



APPLICATION ACCEPTED: December 2, 2009
BOARD OF ZONING APPEALS: February 10, 2010
TIME: 9:00 a.m.

County of Fairfax, Virginia

February 3, 2010

**STAFF REPORT
SPECIAL PERMIT APPLICATION NO. SP 2009-MA-109
MASON DISTRICT**

APPLICANT: Phan So Huynh
OWNERS: Phan So and Chach Huynh
SUBDIVISION: First Addition to Aura Heights
STREET ADDRESS: 3322 Nevius Street
TAX MAP REFERENCE: 61-2 ((7)) 21A
LOT SIZE: 11,717 Square Feet
ZONING DISTRICT: R-3
ZONING ORDINANCE PROVISIONS: 8-918
SPECIAL PERMIT PROPOSAL: To permit an accessory dwelling unit.

STAFF RECOMMENDATION: Staff recommends denial of SP 2009-MA-109 for the accessory dwelling unit.

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:\Scaff2\Case Files\Special Permits\SP 2009-MA-109 PHAN HUYNH\Huynh_draft.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/



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.**

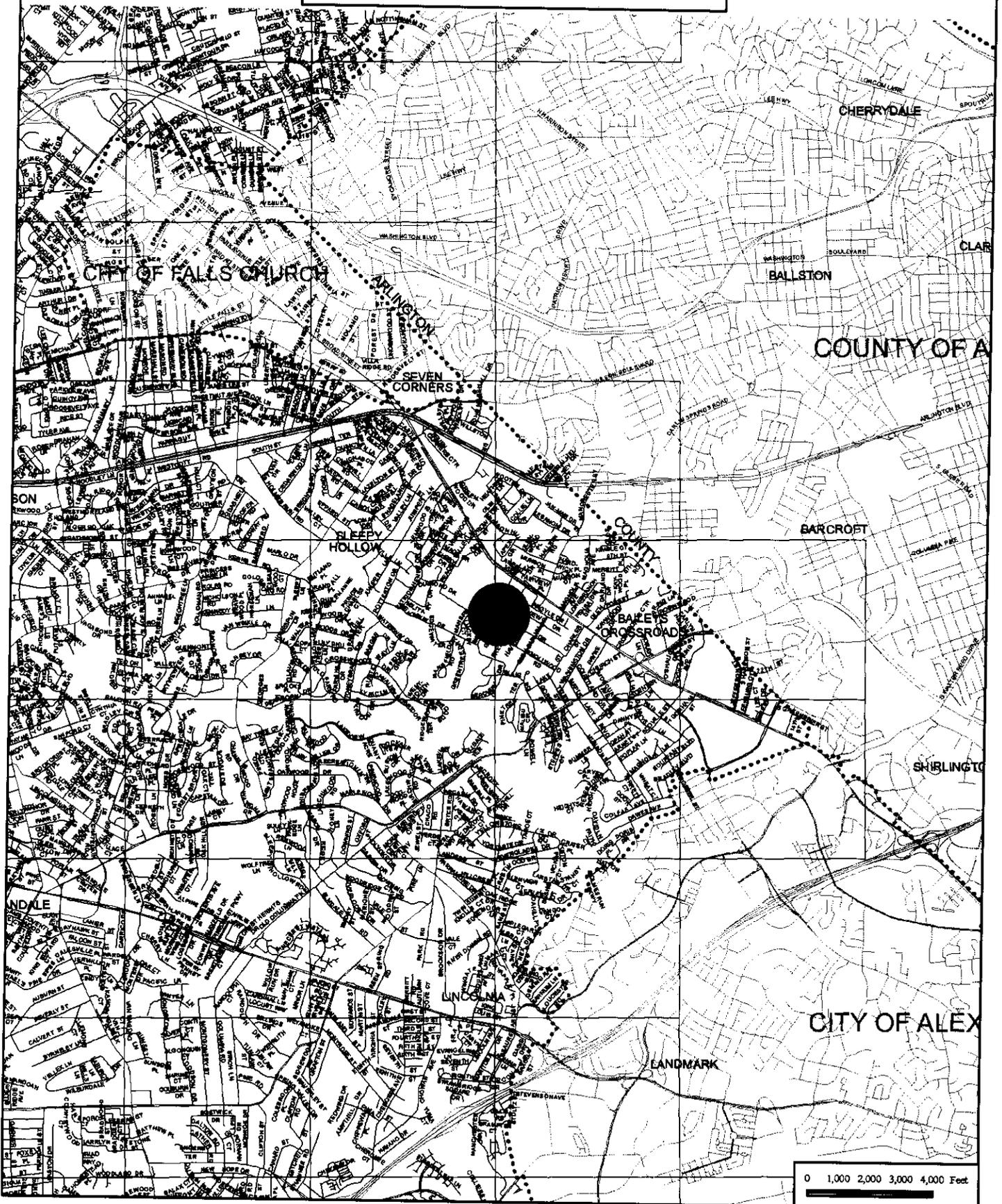


Americans with Disabilities Act (ADA): Reasonable accommodation is available upon 7 days advance notice. For additional information on ADA call (703) 324-1334 or TTY 711 (Virginia Relay Center).

