



APPLICATION ACCEPTED: June 12, 2009
BOARD OF ZONING APPEALS: September 22, 2009
ADMINISTRATIVELY MOVED AT APPLICANT'S REQUEST
TIME: 9:00 a.m.

County of Fairfax, Virginia

September 15, 2009

STAFF REPORT

SPECIAL PERMIT APPLICATION NO. SP 2009-SP-047

SPRINGFIELD DISTRICT

APPLICANTS/OWNERS: Alexander K. Kuhns
Theresa M. Kuhns, a/k/a Theresa M. Brown

SUBDIVISION: Greenbriar

STREET ADDRESS: 4103 Minstrell Lane

TAX MAP REFERENCE: 45-4 ((3)) (33) 3

LOT SIZE: 12,222 square feet

ZONING DISTRICT: R-3 (Cluster), HC and WS

ZONING ORDINANCE PROVISIONS: 8-923

SPECIAL PERMIT PROPOSAL: To permit fence greater than 4.0 feet in height to remain in the front yard of a corner lot.

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 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).

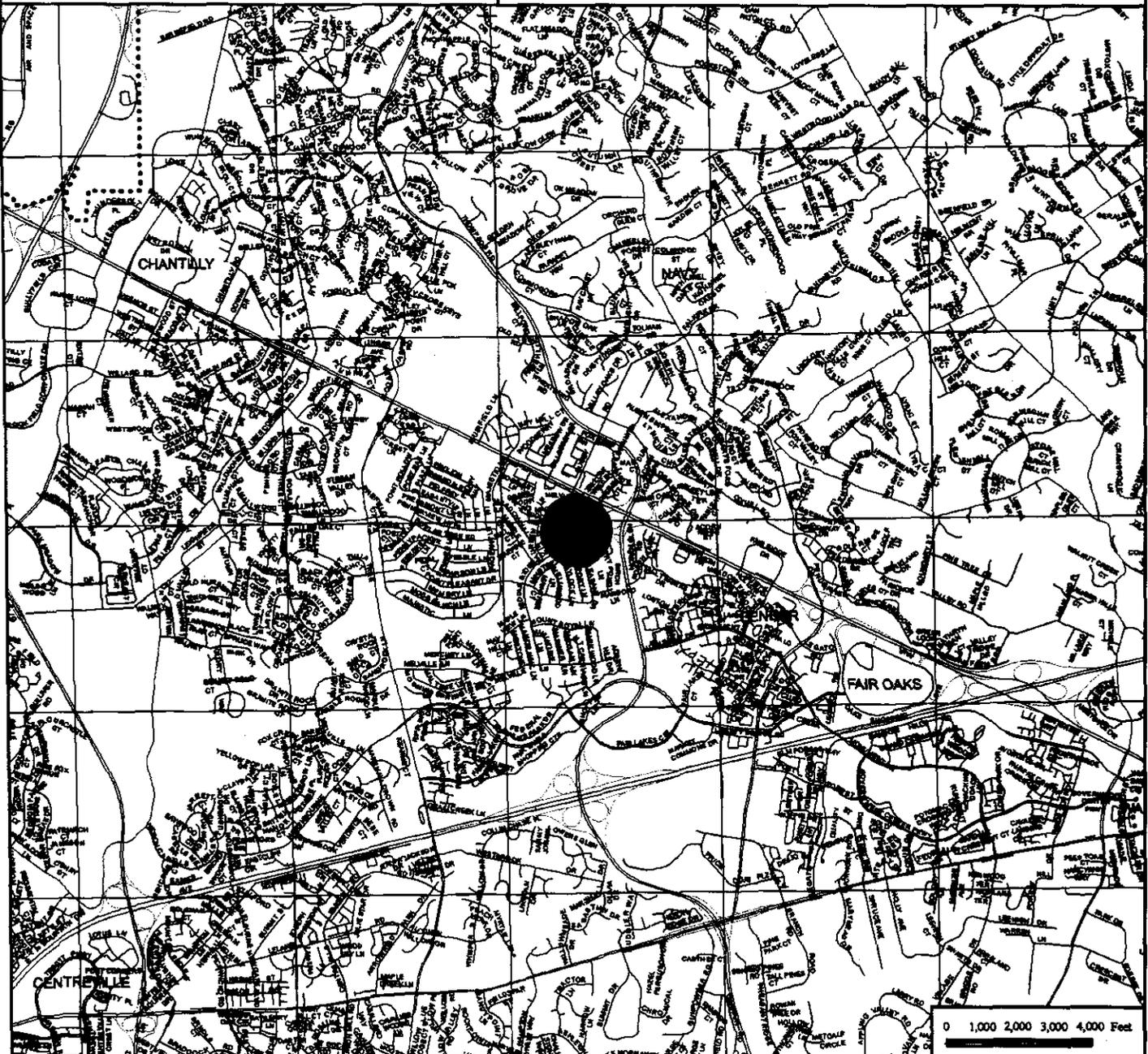
O:\dhedn\Special Permits\9-22) SP 2009-SP-047 Kuhns\SP 2009-SP-047 Kuhns staff report.doc Deborah Hedrick

Special Permit
SP 2009-SP-047

Applicant: ALEXANDER AND THERESA KUHN
Accepted: 06/12/2009
Proposed: PERMIT FENCE 6.0 FEET IN HEIGHT IN FRONT YARD
Area: 12,222 SF OF LAND; DISTRICT - SPRINGFIELD

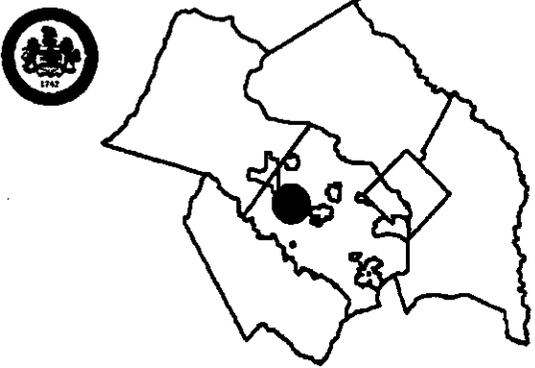


Zoning Dist Sect: 08-0923
Art 8 Group and Use: 9-22
Located: 4103 MINSTRELL LANE
Zoning: R-3
Overlay Dist: WS HC
Map Ref Num: 045-4 /03/33/0003

