



APPLICATION ACCEPTED: August 2, 2010
BOARD OF ZONING APPEALS: October 6, 2010
TIME: 9:00 a.m.

County of Fairfax, Virginia

September 29, 2010

STAFF REPORT

SPECIAL PERMIT APPLICATION NO. SP 2010-MA-047

MASON DISTRICT

APPLICANTS/OWNERS: Daniel E. Lopez
Berta Lopez
Patricia N. Morales

SUBDIVISION: Sunset Manor

STREET ADDRESS: 5616 Seminary Road

TAX MAP REFERENCE: 62-3 ((3)) 80

LOT SIZE: 12,587 square feet

ZONING DISTRICT: R-3

ZONING ORDINANCE PROVISIONS: 8-918

SPECIAL PERMIT PROPOSAL: To permit an accessory dwelling unit within an existing dwelling.

STAFF RECOMMENDATION: Staff recommends approval of SP 2010-MA-047 for the accessory dwelling unit, subject to the proposed development conditions contained in Appendix 1.

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

O:\dhedri\Special Permits\10-6) SP 2010-MA-047 Lopez & Morales\SP 2010-MA-047 Lopez & Morales staff report.doc

Deborah Hedrick

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/



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.

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.**

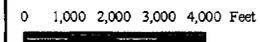
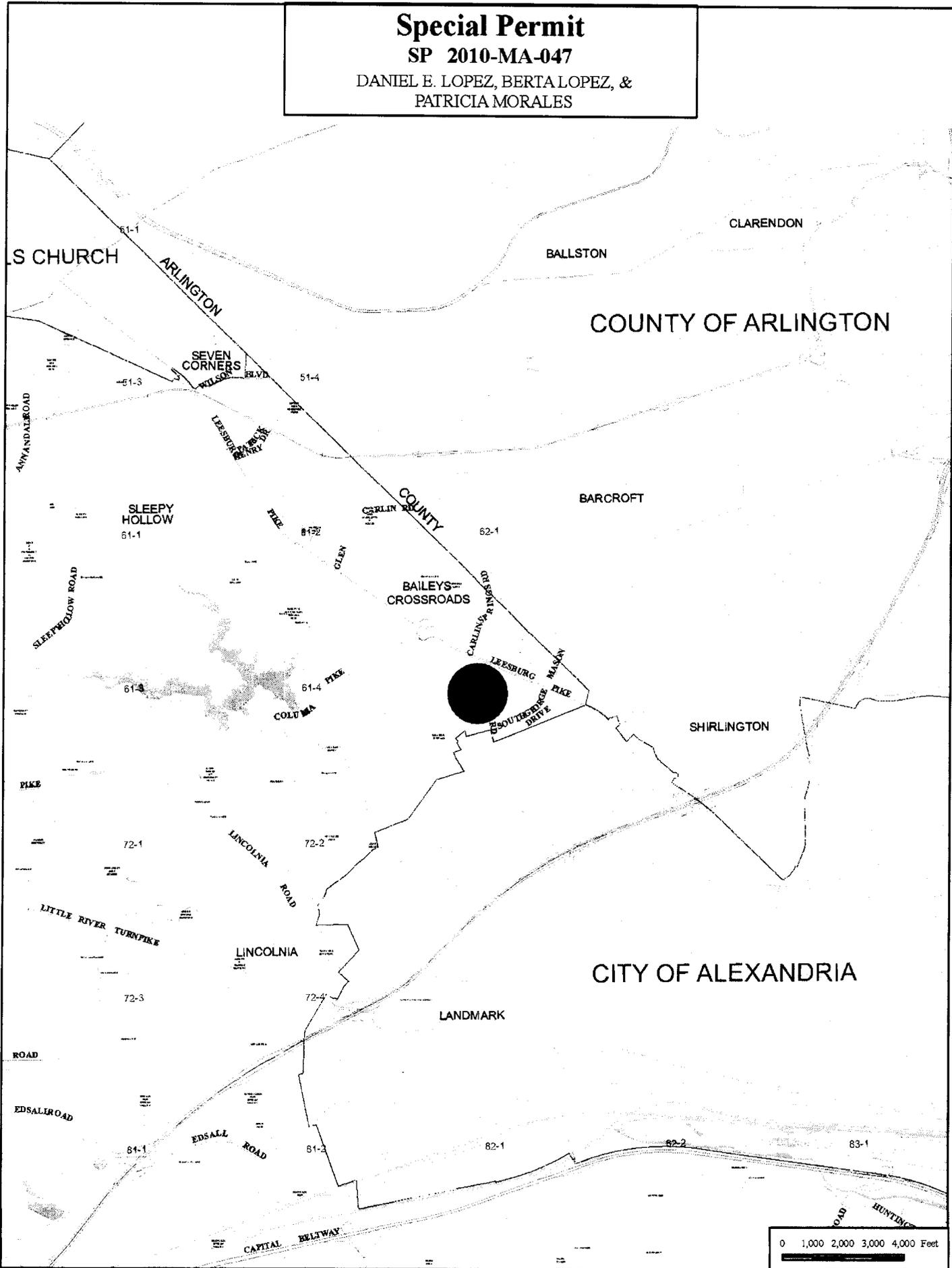


Americans with Disabilities Act (ADA): Reasonable accommodation is available upon 7 days advance notice. For additional information on ADA call (703) 324-1334 or TTY 711 (Virginia Relay Center).

