



APPLICATION ACCEPTED: January 5, 2010  
DATE OF PUBLIC HEARING: March 10, 2010  
TIME: 9:00 a.m.

# County of Fairfax, Virginia

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March 3, 2010

## STAFF REPORT

**SPECIAL PERMIT APPLICATION NO. SP 2010-LE-004**

### LEE DISTRICT

**APPLICANT/OWNER:** W.M. (Jack) Jones, Trustee under the Jones Living Trust

**LOCATION:** 3401 Austin Court

**SUBDIVISION:** Kings Landing

**TAX MAP:** 92-2 ((24)) 64

**LOT SIZE:** 11,147 square feet

**ZONING:** R-4

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

**SPECIAL PERMIT PROPOSAL:** To permit reduction to minimum yard requirements based on errors in building locations to permit deck to remain 14.7 feet from a front lot line and to permit accessory storage structure to remain 1.5 feet and 1.9 feet from side lot lines and to permit fence greater than 4.0 feet in height to remain the 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:\dhedr\Special Permits\3-10 SP 2010-LE-004 Jones\SP 2010-LE-004 Jones, Trustee, staff report.doc Deborah Hedrick*

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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 2010-LE-004**

W.M. (JACK) JONES, TRUSTEE UNDER  
THE JONES LIVING TRUST

**CITY OF ALEXANDRIA**

LANDMARK

OLDE TOWNE ALEXANDRIA

OS HILL

PENN DANCE

BELLEVUE

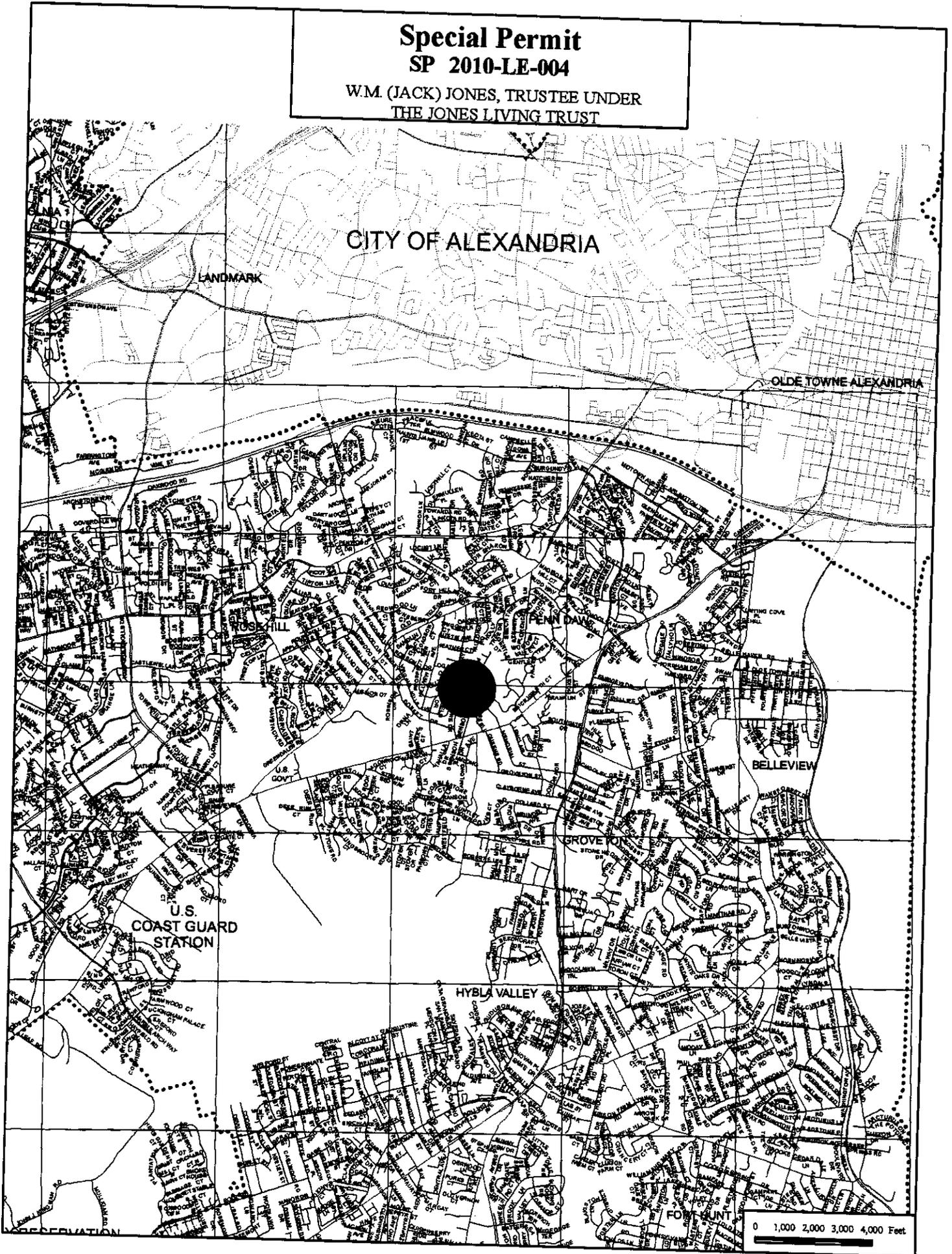
U.S.  
COAST GUARD  
STATION

HYBLA VALLEY

GROVE OF

FOUNTAIN

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



# Special Permit

## SP 2010-LE-004

W.M. (JACK) JONES, TRUSTEE UNDER THE  
JONES LIVING TRUST



**NOTES**

1. TAX MAP: 092-2-24-0064
2. ZONE: R-4 RESIDENTIAL 4 DU/AC
3. LOT AREA: 11,147 SQUARE FEET
4. MINIMUM REQUIRED YARDS:
  - FRONT: 30 FEET
  - SIDE: 10 FEET
  - REAR: 25 FEET
5. HEIGHTS:
  - DWELLING: 18 FEET
  - DECK: 7.5 FEET
  - SHED: 8.5 FEET
  - FENCES: AS NOTED
6. THIS PROPERTY IS SERVED BY PUBLIC WATER AND SEWER. ALL UTILITIES ARE UNDERGROUND.
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 NOTED AS PROPOSED.
9. THE SURVEYOR IS NOT AWARE OF ANY UTILITY EASEMENTS 25 FEET IN WIDTH OR GREATER AFFECTING THIS PROPERTY.
10. THERE ARE NO FLOOD PLAINS, FLOOD HAZARD AREAS OR RESOURCE PROTECTION AREAS ON THIS PROPERTY.