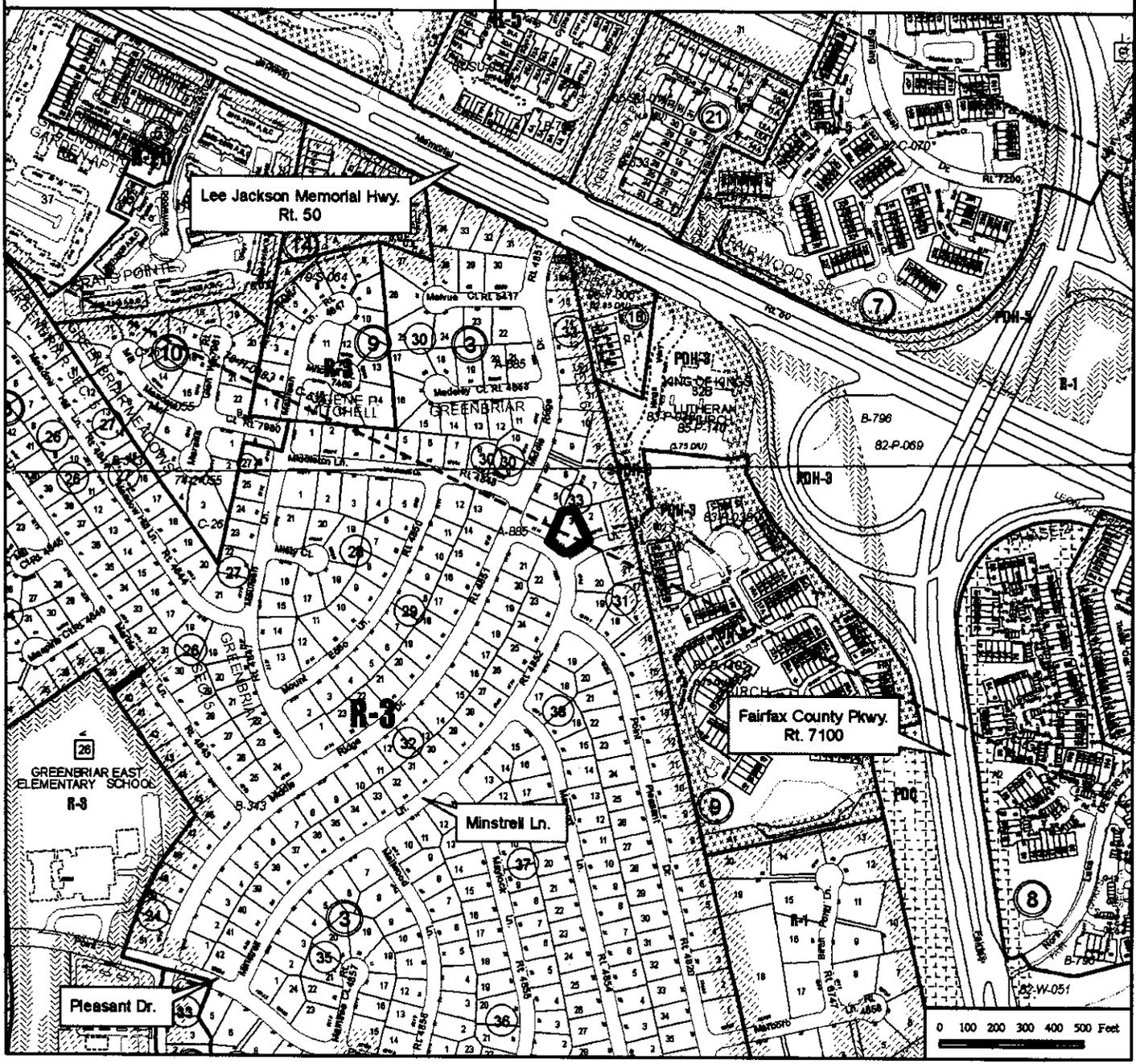


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Located: 4103 MINSTRELL LANE
Zoning: R-3
Overlay Dist: WS HC
Map Ref Num: 045-4- /03/33/0003



NOTES

- TAX MAP: 45-4-0333-0003
- ZONE: R-3C (R-3 w/CLUSTER DEV)
- LOT AREA: 12,222 SF (0.28058 ACRES)

REQUIRED YARDS:

FRONT: 20.0 FEET
 SIDE: 08.0 FEET
 REAR: BUT A TOTAL OF 20.0 FEET
 25.0 FEET

HEIGHTS:

EX DWELLING 19.5 FEET
 SHED 08.5 FEET
 NEW FRAME FENCE 07.4 FEET
 ALL OTHER FENCES AS NOTED
 SCREEN PORCH 08.0 FEET
 WALLS AS NOTED
 OP 00.9 FEET
 AC 02.2 FEET

- THIS PROPERTY IS SERVED BY PUBLIC WATER AND SEWER.
- THERE IS NO OBSERVABLE EVIDENCE OF GRAVE SITES OR BURIAL GROUNDS ON THIS PROPERTY.
- ALL IMPROVEMENTS SHOWN ON THIS PLAT ARE EXISTING UNLESS DENOTED AS PROPOSED.
- THE SURVEYOR IS NOT AWARE OF ANY UTILITY EASEMENTS 25 FEET IN WIDTH OR GREATER AFFECTING THIS PROPERTY. UTILITIES ARE UNDERGROUND.
- TOPOGRAPHY DELINEATED HEREON WAS TAKEN FROM AVAILABLE RECORDS, IS SHOWN AT 5' INTERVALS, AND IS AERIAL.
- THERE ARE NO FLOODPLAINS OR RESOURCE PROTECTION AREAS ON THIS PROPERTY.

AREAS:
 EX FIRST FLOOR 1434 SQUARE FEET
 EX SECOND FLOOR 1338 SQUARE FEET
 GROSS FLOOR AREA 2772 SQUARE FEET

FLOOR AREA RATIO
 EX GROSS FLOOR AREA (2,772) / LOT AREA (12,222) = 0.23

PLAT
 SHOWING THE IMPROVEMENTS ON
 LOT 3, BLOCK 33, SECTION 8
GREENBRIAR
 (DEED BOOK 1894, PAGE 218)
 FAIRFAX COUNTY, VIRGINIA
 SPRINGFIELD DISTRICT
 FEBRUARY 25, 2009
 SCALE: 1" = 20'
 MAY 27, 2009 (REVISED)

