



APPLICATION ACCEPTED: July 6, 2009
DATE OF PUBLIC HEARING: October 27, 2009
TIME: 9:00 a.m.

ADMINISTRATIVELY MOVED AT APPLICANT'S REQUEST

County of Fairfax, Virginia

October 20, 2009

STAFF REPORT

SPECIAL PERMIT APPLICATION No. SP 2009-LE-061

LEE DISTRICT

APPLICANT: Homero A. Escobar

OWNERS: Homero A. and Leticia M. Escobar

ZONING: R-4

LOCATION: 3403 Sapphire Court

SUBDIVISION: Kings Landing

ZONING ORDINANCE PROVISION: 8-914 & 8-923

TAX MAP: 92-2 ((24)) 79

LOT SIZE: 10,470 Sq. Ft.

SP PROPOSAL: To permit reduction to minimum yard requirements based on error in building location to permit an accessory storage structure to remain 0.2 feet from a side lot line and to permit fence greater than 4 feet in height to remain in a front yard.

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

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

O:\Scaff2\Case Files\Special Permits\SP 2009-LE-061 HOMERO ESCOBAR\Escobar_cover.doc

Shannon Caffee

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



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Integrity * Teamwork * Public Service

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



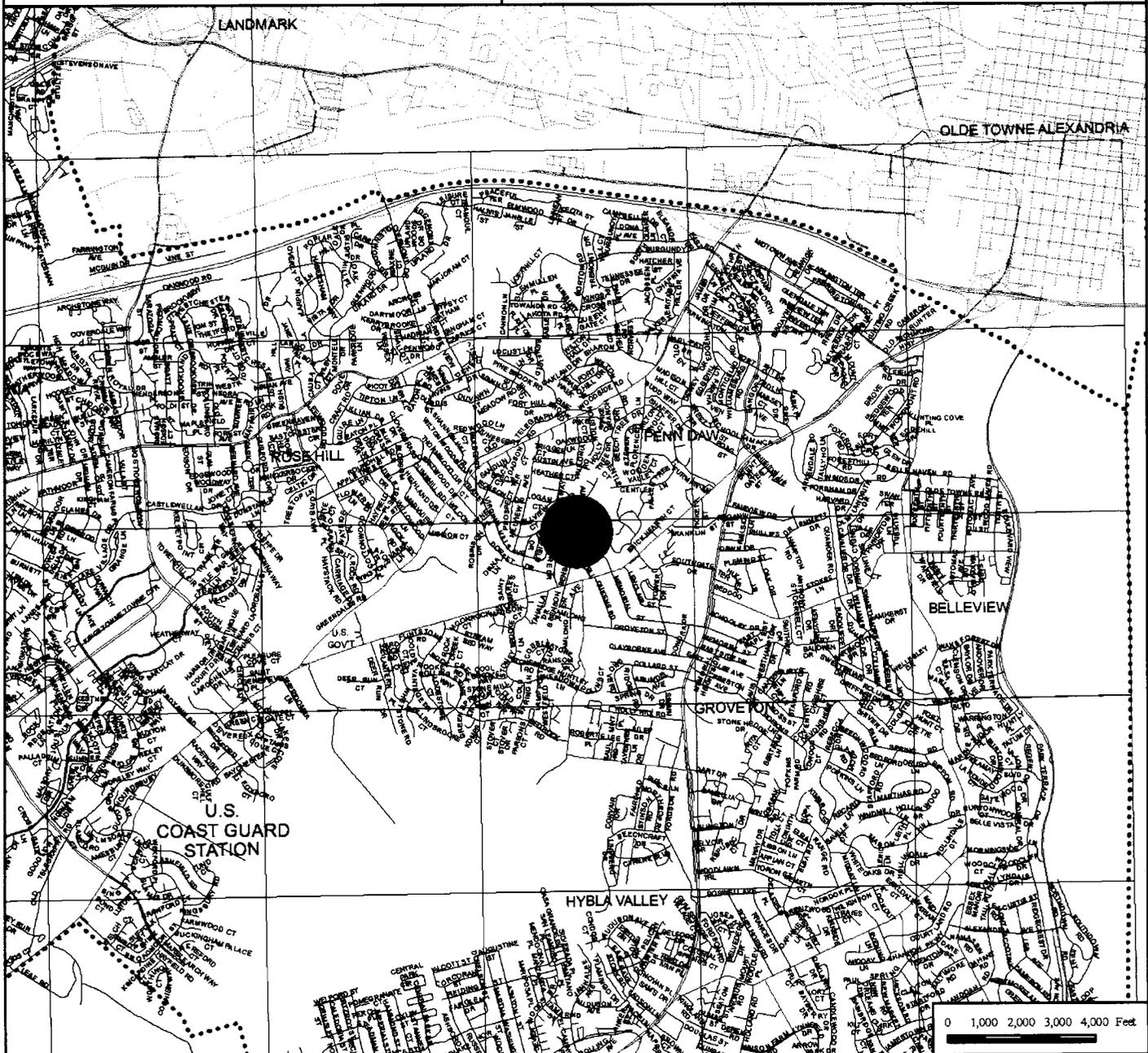
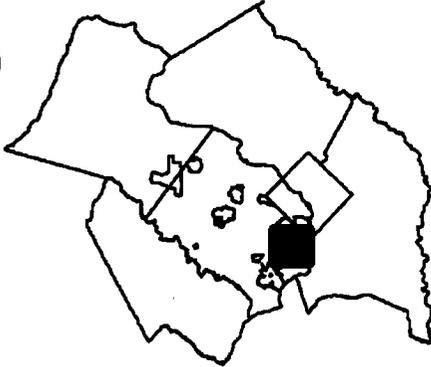
Americans with Disabilities Act (ADA): Reasonable accommodation is available upon 7 days advance notice. For additional information on ADA call (703) 324-1334 or TTY 711 (Virginia Relay Center).