PLAT  
 SHOWING HOUSE LOCATION ON  
 LOT 64 SECTION 1-A  
**KINGS LANDING**  
 FAIRFAX COUNTY, VIRGINIA  
 SCALE: 1"=20'  
 MARCH 30, 2009  
 DECEMBER 12, 2009 (REVISED)

CASE NAME: JONES

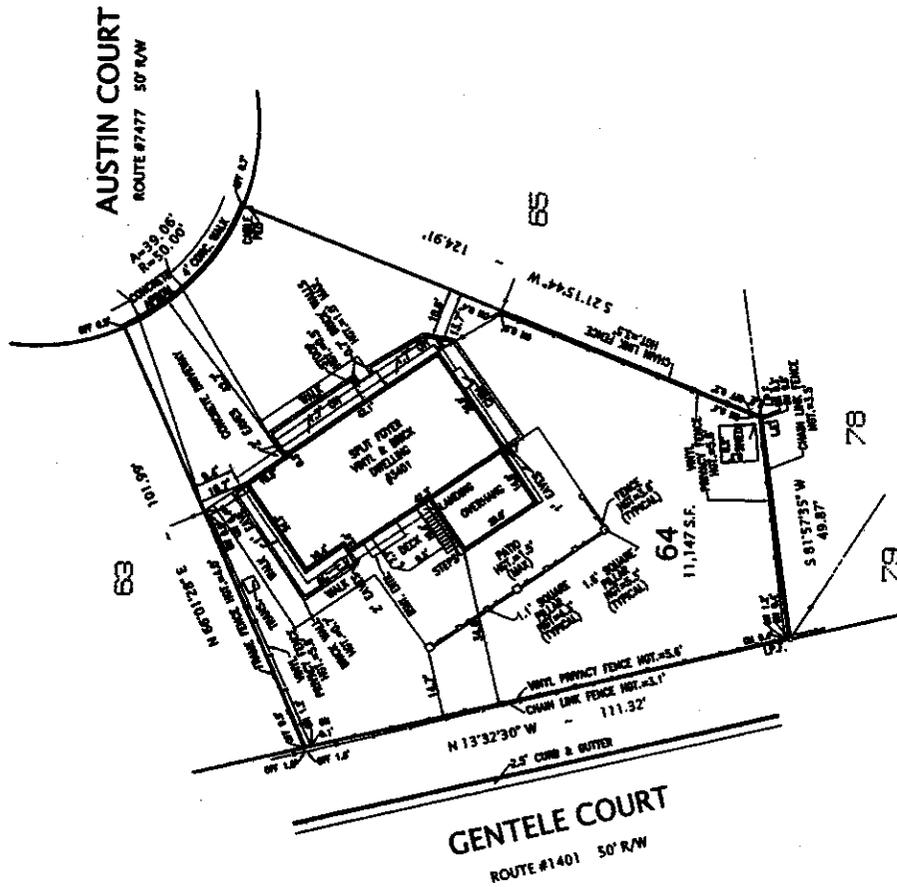
GRAPHIC SCALE: 1"=20'

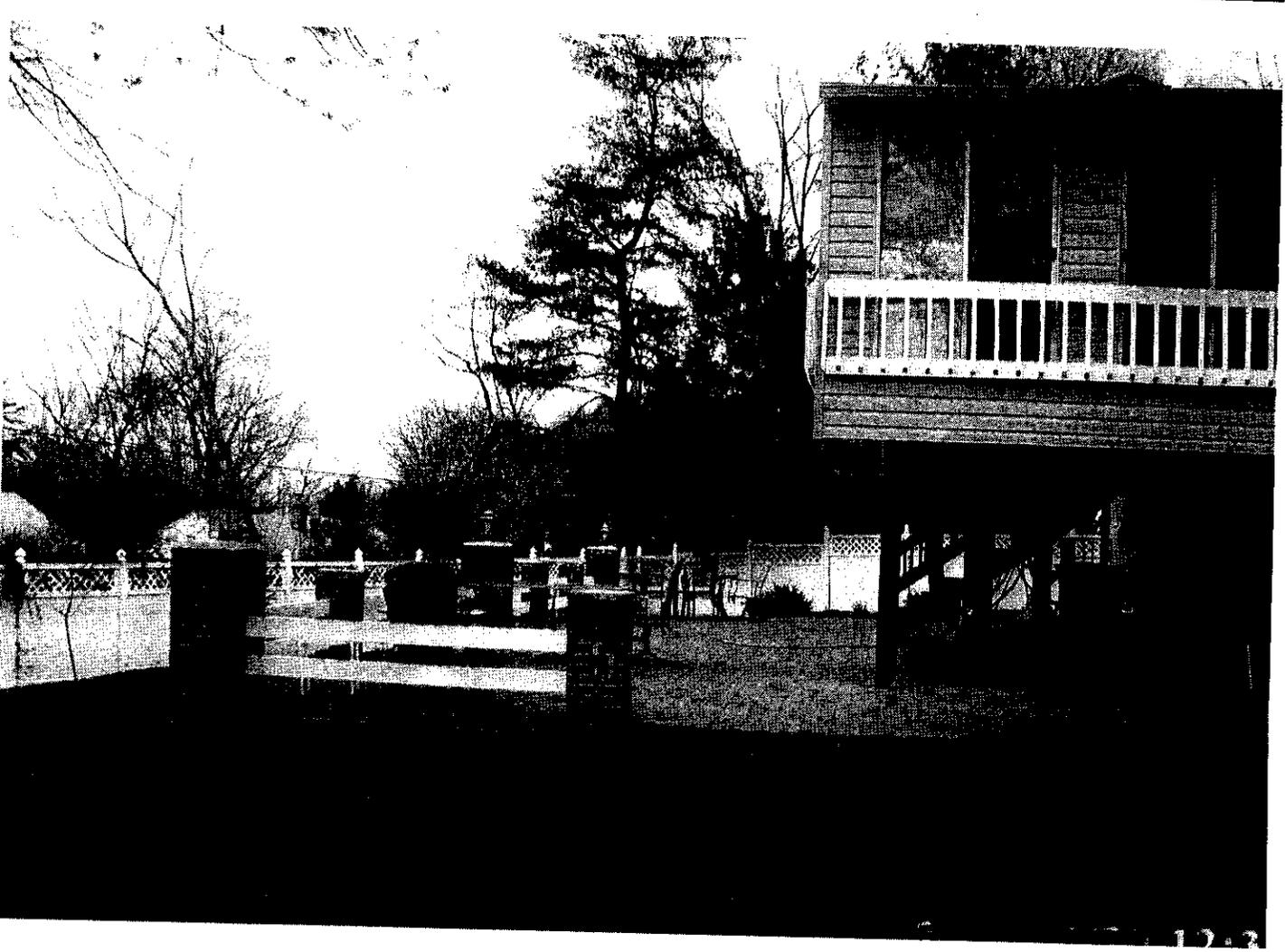
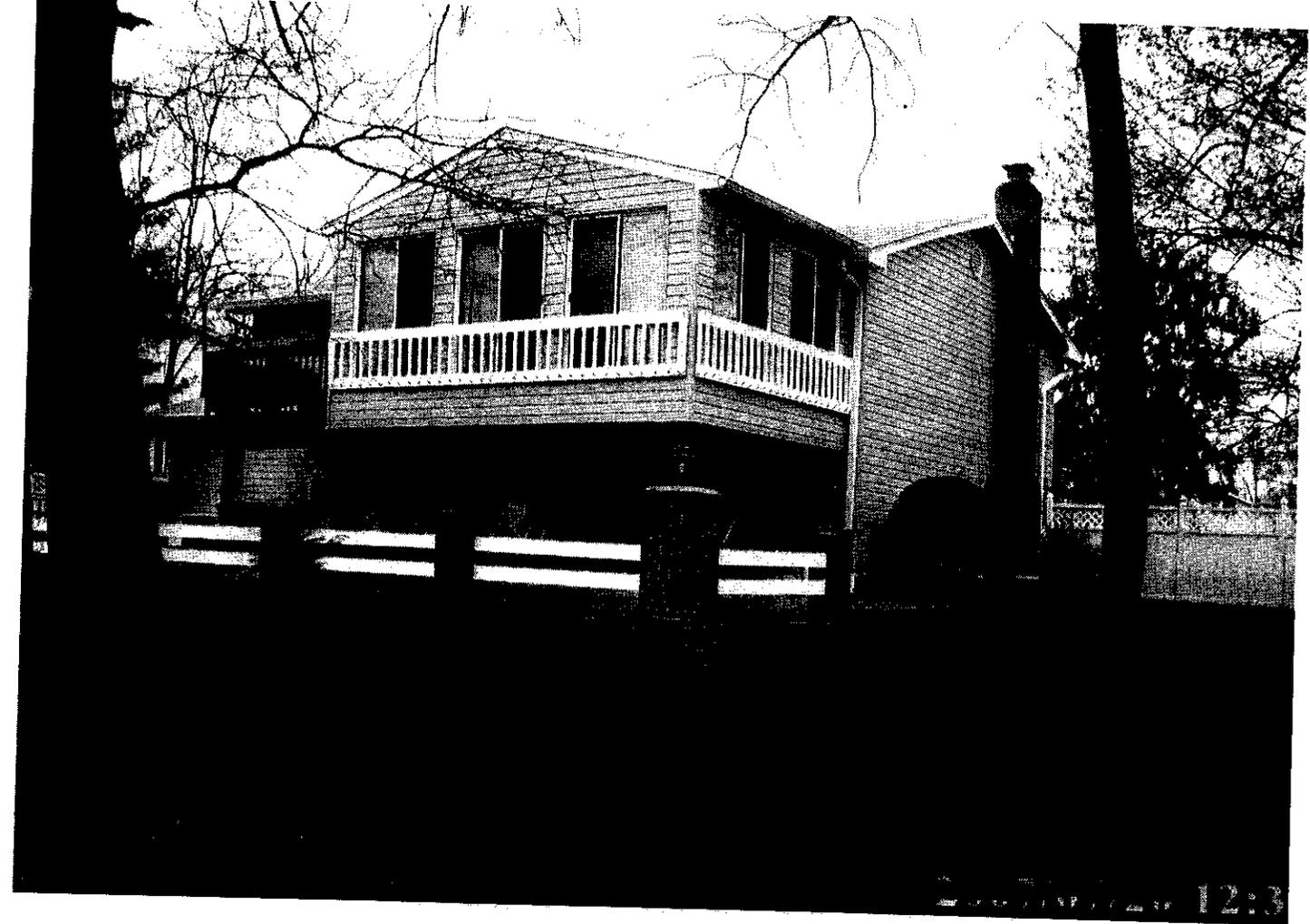
BY PERMISSION OF THE VIRGINIA CODE, THE COMMONWEALTH OF VIRGINIA, THE SURVEYOR'S OFFICE SHALL BE RESPONSIBLE FOR THE ACCURACY OF THE INFORMATION CONTAINED HEREIN. THE SURVEYOR'S OFFICE SHALL NOT BE RESPONSIBLE FOR THE ACCURACY OF THE INFORMATION CONTAINED IN ANY OTHER SOURCE.