Special Permit

SP 2010-MA-047

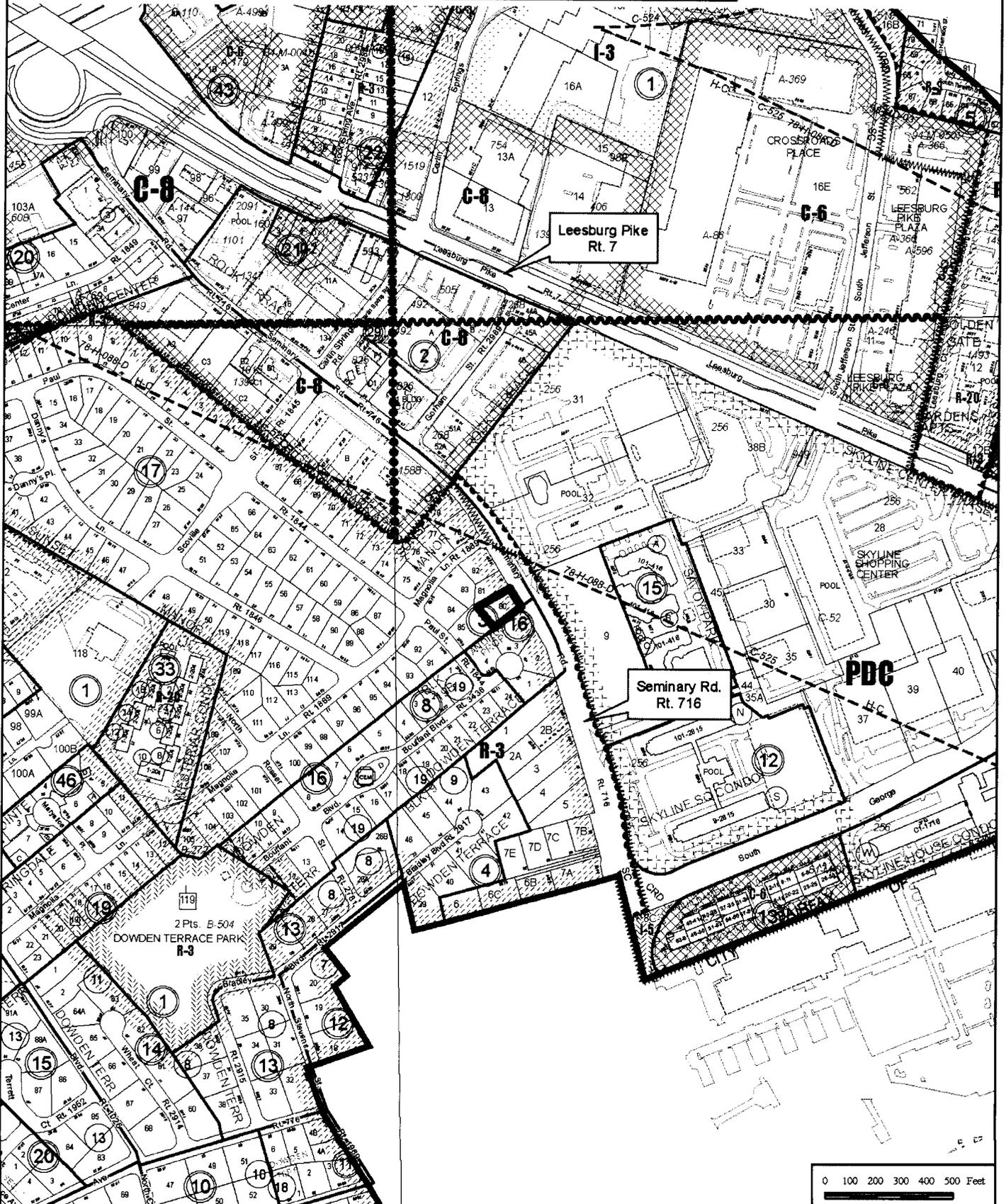
DANIEL E. LOPEZ, BERTA LOPEZ, &
PATRICIA MORALES



Special Permit

SP 2010-MA-047

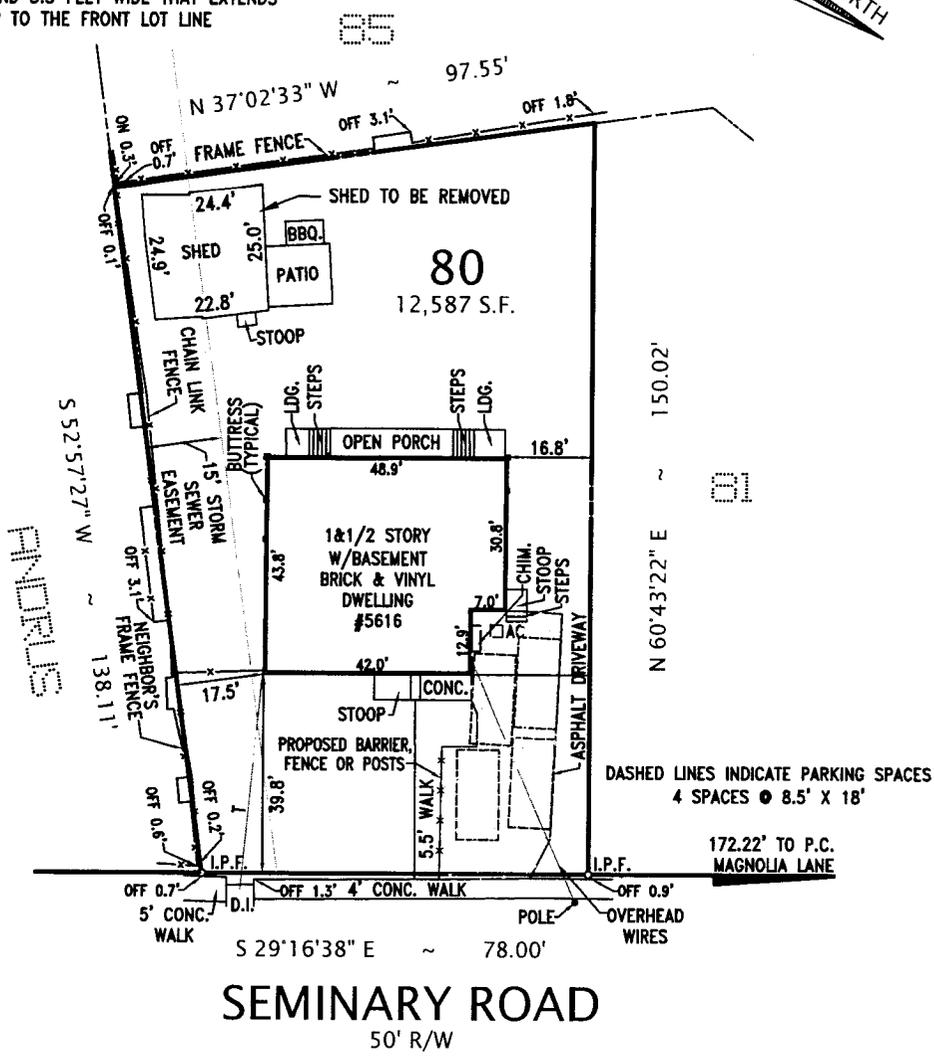
DANIEL E. LOPEZ, BERTA LOPEZ, &
PATRICIA MORALES