Special Permit

SP 2009-LE-061

Applicant: HOMERO A. ESCOBAR
Accepted: 07/06/2009
Proposed: PERMIT A FENCE GREATER THAN 4.0 FEET IN HEIGHT IN A FRONT YARD AND REDUCTION TO MINIMUM YARD REQUIREMENTS BASED ON ERROR IN BUILDING LOCATION TO PERMIT ACCESSORY STORAGE STRUCTURE TO REMAIN 0.2 FEET FROM SIDE LOT LINE

Area: 10,470 SF OF LAND; DISTRICT - LEE
Zoning Dist Sect: 08-0923 08-0914
Art 8 Group and Use: 9-22 9-13
Located: 3403 SAPPHIRE COURT
Zoning: R- 4
Overlay Dist:
Map Ref Num: 092-2- /24/ /0079



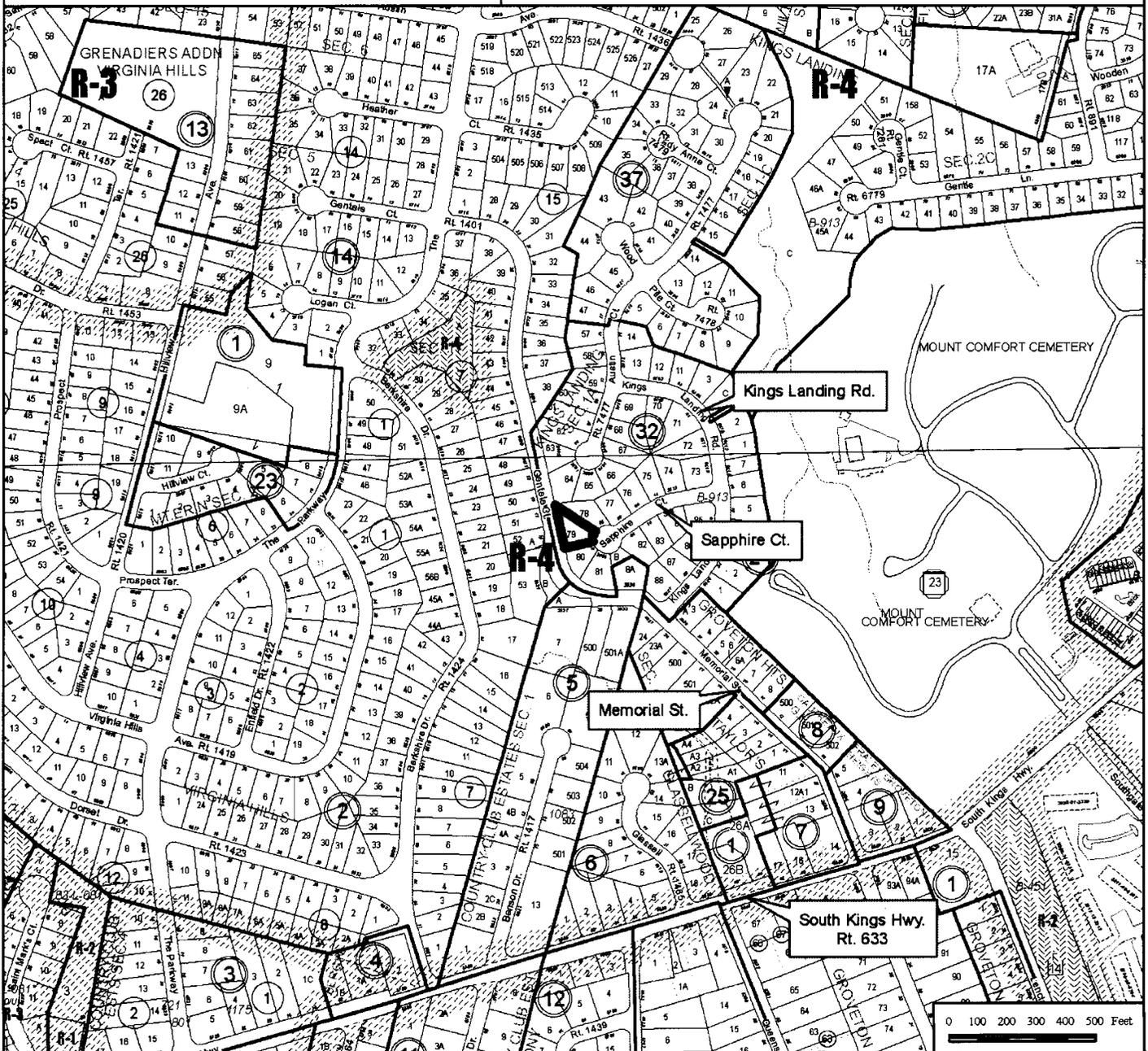