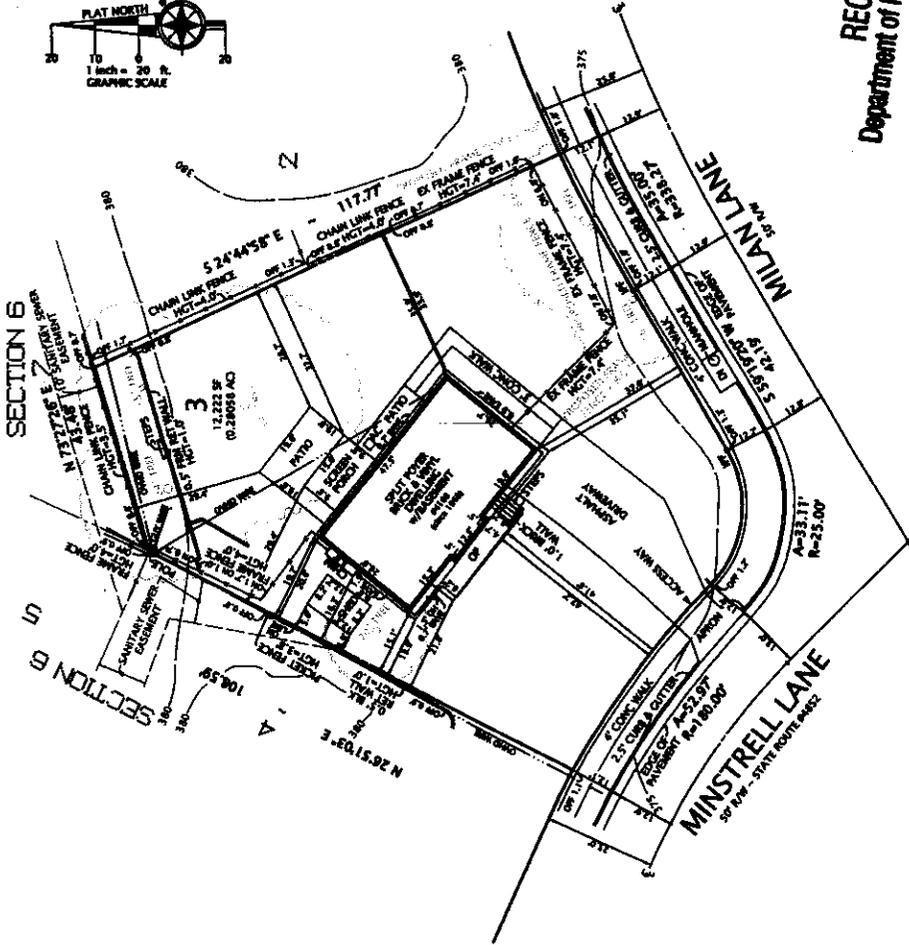


I HEREBY CERTIFY THAT THE PORTIONS OF ALL THE EXISTING INSTRUMENTS HAVE BEEN CAREFULLY EXAMINED BY A COMBATANT FIELD SURVEYOR AND UNDERSTAND THAT THE FIELD NOTES ENCLOSURE(S) IS/ARE TRUE AND CORRECT.

THIS PAGE IS SUBJECT TO THE INSTRUCTIONS OF RECORD.
 A TITLE REPORT WILL NOT BE FURNISHED.
 NO OTHER WARRANTIES INT.

CASE NAME:
 THEBERA BROWN
 ALEXANDER K. JURNS

DOMINION SURVEYORS
 INC.
 8485 HERRING TRACE VILLAGE COURT
 ALEXANDRIA, VIRGINIA 22309
 TEL: 703-941-8133
 FAX: 703-941-8112



RECEIVED
 Department of Planning & Zoning
JUN 02 2009
 Zoning Evaluation Division

NOTES

1. TAX MAP: 45-4-0333-0003
2. ZONE: R-3C (R-3 w/CLUSTER DEV)
3. LOT AREA: 12,222 SF (0.28058 ACRE)

4. REQUIRED YARDS:

FRONT:	=	20.0 FEET
SIDE:	=	08.0 FEET
		BUT A TOTAL OF 20.0 FEET
REAR:	=	25.0 FEET

5. HEIGHTS:

EX DWELLING	=	19.5 FEET
SHED	=	08.5 FEET
NEW FRAME FENCE	=	07.4 FEET
ALL OTHER FENCES	=	AS NOTED
SCREEN PORCH	=	08.0 FEET
WALLS	=	AS NOTED
OP	=	00.9 FEET
AC	=	02.2 FEET

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. UTILITIES ARE UNDERGROUND.

10. TOPOGRAPHY DELINEATED HEREON WAS TAKEN FROM AVAILABLE RECORDS, IS SHOWN AT 5' INTERVALS, AND IS AERIAL.

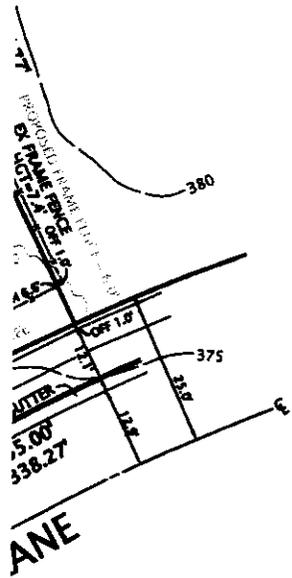
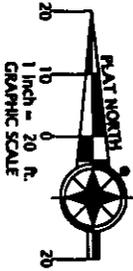
11. THERE ARE NO FLOODPLAINS OR RESOURCE PROTECTION AREAS ON THIS PROPERTY.

