



APPLICATION ACCEPTED: September 13, 2010
BOARD OF ZONING APPEALS: June 22, 2011
MOVED AT APPLICANT'S REQUEST
TIME: 9:00 a.m.

County of Fairfax, Virginia

June 15, 2011

STAFF REPORT
SPECIAL PERMIT APPLICATION NO. SP 2010-LE-053
Concurrent with VC 2010-LE-006
LEE DISTRICT

APPLICANT/ OWNER: Ashley Nicole M. Le

SUBDIVISION: Gustafson

STREET ADDRESS: 8116 Martha Street

TAX MAP REFERENCE: 101-4 ((5)) 10

LOT SIZE: 7,259 square feet

ZONING DISTRICT: R-2, HC

ZONING ORDINANCE PROVISIONS: 8-914 & 18-401

SPECIAL PERMIT PROPOSAL: To permit reduction to minimum yard requirements based on errors in building locations to permit addition to remain 20.0 feet from the front lot line and accessory storage structure to remain 0.0 feet from the rear lot line.

VARIANCE PROPOSAL: To permit greater than 30 percent minimum rear yard coverage and to permit accessory storage structures greater than 200 square feet in size.

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.

O:\SMCKN\SP\LE SP 2010-LE-053 (conc w VC 2010-LE-006)\Staff Report\Staff Report Le.doc Shelby Johnson

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-LE-053

Applicant: ASHLEY NICOLE MLE
Accepted: 09/13/2010
Proposed: TO PERMIT REDUCTION TO MINIMUM YARD REQUIREMENTS BASED ON ERROR IN BUILDING LOCATION TO PERMIT ADDITION TO REMAIN 20.0 FEET FROM FRONT LOT LINE AND ACCESSORY STORAGE STRUCTURE TO REMAIN 0 FEET FROM REAR LOT LINE

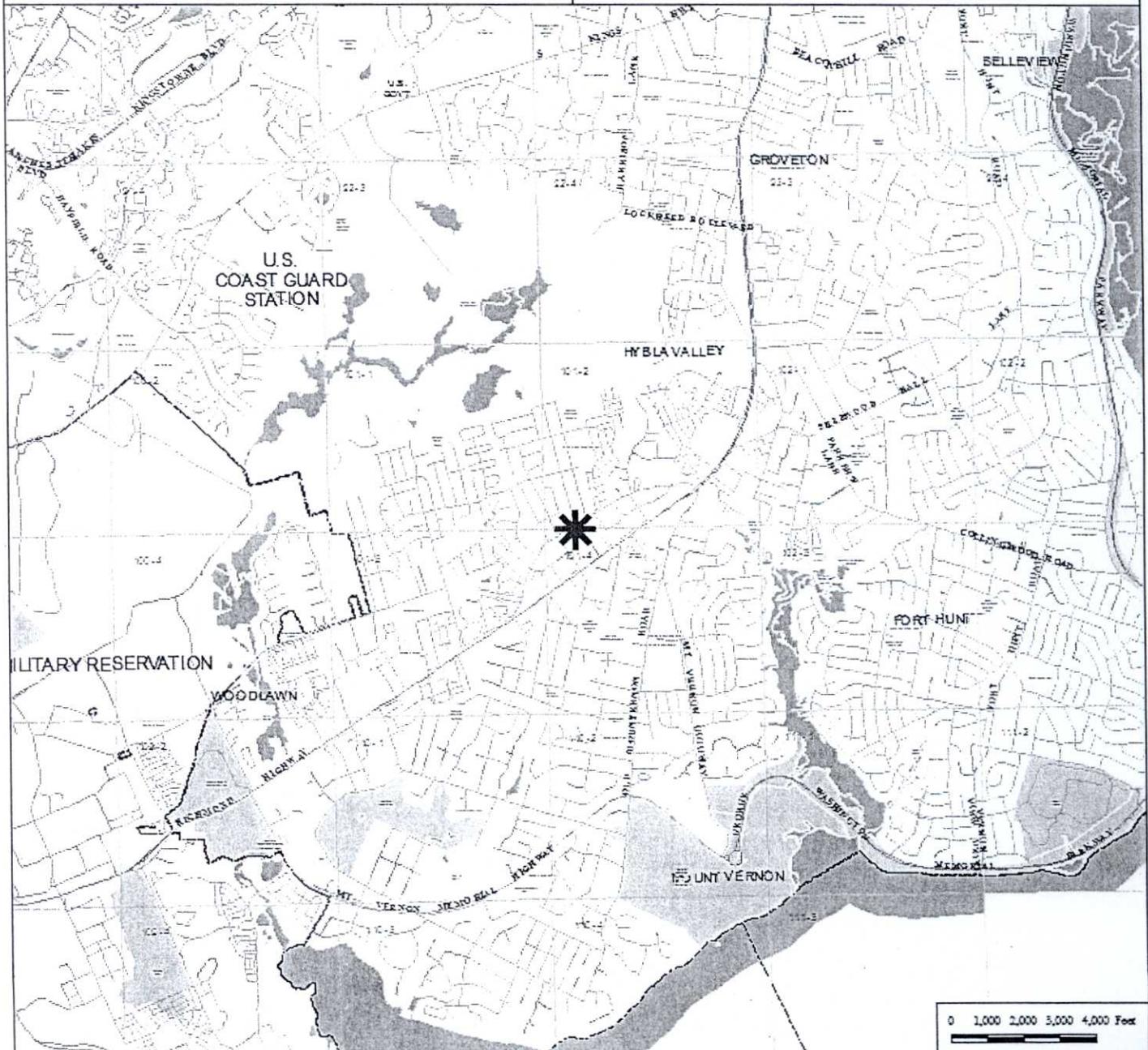
Area: 7,259 SF OF LAND; DISTRICT - LEE
Zoning Dist Sect: 08-0914
Art 8 Group and Use: 9-13
Located: 8116 MARTHA STREET
Zoning: R-2
Overlay Dist: HC
Map Ref Num: 101-4-/05/ /0010