Special Permit

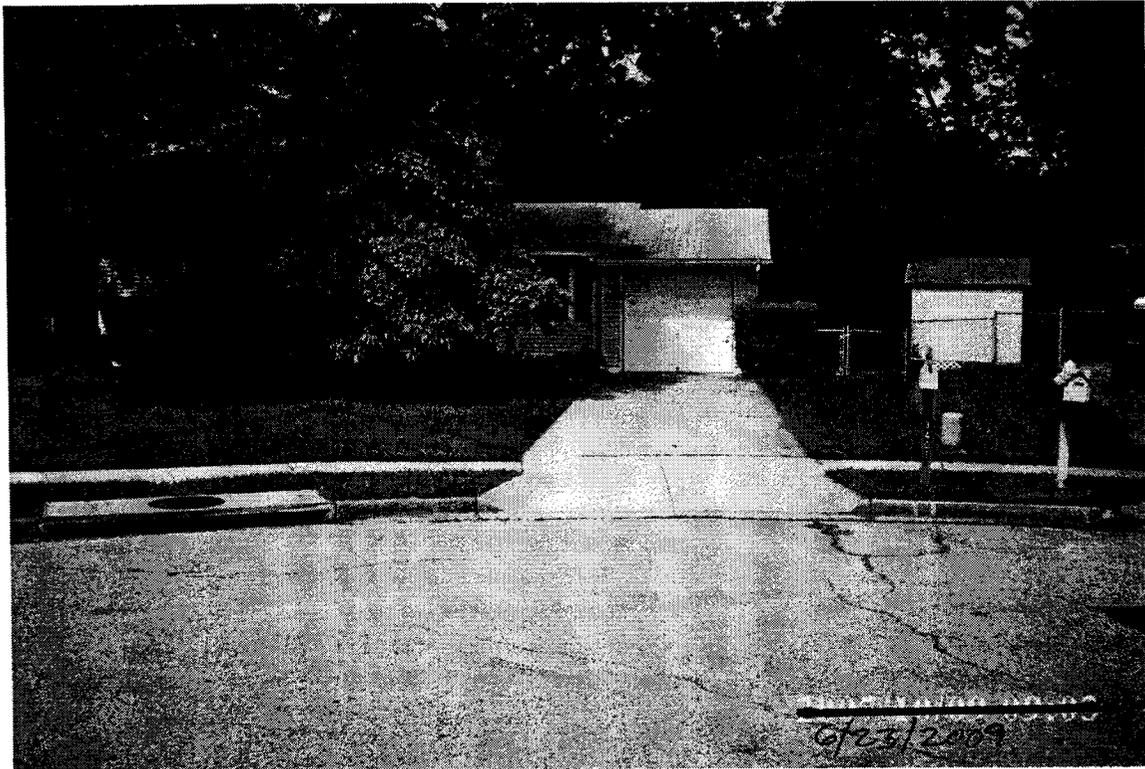
SP 2009-LE-061

Applicant: HOMERO A. ESCOBAR
Accepted: 07/06/2009
Proposed: PERMIT A FENCE GREATER THAN 4.0 FEET IN HEIGHT IN A FRONT YARD AND REDUCTION TO MINIMUM YARD REQUIREMENTS BASED ON ERROR IN BUILDING LOCATION TO PERMIT ACCESSORY STORAGE STRUCTURE TO REMAIN 0.2 FEET FROM SIDE LOT LINE



Area: 10,470 SF OF LAND; DISTRICT - LEE
Zoning Dist Sect: 08-0923 08-0914
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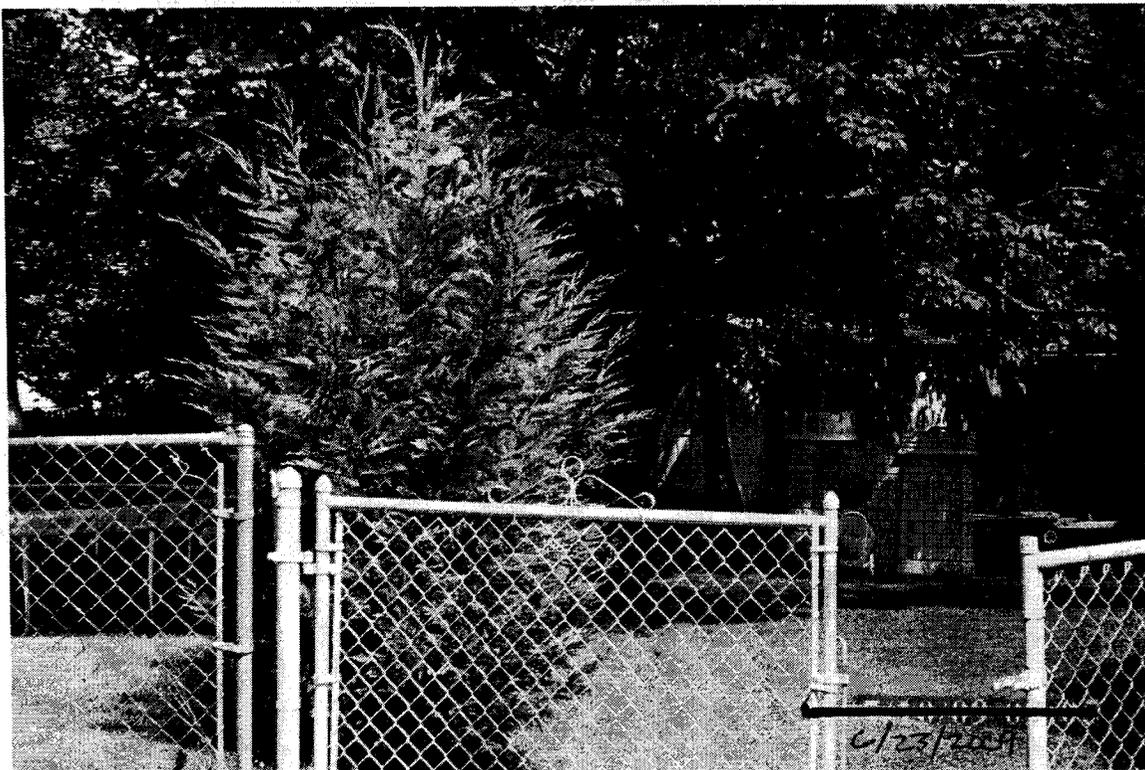