12. AREAS:

EX FIRST FLOOR	=	1434 SQUARE FEET
EX SECOND FLOOR	=	1338 SQUARE FEET
GROSS FLOOR AREA	=	2772 SQUARE FEET

FLOOR AREA RATIO

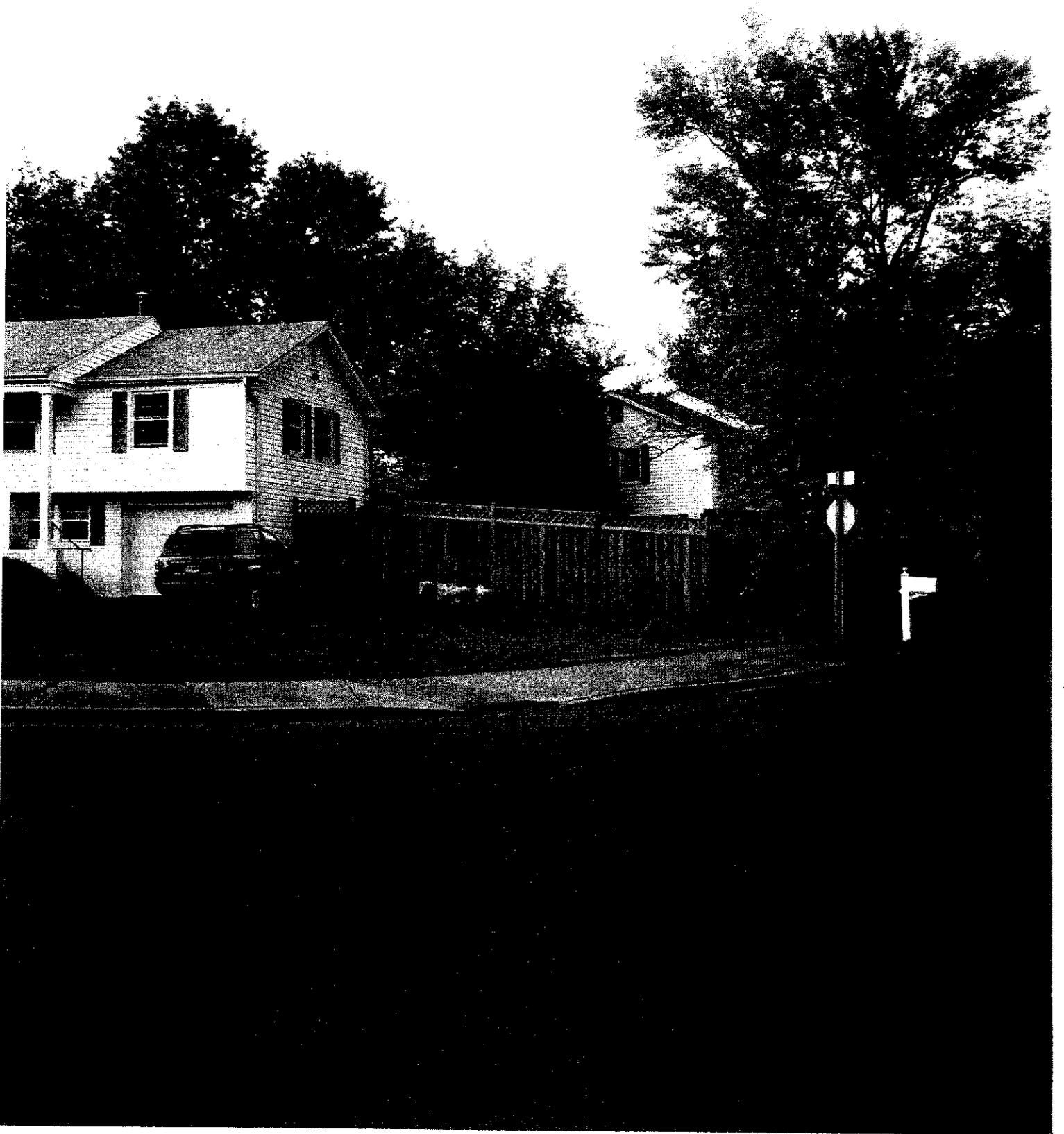
EX GROSS FLOOR AREA (2,772) / LOT AREA (12,222) = 0.23