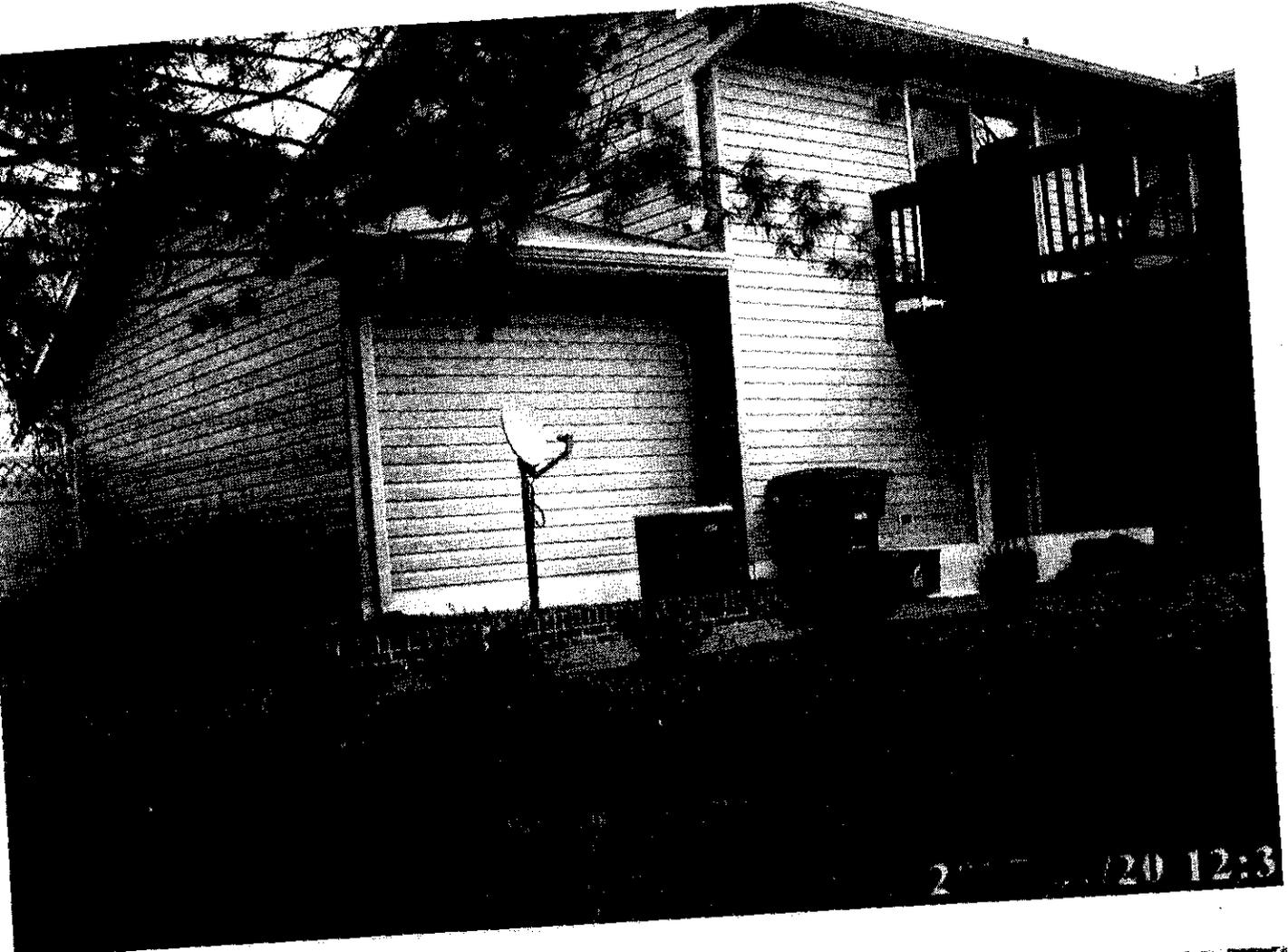
I HEREBY CERTIFY THAT THE PLAT OF THE ABOVE PROPERTY WAS PREPARED BY A LICENSED SURVEYOR AND THAT THE SURVEYOR HAS BEEN QUALIFIED BY A COURT OF RECORD AND IS A MEMBER OF THE VIRGINIA SURVEYORS ASSOCIATION.