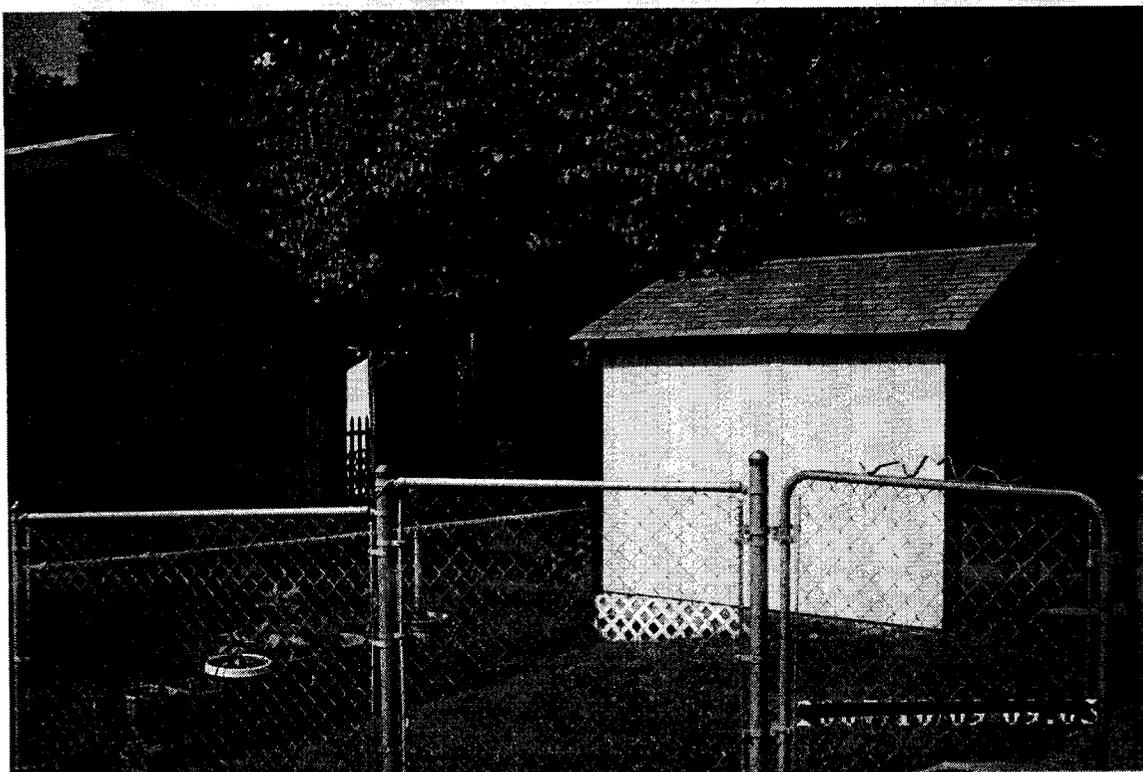
HOUSE AT 3401 SAPPHIRE CT. ALSO SHOWED IN SIDE YARD OF 3403 SAPPHIRE CT.



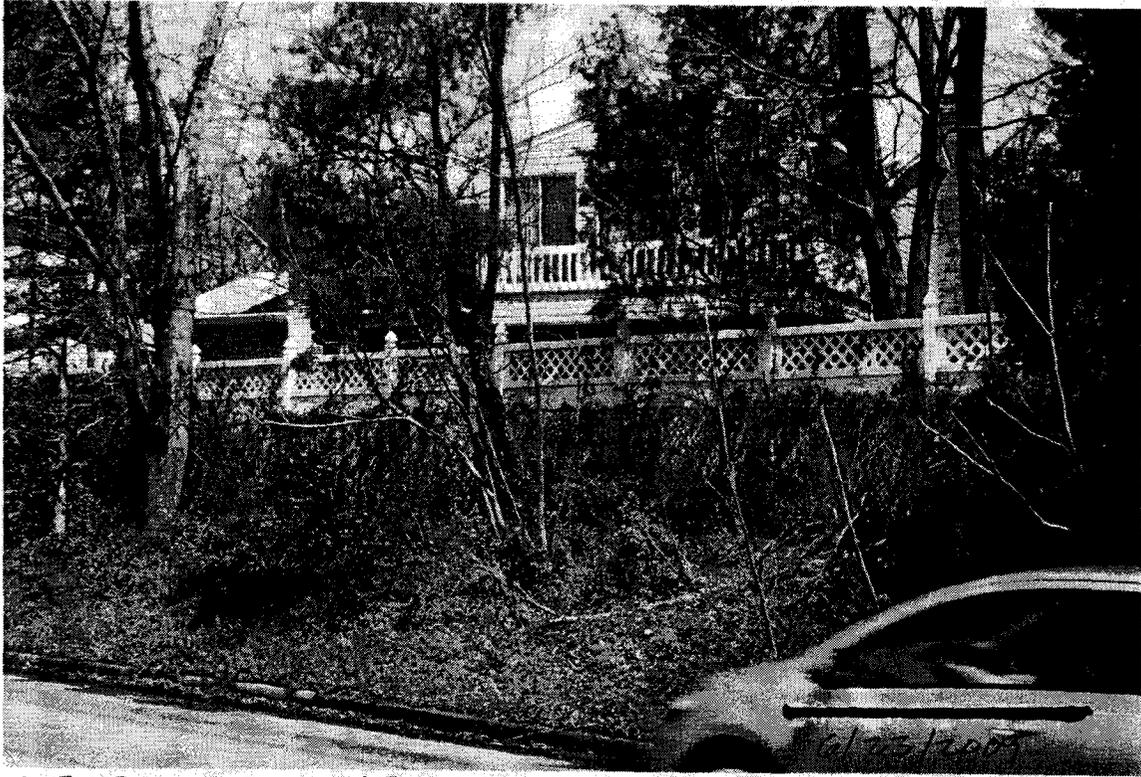
HOUSE AT 3405 SAPPHIRE CT 3403 SAPPHIRE CT IS TO THE LEFT.