Special Permit

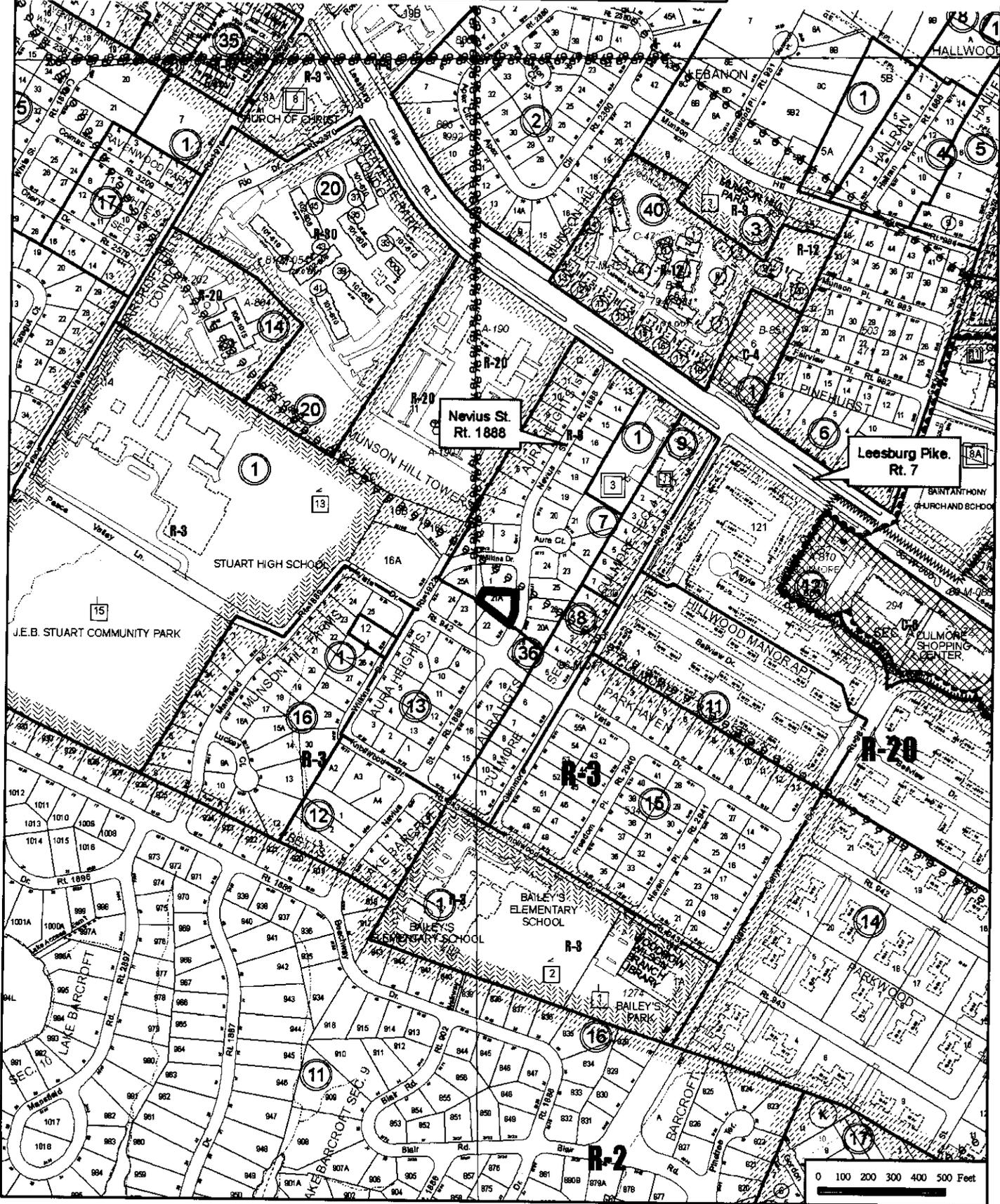
SP 2009-MA-109

PHAN SO HUYNH



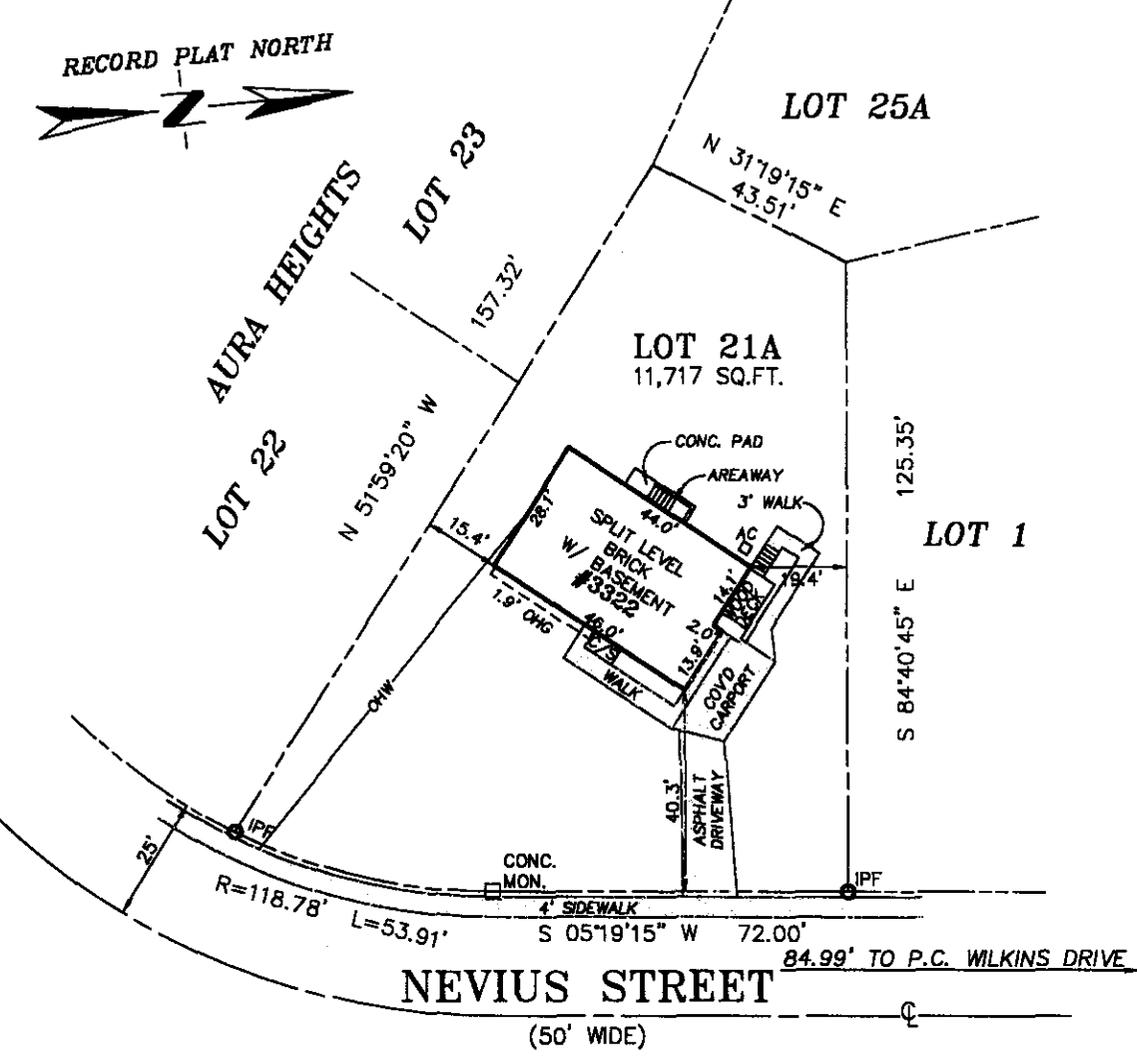
0 1,000 2,000 3,000 4,000 Feet

Special Permit
SP 2009-MA-109
PHAN SO HUYNH



NOTE

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



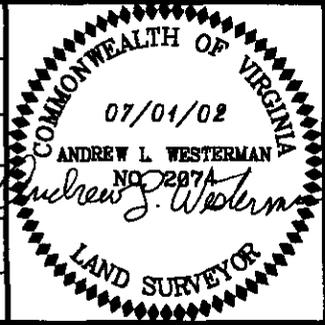
**HOUSE LOCATION SURVEY
LOT 21A
FIRST ADDITION TO
AURA HEIGHTS**

(PLAT SHOWN IN DEED BOOK 1534, AT PAGE 489)
MASON DISTRICT
FAIRFAX COUNTY, VIRGINIA

RECEIVED
Department of Planning & Zoning
JUN 11 2009
Zoning Evaluation Division

ABSOLUTE SURVEYS INC.
3918 PROSPERITY AVENUE
SUITE 319
FAIRFAX, VIRGINIA 22031
PHONE: (703)-641-0476 FAX: 641-0836

CASE # 22-4179 MJS
WORK ORDER # 602-105
OWNER: CLARK
PURCHR: HUYNH
DATE: 06/19/02
SCALE: 1" = 30'