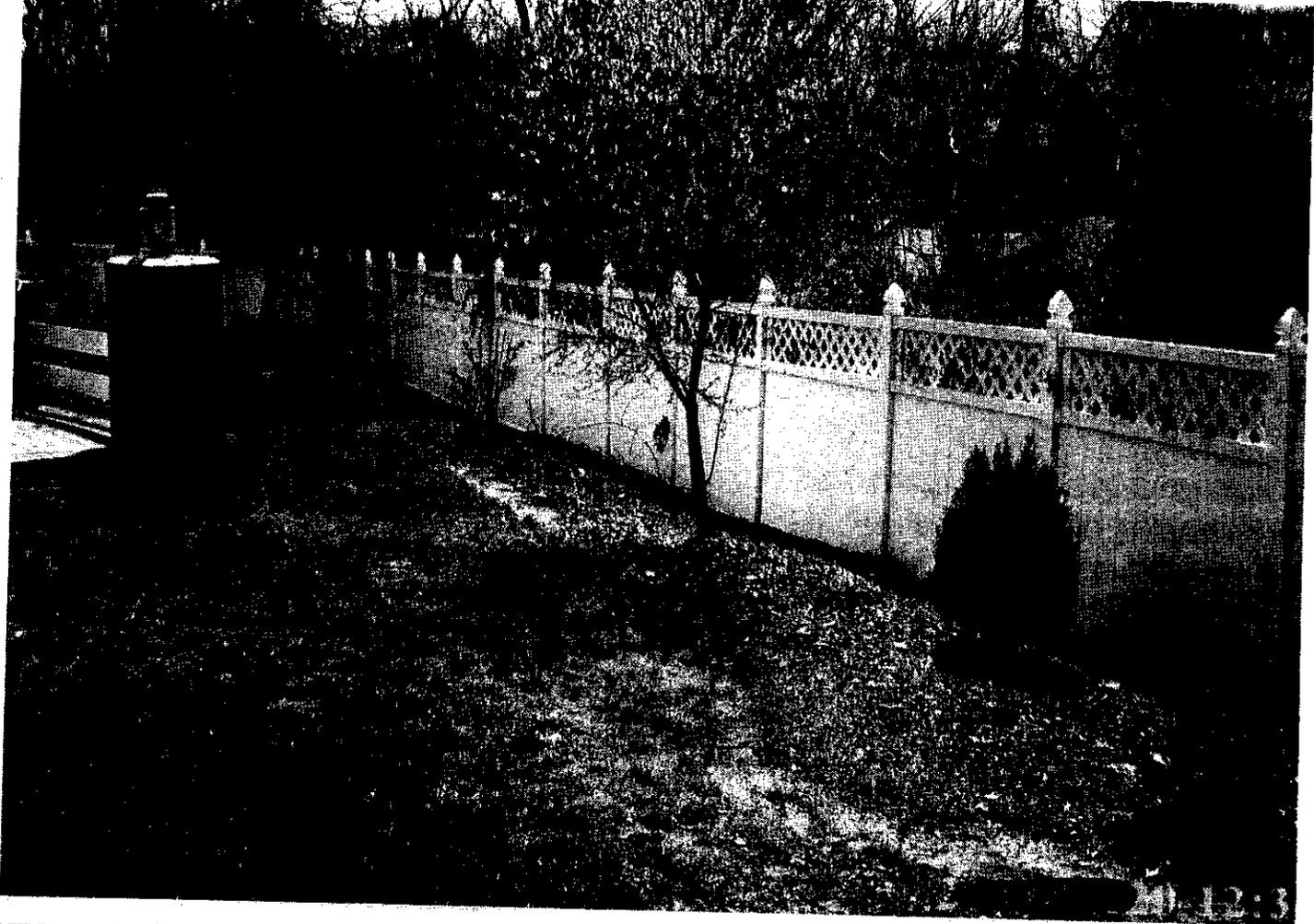
10/14/09

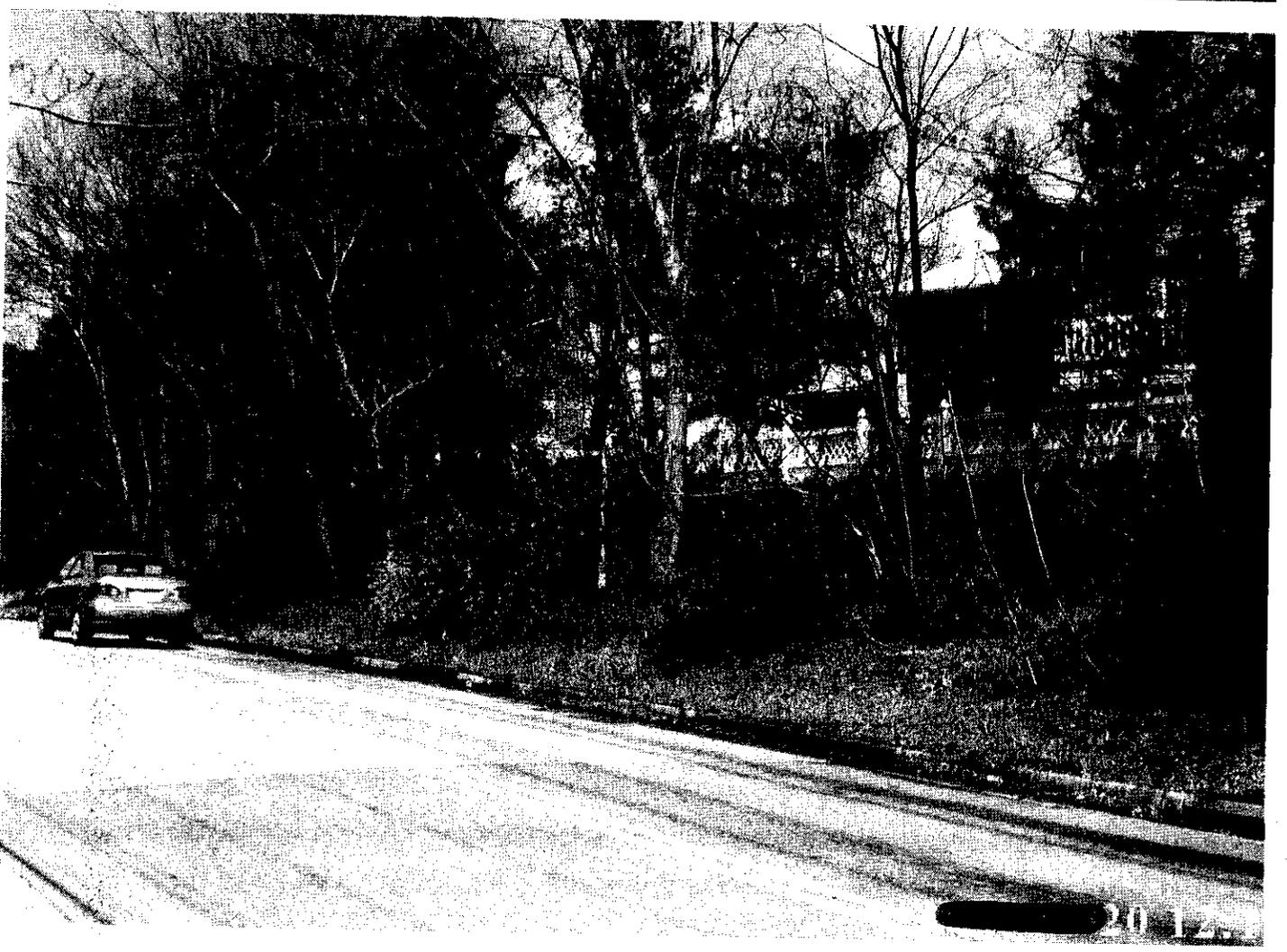
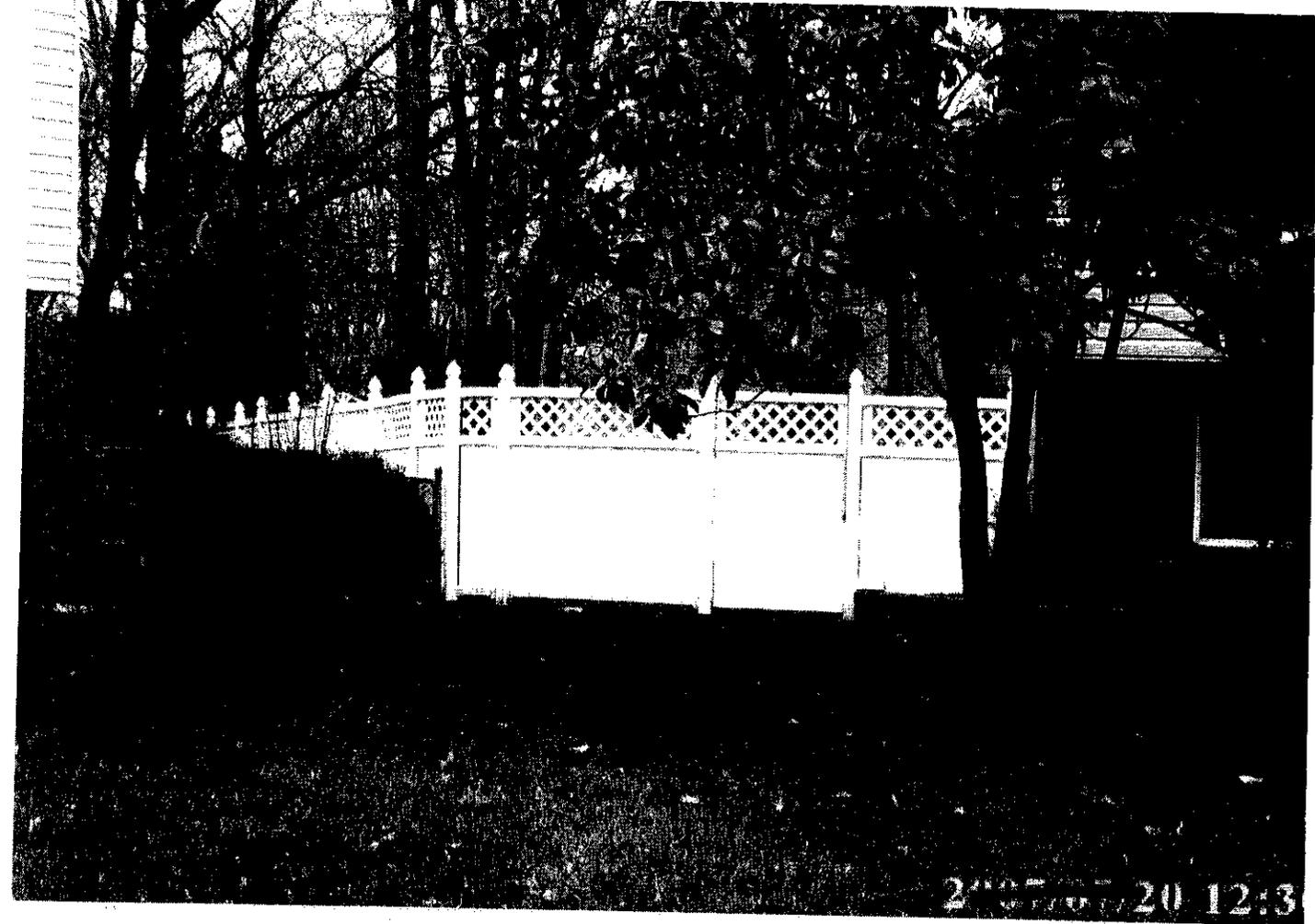
**ALEXANDRIA SURVEYS**  
 INTERNATIONAL, LLC  
 8310 NORTH LINDSEY LANE, ALEXANDRIA, VIRGINIA 22304  
 TEL. NO. 703-499-8815 FAX NO. 703-782-7704