Variance Application

VC 2010-LE-006

Applicant: ASHLEY NICOLE MLE
Accepted: 09/13/2010
Proposed: TO PERMIT GREATER THAN 30 PERCENT REAR YARD COVERAGE

Area: 7,259 SF OF LAND; DISTRICT - LEE
Zoning Dist Sect: 18-0401 10-0103
Paragraph: 1 03
Located: 8116 MARTHA STREET
Zoning: R-2
Overlay Dist: HC
Map Ref Num: 101-4-/05/ /0010



Special Permit

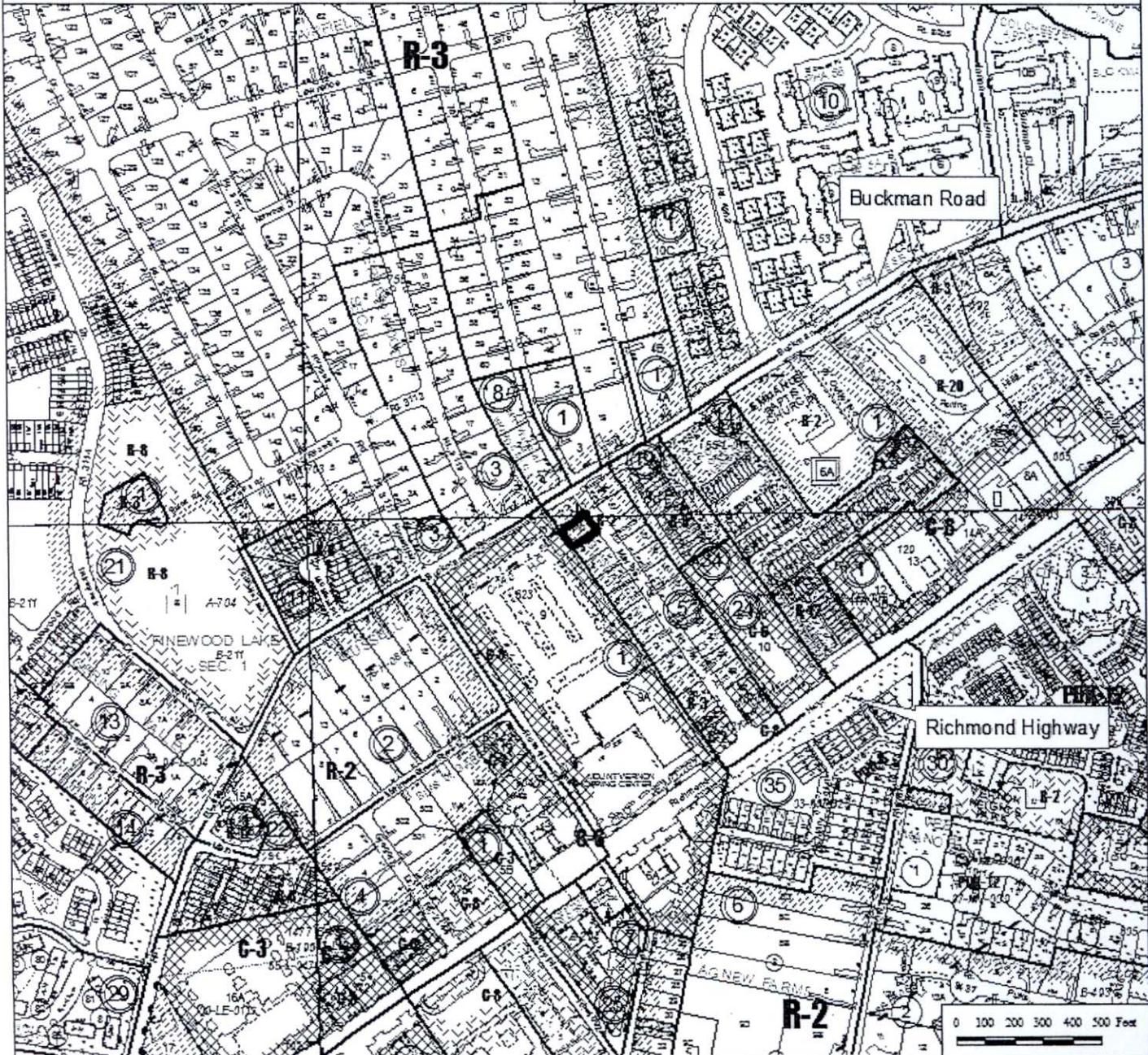
SP 2010-LE-053

Applicant: ASHLEY NICOLE MLE
Accepted: 09/13/2010
Proposed: TO PERMIT REDUCTION TO MINIMUM YARD REQUIREMENTS BASED ON ERROR IN BUILDING LOCATION TO PERMIT ADDITION TO REMAIN 200 FEET FROM FRONT LOT LINE AND ACCESSORY STORAGE STRUCTURE TO REMAIN 0 FEET FROM REAR LOT LINE
Area: 7,259 SF OF LAND; DISTRICT - LEE
Zoning Dist Sect: 08-0914
Art 8 Group and Use: 9-13
Located: 8116 MARTHA STREET
Zoning: R-2
Overlay Dist: HC
Map Ref Num: 101-4 /05/ /0010