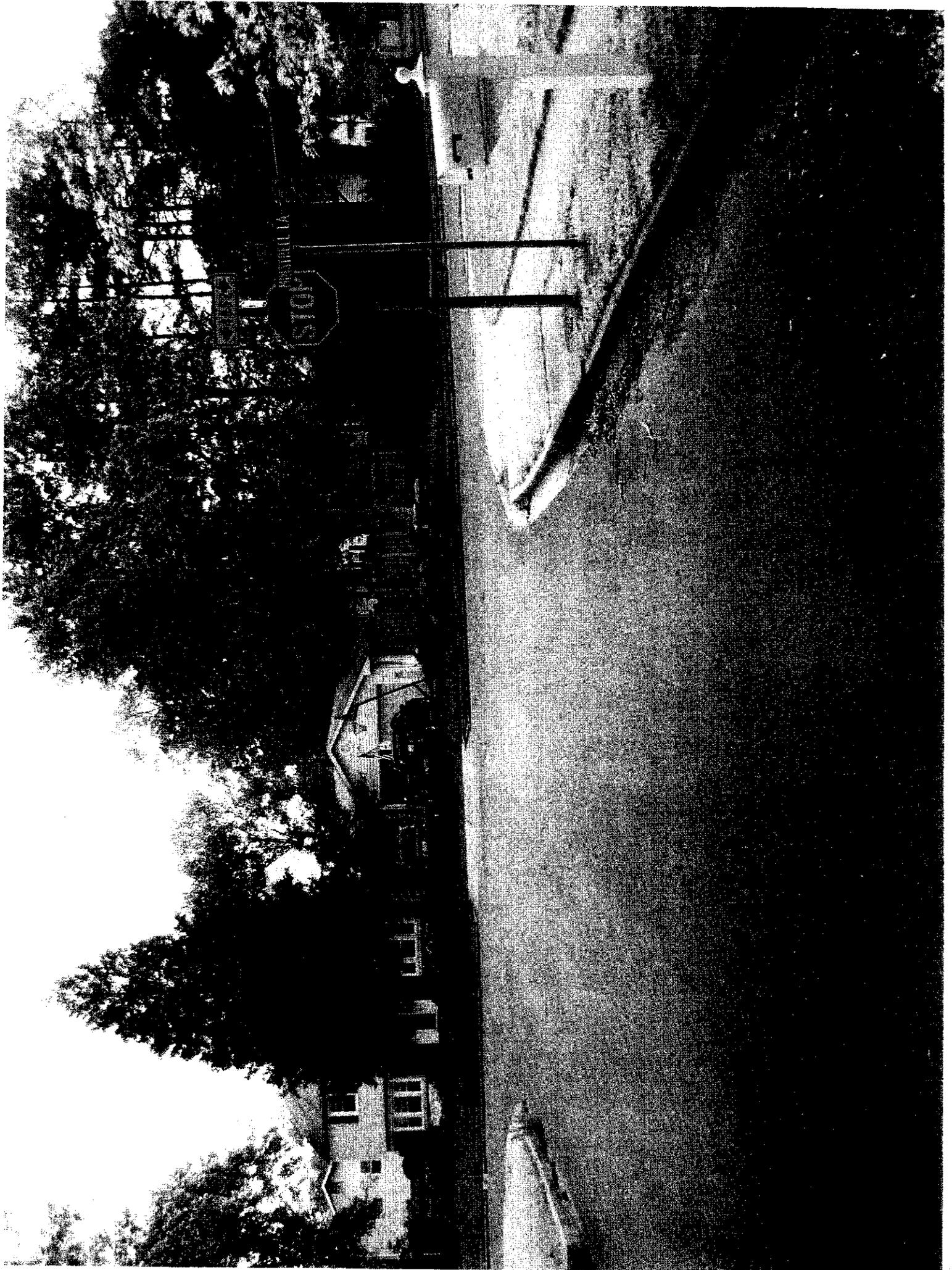


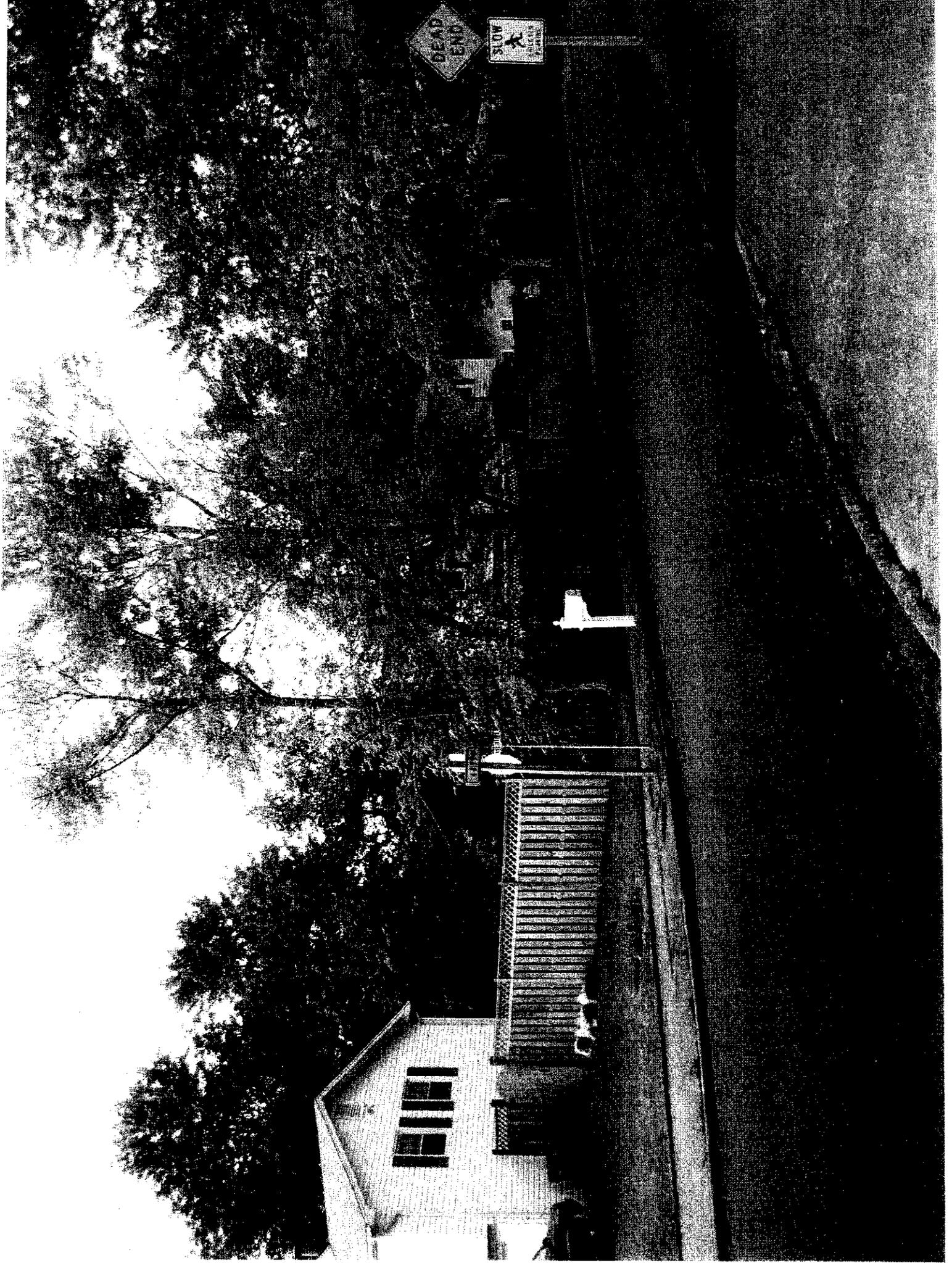
RECEIVED
 Department of Planning & Zoning
JUN 02 2009
 Zoning Evaluation Division

PLAT
 SHOWING THE IMPROVEMENTS ON
 LOT 3, BLOCK 33, SECTION 8
GREENBRIAR
 (DEED BOOK 3034, PAGE 210)
 FAIRFAX COUNTY, VIRGINIA
 SPRINGFIELD DISTRICT
 SCALE: 1" = 20' FEBRUARY 25, 2009
 MAY 27, 2009 (REVISED)

<p>I HEREBY CERTIFY THAT THE POSITIONS OF ALL THE EXISTING IMPROVEMENTS HAVE BEEN CAREFULLY ESTABLISHED BY A CURRENT FIELD SURVEY AND UNLESS SHOWN THERE ARE NO VISIBLE ENCROACHMENTS AS OF THIS DATE:</p>		<p>CASE NAME: THERESA BROWN & ALEXANDER K. KUHNS</p>
<p>THIS PLAT IS SUBJECT TO RESTRICTIONS OF RECORD. A TITLE REPORT WAS NOT FURNISHED</p>		<p>DOMINION Surveyors Inc. 8808-H PEAR TREE VILLAGE COURT</p>