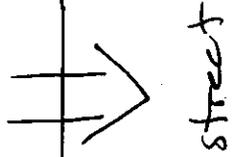


LEGEND
C/S = CONCRETE STOOP
AC = AIR CONDITIONER
OHW = OVERHEAD WIRES
OHG = OVERHANG
IPF = IRON PIPE FOUND

JUN 11 2009

RECEIVED
Department of Planning & Zoning

DRIVE WAY



street

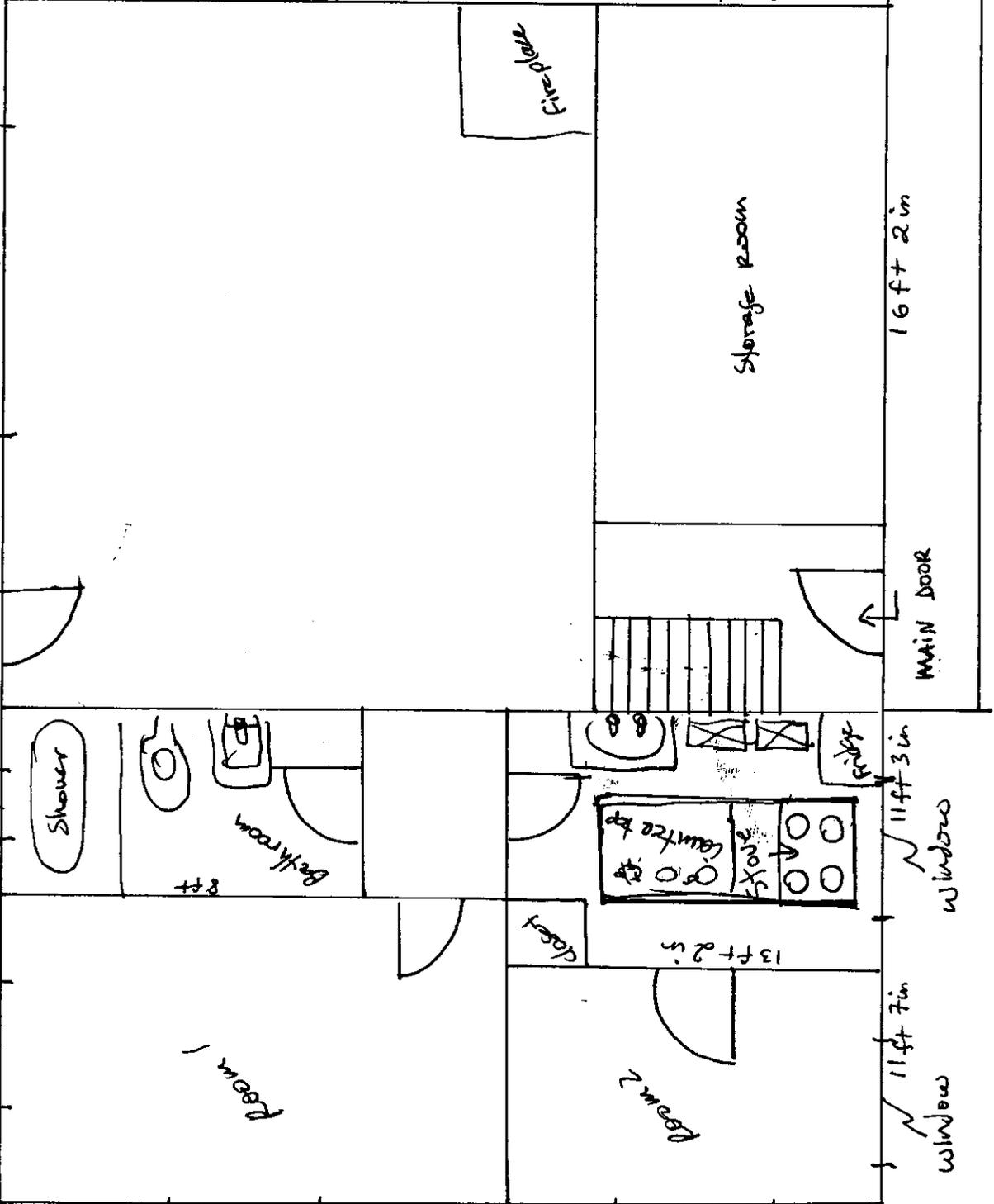
13ft 3in

12ft 8in

16ft 2in

20ft 4in

Backyard
Window
Shower
Backroom
13ft 7in
Window



MAIN DOOR

Storage Room

fire place