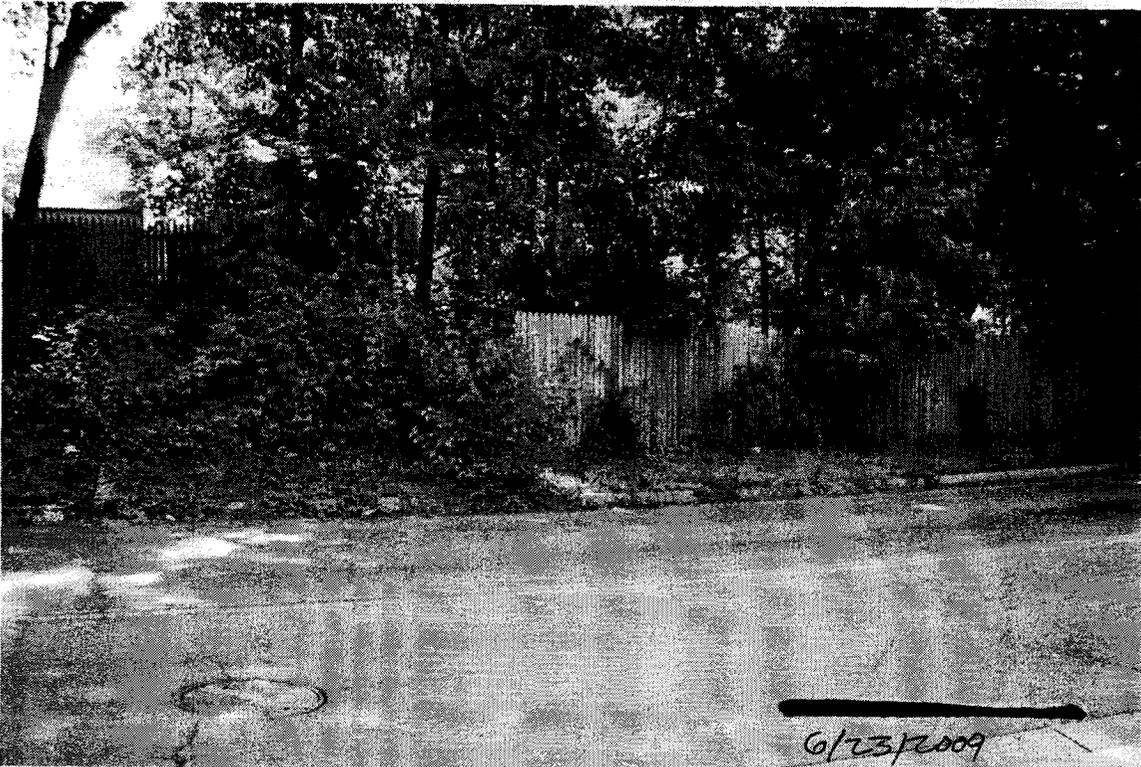
VIEW FROM FRONT YARD OF 3403 SAPPHIRE CT OF SHED IN REAR YARD AT 3405 SAPPHIRE CT.



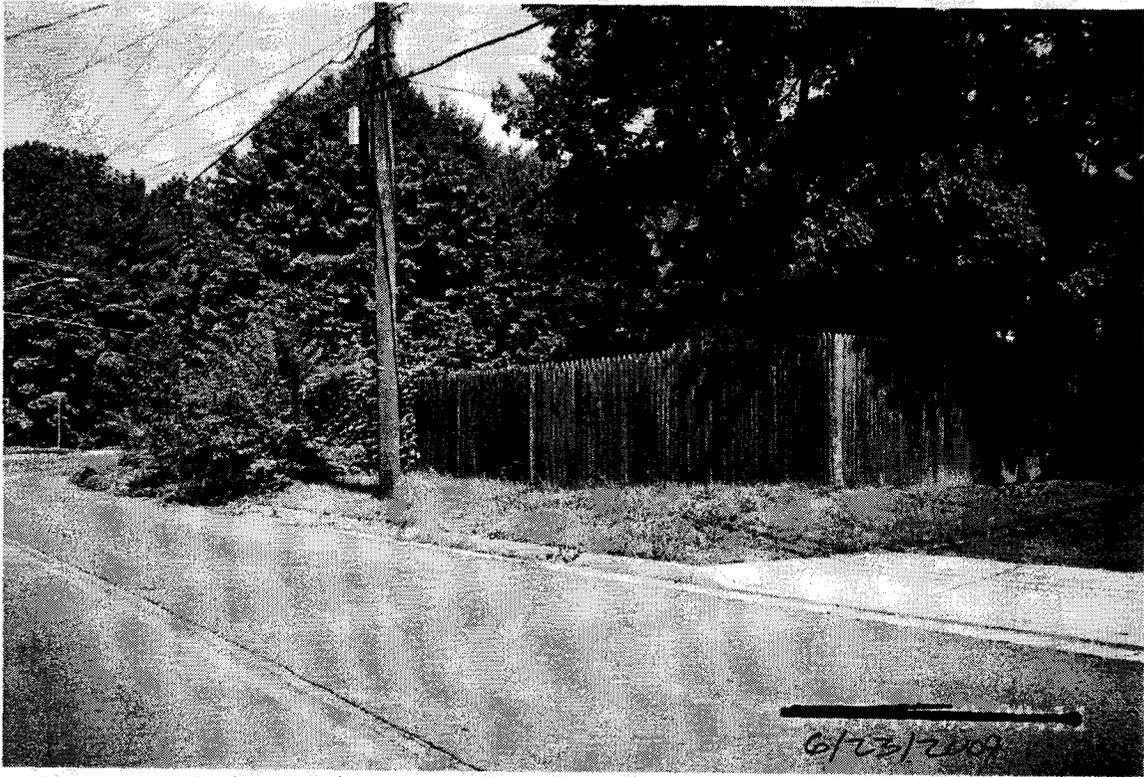
SHED IN SIDE YARD OF 3403 SAPPHIRE CT. SIDE WALL OF THE GARAGE AT 3401 SAPPHIRE CT. IS TO THE LEFT.