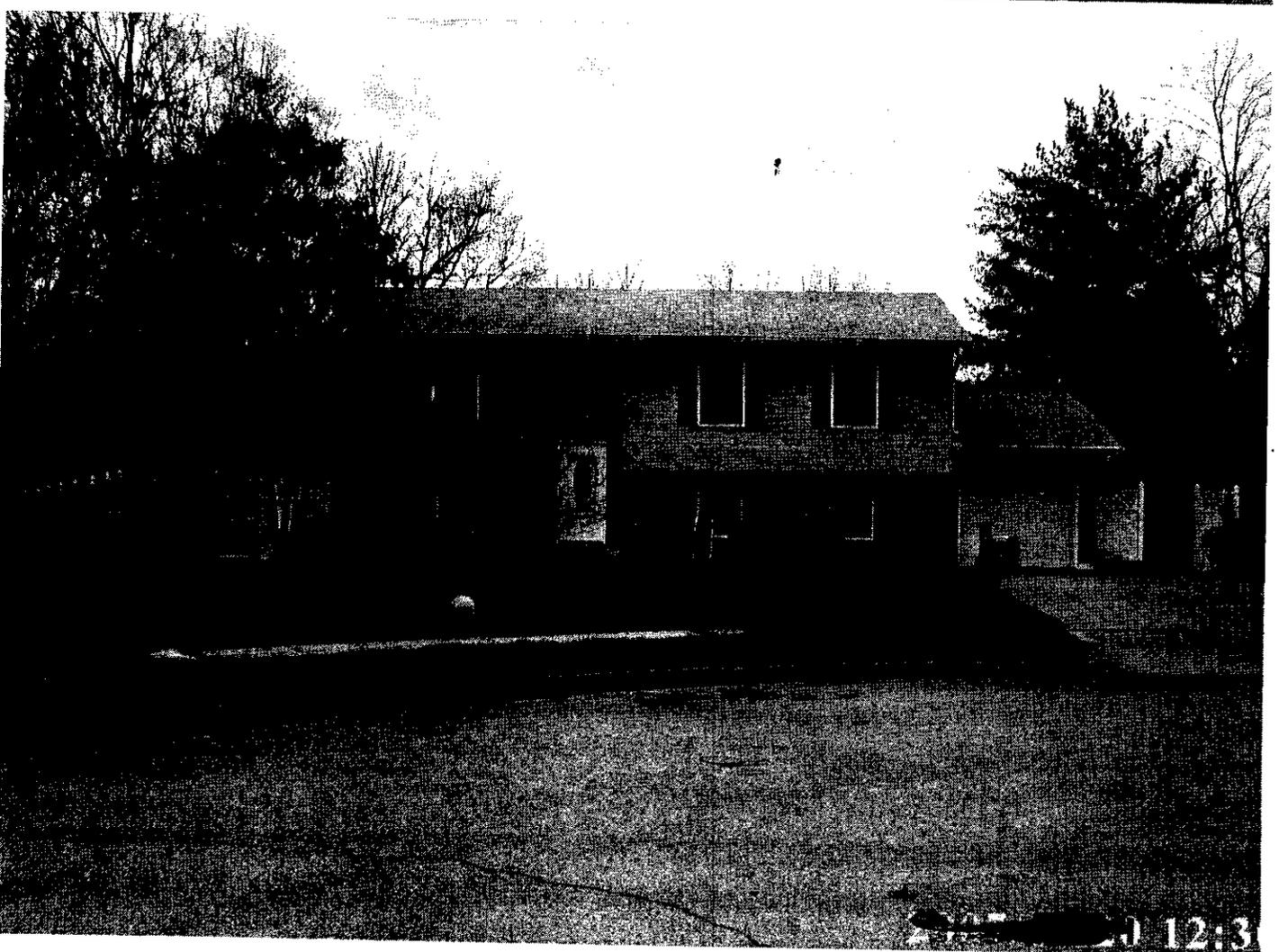












**DESCRIPTION OF THE APPLICATION**

The applicant is requesting approval of a reduction to the minimum yard requirements based on errors in building locations to permit 1) an existing 1.5 foot high open deck to remain 14.7 feet from a front lot line of a through lot; and 2) to permit an accessory storage structure, an 8.6 foot high shed, to remain 1.5 feet from the southern side lot line and 1.9 feet from the eastern side lot line.