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FRONT YARD COVERAGE:
AREA OF FRONT YARD 3218 SF
COVERAGE OF FRONT YARD FOR PARKING 868 SF
868 / 3218 = 27%

COVERAGE DOES NOT INCLUDED LEAD WALK
35 FEET LONG AND 5.5 FEET WIDE THAT EXTENDS
FROM THE STOOP TO THE FRONT LOT LINE



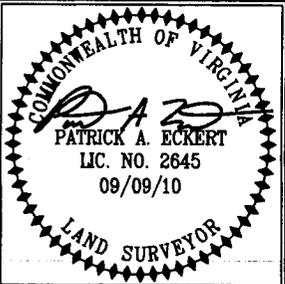
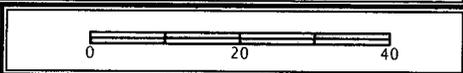
SEMINARY ROAD

50' R/W

PLAT
SHOWING HOUSE LOCATION ON
LOT 80 SECTION 3
SUNSET MANOR
FAIRFAX COUNTY, VIRGINIA

SCALE: 1" = 30' JUNE 28, 2010
SEPTEMBER 8, 2010 (ADD LOT COVERAGE AND PARKING SPACES)

CASE NAME: GRAPHIC SCALE



BY PROVISIONS OF THE VIRGINIA CODE: NO CORNER MARKERS SET, BOUNDARY SURVEY NOT PERFORMED.
PLAT SUBJECT TO RESTRICTIONS OF RECORD, TITLE REPORT NOT FURNISHED.

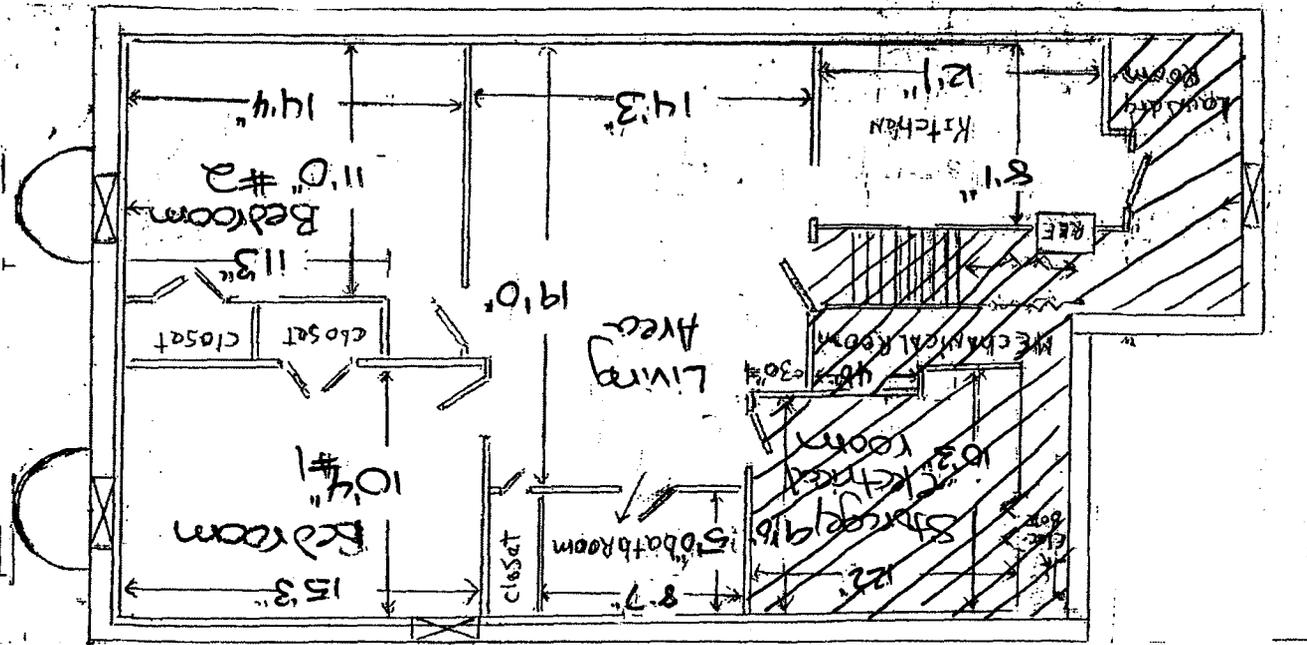
I HEREBY CERTIFY THAT THE POSITIONS OF ALL THE EXISTING IMPROVEMENTS HAVE BEEN CAREFULLY ESTABLISHED BY A CURRENT FIELD SURVEY, AND UNLESS OTHERWISE SHOWN, THERE ARE NO VISIBLE ENCRAGEMENTS.

REQUESTED BY:
DANIEL LOPEZ

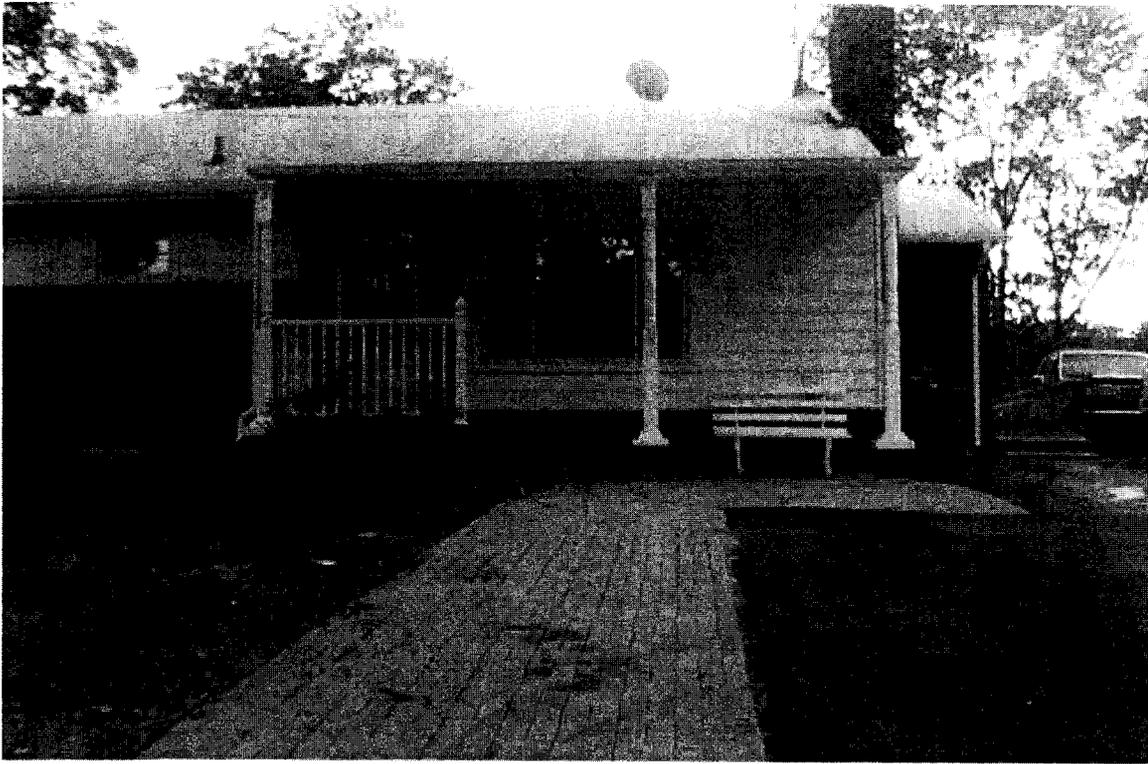
ALEXANDRIA SURVEYS
INTERNATIONAL, LLC
11216 WAPLES MILL ROAD #102 FAIRFAX, VIRGINIA 22030
TEL. NO. 703-660-6615 FAX NO. 703-768-7764