6 FOOT HIGH PRIVACY FENCE ALONG GENTELE CT ON THE PROPERTY LOCATED AT 3401 AUSTIN CT.



6 FOOT HIGH PRIVACY FENCES ALONG GENTELE CT FOR THE PROPERTIES LOCATED AT 3403 AND 3401 SAPPHIRE CT.



6 FOOT HIGH PRIVACY FENCE ALONG MEMORIAL STREET FOR THE PROPERTY AT 3400 SAPPHIRE CT.

DESCRIPTION OF THE APPLICATION

The applicant is requesting approval of two special permits for the subject property. The first is to permit reduction of minimum yard requirements based on error in building location to permit a 10.2 foot tall accessory storage structure (shed) to remain 0.2 feet from the south side lot line.

| | Yard | Min. Yard Req.* | Structure Location | Amount of Error | Percent of Error |
|-------------------------|------|-----------------|--------------------|-----------------|------------------|
| Special Permit 1 | Side | 10 ft. | 0.2 ft. | 9.8 ft. | 98 % |

* Minimum side yard requirement per Section 3-207

The second special permit request is to permit a fence greater than 4 feet in height in the front yard of a through lot. There is an existing 6 foot high fence; however a majority of the fence is in the street right-of-way. Therefore, the applicant proposes to relocate the portions of the fence currently in the right-of-way back on to the subject property.

| | Yard | Max. Ht. Permitted* | Height | Modification Requested |
|-------------------------|-------|---------------------|------------|------------------------|
| Special Permit 4 | Front | 4 ft. | Max. 6 ft. | 2 ft. |

* Minimum fence height per Section 10-104.

LOCATION AND CHARACTER

Existing Site Description

The site is currently zoned R-4 and contains a two story single family detached dwelling which was constructed in 1978. The lot consists of 10,470 square feet and has no significant changes in topography. There is dense vegetation along the rear of the property on site which will not be affected by the special permit requests. The subject property is surrounded by single family detached homes on all sides.

Character of the Area

| | Zoning | Use |
|-------|--------|----------------------------------|
| North | R-4 | Single Family Detached Dwellings |
| South | R-4 | Single Family Detached Dwellings |
| East | R-4 | Single Family Detached Dwellings |
| West | R-4 | Single Family Detached Dwellings |

ANALYSIS OF SPECIAL PERMIT APPLICATION

- **Title of SP Plat:** Plat Showing House Location on Lot 79, Section 1-A, Kings Landing
- **Prepared By:** Andrew L. Westerman, Alexandria Surveys International, Inc. dated April 2, 2009, revised through June 19, 2009 and signed through June 24, 2009.
- **Building Permits Required for Shed:** No (shed is under 150 square feet)

BACKGROUND

A notice of violation was issued on March 3, 2009, for the subject property for the accessory storage structure and the fence subject to this special permit request. A copy of this notice can be found in Appendix 4.

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

- Special Permit SP 2009-LE-054, approved on September 29, 2009, on Tax Map Number 92-2 ((24)) 81, on 3400 Sapphire Court, zoned R-4, one house south of the subject property to permit fence greater than 4 feet in height to remain in a front yard.
- Special Permit SP 2009-LE-039, approved on August 4, 2009, on Tax Map Number 82-4 ((32)) 62, on 3405 Austin court, zoned R-4, north of the subject property to permit fence greater than 4 feet in height to remain in a front yard.
- Special Permit SP 2007-LE-019, approved on May 15, 2009, on Tax Map Number 82-4 ((32)) 63, on 3403 Austin Court, zoned R-4, north of the subject property to permit fence greater than 4 feet in height to remain in a front yard.

ZONING ORDINANCE REQUIREMENTS (See Appendix 5)

- General Special Permit Standards (Sect. 8-006)
- Group 9 Standards (Sect. 8-903)
- Provisions for Approval of Reduction of the Minimum Yard Requirements Based on an Error in Building Location (Sect. 8-914)
- Provisions for Increase in Fence and/or Wall Height in Any Front Yard (Sect. 8-923)

CONCLUSION

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

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

APPENDICES

1. Proposed Development Conditions
2. Applicant's Affidavit
3. Applicant's Statement of Justification
4. Notice of Violation
5. Zoning Ordinance Provisions

PROPOSED DEVELOPMENT CONDITIONS

SP 2009-LE-061

October 20, 2009

1. This special permit is approved for the location of the shed and fence as shown on the plat prepared by Andrew L. Westerman, Alexandria Surveys International, Inc. dated April 2, 2009, revised through June 19, 2009 and signed through June 24, 2009 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: 09/10/2009
 (enter date affidavit is notarized)

I, Homero A. Escobar, 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 104286a