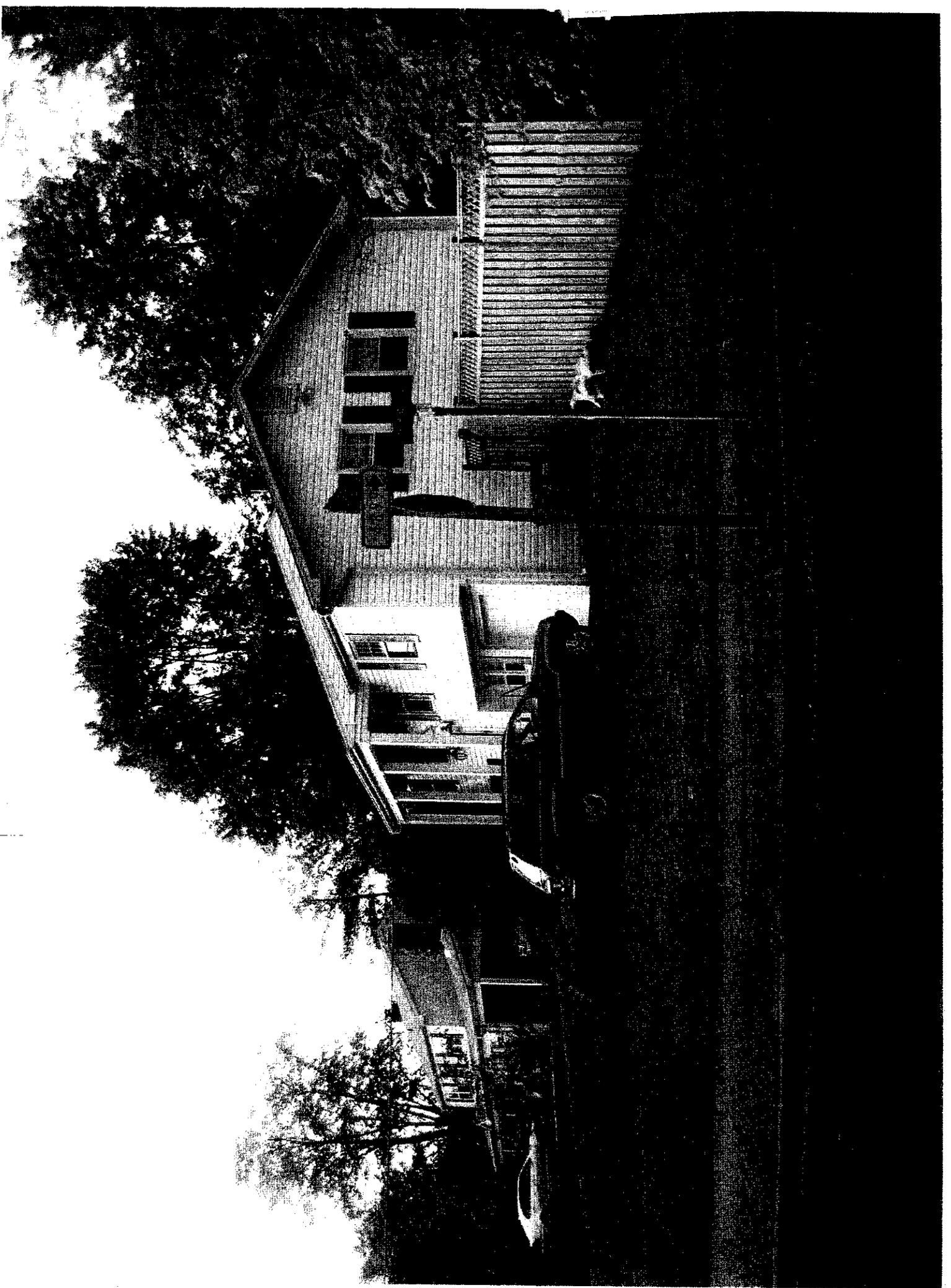


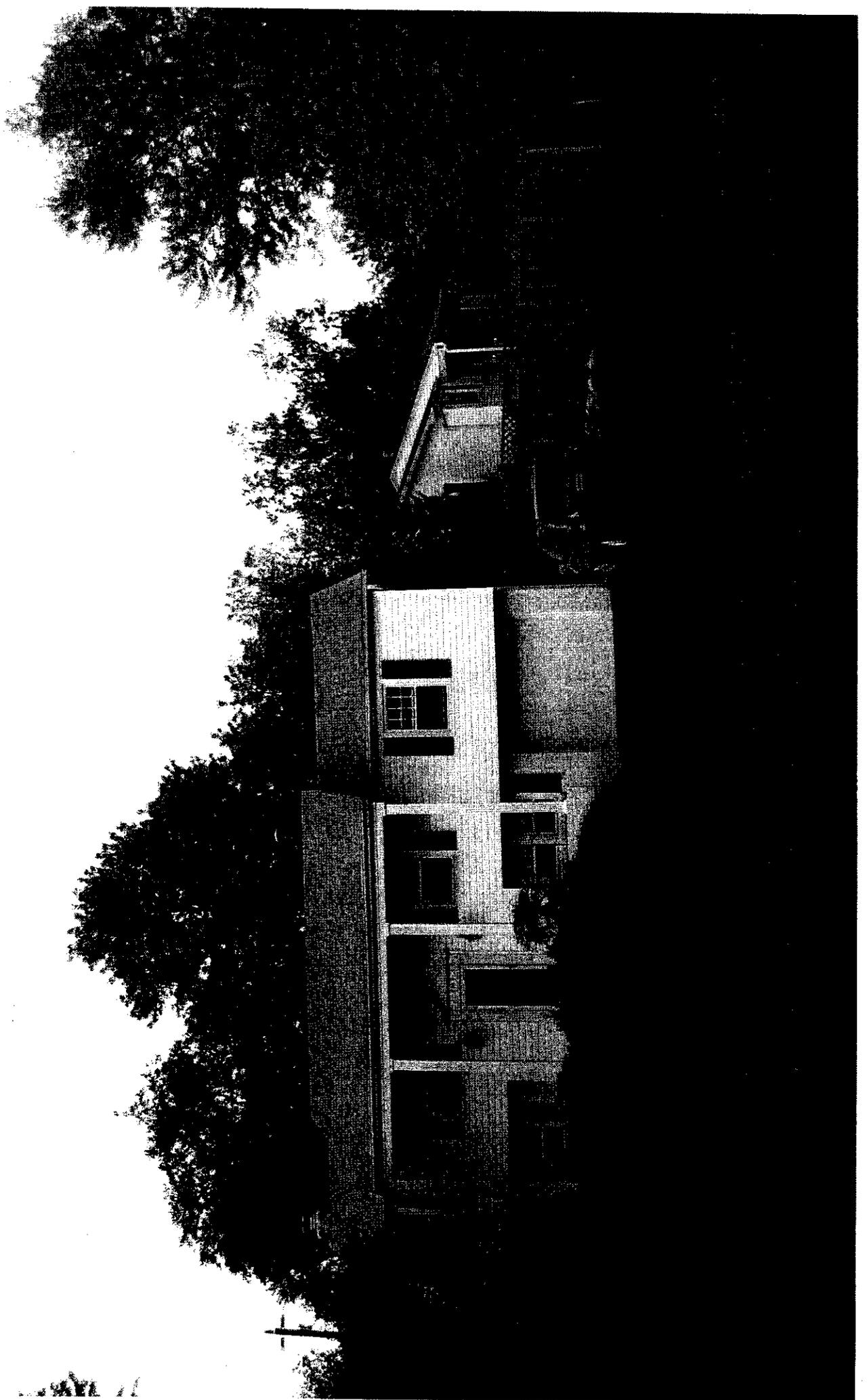












DESCRIPTION OF THE APPLICATION

To permit a fence 6.0 feet in height in the front yard of a corner lot.