*Shaded areas are not part of the accessory dwelling unit

Basement Floor Plan
Top View



Floor Lay out





From Seminary Road, facing west (northeast corner of house)

Date: 09/09/10

SP 2010-0015



**From the northern lot line, facing north (rear yard of
5618 Seminary Road)**

Date: 3/23/2010

SP 2010-0015



From the northern lot line, facing south (north side of house)

Date: 09/09/2010

SP 2010-0015



**From driveway, showing north side of house (north side
of house)**

Date: 2/4/10

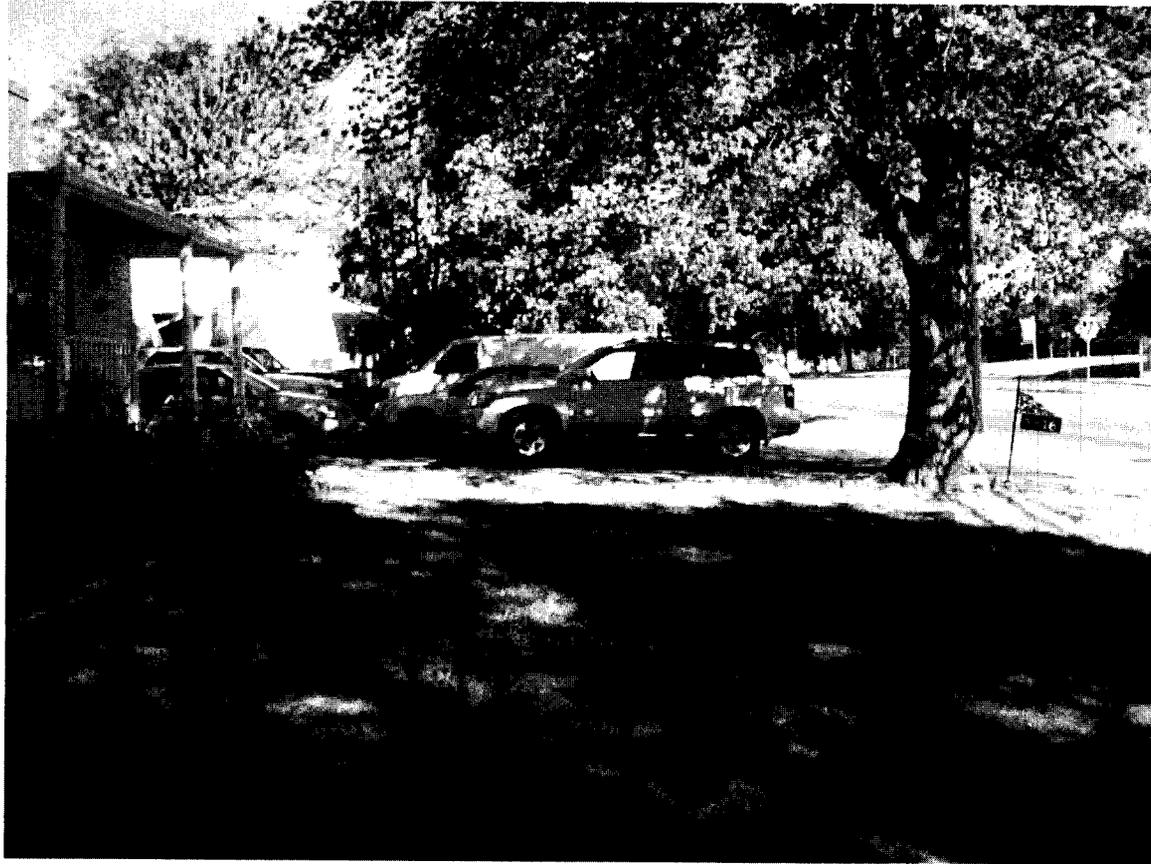
SP 2010-0015



From the western lot line, facing east (facing rear of home)

Date: 3/23/2010

SP 2010-0015



**From southern lot line, facing north (facing 5618
Seminary Road)**

Date: 09/09/2010

SP 2010-0015



**From front step, facing southeast corner of lot and
Seminary Road**

Date: 2/4/10

SP 2010-0015



From eastern lot line, facing east (Seminary Road)

Date: 2/23/2010

SP 2010-0015



From front step, facing east (Seminary Road)

