant to the provisions of Article 7, Chapter 22, Title 15.2 of the Code of Virginia. The BZA's powers, duties and procedures are set forth in broad terms in the State Code and are further detailed in the Fairfax County Zoning Ordinance. Such powers and duties include:

- Hearing and deciding appeals of administrative decisions made pursuant to the Zoning Ordinance.
- Hearing and deciding upon applications for special permits and variances as authorized by the Zoning Ordinance.
- Hearing and deciding on applications for interpretation of the Zoning Map where there is uncertainty as to the location of a zoning district boundary.

The BZA consists of seven (7) members appointed by the Circuit Court for staggered terms of five years. All members of the BZA are private citizens and must be residents of Fairfax County. They serve only as a Board and not as County employees and, as such, do not have County office space nor are they available by telephone in the County government. The Zoning Administration Division (ZAD) of the Department of Planning and Zoning provides the principal administrative coordination and support on appeal applications for the BZA. ZAD is located at 12055 Government Center Parkway, Fairfax, Virginia 22035 in Suite 807 and the telephone number is (703) 324-1314.

Before the BZA will consider an appeal, an application must be properly filed with both the Zoning Administrator and the Clerk to the BZA within thirty (30) days from the date the decision being appealed was made. The Zoning Administrator is located in Suite 807 and the Clerk to the BZA is located in Suite 801, at the above address. If an appeal application is accepted, a public hearing date is scheduled. Written notice requirements must be satisfied and the public hearing properly held before the BZA can act upon an appeal. The appellant or authorized agent is required to present the justification for the appeal at the hearing.

PROPERLY FILED APPLICATION

Sect. 18-304 of the Zoning Ordinance sets forth the submission requirements for appeals. All elements of the submission requirements must be met within the thirty (30) day filing time frame before the appeal can be accepted and scheduled for public hearing.

Each appeal application must include: four (4) copies of the application form and four (4) copies of a written statement signed by the appellant setting forth the following:

- The order, requirement, decision or determination which is the subject of the appeal. Usually including a copy of the document which sets forth the determination at issue and referencing this determination in the statement satisfies this requirement.
- The date upon which the decision being appealed was made.
- The appellant's grounds and reasons for the appeal.
- Specification as to how the appellant is an aggrieved person. (For example, owner of property affected by the determination or adjacent property owner affected by the determination, etc.) If the appellant is a County officer, department, board or bureau, a statement must be provided as to how the appellant is affected by the decision.
- Any other supportive data as the appellant may desire in the record, including plats, plans, drawings, charts or related material. If supportive data is oversized, at least one copy no larger in size than 8 ½" X 11" must be provided.

A \$375.00 filing fee as prescribed in the Zoning Ordinance must accompany each appeal application. The filing fee must be in the form of a check made payable to the County of Fairfax. Cash or credit card is not acceptable. If the appeal is withdrawn, there will be no refund of the filing fee.

Appellant must file three (3) copies of the appeal application package (application form, written statement and any supportive data) and the \$375 filing fee with the Zoning Administrator, AND one (1) copy of the appeal application package with the Clerk to the Board of Zoning Appeals at the locations identified above.

If staff determines that the appeal is complete and timely filed, the appeal will be administratively accepted. However, if staff has a question regarding the completeness, or timeliness of an application, whether the scope of the appeal should be limited, or whether the determination at issue is within the jurisdiction of the BZA, the appeal application will be forwarded to the BZA for a determination as to whether the appeal should be accepted. In such instances, the appellant will be notified of staff's position regarding acceptance of the appeal and of the opportunity to address the BZA.