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) |
|--|---|--|
| Homero A. Escobar | 3403 Sapphire Court Alexandria, VA.22310 | Applicant/Title Owner |
| Leticia M. Escobar | 3403 Sapphire Court Alexandria, VA.22310 | Title Owner |
| Alexandria Surveys International, LLC | 6210 N Kings Highway Alexandria, VA 22303 | Agent |
| Rodney Root employee with Alexandria Surveys International, LLC | 6210 N Kings Highway Alexandria, VA 22303 | Agent |

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

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

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

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

Page Two

SPECIAL PERMIT/VARIANCE AFFIDAVIT

DATE: 09/10/2009
(enter date affidavit is notarized)

104286 a

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)

Alexandria Surveys International, LLC
6210 North Kings Highway
Alexandria, Virginia 22303

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)

John P. Hoofnagle

(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: 09/10/2009
(enter date affidavit is notarized)

104286 a

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

PARTNERSHIP INFORMATION

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

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

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

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

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

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

SPECIAL PERMIT/VARIANCE AFFIDAVIT

DATE: 09/10/2009
(enter date affidavit is notarized)

104286a

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: 09/10/2009
(enter date affidavit is notarized)

104286a

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.

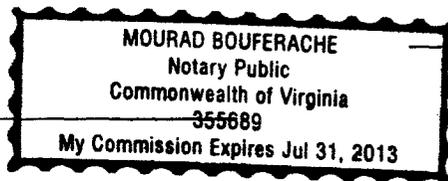
WITNESS the following signature:

(check one) Homero A. Escobar Mr.
[X] Applicant [] Applicant's Authorized Agent

Homero A. Escobar Mr.
(type or print first name, middle initial, last name, and title of signee)

Subscribed and sworn to before me this 10th day of September 2009, in the State/Comm. of Virginia, County/City of Alexandria

My commission expires: _____



Mourad Bouferache
Notary Public

SPECIAL PERMIT STATEMENT OF JUSTIFICATION

3403 Sapphire Court
Alexandria, VA 22310
Tax Map #:092 2 24 0079
Zoning District: R-4

RECEIVED
Department of Planning & Zoning
JUN 24 2009
Zoning Evaluation Division

To whom it may concern

The accessory storage structure (shed) located on the above referenced property is used to store typical items associated with a home and yard. The property was purchased in June 2003. At the time of purchase the shed was located behind the house but later moved to the side yard to permit construction of a deck. We, the homeowners were unaware that moving the shed would result in the structure being in violation of the zoning ordinance side yard distance requirement. The error exceeds ten percent of the measurement involved. As such, we are now requesting a Special Permit from the Board of Zoning Appeals.

We built the six-foot high fence along Gentele Court to shield the yard at the rear of the house (there is road frontage in both the front and back of the house) from the noise, sight and trash generated by the vehicles that travel the road. The fence also serves to protect the yard from observations by all those driving on the road. The fence provides security to the residence by making it difficult to enter the property from a main and busy road. Gentele Court is no longer a cul-de-sac and together with Memorial Street forms a busy thoroughfare. The fence is similar to others along this stretch of the road and we the homeowners were unaware that erecting the fence would result in the fence being in violation of the zoning ordinance front yard fence height requirement. As such, we are now requesting a Special Permit from the Board of Zoning Appeals.

As this is not a place of business, there are no hours of operation, patrons, clients, employees, etc. There will be no traffic impact and no area is served by the use.

The shed facade and architecture is that of a typical shed and matches with the house it is constructed of wood and is painted. The fence is constructed of wood and has a natural finish it is a privacy fence similar to many found in suburban neighborhoods in this county.

There are not and will not be and hazardous or toxic substances generated, utilized, stored, treated, and/or disposed of on the site.

We the homeowners are seeking the Special Permit to permit the shed to remain in the side yard and to permit a fence greater than 4.0 feet in height in a front yard. We feel that the reduction in the yard requirement and increase in fence height would not impair the purpose or intent of the ordinance, will not be detrimental to the use and enjoyment of other property in the immediate vicinity, will not create an unsafe condition with respect to both other property and public streets, and that to force compliance with the minimum yard requirement and fence height requirement would cause unreasonable hardship upon us due to the loss of the protection afforded by the fence if the fence is removed or shortened and the effort and expense that would be required to remove, alter or relocate the shed. Thank you for your consideration in this matter.

Sincerely,

Homero Escobar



Stewart

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: March 3, 2009

CERTIFIED MAIL #: 7007 3020 0001 3001 5247

CASE #: 42928

SERVE: Homero A. Escobar
Leticia M. Escobar
3403 Sapphire Court
Alexandria, Virginia 22310-3101

LOCATION 3403 Sapphire Court
OF VIOLATION: Kings Landing, Section 1A, Lot 79
Tax Map Ref.: 92-2 ((24)) 79
Zoning District: R-4
Lot size: 10,470 square feet

Dear Property Owners:

An inspection of the above referenced property on January 15, 2009 revealed the following violations of the Fairfax County Zoning Ordinance.

§ 10-104 (3B) Accessory Structures:

§ 2-302 (6) Accessory Use:

It has been established that you have erected or have permitted to be erected a stockade style fence, which is approximately six (6) feet in height, inside of the chain link fencing, in the front yard, which is adjacent to Gentele Court.

A fence is a permitted accessory use in the R-4 District, subject to the provisions detailed in Par. 3B of Sect. 10-104 of the Zoning Ordinance which states, in part:

In any front yard on any lot, a fence, or wall not exceeding four (4) feet in height is permitted...

Kings Landing, Section 1A, Lot 79 was planned, designed and developed as a Through Lot. A Through Lot is defined in Part 3 of Section 20 of the Fairfax County zoning Ordinance, in part, as:

An interior lot, but not a corner lot, abutting on two (2) or more public streets...