	Structure	Yard	Height Permitted By right	Maximum Height Requested	Modification Requested
Special Permit	Fence	Front	4.0 feet	6.0 feet	2.0 feet

ANALYSIS OF THE APPLICATION

- **Title of Plat:** Plat Showing the Improvements on Lot 3, Block 33, Section 8, Greenbriar
- **Prepared by:** Dominion Surveyors, Inc.
- **Dated:** February 25, 2009, revised through May 27, 2009

Description of Special Permit

The applicant is requesting special permit approval to permit an existing fence, which currently measures 7.4 feet in height, to remain in the front yard of a corner lot. The applicant proposes to reduce the height of the fence to 6.0 feet, if the special permit is approved. The Zoning Ordinance currently permits 4.0 feet in height by-right; however, through a special permit, an applicant can request a fence in the front yard up to 6.0 feet in height. The front entrance of the dwelling faces Minstrell Lane. The fence is located in the front yard facing Milan Lane, which is used as a side and rear yard by the applicants.

CHARACTER OF THE AREA

	Zoning	Use
North	R-3	Single family detached dwellings
South	R-3	Single family detached dwellings
East	R-3	Single family detached dwellings
West	R-3	Single family detached dwellings

BACKGROUND

Records indicate that the original dwelling was constructed in 1969 and remodeled in 2007. The applicant constructed the fence in November 2008. The board-on-board wood fence is measured to be 6.0 feet in height and is topped with a trellis, which measures an additional 1.4 feet.

The applicant was issued a Notice of Violation on February 19, 2009, which is attached as Appendix 4.

ZONING ORDINANCE REQUIREMENTS

Applicable bulk regulation(s) and additional location regulations are set forth on Page 1.

The application must meet all of the following standards, copies of which are attached as Appendix 5:

- Sect. 8-006 General Special Permit Standards
- Sect. 8-903 Group 9 Standards
- Sect. 8-923 Provisions for Increase in Fence and/or Wall Height in Any Front Yard

CONCLUSION

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

APPENDICES

1. Proposed Development Conditions
2. Applicant's Affidavit
3. Applicant's Statement of Justification
4. Notice of Violation dated February 19, 2009
5. Applicable Zoning Ordinance Provisions

PROPOSED DEVELOPMENT CONDITIONS

SP 2009-SP-047

September 15, 2009

1. This special permit is approved for the location and maximum height of a 6 foot fence in the front yard in the location as shown on the plat prepared by Dominion Surveyors, Inc., dated February 25, 2009, revised through May 27, 2009, as submitted with this application and is not transferable to other land.

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: April 6, 2009
 (enter date affidavit is notarized)

I, Theresa M. Kuhns, 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 104001a

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)
Alexander K. Kuhns	4103 Minstrell Lane, Fairfax, VA 22033	Applicant/Title Owner
Theresa M. Kuhns, also known of record as Theresa M. Brown	4103 Minstrell Lane, Fairfax, VA 22033	Applicant/Title Owner

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

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

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

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

SPECIAL PERMIT/VARIANCE AFFIDAVIT

DATE: April 6, 2009
(enter date affidavit is notarized)

104001a

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)

DESCRIPTION OF CORPORATION: (check one statement)

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

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

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

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

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

SPECIAL PERMIT/VARIANCE AFFIDAVIT

DATE: April 6, 2009
(enter date affidavit is notarized)

104001a

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

PARTNERSHIP INFORMATION

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

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

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

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

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

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

Page Four

SPECIAL PERMIT/VARIANCE AFFIDAVIT

DATE: April 6, 2009
(enter date affidavit is notarized)

104001a

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: April 6, 2009
(enter date affidavit is notarized)

104001a

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)

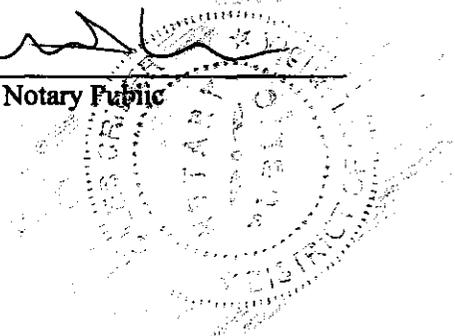
Theresa M. Kuhns
[x] Applicant [] Applicant's Authorized Agent

Theresa M. Kuhns
(type or print first name, middle initial, last name, and title of signee)

Subscribed and sworn to before me this 6th day of April, 2009, in the State/Comm. of District of Columbia, County/City of Washington.

[Signature]
Notary Public

My commission expires: My Commission Expires October 31, 2011



RECEIVED
Department of Planning & Zoning

JUN 02 2009

Zoning Evaluation Division

SPECIAL PERMIT STATEMENT OF JUSTIFICATION

- A. Type of Operation: Primary types of operation are to provide privacy for our family and to safely contain our two dogs. In addition, the high fence was built to replace a lower fence (5 ft) which our dog had destroyed by chewing it within 3 months of purchasing our home.
- B. Hours of Operation: 24-hour.
- C. Estimated number of patrons/clients/patients/pupils: 2
- D. Proposed number of employees/attendants/teachers: n/a
- E. Estimate of traffic impact of the proposed use: none as witnessed by Inspector Miller 12/08 (fence is set far enough back from the corner not to block view of intersecting traffic).
- F. Vicinity or general area to be served by use: Fence extends our back yard along left side of house and runs parallel to Milan Ct.
- G. Description of building façade and architecture of proposed new building or additions: Fence is made of wood planks and is topped by a trellis.
- H. Listing of hazardous substances/waste to be used or stored: Substance for weatherizing fence will be applied before next winter; no hazardous substances/waste will be stored behind fence.
- I. A statement of how the proposed use conforms to the provisions of all applicable ordinances regulations, adopted standards and any applicable conditions, or, if any waiver exception or variance is sought by the applicant from such ordinances, regulations, standards and conditions, such shall be specifically noted with the justification for any such modification:

Currently, the regulation states that for purposes of corner lots, the area of a side yard existing in the 90 degree angle created by the intersection of two roads is to be considered a front yard for purpose of zoning. The allowable height for fences in the front yard in Fairfax County is four feet.

Alexander and Theresa Kuhns are requesting that an exception to the zoning regulation be made for their fence. The fence was constructed at our request by Mendoza Contracting in November 2008. At no time were we aware of the ordinance regarding corner lots, and the contracting firm didn't inform us of this regulation either. We constructed the fence because our dog had destroyed by chewing the top of the old fence in existence on that side of the house when we bought it, just a few months prior. The fence our contractors built is just above 7 feet in height.