Shower

Bathroom

Kitchen
sink
counter top

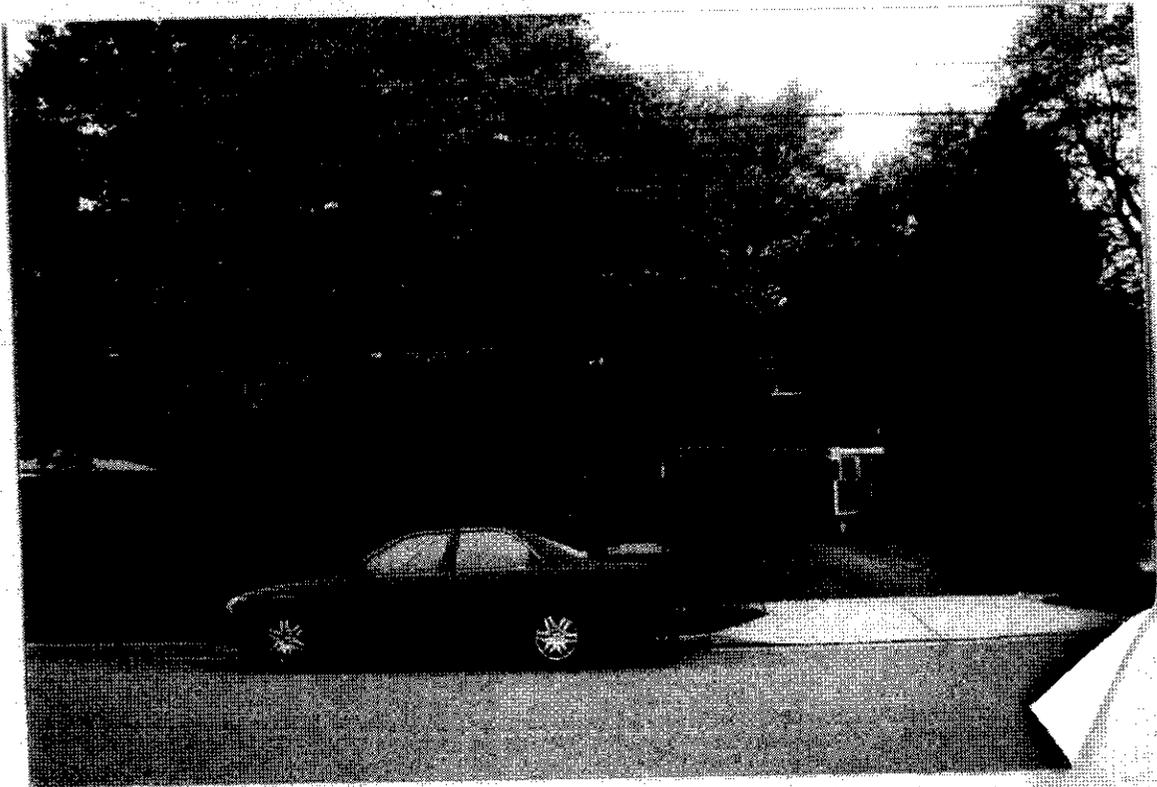
closet

Bedroom 1

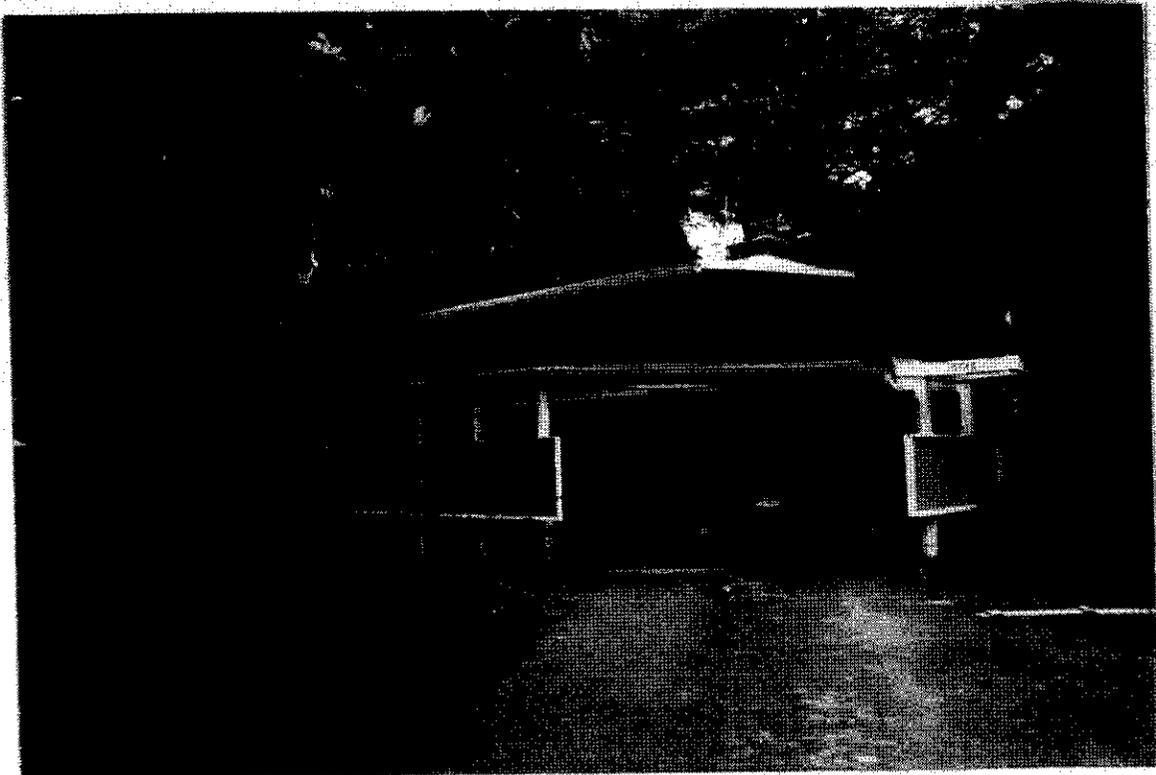
Bedroom 2

PITAN HUYNH
3322 Nevius St
Falls Church, VA 22041

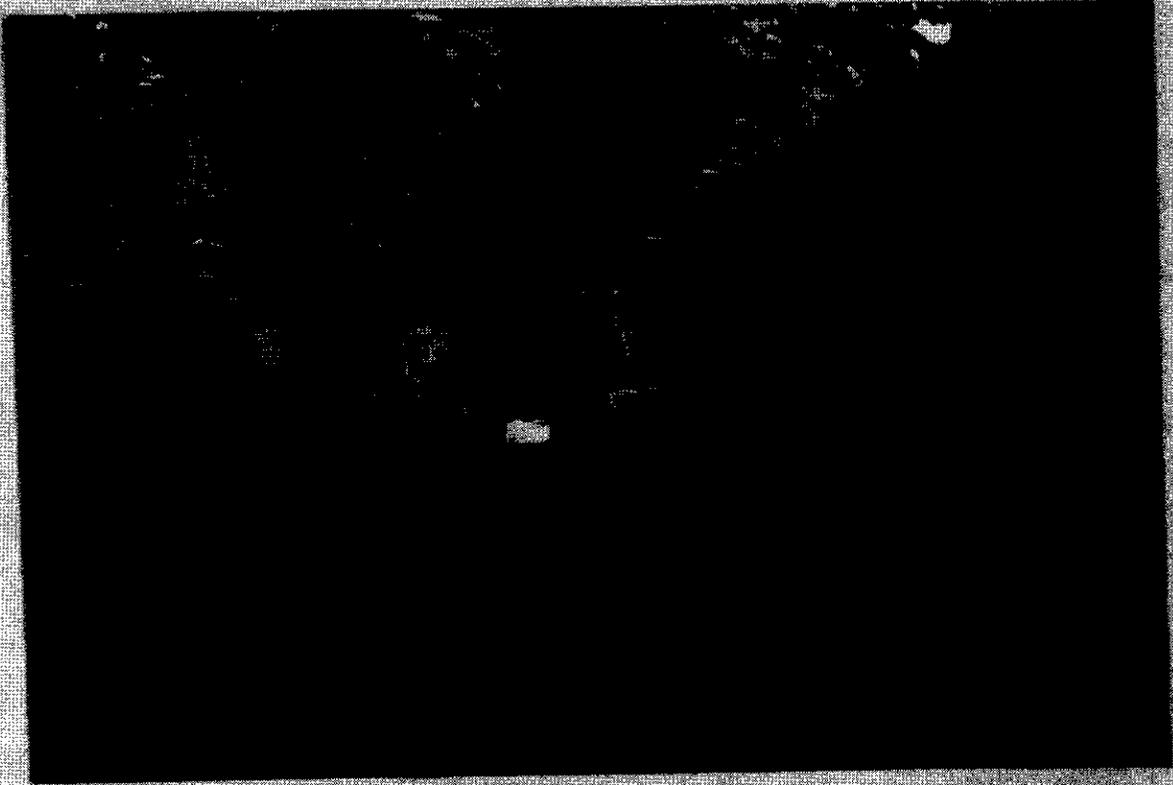
Our basement



FRONT VIEW OF HOUSE



RIGHT SIDE VIEW



BACK LOT VIEW



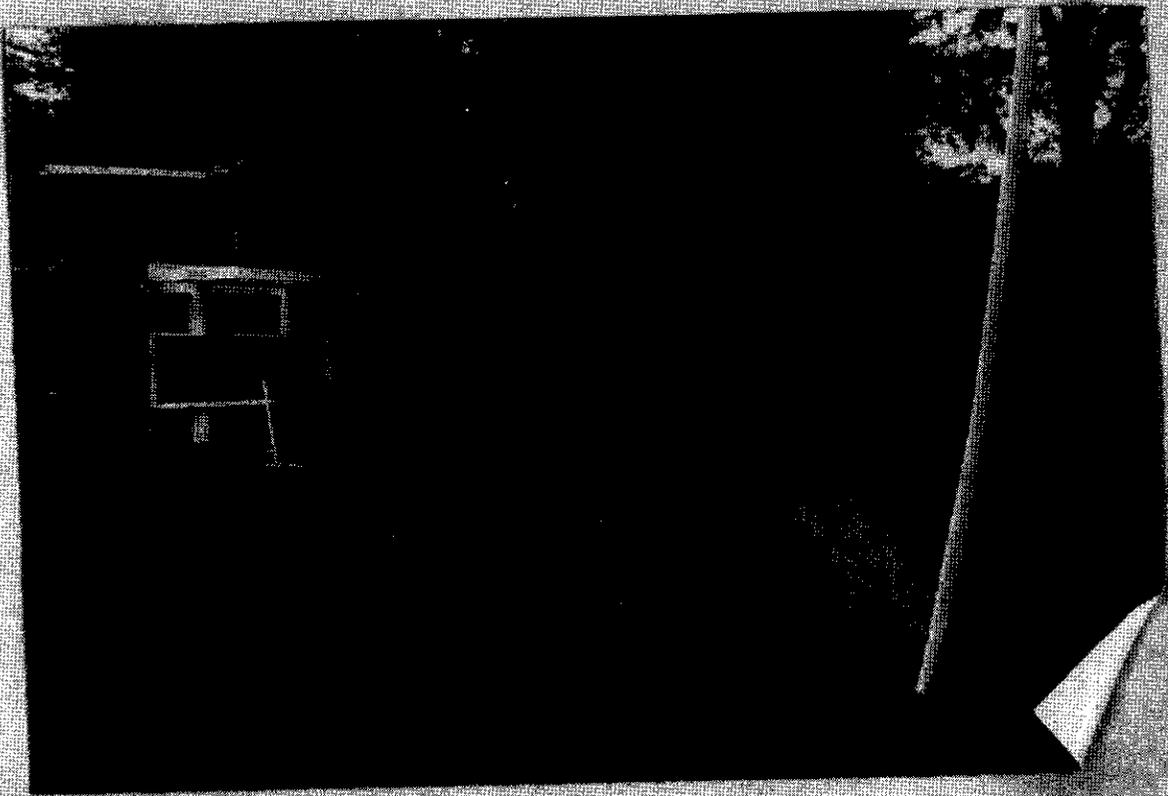
BACK OF THE HOUSE