	Structure	Yard	Min. Yard Req.*	Permitted Extension **	Min. Allowed	Structure Location	Amount of Error	Percent of Error
Special Permit #1	Deck	Front	30.0 feet	6.0 feet	24.0 feet	14.7 feet	9.3 feet	39%
Special Permit #2	Accessory Storage Structure (shed)	Side (southern)	10.0 feet	NA	10.0 feet	1.5 feet	8.5 feet	85%
Special Permit #2	Accessory Storage Structure (shed)	Side (eastern)	10.0 feet	N/A	10.0 feet	1.9 feet	8.1 feet	81%

\* Minimum yard requirement per Sect. 10-102

\*\* Permitted extension per Sect. 2-412

The applicant is also requesting a special permit to permit an existing fence greater than 4.0 feet in height to remain in a front yard. The vinyl privacy fence ranges in height from 5.6 feet to 5.8 feet and is located along the front lot line facing Gentele Court, which serves as the applicant's rear yard. The Zoning Ordinance currently permits fences 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 Austin Court.

	Structure	Yard	Height Permitted By right	Maximum Height Requested	Modification Requested
Special Permit	Fence	Front	4.0 feet	5.8 feet	1.8 feet

**ANALYSIS OF THE APPLICATION**

- **Title of Plat:** Plat, Showing House Location on Lot 64, Section 1-A, Kings Landing
- **Prepared by:** Alexandria Surveys International, LLC, dated March 30, 2009, as revised through December 12, 2009
- **Building Permits required:** No, building permits would not have been required for the accessory storage structure since it does not exceed 150 square feet. The structure measures approximately 68 square feet in size. Also, building permits would not have been required for an at-grade patio or the fencing.
- **Errors Made by:** The applicant.

**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

**BACKGROUND**

Records indicate that the two-story, split foyer, single family detached dwelling was constructed in 1978, with an addition constructed in 1994. The applicant purchased the property in 1989 and states that he replaced an existing shed on site, in its current location, as well as installed the privacy fencing, and constructed the brick at-grade patio.

On March 3, 2009, a Notice of Violation (NOV) was issued to the applicant, which is attached as Appendix 4. The lot is deemed to be a through lot and has two public street frontages, one on Austin Court through which the driveway is accessed and one on Gentele Court.

On October 2, 2009, staff from the Zoning Administration Division deemed that the accessory storage structure did not meet the requirements set forth under Section 15.2-2307 of the Code of Virginia with regard to Vested Rights since the accessory storage did not require a building permit, nor does it appear on Tax Administration records. A copy of that determination is attached as Appendix 5.

The Board has heard the following similar special permit applications in the vicinity of the application site:

- Special Permit SP 2009-LE-061 was approved on October 27, 2009 for Tax Map 92-2 ((24)) 79, zoned R-4, at 3403 Sapphire Court, to permit a fence greater than 4.0 feet in height in a front yard and 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.
- Special Permit SP 2009-LE-054 was approved on October 29, 2009 for Tax Map 92-2 ((24)) 81, zoned R-4, at 3400 Sapphire Court, to permit a fence greater than 4.0 feet in height to remain in a front yard.
- Special Permit SP 2009-LE-039 was approved on August 4, 2009 for Tax Map 82-4 ((32)) 62, zoned R-4, at 3405 Austin Court, to permit a fence greater than 4.0 feet in height to remain in a front yard.
- Special Permit SP 2007-LE-019 was approved on May 15, 2007 for Tax Map 82-4 ((32)) 63, zoned R-4, at 3403 Austin Court, to permit fences greater than 4.0 feet in height to remain in front yards.

#### **ZONING ORDINANCE REQUIREMENTS (See Appendix 6)**

- 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)
- 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, staff suggests the BZA condition its approval by requiring conformance with the conditions set forth in Appendix 1 of this report, Proposed Development Conditions.

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

## **APPENDICES**

1. Proposed Development Conditions
2. Applicant's Affidavit
3. Applicant's Statement of Justification
4. Notice of Violation dated March 3, 2009
5. Zoning Administration determination dated October 2, 2009
6. Zoning Ordinance Provisions

**PROPOSED DEVELOPMENT CONDITIONS**

**SP 2010-LE-004**

**March 3, 2010**

1. This special permit is approved for the location of the deck (at-grade patio), accessory storage structure (shed) and fences (ranging from 5.6 feet to 5.8 feet in height) as shown on the plat prepared by Alexandria Surveys International, LLC, dated March 30, 2009 as revised through December 12, 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): SP 2010-LE-004  
 (county-assigned application number(s), to be entered by County Staff)

**SPECIAL PERMIT/VARIANCE AFFIDAVIT**

DATE: 09/11/2009  
 (enter date affidavit is notarized)

I, W.M. (Jack) Jones, Trustee under the Jones Living Trust, 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            105963

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 <b>BOLD</b> above)
W.M. (Jack) Jones, Trustee under the Jones Living Trust	3401 Austin Court Alexandria , VA 22310	<b>Applicant/Title Owner</b>
Jacqueline Abrams	242 Loch Circle Hampton, VA 23669	Living Trust Beneficiary
Matthew Abrams	242 Loch Circle Hampton, VA 23669	Living Trust Beneficiary
Sonja Adkison	3 Galveston Hampton, VA 23669	Living Trust Beneficiary
John Jack Jones	U.S. Navy Norfolk, VA	Living Trust Beneficiary
Rachell Pryor	3 Galveston Hampton, VA 23669	Living Trust Beneficiary
Lacey Jones	3 Galveston Hampton, VA 23669	Living Trust Beneficiary
Loretta Jackson	3401 Austin Court Alexandria , VA 22310	Living Trust Beneficiary
Dinesa Jackson	3401 Austin Court Alexandria , VA 22310	Living Trust Beneficiary
Shante Scott	3401 Austin Court Alexandria , VA 22310	Living Trust Beneficiary
Alexandria Surveys International, LLC	6210 N Kings Highway Alexandria, VA 22303	<b>Agent</b>
Rodney Root employee with Alexandria Surveys International, LLC (check if applicable)	6210 N Kings Highway Alexandria, VA 22303	<b>Agent</b>

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 2010-LE-004  
(county-assigned application number(s), to be entered by County Staff)

**SPECIAL PERMIT/VARIANCE AFFIDAVIT**

DATE: 09/11/2009  
(enter date affidavit is notarized)

105963

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):

SP 2010-LE-004

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

Page Three

**SPECIAL PERMIT/VARIANCE AFFIDAVIT**

DATE:

09/11/2009

(enter date affidavit is notarized)

105963

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 2010-LE-004  
(county-assigned application number(s), to be entered by County Staff)

**SPECIAL PERMIT/VARIANCE AFFIDAVIT**

DATE: 09/11/2009  
(enter date affidavit is notarized)

105963

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 2010-LE-004  
(county-assigned application number(s), to be entered by County Staff)

**SPECIAL PERMIT/VARIANCE AFFIDAVIT**

DATE: 09/11/2009  
(enter date affidavit is notarized)

105963

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)

W.M. Jones  
[X] Applicant

[ ] Applicant's Authorized Agent

W.M. (Jack) Jones, Trustee under the Jones Living Trust  
(type or print first name, middle initial, last name, and title of signee)

Subscribed and sworn to before me this 11 day of Sept 2009, in the State/Comm. of VA, County/City of Fairfax.