LEGALLY ADVERTISED PUBLIC HEARING

Normally, the public hearing on an appeal will be held within ninety (90) days of the acceptance of the appeal. There are advertisement and public notification procedures required by law for all public hearings. They are as follows:

1. The Clerk to the BZA must notify the County Planning Commission of every application made to the BZA. If the Commission decides to consider any such application, it will normally schedule its own public hearing on the application prior to the time it is scheduled for public hearing by the BZA.
2. The County must publish a notice of the time and place of the public hearing once a week for two successive weeks in a newspaper having general circulation in the County, such that the publications will be not less than six (6) days and nor more than twenty-one (21) days before the date of the public hearing.
3. The County must, at least fifteen (15) days before the scheduled hearing, post on the subject property a notice of the hearing and a statement indicating the property affected and the nature of the appeal.
4. The County must notify owners of each property involved in the appeal, if these owners are different from the appellant.
5. The County must send written notice of the public hearing to property owners in the immediate vicinity of the subject property. This notice will include the date, time, place, subject matter and name of the appellant. The appellant will receive a copy of this notice.

Prior to the public hearing staff will forward a staff report to the BZA detailing staff's position, a copy of which will be sent to the appellant. At the public hearing, both staff and the appellant present their position and then any other interested person is given an opportunity to speak.

ACTION OF THE BZA

Although the BZA may defer its decision on an appeal, it usually renders a decision immediately following the public hearing. The BZA may affirm or reverse, wholly or partly, or may modify the order, requirement, decision or determination that is at issue in the appeal and the concurring vote of four (4) members of the BZA is required for any such action.

The State Code provides that any person aggrieved by a decision of the Board of Zoning Appeals may, within thirty (30) days of that decision, file a petition with the Circuit Court to review decision.

PLACE STICKER AT TOP OF ENVELOPE
TO THE RIGHT OF RETURN ADDRESS
FOLD AT DOTTED LINE

CERTIFIED MAIL



7099 3400 0007 0874 3698
7099 3400 0007 0874 3698

U.S. Postal Service
CERTIFIED MAIL RECEIPT
(Domestic Mail Only; No Insurance Coverage Provided)

Article Sent To:

Postage	\$	Postmark Here <i>BIEDLER</i> 2007-25597
Certified Fee		
Return Receipt Fee (Endorsement Required)		
Restricted Delivery Fee (Endorsement Required)		
Total Postage & Fees	\$	

Name (Please Print Clearly) (to be completed by mailer)
MR & MRS NGUYEN
Street, Apt. No., or PO Box No.
3811 WHISPERING LA.
City, State, ZIP+4
FALLS CHURCH, VA 22041

PS Form 3800, July 1999 See Reverse for Instructions

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:
ANTONY V. NGUYEN
TUYET LINH T. NGUYEN
3811 WHISPERING LA.
FALLS CHURCH, VA.
22041

2. Article Number
(Transfer from service label) *7099-3400 0007 0874 3698*

COMPLETE THIS SECTION ON DELIVERY

A. Signature
X Agent Addressee

B. Received by (Printed Name) C. Date of Delivery

D. Is delivery address different from item 1? Yes
If YES, enter delivery address below: No

3. Service Type
 Certified Mail Express Mail
 Registered Return Receipt for Merchandise
 Insured Mail C.O.D.

4. Restricted Delivery? (Extra Fee) Yes

PS Form 3811, February 2004 *BIEDLER* Domestic Return Receipt *2007-25597* 102595-02-M-1540

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.

8-918 Additional Standards for Accessory Dwelling Units

As established by the Fairfax County Board of Supervisors' Policy on Accessory Dwelling Units (Appendix 5), the BZA may approve a special permit for the establishment of an accessory dwelling unit with a single family detached dwelling unit but only in accordance with the following conditions:

1. Accessory dwelling units shall only be permitted in association with a single family detached dwelling unit and there shall be no more than one accessory dwelling unit per single family detached dwelling unit.
2. Except on lots two (2) acres or larger, an accessory dwelling unit shall be located within the structure of a single family detached dwelling unit. Any added external entrances for the accessory dwelling unit shall be located on the side or rear of the structure.

On lots two (2) acres or greater in area, an accessory dwelling unit may be located within the structure of a single family detached dwelling unit or within a freestanding accessory structure.