Date: 2/4/10

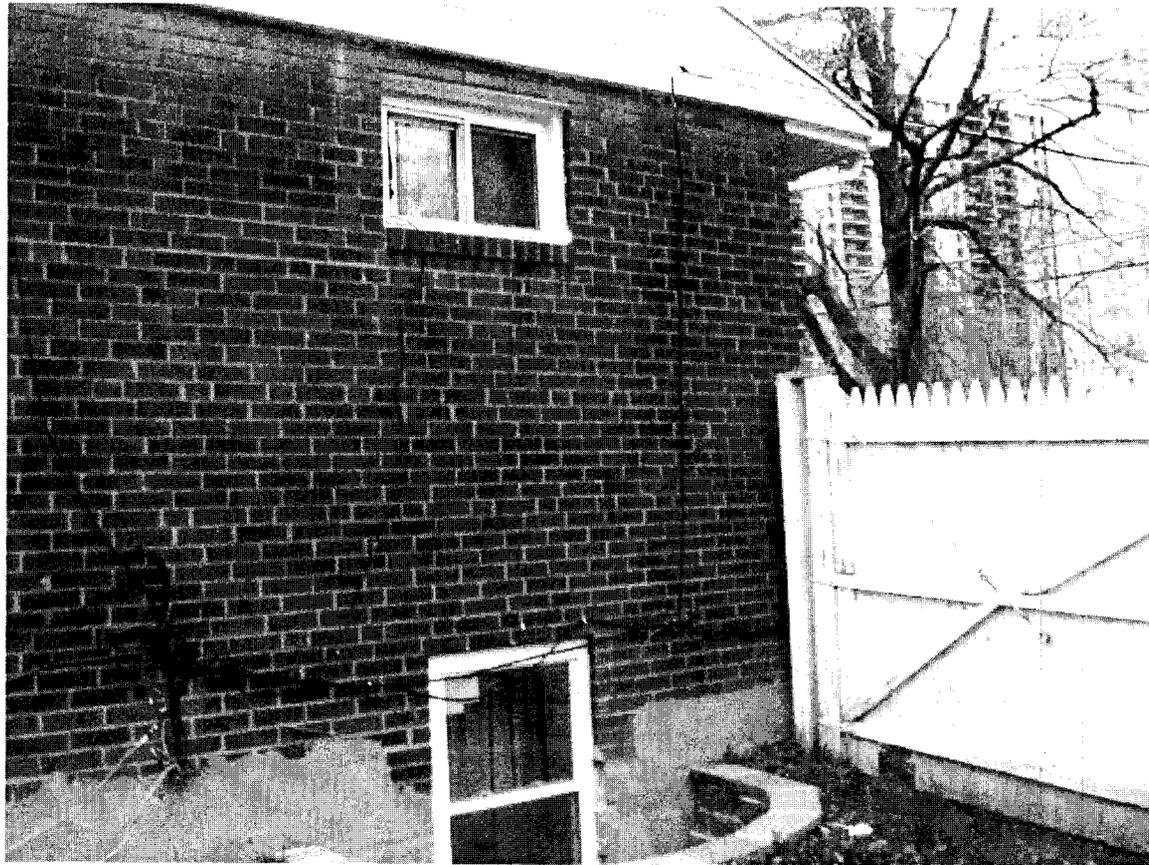
SP 2010-0015



From Seminary Road, facing west (driveway)

Date: 09/09/2010

SP 2010-0015



**From the southern lot line, facing north (facing south
side of house)**

Date: 3/23/2010

SP 2010-0015

DESCRIPTION OF THE APPLICATION

Special Permit Request: To permit an accessory dwelling unit within an existing single family detached dwelling.

Size of Principal Dwelling: 2,416 square feet

Size of Accessory Dwelling Unit: 761.88 square feet (31.5%)

Lot Size: 12,587 square feet

LOCATION AND CHARACTER

Site History and Existing Site Description

The application property is located at 5616 Seminary Road in the Sunset Manor subdivision. The 12,587 square foot site is developed with a single family detached one-story dwelling, with cellar, built in 1956, and is located directly across the street from a high rise apartment complex on Seminary Road. An asphalt driveway is accessed from Seminary Road and terminates at the dwelling. There is an existing shed located in the rear yard which is proposed to be removed. There is frame fencing located along the southern and western lot lines, owned by adjacent homeowners. The lot is flat and there is some mature vegetation along the lot lines.

Surrounding Area Description

Direction	Use	Zoning
North	Single Family Detached Dwellings	R-3
South	Single Family Detached Dwellings	R-3
East	Skyline Towers Apartment Complex	PDC
West	Single Family Detached Dwellings	R-3

BACKGROUND

The Department of Tax Administration records indicate an above grade living area of 2,416 square feet. The applicants have indicated that they purchased the property with an existing second kitchen located in the cellar of the home. A Notice of Violation was issued on January 28, 2009, for an accessory dwelling unit. A copy of the NOV is attached as Appendix 4. The applicants have installed emergency ingress/egress windows in order to comply with Building Code regulations for two bedrooms located within the cellar space.

Records indicate there were no other similar applications for properties in the vicinity of the application site heard by the BZA.

ANALYSIS

Special Permit Plat (Copy at front of staff report)

Title of SP Plat: Plat, Showing House Location on Lot 80, Section 3, Sunset Manor

Prepared By: Alexandria Surveys International, LLC

Dated: June 28, 2010, as revised through September 8, 2010

Proposed Use

The applicants propose an accessory dwelling unit to be located within the cellar portion of the existing single family detached dwelling. The existing two-level dwelling, which includes cellar space, consists of 2,416 square feet of above grade living space. The applicants are requesting the accessory unit to occupy approximately 761.88 square feet of the cellar space, which would consist of 31.5% of the total square footage of the above grade living space. The unit would consist of two bedrooms, a living room area, a bathroom and a full kitchen. There is a storage room, electrical/mechanical room as well as a laundry room also located within the cellar space, which is utilized by the entire household; therefore, the square footages of those areas were not calculated within the overall square footage of the accessory unit. The accessory unit will be occupied by the applicants' daughter and grandchild. The applicants, Daniel Lopez and Berta Lopez, reside in the principal dwelling and are 75 and 72 years of age, respectively.

As shown on the special permit plat, and in photographs located at the front of the staff report, the existing driveway can accommodate up to four vehicles. The applicants have four vehicles for the household. There is a 5.5 foot wide walkway composed of paving stones which runs alongside the driveway. The Zoning Ordinance requires that the amount of paved area for parking in the front yard of an R-3 District can not exceed 30%. The current amount is 27%. In order to ensure that the parking area in the front yard does not exceed the allowable amount, the applicants propose the installation of a physical barrier placed between the parking area and the walkway, such as light posts, decorative fencing, or raised bricks. Staff has included a development condition to address this issue.

ZONING ORDINANCE PROVISIONS

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

OTHER ZONING ORDINANCE REQUIREMENTS

Special Permit Requirements (See Appendix 5)

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

Summary of Zoning Ordinance Provisions

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.