BACK OF THE HOUSE



LEFT SIDE OF THE HOUSE



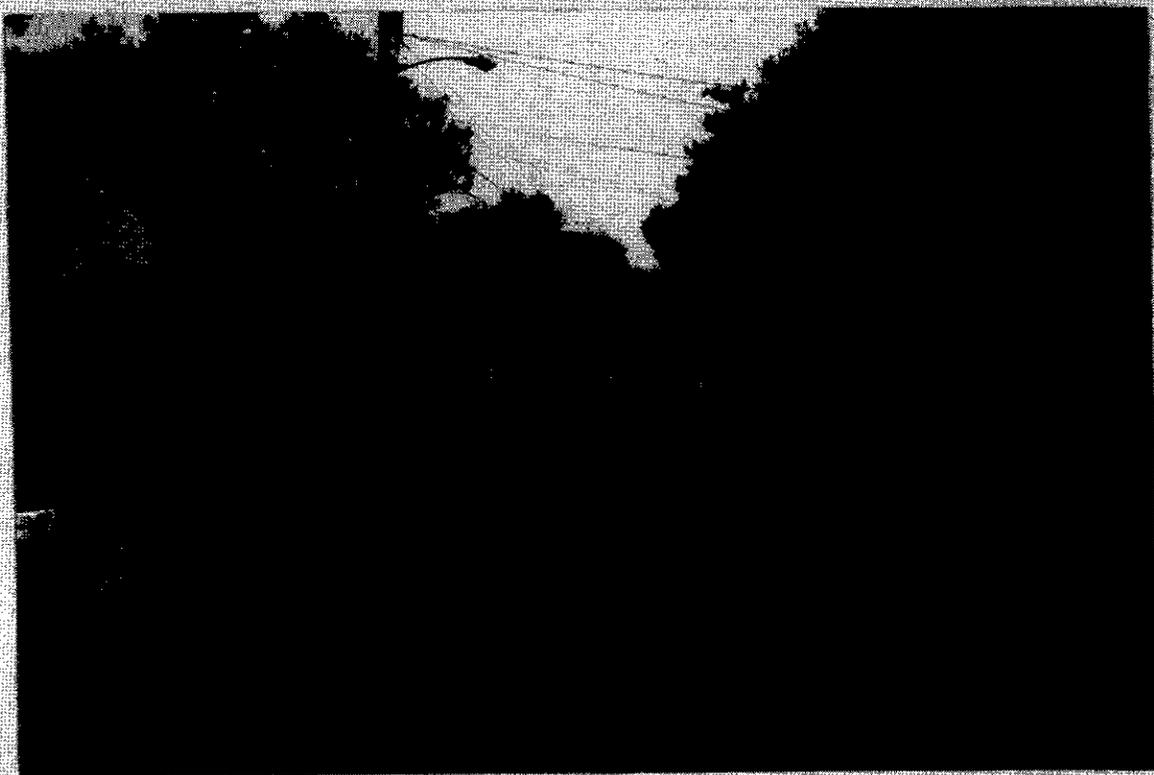
RIGHT LOT VIEW



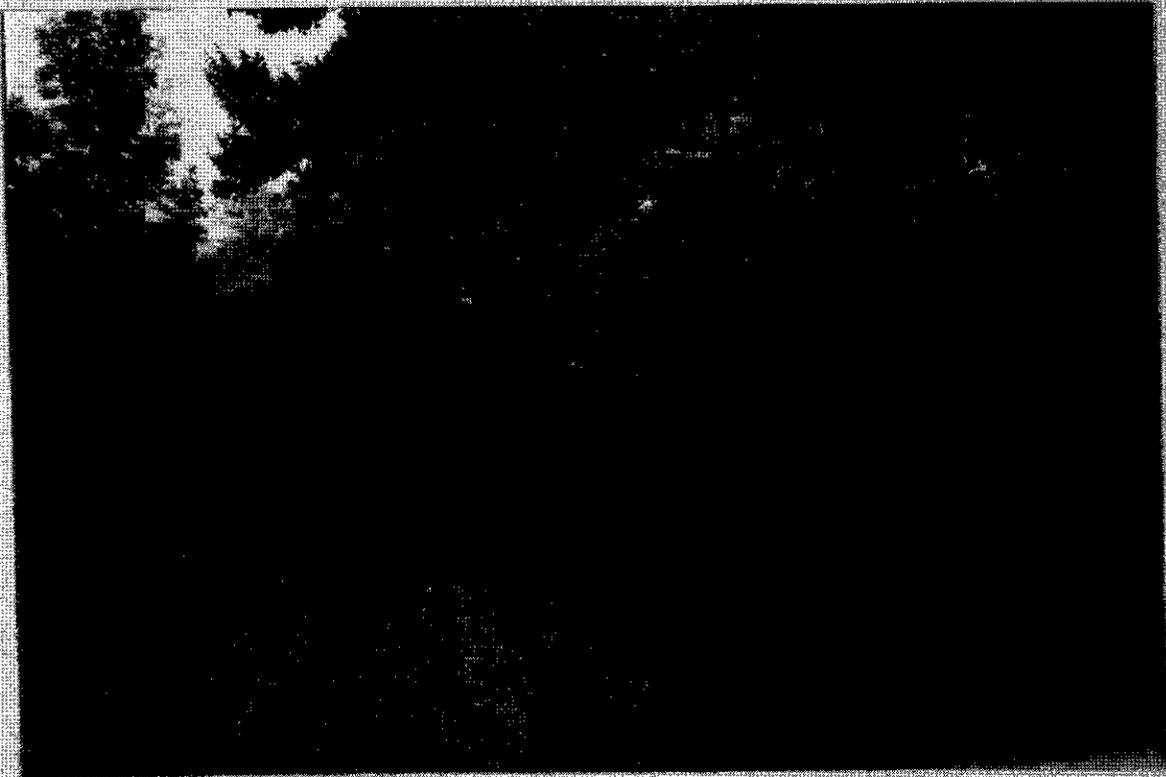
LEFT LOT VIEW



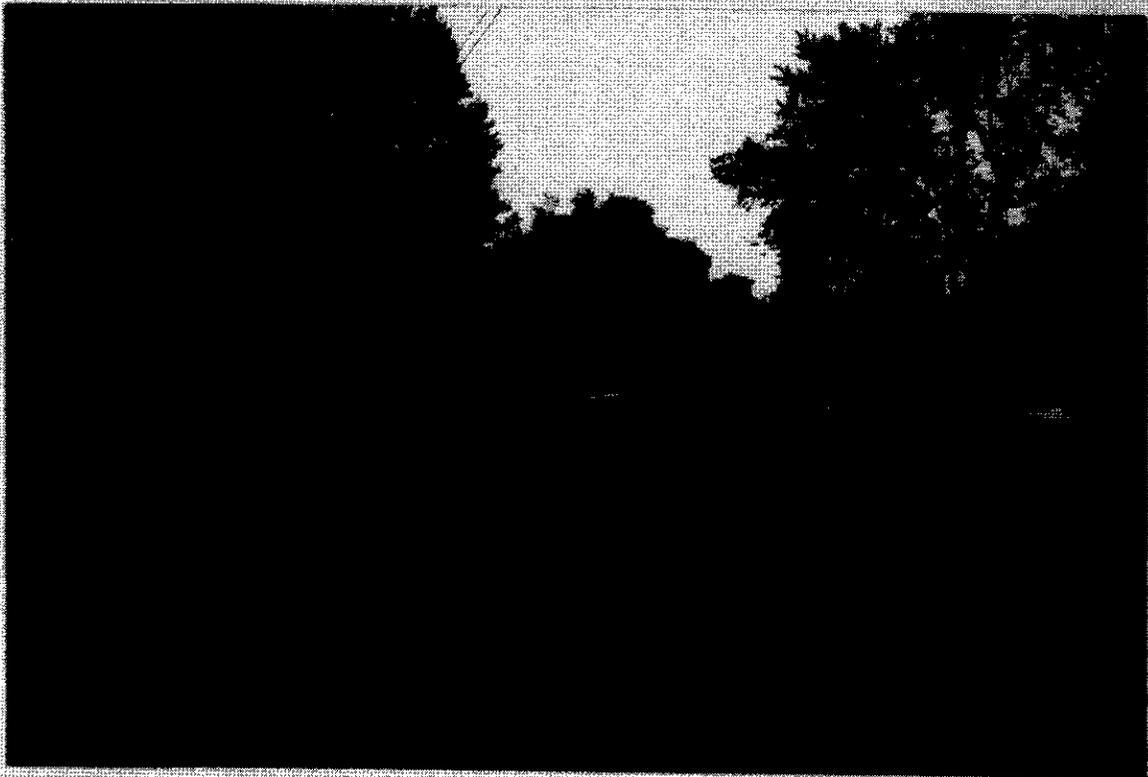
LEFT LOT VIEW



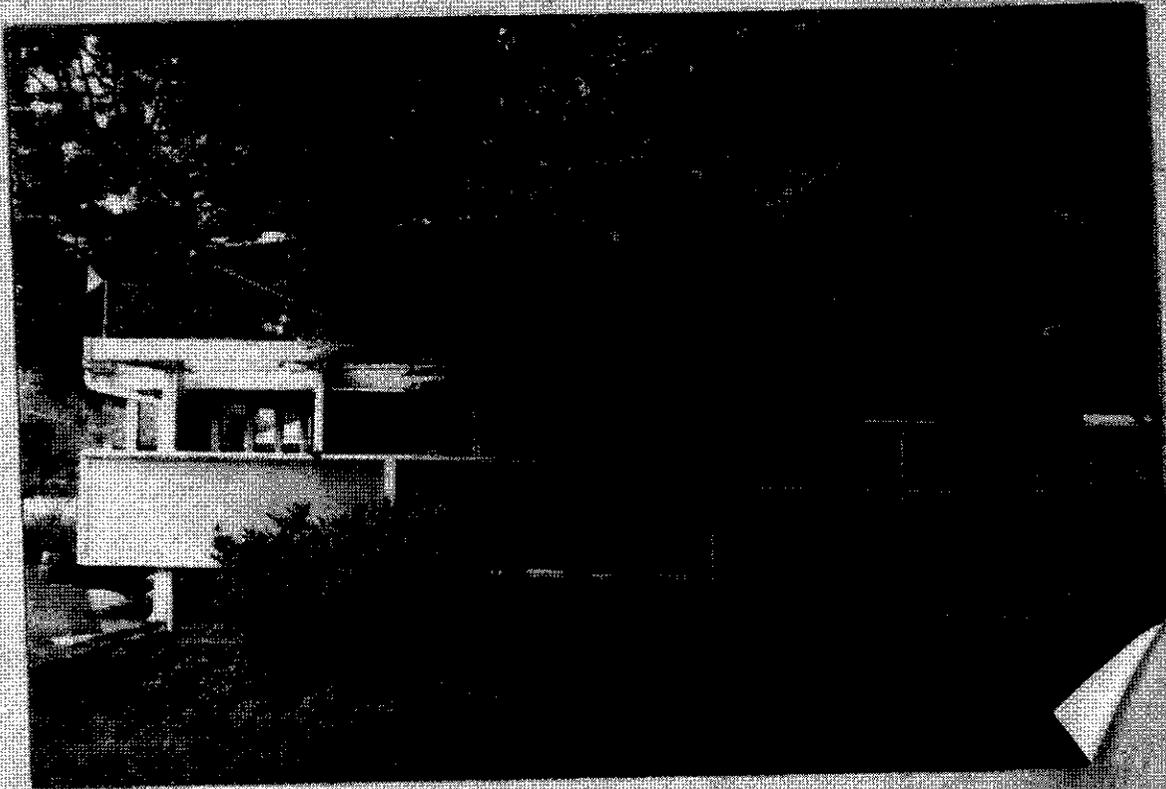
STREET VIEW



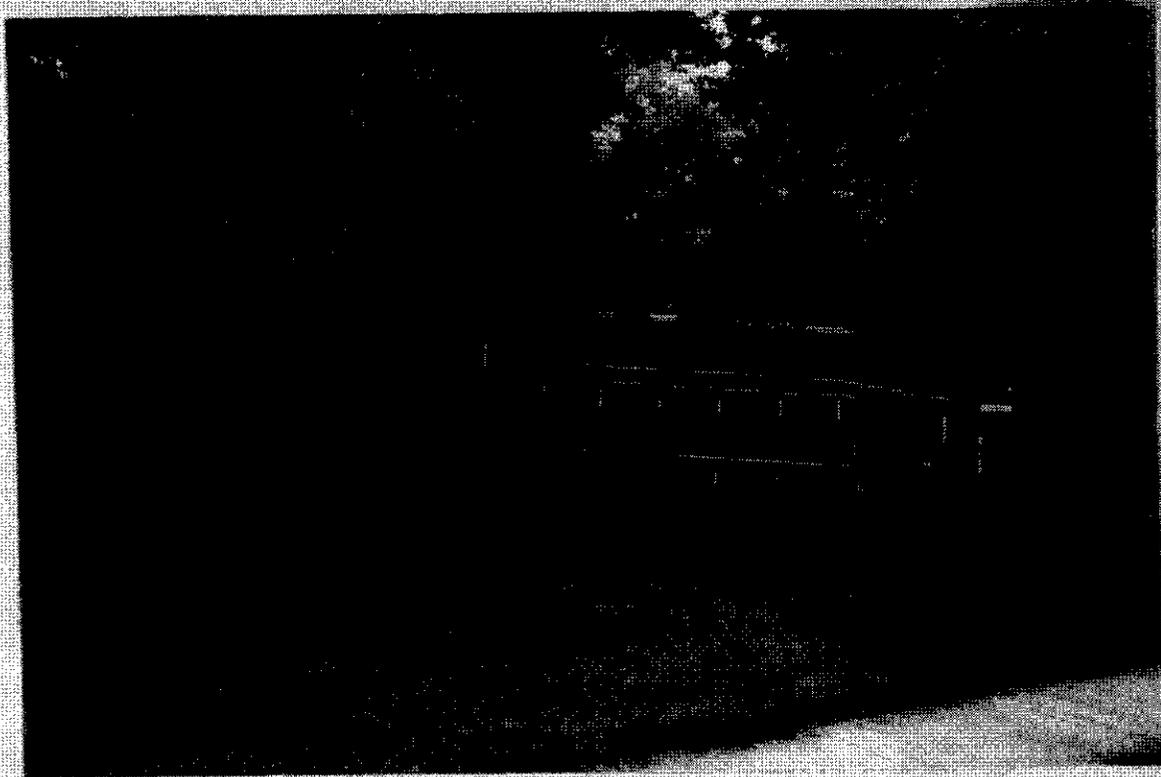
LEFT LOT OF THE HOUSE



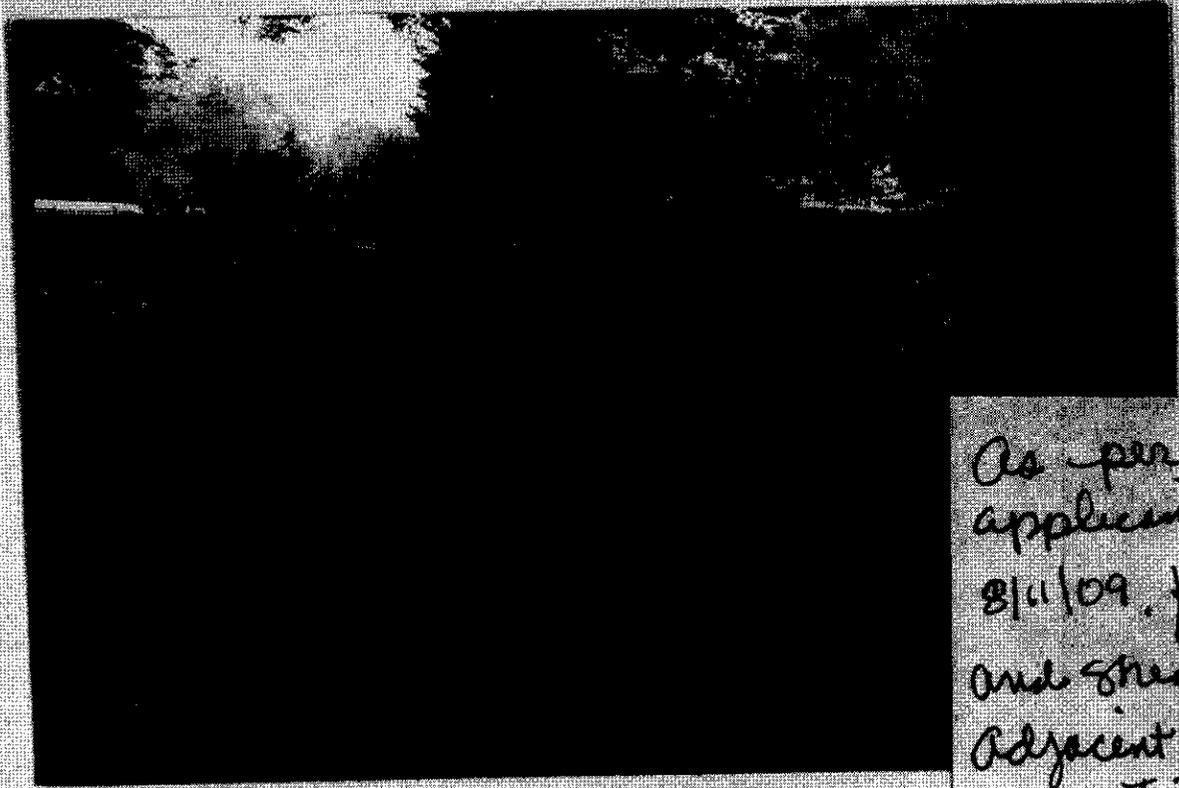
STREET VIEW