My commission expires: 04/30/10



W.K. Clavijo  
Notary Public

## SPECIAL PERMIT STATEMENT OF JUSTIFICATION

3401 Austin Court Alexandria, VA 22310  
Tax Map #:092 2 24 0064  
Zoning District: R-4

RECEIVED  
Department of Planning & Zoning

FEB 18 2010

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 September 1989. At the time of purchase a shed existed in the yard. I, the homeowner, replaced the existing shed with a new shed in the same general location. I was unaware that erecting the new shed would result in the structure being in violation of the zoning ordinance side yard distance requirement. The error in location exceeds ten percent of the measurement involved. As such, I am now requesting a Special Permit from the Board of Zoning Appeals.

I, the homeowner, had a six-foot high fence constructed 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 a privacy fence similar to others along this stretch of the road and I was unaware that having the fence constructed would result in the fence being in violation of the zoning ordinance front yard fence height requirement. As such, I am now requesting a Special Permit from the Board of Zoning Appeals.

I, the homeowner, had a lower level patio or deck constructed attached to the rear wall of the house. The builder was involved with more than one project on the property. There was a building permit at the time but it is not clear if the permit included this deck. I was unaware that having the deck constructed would result in the structure being in violation of the zoning ordinance front yard distance requirement. The error in location exceeds ten percent of the measurement involved. As such, I am 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 has vinyl siding. The fence is constructed of vinyl with metal inserts and has a white finish it is a privacy fence similar to many found in suburban neighborhoods in this county. The deck is mostly at grade but extends above grade as the yard slopes down. The deck surface is brick and there is a railing along areas that extend above grade.

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

I, the homeowner am seeking the Special Permit to permit the shed to remain in the side yard, the deck to remain in the front yard, and to permit a fence greater than 4.0 feet in height in a front yard. I feel that the reduction in the yard requirements 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 me 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 deck and shed. Thank you for your consideration in this matter.

Sincerely,

Jack W.M. Jones

Street File



# 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

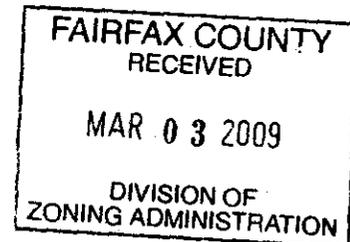
**DATE OF ISSUANCE:** March 3, 2009

**CERTIFIED MAIL #:** 7008 3230 0003 1330 7613

**CASE #:** 42926

**SERVE:** W. M. (Jack) Jones TR  
3401 Austin Court  
Alexandria, Virginia 22310-3101

**LOCATION OF VIOLATION:** 3401 Austin Court  
Kings Landing, Section 1A, Lot 64  
Tax Map Ref.: 92-2 ((24)) 64  
Zoning District: R-4  
Lot size: 11,147 square feet



Dear Jones:

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...

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/](http://www.fairfaxcounty.gov/dpz/)



W. M. (Jack) Jones

March 3, 2009

Page 2

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.

W. M. (Jack) Jones

March 3, 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)324-1313 or 703-324-1300.

Sincerely,

A handwritten signature in cursive script that reads "Roy V. Biedler".

Roy V. Biedler  
Senior Zoning Inspector



# County of Fairfax, Virginia

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

## Via Regular Mail

October 2, 2009

W. M. (Jack) Jones  
3401 Austin Court  
Alexandria, Virginia 22310

RE: Sect. 15.2-2307 of the Code of Virginia Determination for Shed  
3401 Austin Court  
Kings Landing, Lt. 64, Sec. 1A  
Tax Map Ref.: 92-2 ((24)) 64  
Zoning District: R-4

Dear Mr. Jones:

This letter is in response to your letter dated September 10, 2009 to Eileen McLane concerning an existing shed located in the southeastern portion of the above-referenced property. It is my understanding that you have filed a Special Permit application, which is pending applications acceptance, to permit a fence greater than 4.0 feet in height to remain in a front yard and a reduction in minimum yard requirements based on error in building location to permit an accessory storage structure to remain in its current location. The shed is 8.6 feet in height, is approximately 8' by 8' (64 square feet), and is located 1.5 feet and 2 feet from the side lot lines. Under Par. 10 of Sect. 10-104, accessory storage structures (sheds) that exceed 8.5 feet in height may not be located in any part of any minimum required side yard. The minimum required side yard for the R-4 District is 10 feet. As such, the shed does not meet the accessory structure locational requirements. There is no evidence in our files that a Building Permit has ever been issued for the shed; however a building permit is not required for a 64 square foot structure. In addition, the Department of Tax Administration records show that no accessory storage structures are listed on the tax records.

Under §15.2-2307 of the *Code of Virginia*, if (a) local government has issued a building permit, the structure was constructed in accordance with the building permit, and a certificate of occupancy was issued, or (b) the owner of the building has paid taxes for the structure for more than 15 years, the structure is not illegal and may remain. As no Building Permit has been issued for the shed and the shed is not listed in the tax records, §15.2-2307 is not applicable and the shed must either be removed, relocated to meet the locational criteria, or a Special Permit for an error in building location must be approved by the Board of Zoning Appeals. I would note that the currently filed Special Permit application, if approved, would address this issue.

---

Department of Planning and Zoning  
Zoning Administration Division  
Ordinance Administration Branch  
12055 Government Center Parkway, Suite 807  
Fairfax, Virginia 22035-5505  
Phone 703-324-1314 FAX 703-803-6372  
[www.fairfaxcounty.gov/dpz/](http://www.fairfaxcounty.gov/dpz/)

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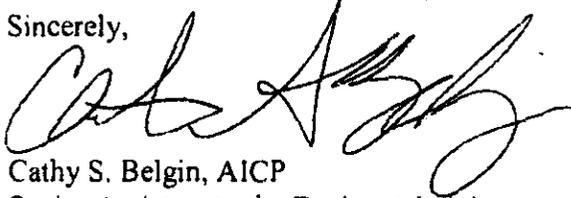
Mr. W. M. (Jack) Jones

October 2, 2009

Page 2

I trust this correspondence adequately responds to your request. If you have any additional questions, please feel free to contact me at 703-324-1314.

Sincerely,



Cathy S. Belgin, AICP  
Senior Assistant to the Zoning Administrator

CSB/

cc: Eileen M. McLane, Zoning Administrator  
Lorrie Kirst, Deputy Zoning Administrator for Ordinance Administration Branch  
Diane Johnson-Quinn, Deputy Zoning Administrator for Zoning Permit Review Branch  
Janet E. Coldsmith, Director, Real Estate Division, DTA

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# County of Fairfax, Virginia

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

## Vested Rights Determination under §15.2-2307 of the Code of Virginia

Property Tax Map Number:	92-2 ((24)) 64
Property Address:	3401 Austin Court
Requestor's Name:	Mr. W. M. (Jack) Jones
Requestors Address: (if different than above)	
Requestor's Phone Number:	703-778-5231
Current Zoning:	R-4
Magisterial District:	Lee
Subdivision Name/Section/Block/Lot No.:	Kings Landing, Lt. 64, Sec. 1A

### Written Description of Structure that may be vested under §15.2-2307 of the Code of Virginia

An 8.6 foot tall shed that is approximately 8 feet by 8 feet (64 square feet) and located approximately 1.5 feet from the southern side property line and 2 feet from the southeastern side property line. This information is obtained from the house location plat prepared by Alexandria Surveys, Inc. and dated March 30, 2009. There is no record of a building permit having been issued. (Note a building permit is not required for a 64 square foot structure.)