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 will be satisfied with adoption of the proposed development conditions. Therefore staff recommends approval of SP 2010-MA-047 subject to the Proposed Development Conditions contained in Appendix 1 of this staff report.

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
2. Applicant's Affidavit
3. Applicant's Statement of Justification and Attachments
4. Notice of Violation dated January 28, 2009
5. Applicable Zoning Ordinance Provisions

PROPOSED DEVELOPMENT CONDITIONS**SP 2010-MA-047****September 29, 2010**

If it is the intent of the Board of Zoning Appeals to approve SP 2010-MA-047 located at Tax Map 62-3 ((3)) 80 to permit an accessory dwelling unit under Section 8-918 to the Fairfax County Zoning Ordinance, staff recommends that the Board condition the approval by requiring conformance with the following development conditions.

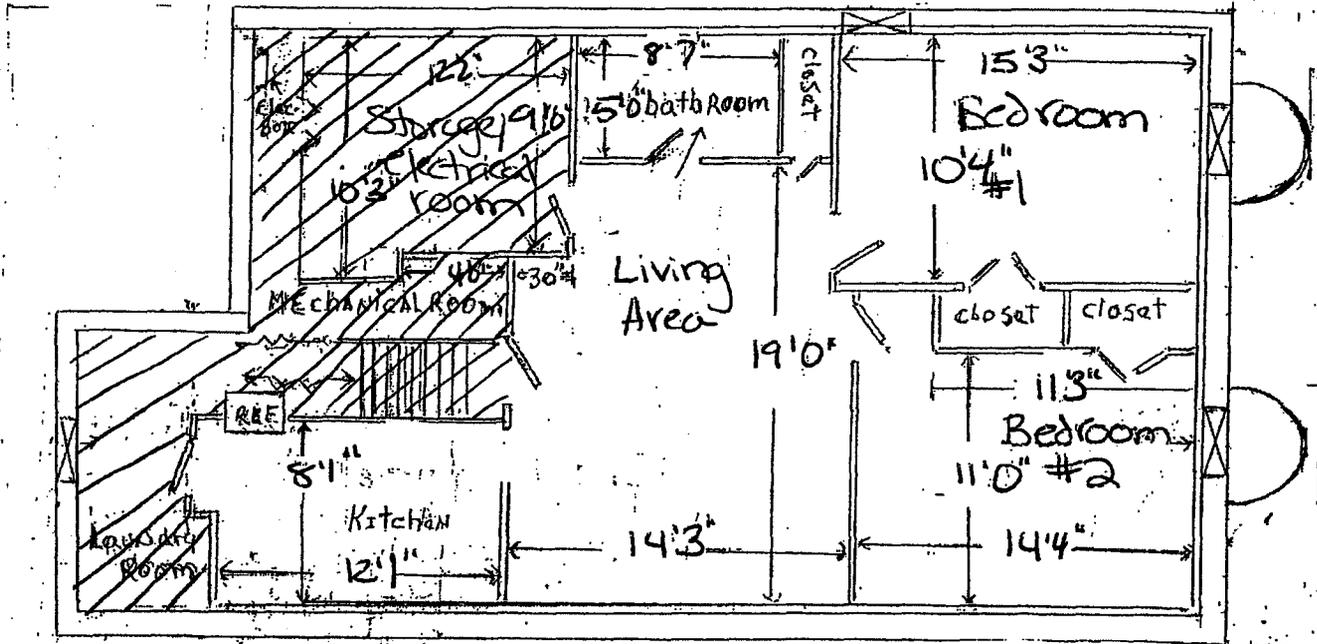
1. These conditions shall be recorded by the applicant among the land records of Fairfax County for this lot prior to the issuance of a building permit for the kitchen. A certified copy of the recorded conditions shall be provided to the Zoning Permit Review Branch, Department of Planning and Zoning.
2. This approval is granted to the applicants only, Daniel E. Lopez, Berta Lopez, Patricia N. Morales, and is not transferable without further action of this Board, and is for the location indicated on the application, 5616 Seminary Road, (12,587 square feet), and is not transferable to other land.
3. The occupants of the accessory dwelling unit shall be limited to the applicant's immediate family members.
4. This special permit is granted only for the purposes, structures and/or uses indicated on the plat prepared by Alexandria Surveys International, LLC, dated June 28, 2010, as revised through September 8, 2010, and approved with this application, as qualified by these development conditions.
5. 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.
6. The occupants 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.
7. The accessory dwelling unit shall contain a maximum of 761.88 square feet, and the layout shall be generally as depicted on the floor plan included as Attachment 1 to these conditions.

8. All applicable building permits and final inspections shall be obtained for kitchen in the accessory dwelling unit.
9. 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.
10. 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.
11. If the use of the accessory dwelling unit ceases for the applicant's immediate family members 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.
12. Parking shall be provided on site as shown on the special permit plat. The applicant shall install a physical barrier alongside the 5.5 foot walkway to ensure parking is contained within the asphalt driveway.

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

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

FLOOR LAYOUT



Basement Floor Plan
TOP VIEW

*Shaded areas are not part of the accessory dwelling unit

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

SPECIAL PERMIT/VARIANCE AFFIDAVIT

DATE: 2/9/10
(enter date affidavit is notarized)

I, Sara Silverman, Esq., 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 107488a

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)
Daniel E. Lopez	5616 Seminary Road, Alexandria VA 22311	Title Owner/Applicant
Berta Lopez	5616 Seminary Road, Alexandria VA 22311	Title Owner/Applicant
Patricia N. Morales	10804 Norman Avenue, Fairfax VA 22030	Title Owner/Applicant
Sara G. Silverman, Esq.	3905 Railroad Ave., Ste. 202 S, Fairfax VA 22030	Attorney/Agent

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

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

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

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

SPECIAL PERMIT/VARIANCE AFFIDAVIT

DATE: 2/9/10
(enter date affidavit is notarized)

107488a

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

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

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

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

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

None

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

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

SPECIAL PERMIT/VARIANCE AFFIDAVIT

DATE: 2/9/10
(enter date affidavit is notarized)

107488a

3. That within the twelve-month period prior to the public hearing of this application, no member of the Fairfax County Board of Zoning Appeals, Planning Commission, or any member of his or her immediate household, either directly or by way of partnership in which any of them is a partner, employee, agent, or attorney, or through a partner of any of them, or through a corporation in which any of them is an officer, director, employee, agent, or attorney or holds 10% or more of the outstanding bonds or shares of stock of a particular class, has, or has had any business or financial relationship, other than any ordinary depositor or customer relationship with or by a retail establishment, public utility, or bank, including any gift or donation having a value of more than \$100, singularly or in the aggregate, with any of those listed in Par. 1 above.