RIGHT SIDE VIEW OF THE HOUSE

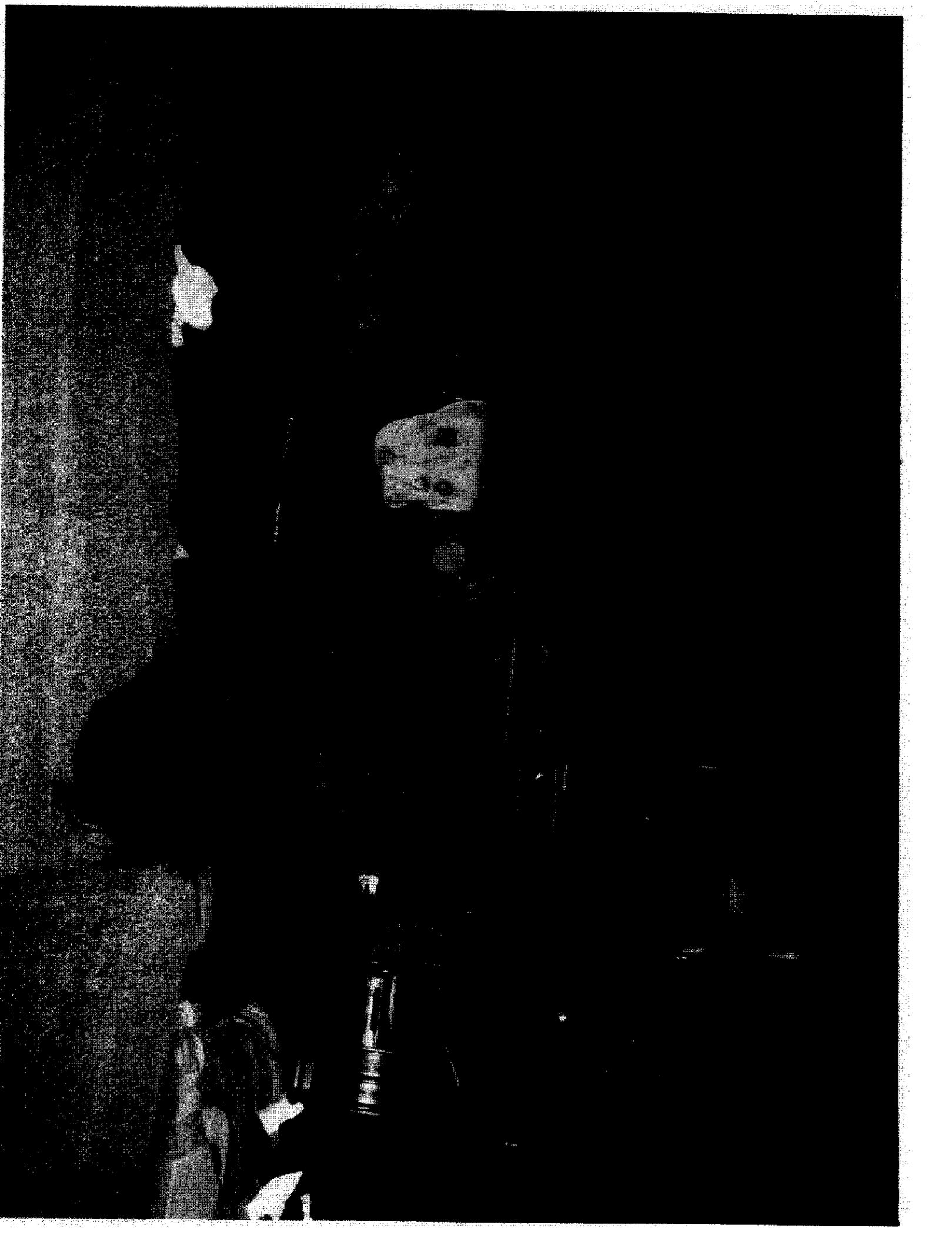


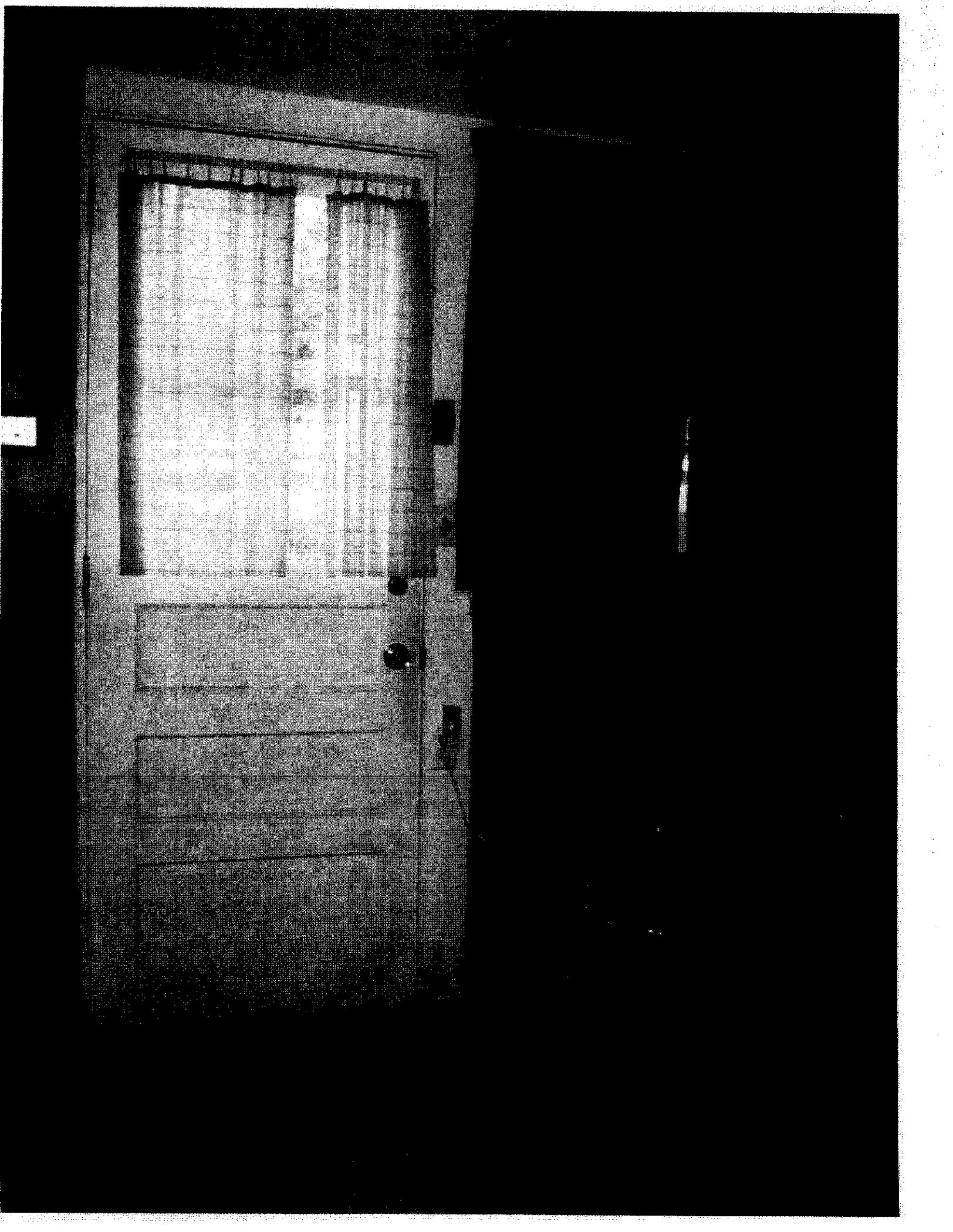
FRONT VIEW OF THE HOUSE

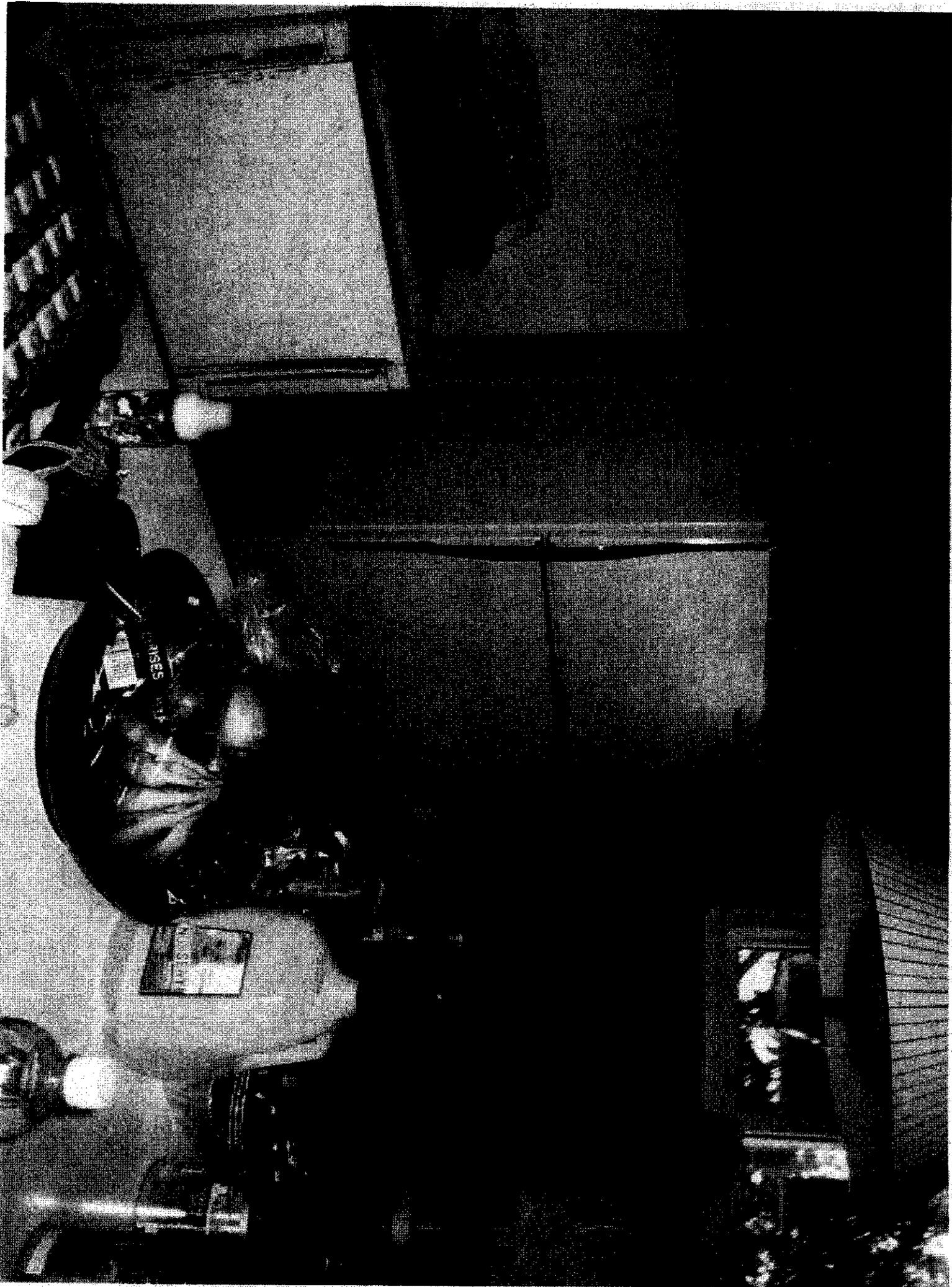


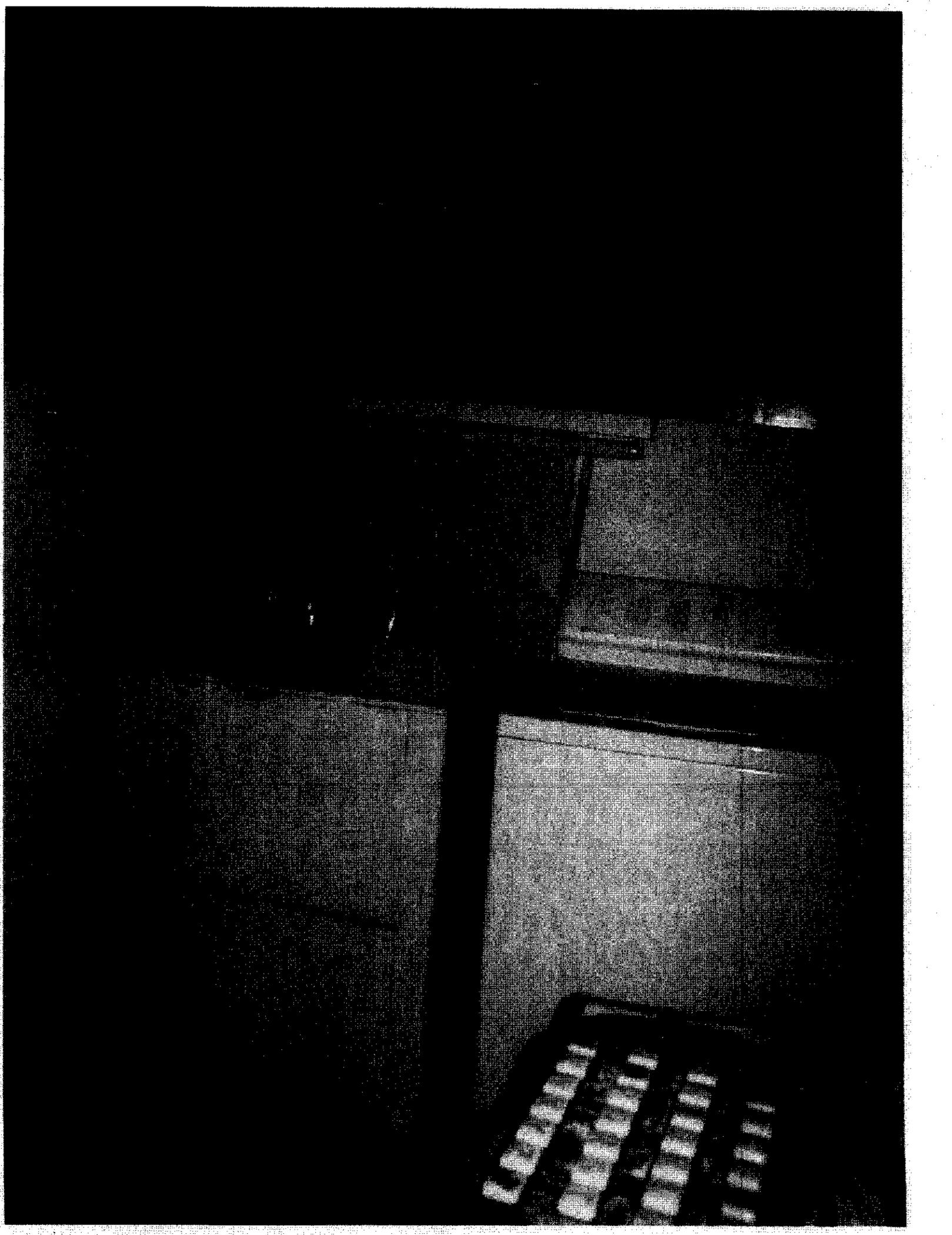
RIGHT LOT VIEW

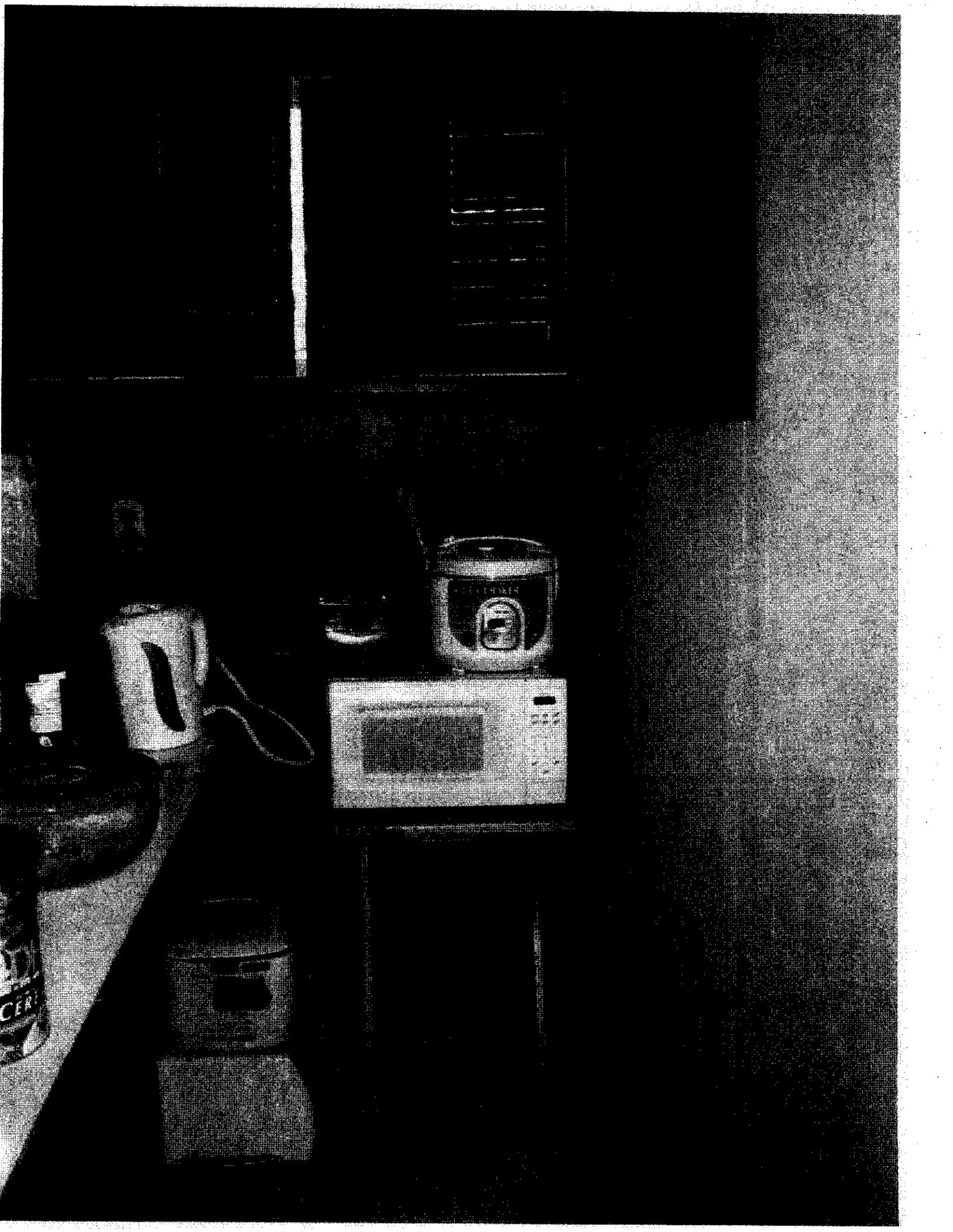
As per
applicant on
8/11/09, fence
and shed on
Adjacent
properties - do
not belong to
applicant. *sl*