As Kings Landing, Section 1A, Lot 79 has been developed as a through lot, this lot contains two front yards and has no rear yard. The front yards of a through lot are defined in Part 3 of Sect. 20 of the Zoning Ordinance, in part, as:

On a through lot, the two (2) yards lying between the principal building and the two (2) or more public streets shall be deemed to be front yards and shall be controlled by the provisions for same...

Because the referenced fence exceeds four (4) feet in height, it is therefore in violation of Par. 6 of Sect. 2-302 of the Zoning Ordinance that 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 Part 1 of Article 10.

You are hereby directed to clear this violation within thirty (30) days of receipt of the Notice. Compliance may be obtained by:

- Remove all fencing from the property that does not conform to the provisions detailed in Par. 3B of Sect. 10-104, as detailed above, or
- Reduce the height of all fencing in a front yard, to a maximum of four (4) feet, when measured from the lowest point of natural grade, or
- Make application to, diligently pursue and ultimately obtain special permit approval of the Board of Zoning Appeals (BZA) to allow the fence to remain at its present height and location.

Information and submission criteria regarding the filing of the Special Permit Application may be obtained by contacting the Zoning Evaluation Division at (703) 324-1290.

Homero A. Escobar
Leticia M. Escobar
March 3, 2009
Page 3

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)324-1323 or 703-324-1300.

Sincerely,



Chuck Cohenour
Senior Zoning Inspector

8-006**General Standards**

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

1. The proposed use at the specified location shall be in harmony with the adopted comprehensive plan.
2. The proposed use shall be in harmony with the general purpose and intent of the applicable zoning district regulations.
3. The proposed use shall be such that it will be harmonious with and will not adversely affect the use or development of neighboring properties in accordance with the applicable zoning district regulations and the adopted comprehensive plan. The location, size and height of buildings, structures, walls and fences, and the nature and extent of screening, buffering and landscaping shall be such that the use will not hinder or discourage the appropriate development and use of adjacent or nearby land and/or buildings or impair the value thereof.
4. The proposed use shall be such that pedestrian and vehicular traffic associated with such use will not be hazardous or conflict with the existing and anticipated traffic in the neighborhood.
5. In addition to the standards which may be set forth in this Article for a particular group or use, the BZA shall require landscaping and screening in accordance with the provisions of Article 13.
6. Open space shall be provided in an amount equivalent to that specified for the zoning district in which the proposed use is located.
7. Adequate utility, drainage, parking, loading and other necessary facilities to serve the proposed use shall be provided. Parking and loading requirements shall be in accordance with the provisions of Article 11.
8. Signs shall be regulated by the provisions of Article 12; however, the BZA, under the authority presented in Sect. 007 below, may impose more strict requirements for a given use than those set forth in this Ordinance.

8-903**Standards for all Group 9 Uses**

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

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

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

8-914

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

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

1. Notwithstanding Par. 2 of Sect. 011 above, all applications shall be accompanied by ten (10) copies of a plat and such plat shall be presented on a sheet having a maximum size of 24" x 36", and one 8 ½" x 11" reduction of the plat. Such plat shall be drawn to a designated scale of not less than one inch equals fifty feet (1" = 50'), unless a smaller scale is required to accommodate the development. Such plat shall be certified by a professional engineer, land surveyor, architect, or landscape architect licensed by the State of Virginia and such plat shall contain the following information:
 - A. Boundaries of entire property, with bearings and distances of the perimeter property lines and of each zoning district.
 - B. Total area of the property and of each zoning district in square feet or acres.
 - C. Scale and north arrow, with north, to the extent feasible, oriented to the top of the plat and on all supporting graphics.
 - D. Location of all existing structures, with dimensions, including height of any structure and penthouse, and if known, the construction date(s) of all existing structures.
 - E. All required minimum yards to include front, side and rear, and a graphic depiction of the angle of bulk plane, if applicable, and the distances from all existing structures to lot lines.
 - F. Means of ingress and egress to the property from a public street(s).
 - G. For nonresidential uses, the location of parking spaces, indicating minimum distance from the nearest property line(s).
 - H. If applicable, the location of well and/or septic field.
 - I. For nonresidential uses, a statement setting forth the maximum gross floor area and FAR for all uses.

- J. Location of all existing utility easements having a width of twenty-five (25) feet or more, and all major underground utility easements regardless of width.
- K. Seal and signature of professional person certifying the plat.

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

- 2. The BZA determines that:
 - A. The error exceeds ten (10) percent of the measurement involved, and
 - B. The noncompliance was done in good faith, or through no fault of the property owner, or was the result of an error in the relocation of the building subsequent to the issuance of a Building Permit, if such was required, and
 - C. Such reduction will not impair the purpose and intent of this Ordinance, and
 - D. It will not be detrimental to the use and enjoyment of other property in the immediate vicinity, and
 - E. It will not create an unsafe condition with respect to both other property and public streets, and
 - F. To force compliance with the minimum yard requirements would cause unreasonable hardship upon the owner.
 - G. The reduction will not result in an increase in density or floor area ratio from that permitted by the applicable zoning district regulations.
- 3. In granting such a reduction under the provisions of this Section, the BZA shall allow only a reduction necessary to provide reasonable relief and may, as deemed advisable, prescribe such conditions, to include landscaping and screening measures, to assure compliance with the intent of this Ordinance.
- 4. Upon the granting of a reduction for a particular building in accordance with the provisions of this Section, the same shall be deemed to be a lawful building.
- 5. The BZA shall have no power to waive or modify the standards necessary for approval as specified in this Section.

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 Emergency Management Agency, 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.