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

None

(NOTE: Business or financial relationships of the type described in this paragraph that arise after the filing of this application and before each public hearing must be disclosed prior to the public hearings. See Par. 4 below.)

(check if applicable) [] There are more disclosures to be listed and Par. 3 is continued on a "Special Permit/Variance Attachment to Par. 3" form.

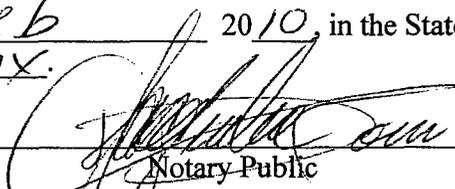
4. That the information contained in this affidavit is complete, that all partnerships, corporations, and trusts owning 10% or more of the APPLICANT, TITLE OWNER, CONTRACT PURCHASER, or LESSEE* of the land have been listed and broken down, and that prior to each and every public hearing on this matter, I will reexamine this affidavit and provide any changed or supplemental information, including business or financial relationships of the type described in Paragraph 3 above, that arise on or after the date of this application.

WITNESS the following signature:

(check one) [] Applicant  [x] Applicant's Authorized Agent

Sara G. Silverman, Esq. Attorney/Agent
(type or print first name, middle initial, last name, and title of signee)

Subscribed and sworn to before me this 9 day of Feb, 2010, in the State/Comm. of Virginia, County/City of FAIRFAX.


Notary Public

My commission expires: 10/31/13

JACQUELINE S. ROMERO
NOTARY PUBLIC
COMMONWEALTH OF VIRGINIA
MY COMMISSION EXPIRES OCT. 31, 2013
COMMISSION # 299436

SEP 10 2010

SPECIAL PERMIT &
VARIANCE BRANCH**Statement of Justification**

Referring to the Requirements of 8-011 and 8-918

Description of the Property

Daniel E. Lopez, Berta Lopez and Patricia Morales, owners of 5616 Seminary Road, Alexandria, Virginia, seek a special permit to allow the use of a portion of their basement as an accessory dwelling unit. 5616 Seminary Road is a single family home located in an R-3 zoning district. The tax administration records indicate that the home contains 2,416 square feet of above grade living space. The accessory dwelling unit will be composed of a full kitchen, a living area, two bedrooms and a bathroom. The square footage of the accessory dwelling unit is 761.88 square feet, which is 31.5% of the total square footage of the above grade living space. The square footage of the accessory dwelling unit is calculated as follows:

Room	Dimensions	Area
Kitchen	8'1 x 12'1	97.67
Bathroom	8'7x5	40.29
Living Area	19x14'3	270.45
Bedroom 1	10'4x15'3	157.58
Bedroom 2	13'8x14'4	195.89
Total		761.88

The laundry room, storage area, stairwell, and mechanical room are used by the entire household. There are no other laundry facilities available to the rest of the household. The home contains no other accessory dwelling unit.

Occupancy

The home is occupied by Daniel E. Lopez, Berta Lopez, Orlando Lopez, Celina Cabrera and Ms. Carrera's three children. Orland Lopez and Celina Cabrera are two of Daniel and Berta Lopez's children. Daniel Lopez is 75 years of age and Berta Lopez is 72 years of age. Celina Cabrera suffers from physical disabilities that limit her mobility and ability to work full-time.

If this special permit application is approved, the accessory dwelling unit will be occupied by Celina Cabrera and one of her children. Daniel Lopez, Berta Lopez, Orlando Lopez and two of Celina Cabrera's children will occupy the principal dwelling unit.

Parking

The Lopez/Cabrera family will park four vehicles at the house. The property contains a driveway which easily accommodates the four vehicles. A 5.5 foot wide walkway composed of paving stones runs alongside the driveway. In order to ensure that the parking area in the front yard of the property does not exceed 30% of the front yard, the family proposes the installation

of a physical barrier placed between the parking area and the walkway, such as light posts, fencing, or raised bricks.

Regulations for Building, Safety, Health and Sanitation

The Lopez/Cabrerra Family has been visited by Senior Zoning Inspector, Victoria Dzierzek, a number of times in 2009. Pursuant to those inspections, the Lopez/Cabrerra Family has corrected the zoning violations noted by Ms. Dzierzek, with the exception of removing the accessory dwelling unit. The Lopez/Cabrerra Family is filing this permit application to bring the property into full compliance with all regulations for building, safety, health and sanitation, by obtaining a special permit for the accessory dwelling unit.

Character of the Neighborhood

5616 Seminary Road is located in a row of older single family homes along a busy thoroughfare. The home abuts a development of single family homes on its rear. The home faces a large apartment complex. The use of an accessory dwelling unit in the basement of the home, in order to support the needs of a multi-generational family, would not detract from the character of the neighborhood.

Requirements of Ordinance 8-011

A-B The accessory dwelling unit will be a twenty-four hour operation, occupied by Celina Cabrerra and her child as their primary residence.

C-D There will be no patrons/clients/patients/pupils etc. and there will be no employees/attendants/teachers etc.

E The Lopez/Cabrerra Family will park four cars at the residence.

F The accessory dwelling unit will serve the needs of the Lopez/Cabrerra Family.

G No new building or additions are proposed.

H With the exception of gas for the furnace, no hazardous or toxic substances will be generated, utilized, stored, treated, and/or disposed of on site.

I See the above paragraphs addressing requirements of Ordinance 8-918.

RECEIVED
Department of Planning & Zoning
JUL 16 2010
Zoning Evaluation Division

SilvermanWilson PLLC
Attorneys at Law

3905 Railroad Avenue
Suite 202 South
Fairfax, Virginia 22030

Tel: 703-673-1155
Fax: 888-706-5390

Sara Silverman
sgs@silvermanwilson.com

Robert Wilson
row@silvermanwilson.com

July 16, 2010

Via Hand Delivery

Ms. Virginia Ruffner
Application Acceptance Section
Board of Zoning Appeals
12055 Government Center Parkway
Suite 801
Fairfax, Virginia 22035

Re: Plat for Submission with Application SP 2010-0015

Dear Ms. Ruffner:

Enclosed please find a plat, which I have filed with SP 2010-0015. This plat reflects my discussions with Ms. Susan Langdon on July 2, 2010, in that the plat reflects that (1) the house is 1 1/2 stories with a basement, (2) the distance of the home from the northern lot line is stated, and (3) the plat reflects that the shed in the rear yard will be removed. As I discussed with Ms. Langdon, the height of the fence is not stated, because the fence running on the subject property appears to be the shorter chain-link fence.