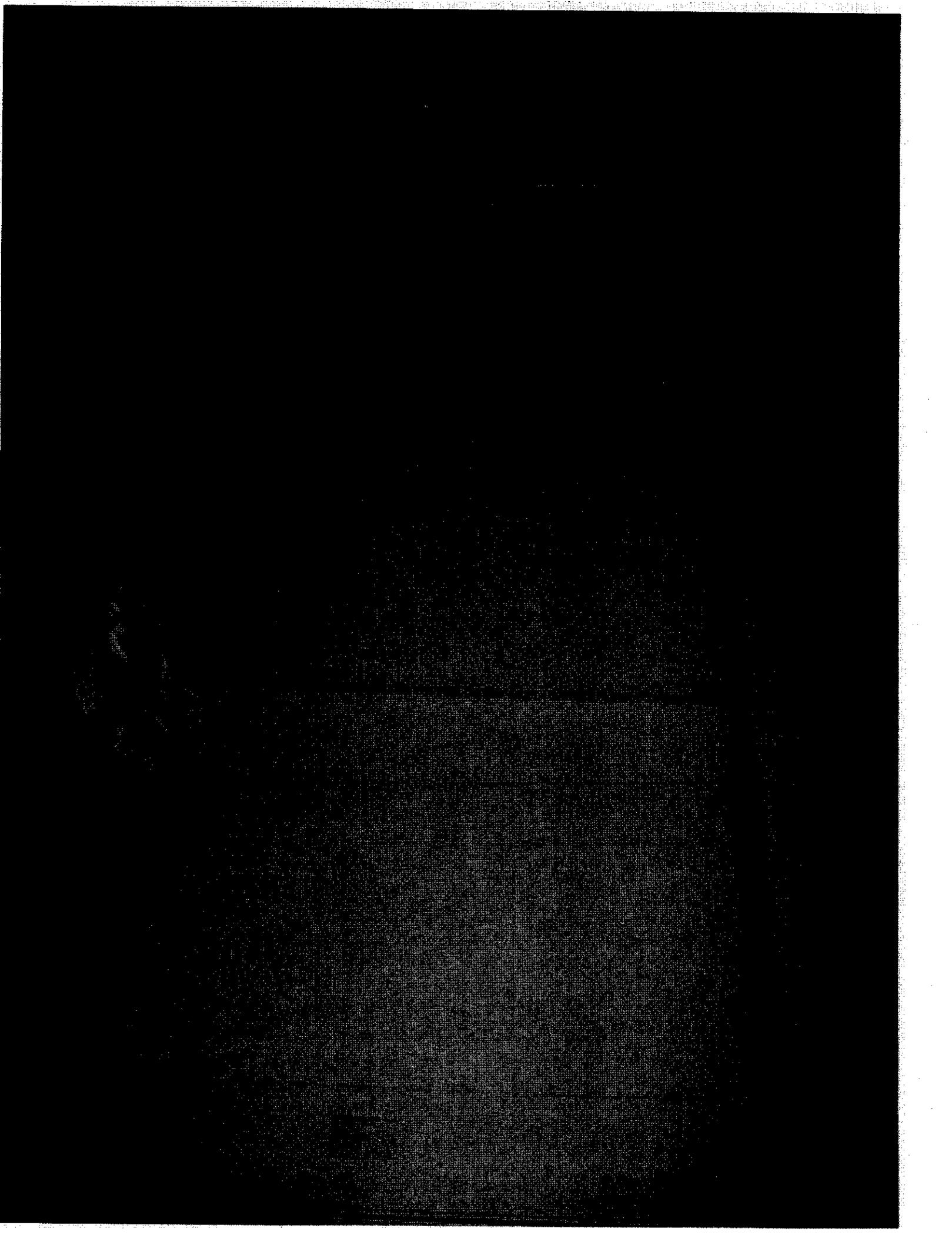






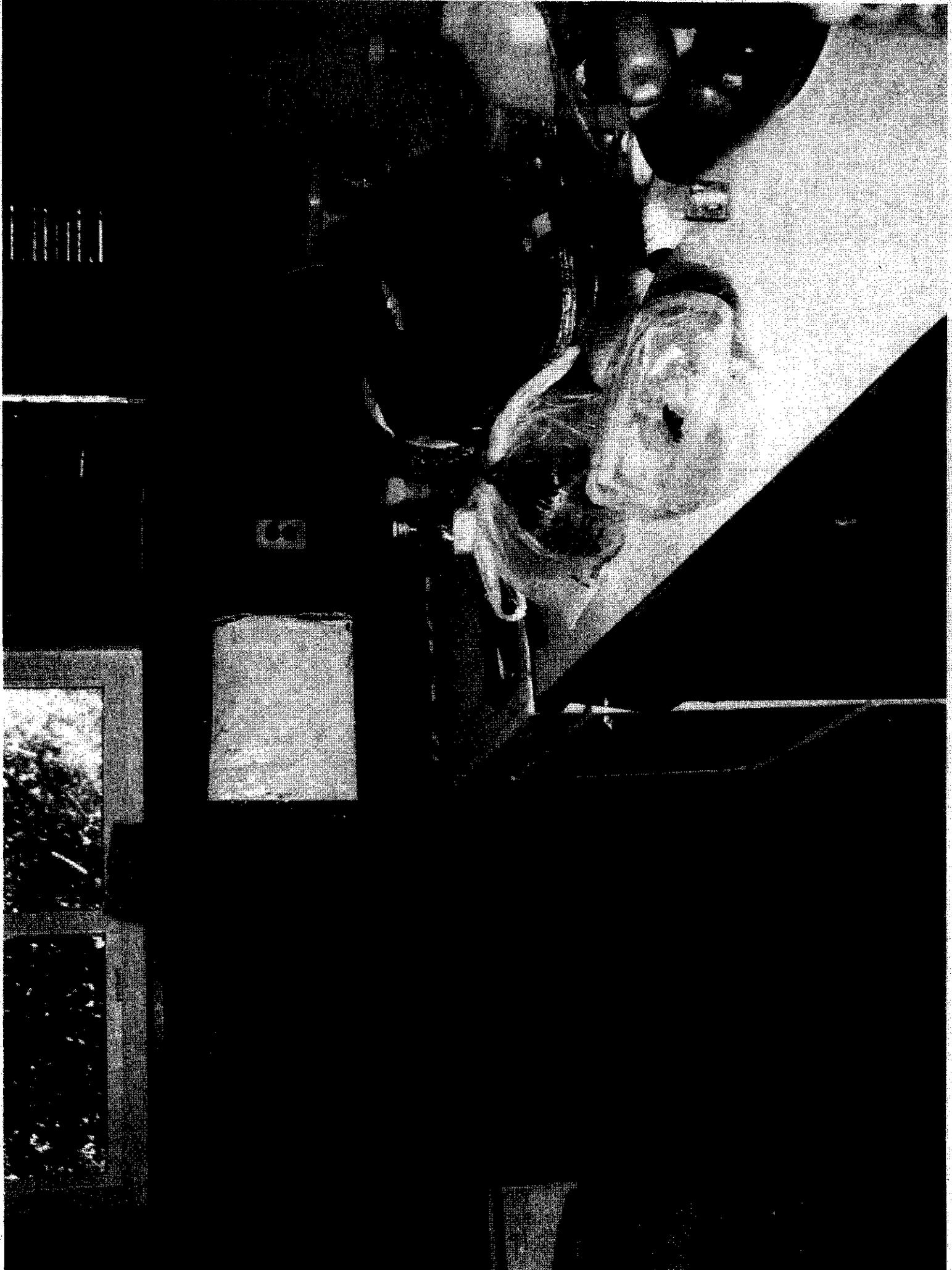












DESCRIPTION OF THE APPLICATION

The applicant is requesting a special permit for an accessory dwelling unit within the basement of the existing dwelling.

Size of Principal Dwelling:

2,424.7 square feet

Size of Accessory Dwelling Unit:

1,116.7 square feet (46% the size of the principal dwelling)

Lot Size:

11,717 square feet

LOCATION AND CHARACTER

Existing Site Description: The 11,717 square foot lot is developed with a split level with basement, single family detached dwelling. Vehicular access is provided via a paved driveway from Nevius Street. Parking is provided by the existing driveway and also by a covered carport. There is little change in topography across the lot; however, significant portions of the basement are above grade all around the dwelling. The perimeter of the house is planted with foundation vegetation and large trees are scattered throughout the lot.

Surrounding Area Description:

Direction	Use	Zoning
North	Single Family Detached Dwellings	R-3
South	Single Family Detached Dwellings	R-3
East	Single Family Detached Dwellings	R-3
West	Single Family Detached Dwellings	R-3

BACKGROUND

A Notice of Violation (NOV) was issued on May 21, 2009 for the establishment of multiple dwelling units on the subject property. A copy of the NOV can be found in Appendix 4.

The Board of Zoning Appeals (BZA) has heard the following applications in the vicinity of the property:

- Special Permit SP 2009-MA-097, approved on January 6, 2010, on Tax Map Number 61-1 ((13)) 24, on 3321 Wilkins Drive, zoned R-3, directly west and in the same neighborhood block of the subject property to permit an accessory dwelling unit.
- Special Permit SP 2009-MA-088, denied on November 17, 2009, on Tax Map Number 61-2 ((4)) 12, on 3215 Hallran Road, zoned R-3, north of the subject property to permit an accessory dwelling unit.