3. The gross floor area of the accessory dwelling unit shall not exceed thirty-five (35) percent of the total gross floor area of the principal dwelling unit. When the accessory dwelling unit is located in a freestanding accessory structure, the gross floor area of the accessory dwelling unit shall not exceed thirty-five (35) percent of the gross floor area of the accessory freestanding structure and the principal dwelling unit.
4. The accessory dwelling unit shall contain not more than two (2) bedrooms.
5. The occupancy of the accessory dwelling unit and the principal dwelling unit shall be in accordance with the following:

- A. One of the dwelling units shall be owner occupied.
- B. One of the dwelling units shall be occupied by a person or persons who qualify as elderly and/or disabled as specified below:

- (1) Any person fifty-five (55) years of age or over and/or

- (2) Any person permanently and totally disabled. If the application is made in reference to a person because of permanent and total disability, the application shall be accompanied by a certification by the Social Security Administration, the Veterans Administration or the Railroad Retirement Board. If such person is not eligible for certification by any of these agencies, there shall be submitted a written declaration signed by two (2) medical doctors licensed to practice medicine, to the effect that such person is permanently and totally disabled. The written statement of at least one of the doctors shall be based upon a physical examination of the person by the doctor. One of the doctors may submit a written statement based upon medical information contained in the records of the Civil Service Commission which is relevant to the standards for determining permanent and total disability.

For purposes of this Section, a person shall be considered permanently and totally disabled if such person is certified as required by this Section as unable to engage in any substantial gainful activity by reasons of any medically determinable physical or mental impairment or deformity which can be expected to result in death or can be expected to last for the duration of the person's life.

- C. The accessory dwelling unit may be occupied by not more than two (2) persons not necessarily related by blood or marriage. The principal single family dwelling unit may be occupied by not more than one (1) of the following:

- (1) One (1) family, which consists of one (1) person or two (2) or more persons related by blood or marriage and with any number of natural children, foster children, step children or adopted children.

- (2) A group of not more than four (4) persons not necessarily related by blood or marriage.

- 6. Any accessory dwelling unit established for occupancy by a disabled person shall provide for reasonable access and mobility as required for the disabled person. The measures for reasonable access and mobility shall be specified in the application for special permit. Generally,

reasonable access and mobility for physically disabled persons shall include:

- A. Uninterrupted access to one (1) entrance; and
 - B. Accessibility and usability of one (1) toilet room.
7. The BZA shall review all existing and/or proposed parking to determine if such parking is sufficient to meet the needs of the principal and accessory dwelling units. If it is determined that such parking is insufficient, the BZA may require the provision of one (1) or more off-street parking spaces. Such parking shall be in addition to the requirements specified in Article 11 for a single family dwelling unit.
 8. The BZA shall determine that the proposed accessory dwelling unit together with any other accessory dwelling unit(s) within the area will not constitute sufficient change to modify or disrupt the predominant character of the neighborhood. In no instance shall the approval of a special permit for an accessory dwelling unit be deemed a subdivision of the principal dwelling unit or lot.
 9. Any accessory dwelling unit shall meet the applicable regulations for building, safety, health and sanitation.
 10. Upon the approval of a special permit, the Clerk to the Board of Zoning Appeals shall cause to be recorded among the land records of Fairfax County a copy of the BZA's approval, including all accompanying conditions. Said resolution shall contain a description of the subject property and shall be indexed in the Grantor Index in the name of the property owners.
 11. The owner shall make provisions to allow inspections of the property by County personnel during reasonable hours upon prior notice.
 12. Special permits for accessory dwelling units shall be approved for a period not to exceed five (5) years from the date of approval; provided, however, that such special permits may be extended for succeeding five (5) year periods in accordance with the provisions of Sect. 012 above.
 13. Notwithstanding Par. 5 of Sect. 9-012, any accessory dwelling unit approved prior to July 27, 1987 and currently valid may be extended in accordance with the provisions of this Section and Sect. 012 above.