Prior to the new fence's construction, because of our dog's chewing, the fence was both an eyesore and a potential source of danger from splinters to both of us, our dog and those using the sidewalk on that side of our house. Although our dog is a friendly creature, and has never had any instances of hurting anyone or any other dogs, we noticed that pedestrians would avoid the sidewalk when passing our home. We resolved to bear the expense of improving the property and removing both an eyesore to the neighborhood and potential danger by constructing the fence.

In addition to this reasoning, we are expecting this year, and wanted to have privacy for our children to use our backyard without being observed from any strangers.

The fence poses no danger to traffic whatsoever. It is set far enough back from intersection to ensure that there is absolutely no way traffic on Minstrell Lane could be unaware of approaching traffic on Milan Ct, and vice versa. The fence actually begins 8 feet behind the front of the home.

Theresa and Alex would be very willing to make alterations to the fence in order to secure a special permit, to include removing the trellis, which brings the height to just under 6 feet. This was the suggestion of Inspector Miller when we met with him in December 2008.

In conclusion, Theresa and Alex would like to point out that in a short drive around the Greenbriar development, they have seen at least a dozen other houses with fences of similar dimensions to their own existing on corner lots that are technically in violation of the ordinance. It would be grossly unfair to allow these fences to remain in their current dimensions while demanding that we lower ours to comply with the ordinance. While we would not turn our neighbors in for violation, it seems we are being unfairly picked on. These other fences and in some cases, 8 foot hedges on corner lots that do block traffic sight, exist while ours does not.

Additionally, when we first learned of the complaint against the fence from our neighborhood civic association, we immediately contacted the county and invited the inspector to our home. We reached out to the county prior to even being notified by the county to discuss our options and comply with the ordinance. Inspector Miller has been very nice to work with and in his inspection, he too noted that the fence did not pose to endanger any drivers because it was set far enough back from the road. He also noted that the trellis is exactly the height that needs to be removed from the top of the fence to bring it within regulation of the special permit height restrictions.

We are asking for approval of the special permit and we will immediately bring down the height of the fence to 6 feet. We also thank Ms. Ruffner for her help in explaining the ordinances and our options as well, this has been quite the learning experience for first time home owners that we are!

RECEIVED
Department of Planning & Zoning
JUN 02 2009
Zoning Evaluation Division



Stue. . . .

County of Fairfax, Virginia

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

NOTICE OF VIOLATION

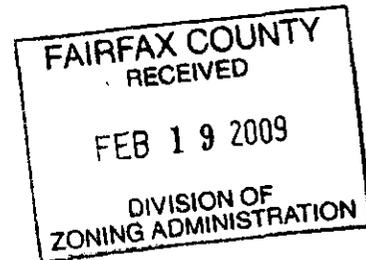
DATE OF ISSUANCE: February 19, 2009

CERTIFIED MAIL #: 7008 1830 0004 9542 3804

CASE #: 42355

SERVE: Alexander K. Kuhns
Theresa M. Brown
4103 Minstrell Lane
Fairfax, Virginia 22033

LOCATION OF VIOLATION 4103 Minstrell Lane
Fairfax, VA 22033-3220
Tax Map #: 0454 03330003
Zoning District: R-3
Development Type: Cluster



Dear Property Owners:

Zoning inspections of the above-referenced property between December 11, 2008 and February 12, 2009 revealed the following violations of the Fairfax County Zoning Ordinance.

- § 10-104 (3B) Accessory Fence Exceeding 4' in the Front Yard
- § 2-302 (6) Accessory Use must comply with Article 10:

The presence of a 7 foot tall accessory fence in the front yard of this corner lot. The lot contains 12,222 square feet in area. The Fairfax County Zoning Ordinance permits accessory fences in the front yard so long as they are in conformance with Par. 3B of Sect. 10-104 of the Zoning Ordinance which states:

Except as may be qualified by Sect. 2-505, a fence or wall may be located as follows. Such regulations shall not be deemed to negate the screening requirements of Article 13.

- A. In any yard on any lot containing not less than two (2) acres located in the R-A through R-1 Districts, a fence or wall not exceeding seven (7) feet in height is permitted.

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/



B. In any front yard on any lot, a fence or wall not exceeding four (4) feet in height is permitted. However, in that portion of a front yard on a residential corner lot that abuts a major thoroughfare, a solid wood or masonry fence or wall not exceeding eight (8) feet in height, located flush to the ground, may be permitted, provided that:

- (1) the driveway entrance to the lot is from a street other than the major thoroughfare and the principal entrance of the dwelling faces a street other than the major thoroughfare, and
- (2) the lot is not contiguous to a lot which has its only driveway entrance from the major thoroughfare or service drive adjacent to the major thoroughfare.

The fence shall not extend into the front yard between the dwelling and the street other than the major thoroughfare and shall also be subject to the provisions of Sect. 2-505.

In addition, an increase in fence height in the front yard up to six (6) feet may be permitted with the approval of a special permit by the BZA in accordance with Part 9 of Article 8.

Therefore, as this accessory fence exceeds four feet (4') in height in the front yard of this corner lot contrary to the provisions of Par. 3B of Sect. 10-104 of the Zoning Ordinance, you are in violation of Par. 3B of Sect. 10-104 and Par 6 of Sect. 2-302 of the Zoning Ordinance which states:

No accessory structure or use, as defined in Article 20, shall hereafter be built, moved, remodeled, established, altered or enlarged unless such accessory structure or use complies with the provisions of Par 1 of Article 10.

You are hereby directed to clear this violation within thirty (30) days of the date of this Notice. Compliance can be accomplished by:

- Removing the fence from the property in its entirety; or
- Reducing the height of the fence to four feet (4') in the front yard.

As an alternative you may apply to the Fairfax County Board of Zoning Appeals (BZA) and actively pursue and ultimately obtain approval of a Group 9 Special Permit for an increase in fence and/or wall height in any front yard. For information and answers to any questions regarding this application process, you may contact the Zoning Evaluation Division at 703-324-1290.

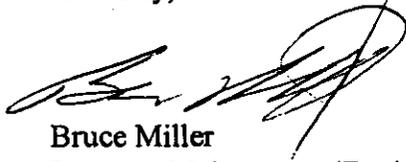
Alexander K. Kuhns
Theresa M. Brown
February 19, 2009
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A follow-up inspection will be made at the expiration of the time period outlined in this Notice. Failure to comply with the Notice will result in the initiation of appropriate legal action to gain compliance with the Zoning Ordinance.

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

Should you have any questions or need additional information, please do not hesitate to contact me at (703)324-1391 or 703-314-5294.

Sincerely,



Bruce Miller
Property Maintenance/Zoning Enforcement Inspector

BM/bm

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.

8-923 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. 3I 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.