COMPREHENSIVE PLAN PROVISIONS

Plan Area: Baileys Planning District; Area III
Planning Sector: Barcroft Community Planning Sector (B5)
Plan Map: Residential Development
ANALYSIS

Special Permit Plat (Copy at front of staff report)

Title of SP Plat: House Location Survey, Lot 21A, First Addition to Aura Heights

Prepared By: Andrew L. Westerman, Absolute Surveys Inc., dated June 19, 2002, signed through July 1, 2002.

Proposed Use

The applicant is requesting approval of a special permit for an accessory dwelling unit within the basement of the existing dwelling to remain. The accessory dwelling unit will encompass the entire basement; which includes two bedrooms, one bathroom, a living room area, storage area and a full kitchen; thus comprising 46% percent of the total square feet in the dwelling. The resident of the accessory dwelling unit will be over 55 years of age as stated by the applicant in their statement of justification (Appendix 3). The driveway and carport will accommodate at least three parking spaces.

Land Use Analysis

The Comprehensive Plan states that "The Concept for Future Development recommends that the areas of the Barcroft Planning Sector outside the Seven Corners and Baileys Crossroads Community Business Centers (CDC) develop as Suburban Neighborhoods."

The neighborhood in which the application property is located is outside the CDC and is considered a suburban neighborhood. Therefore the application property is in conformance with the Plan language.

ZONING ORDINANCE PROVISIONS

Special Permit Requirements

- 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

This special permit is subject to Sects. 8-006, 8-903 and 8-918 of the Zoning Ordinance as referenced above, a copy of which is included in Appendix 5. Subject to development conditions, the special permit must meet these standards.

Standard 3 within Section 8-918 of the Zoning Ordinance specifically states that the accessory unit shall not exceed 35% of the gross floor area of the existing dwelling. The accessory dwelling unit is currently proposed to encompass the entire basement for a total size of 1,116.7 square feet; this encompasses 46% of the dwelling. Even if the storage area were not to be utilized as part of the accessory unit (based on the dimensions provided on the floor plan), the accessory unit would still comprise 37.7 % of the dwelling. However, it should be noted that the lengths and widths provided on the floor plan of the basement drawn by the applicant are not consistent from one side of the dwelling to the other. Therefore, when calculating the square footages and percentages, staff took into account the largest dimensional size attained from the floor plan. Based on these dimensions, the application does not meet this provision.

CONCLUSIONS AND RECOMMENDATIONS

Staff believes that all applicable standards for the accessory dwelling unit as outlined in Sects. 8-006, 8-903 and 8-918 have not been met as outlined above. Should the BZA take action to approve SP 2009-SP-109, staff recommends doing so with adoption of the proposed development conditions contained in Appendix 1 which would require the size of the accessory dwelling unit to be reduced though staff is not sure how this could be accomplished. Staff therefore recommends **denial** of SP 2009-SP-109.

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. Applicant's Affidavit
3. Applicant's Statement of Justification
4. Notice of Violation
5. Applicable Zoning Ordinance Provisions

PROPOSED DEVELOPMENT CONDITIONS**SP 2009-MA-109****February 3, 2010**

If it is the intent of the Board of Zoning Appeals to approve SP 2009-MA-109 located at Tax Map 61-2 ((7)) 21A, 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 for the accessory dwelling unit is granted to the applicant only, Phan So Huynh, and is not transferable without further action of this Board, and is for the location indicated on the application, 3322 Nevius Street (11,717 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 Andrew L. Westerman, Absolute Surveys Inc., dated June 19, 2002, signed through July 1, 2002, 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 which states in part that one of the dwelling units shall be occupied by a person or persons who qualify as elderly (55 years of age or older) and/or permanently and totally disabled.
5. The accessory dwelling unit shall be reduced in size or reconfigured to comprise no more than 35% of the principal dwelling. Prior to approval of a building permit as referenced in Condition 6, a floor plan certified by a licensed architect, surveyor or engineer which accurately depicts the dimensions of the basement and calculations shall be submitted to show that the size of the accessory unit shall not exceed 35% of the gross floor area of the principal dwelling unit in accordance with Section 8-918 of the Zoning Ordinance.
6. Prior to occupancy of the accessory dwelling unit, all applicable building permits and final inspections for the kitchen and basement construction shall be obtained for the accessory dwelling unit.
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. Parking shall be provided on site 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.

Application No.(s): SP 2009-MA-109
 (county-assigned application number(s), to be entered by County Staff)

SPECIAL PERMIT/VARIANCE AFFIDAVIT

DATE: 07/17/09
 (enter date affidavit is notarized)

I, PHAN SO HUYNH, 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 10506a

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)
PHAN S HUYNH	3322 Nevius ST Falls Church, VA 22041	Applicant/ Title Owner
CHACH D HUYNH	3322 Nevius ST Falls Church, VA 22041	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): SP 2009-MA-109
(county-assigned application number(s), to be entered by County Staff)

Page Two

SPECIAL PERMIT/VARIANCE AFFIDAVIT

DATE: 7/17/09
(enter date affidavit is notarized)

105016a

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): SP 2009-MA-109
(county-assigned application number(s), to be entered by County Staff)

Page Three

SPECIAL PERMIT/VARIANCE AFFIDAVIT

DATE: 7/17/09
(enter date affidavit is notarized)

105016a

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):

SP 2009-MA-109
(county-assigned application number(s), to be entered by County Staff)

Page Four

SPECIAL PERMIT/VARIANCE AFFIDAVIT

DATE: 7/17/09
(enter date affidavit is notarized)

1050/lea

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): SP 2009-MA-109
(county-assigned application number(s), to be entered by County Staff)

SPECIAL PERMIT/VARIANCE AFFIDAVIT

DATE: 7/17/09
(enter date affidavit is notarized)

105016a

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)

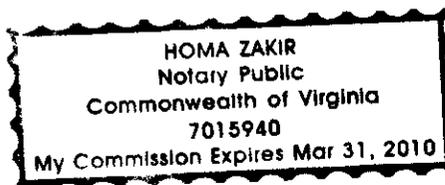
Phan / Chach
[x] Applicant [] Applicant's Authorized Agent

PHAN S HUYNH / CHACH D HUYNH
(type or print first name, middle initial, last name, and title of signee)

Subscribed and sworn to before me this 17 day of July, 2009, in the State/Comm. of VA, County/City of Fairfax.

[Signature]
Notary Public

My commission expires: 3/31/10



RECEIVED
Department of Planning & Zoning

NOV 04 2009

Zoning Evaluation Division

Attention to Ms. Virginia Ruffner

Phan Huynh

3322 Nevius St, Falls Church, Va 22041

571-215-6292

Fairfax County Zoning Evaluation Division

Department of Planning and Zoning

12055 Government Center Parkway, Suite 801, Fairfax, VA 22035

Fairfax County Zoning Evaluation Division Department of Planning and Zoning to whom it may concern:

This letter is a respond in order to clarify my statement of justification that apparently was not well addressed in my permit application request.

Section 8-918 of the zoning ordinance,

1. The house is around 1260 SQ. FT.
2. The accessory dwelling unit is located at lower level of the house, and it is around 293 SQ. FT. This includes bedroom, kitchen and bathroom.
3. The gross floor area of an accessory dwelling unit is around 23.25% of total

Your consideration is our appreciated.

Sincerely



Phan Huynh

Phan Huynh
3322 Nevius St
Falls Church, Va 22041
571-215-6292

RECEIVED
Department of Planning & Zoning

JUN 11 2009

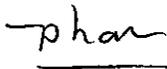
Zoning Evaluation Division

Fairfax County Zoning Evaluation Division
Department of Planning and Zoning
12055 Government Center Parkway, Suite 801
Fairfax, VA 22035

Dear Fairfax County Zoning Evaluation Division
Department of Planning and Zoning,

The reason for this letter is to request the county to allow us to keep the kitchen in the basement. This kitchen was built by the previous owner and it's currently use by my father, Minh Van Huynh, who is a 81 year old man lives in the basement and needs the kitchen to prepare his meals. Included is the copy of his ID. Your consideration is appreciated.

Sincerely,



Phan Huynh

RECEIVED
Department of Planning & Zoning
JUN 11 2009
Zoning Evaluation Division

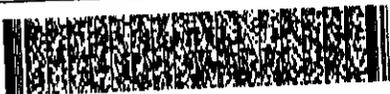
IDENTIFICATION CARD

CUSTOMER NO. B69-61-2041	HEIGHT 5-04	DOB 04-07-1928	
	SEX M	EXPIRES 04-30-2013	
	RESTRICTIONS 0	ISSUED ORI 12-19-2005	
NOT A LICENSE TO OPERATE A MOTOR VEHICLE			

HUY NH, MINH VAN
3322 NEVIUS STREET
FALLS CHURCH, VA 22041-1729
FALLS CHURCH



RESTRICTIONS	DEFINITIONS
	NOTICE Descriptions for restriction, class, and endorsement codes contained on the back of this document are Virginia specific.





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: May 21, 2009

CERTIFIED MAIL #: 70083230000313308719

CASE #: 200901585 **SR#:** 48726

SERVE: Phan So Huynh
Chach So Huynh
4916 Augusta Drive
Springfield, VA 22150

LOCATION OF VIOLATION 3322 Nevius Street
Falls Church, VA 22041-1729
Tax Map #: 0612 07 0021A
Zoning District: R-3

Dear Property Owners:

An inspection of the above referenced property on May 12, 2009 revealed the following violations of the Fairfax County Zoning Ordinance.

§ 2-501 Excessive Dwelling Units:

The inspection revealed there are two complete and separate dwellings in this single family dwelling unit on the above-referenced property. Part 3 of Article 20 of the 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.

Therefore, the presence of more than one dwelling unit on the above-referenced property is in violation of Sect. 2-501 of the 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 829
Fairfax, Virginia 22035-5508
Phone 703-324-1300 FAX 703-324-1343
www.fairfaxcounty.gov/dpz/



You are hereby directed to clear this violation within fifteen (15) days of the date of this notice. Compliance can be achieved as follows:

-
- Removing, on a permanent basis, all interior door locks that prevent the free and unfettered access to all common living areas or which may separate different levels of the structure; and
 - Removing, on a permanent basis, all but one kitchen located in the dwelling to include: the ovens, microwave, ranges, sinks, cabinets, countertops, refrigerators, and freezers or combinations thereof; all other appliances and accoutrements used or intended for use for cooking or eating, and all plumbing, electrical, and gas connections and piping; and
 - Utilities referenced above for the kitchen to be demolished are to be capped and sealed in the wall cavities; and
 - Ceasing, on a permanent basis, the use of all but one (1) dwelling unit, on the property, and restoring the structure such that it contains no more than one (1) dwelling unit.
-

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)324-1398 or 703-324-1300.

Sincerely,



Victoria Dzierzek

Property Maintenance/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.

8-918 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.