### Background Summary (check all that are applicable):

- A Building Permit has been issued.
- No evidence of a Building Permit having been issued.
- A Non-Residential Use Permit/Residential Use Permit has been issued or, when a Non-RUP/RUP is not required, evidence that the structure(s) has passed final inspection.
- Department of Tax Administration records indicate that the structure(s) has been taxed for at least 15 years.
- Department of Tax Administration records do not indicate that the structure(s) has been taxed for at least 15 years.

### Staff Determination:

- §15.2-2307 of the Code of Virginia is applicable and the structure(s) may remain; however, the structure(s) must be brought into compliance with the Virginia Uniform Statewide Building Code. The structure may not be replaced or enlarged unless the replacement or expansion complies with all regulations of the district in which located.



- §15.2-2307 of the Code of Virginia is applicable for the structure and the structure(s) may remain; however, §15.2-23071 is not applicable for the use of the structure. A separate letter explaining the status and use of the structure(s) will be issued.
- §15.2-2307 of the Code of Virginia is not applicable. A separate letter explaining the status of the structure(s) will be issued.

**Reviewer's Signature:**

Cathy S. Belgin, AICP

Senior Assistant to the Zoning Administrator

Zoning Administration Division, Department of Planning and Zoning

**Date:**

10/2/09

cc: Janet E. Coldsmith, Director, Real Estate Division, DTA  
Eileen M. McLane, Zoning Administrator  
Diane Johnson-Quinn, Deputy Zoning Administrator, for Zoning Permit Review Branch  
Virginia Ruffner, Applications Acceptance, Zoning Evaluation Division

## Langhorne, Marie

---

**From:** Rodney Root [rroot@alexandriasurveys.com]  
**Sent:** Thursday, October 08, 2009 10:04 AM  
**To:** Langhorne, Marie  
**Subject:** Special Permit for Jones

Hi Marie,

Mr. Jones had requested a determination for his shed to see if it would be "grandfathered" by state code section 15.2 2307. The response from DPZ ZAD OAD dated October 2 2009 states that 15.2 2307 is not applicable for this shed. Something about not pay taxes on it because it isn't listed in the tax records. Oh well, live and learn. We will just proceed now with the special permit for the shed and fence. Let me know if you want a copy of the determination letter or need anything else.

Rudy

Rodney Root (Rudy)  
Alexandria Surveys International  
6210 North Kings Highway  
Alexandria, Virginia 22303  
703-660-6615 ex 241

## **8-006 General Standards**

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

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

### **8-903 Standards For All Group 9 Uses**

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

1. All uses shall comply with the lot size and bulk regulations of the zoning district in which located, except as may be qualified below.
2. All uses shall comply with the performance standards specified for the zoning district in which located.
3. Before establishment, all uses, including modifications or alterations to existing uses, shall be subject to the provisions of Article 17, Site Plans, or other appropriate submission as determined by the Director.

**8-914 Provisions for Approval of Reduction to the Minimum Yard Requirements Based on Error in Building Location**

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

1. Notwithstanding Par. 2 of Sect. 011 above, all applications shall be accompanied by ten (10) copies of a plat and such plat shall be presented on a sheet having a maximum size of 24" x 36", and one 8 ½" x 11" reduction of the plat. Such plat shall be drawn to a designated scale of not less than one inch equals fifty feet (1" = 50'), unless a smaller scale is required to accommodate the development. Such plat shall be certified by a professional engineer, land surveyor, architect, or landscape architect licensed by the State of Virginia and such plat shall contain the following information:
  - A. Boundaries of entire property, with bearings and distances of the perimeter property lines and of each zoning district.
  - B. Total area of the property and of each zoning district in square feet or acres.
  - C. Scale and north arrow, with north, to the extent feasible, oriented to the top of the plat and on all supporting graphics.
  - D. Location of all existing structures, with dimensions, including height of any structure and penthouse, and if known, the construction date(s) of all existing structures.
  - E. All required minimum yards to include front, side and rear, and a graphic depiction of the angle of bulk plane, if applicable, and the distances from all existing structures to lot lines.
  - F. Means of ingress and egress to the property from a public street(s).
  - G. For nonresidential uses, the location of parking spaces, indicating minimum distance from the nearest property line(s).
  - H. If applicable, the location of well and/or septic field.
  - I. For nonresidential uses, a statement setting forth the maximum gross floor area and FAR for all uses.
  - J. Location of all existing utility easements having a width of twenty-five (25) feet or more, and all major underground utility easements regardless of width.

K. Seal and signature of professional person certifying the plat.

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

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

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

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

1. The maximum fence and/or wall height shall not exceed six (6) feet and such fence and/or wall shall not be eligible for an increase in fence and/or wall height pursuant to Par. 3l of Sect. 10-104.
2. The fence and/or wall shall meet the sight distance requirements contained in Sect. 2-505.
3. The BZA shall determine that the proposed fence and/or wall height increase is warranted based upon such factors to include, but not limited to, the orientation and location of the principal structure on the lot, the orientation and location of nearby off-site structures, topography of the lot, presence of multiple front yards, and concerns related to safety and/or noise.
4. The BZA shall determine that the proposed fence and/or wall height increase will be in character with the existing on-site development and will be harmonious with the surrounding off-site uses and structures in terms of location, height, bulk, scale and any historic designations.
5. The BZA shall determine that the proposed fence and/or wall height increase shall not adversely impact the use and/or enjoyment of other properties in the immediate vicinity.
6. The BZA may impose such conditions as it deems necessary to satisfy these criteria, including but not limited to imposition of landscaping or fence and/or wall design requirements.
7. Notwithstanding Par. 2 of Sect. 011 above, all applications shall be accompanied by fifteen (15) copies of a plat and such plat shall be presented on a sheet having a maximum size of 24" x 36", and one 8 ½" x 11" reduction of the plat. Such plat shall be drawn to a designated scale of not less than one inch equals fifty feet (1" = 50'), unless a smaller scale is required to accommodate the development. Such plat shall be certified by a professional engineer, land surveyor, architect, or landscape architect licensed by the State of Virginia. Such plat shall contain the following information:
  - A. Boundaries of entire property, with bearings and distances of the perimeter property lines, and of each zoning district.
  - B. Total area of the property and of each zoning district in square feet or acres.

- C. Scale and north arrow, with north, to the extent feasible, oriented to the top of the plat and on all supporting graphics.
  - D. The location, dimension and height of any building or structure, to include existing or proposed fences and/or walls.
  - E. All required minimum yards to include front, side and rear, a graphic depiction of the angle of bulk plane, if applicable, and the distances from all existing structures to lot lines.
  - F. Means of ingress and egress to the property from a public street(s).
  - G. For nonresidential uses, the location of parking spaces, indicating minimum distance from the nearest property line(s).
  - H. If applicable, the location of a well and/or septic field.
  - I. If applicable, existing gross floor area and floor area ratio.
  - J. Location of all existing utility easements having a width of twenty-five (25) feet or more, and all major underground utility easements regardless of width.
  - K. The location, type and height of any existing and proposed landscaping and screening.
  - L. Approximate delineation of any floodplain designated by the Federal Insurance Administration, United States Geological Survey, or Fairfax County, the delineation of any Resource Protection Area and Resource Management Area, and the approximate delineation of any environmental quality corridor as defined in the adopted comprehensive plan, and, if applicable, the distance of any existing and proposed structures from the floodplain, Resource Protection Area and Resource Management Area, or environmental quality corridor.
  - M. Seal and signature of professional person certifying the plat.
8. Architectural depictions of the proposed fence and/or wall to include height, building materials and any associated landscaping shall be provided.