At Ms. Langdon's suggestion, I am also requesting a hearing out of turn. If a hearing could be scheduled for the end of September or early to mid October, the Lopez family would greatly appreciate that. A trial is currently scheduled in the Fairfax County Circuit Court for October 28, 2010, on whether the existing basement apartment is a zoning violation. Christopher Costa, Assistant County Attorney, has indicated that the case may be resolved if the family is able to obtain a special permit allowing the basement apartment prior to the trial date. Please contact me if you require any further explanation of my request, or if you require any supporting documentation.

Finally, I have previously submitted drawings of the basement apartment, pursuant to your previous letters. Therefore, I believe that this plat should complete the application. If you require any additional information, please do not hesitate to call. Thank you for your time and attention to this matter.

Sincerely,


Sara Silverman

Enclosures



County of Fairfax, Virginia

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

March 31, 2010

Sara Silverman, Esq.
3905 Railroad Avenue
Suite 202 South
Fairfax, Virginia 22030

Re: Waiver for a Special Permit Application on Tax Map Parcel 62-3 ((3)) 80, WSR 1002
006 & WSR 1002 008

Dear Ms. Silverman:

This is in response to your request received February 12, 2010, to waive the requirement that a special permit plat be submitted with your application and to permit the record plat recorded for Section Three, Sunset Manor to be submitted with your application for a special permit. Your request is denied in my capacity as the duly authorized agent of the Zoning Administrator pursuant to the provisions of Sect. 8-011 of the Zoning Ordinance.

A plat which meets the submission requirements of Section 8-011 of the Zoning Ordinance must be submitted. All structures on the application property including but not limited to the dwelling, decks, driveways and fences must be shown, as well as their heights and distances from lot lines. Additional material and/or information may be requested during the review of your application. Additionally, since an accessory dwelling unit cannot exceed 35% of the total gross floor area of the principal dwelling unit as required under Section 8-918 of the Zoning Ordinance, a drawing showing the layout of the accessory unit with measurements will need to be submitted subsequent to acceptance of the application.

This should not be construed to imply any staff recommendation on the application or to represent the waiver or modification of any other applicable County requirements or regulations. Should you need further information regarding this matter, please contact me at (703) 324-1280.

Sincerely,

Susan C. Langdon, Chief
Special Permit/Variance Branch, DPZ

cc: Kevin Guinaw, Branch Chief, Special Projects and Applications Acceptance, ZED, DPZ
Virginia Ruffner, Senior Planner, ZED, DPZ
Application File

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



SilvermanWilson PLLC
Attorneys at Law

3905 Railroad Avenue
Suite 202 South
Fairfax, Virginia 22030

Tel: 703-673-1155
Fax: 888-706-5390

Sara Silverman
sgs@silvermanwilson.com

Robert Wilson
row@silvermanwilson.com

February 5, 2010

Via Hand Delivery

Ms. Susan Langdon
Board of Zoning Appeals
12055 Government Center Parkway
Suite 801
Fairfax, Virginia 22035

Re: Request for Waiver of Plat Requirement and Statement of Ownership

Dear Ms. Langdon:

Enclosed please find a complete special permit application package for 5616 Seminary Road, Alexandria, Virginia. The Lopez/Cabrera family is seeking a special permit to allow the use of their basement as an accessory dwelling unit, based upon the fact that Mr. Daniel E. Lopez, and Mrs. Berta Lopez, are over 55 years of age. The Lopez/Cabrera family is not proposing any construction or structural changes to the home to create the accessory dwelling unit, as the kitchen and bathroom facilities are already existing. Therefore, they are requesting a waiver of the special permit plat requirement. Attached to the application, please find twenty-three copies of the existing plat on file with the Fairfax County Land Records, both as they are filed with the land records, and enlarged to allow for easier viewing.

Additionally, please find a copy of the 2007 property deed showing that Mr. Daniel E. Lopez, Mrs. Berta Lopez, and Ms. Patricia Morales are the only title owners of the subject property. They have all joined the application, and there are no other property owners who would be affected by the granting of this application.

Sincerely,


Sara Silverman

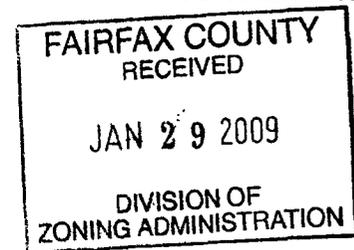
RECEIVED
Department of Planning & Zoning
FEB 12 2010
Zoning Evaluation Division

Enclosures



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: January 28, 2009
CERTIFIED MAIL #: 7008 0150 0002 8819 9934

CASE #: 37238

SERVE: Daniel E. Lopez
Berta Lopez
Patricia N. Morales
5616 Seminary Road
Alexandria, VA 22311

LOCATION OF VIOLATION 5616 Seminary Road
Alexandria, VA 22311-3734
Tax Map #: 0623 03 0080
Zoning District: R-3

Dear Property Owners:

An inspection of the above referenced property on January 21, 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.

Daniel E. Lopez
Berta Lopez
Patricia N. Morales
January 28, 2009
Page 2

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....

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.

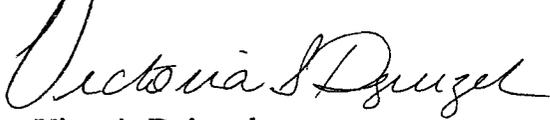
A follow-up inspection will be made at the expiration of the time period outlined in this Notice. Failure to comply with the Notice will result in the initiation of appropriate legal action to gain compliance with the Zoning Ordinance.

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.

Daniel E. Lopez
Berta Lopez
Patricia N. Morales
January 28, 2009
Page 3

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,

A handwritten signature in cursive script, appearing to read "Victoria Dzierzek".

Victoria Dzierzek
Property Maintenance/Senior Zoning Inspector

VD/seg

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.