Variance Application

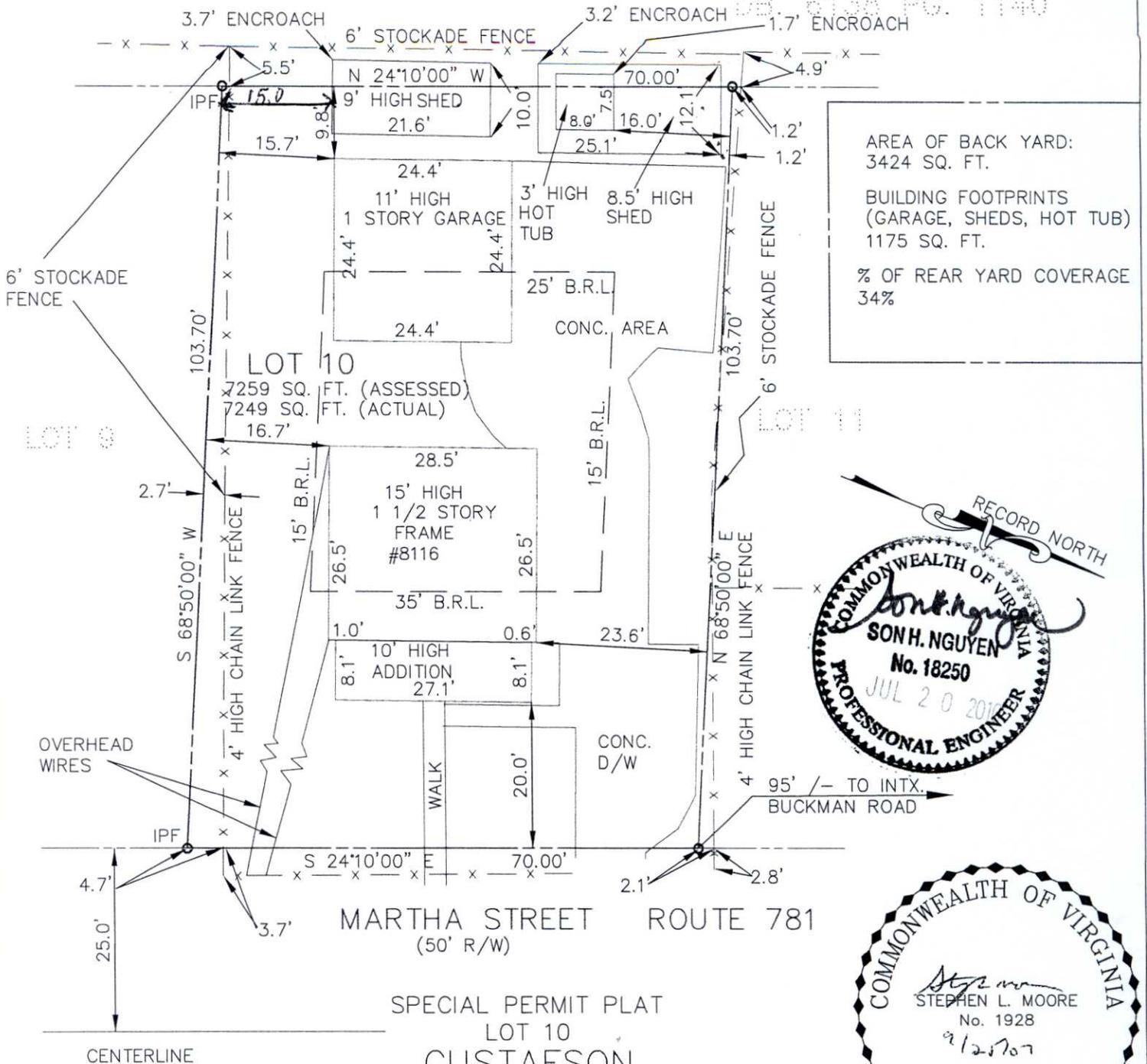
VC 2010-LE-006

Applicant: ASHLEY NICOLE MLE
Accepted: 09/13/2010
Proposed: TO PERMIT GREATER THAN 30 PERCENT REAR YARD COVERAGE
Area: 7,259 SF OF LAND; DISTRICT - LEE
Zoning Dist Sect: 18-0401 10-0103
Paragraph: 1 03
Located: 8116 MARTHA STREET
Zoning: R-2
Overlay Dist: HC
Map Ref Num: 101-4 /05/ /0010



THIS PROPERTY IS SERVED BY PUBLIC WATER AND PUBLIC SEWER.
NO GRAVES ARE ON THIS SITE.

N/F RUSSELL ROAD L.P.
DB. 0138 PG. 1140

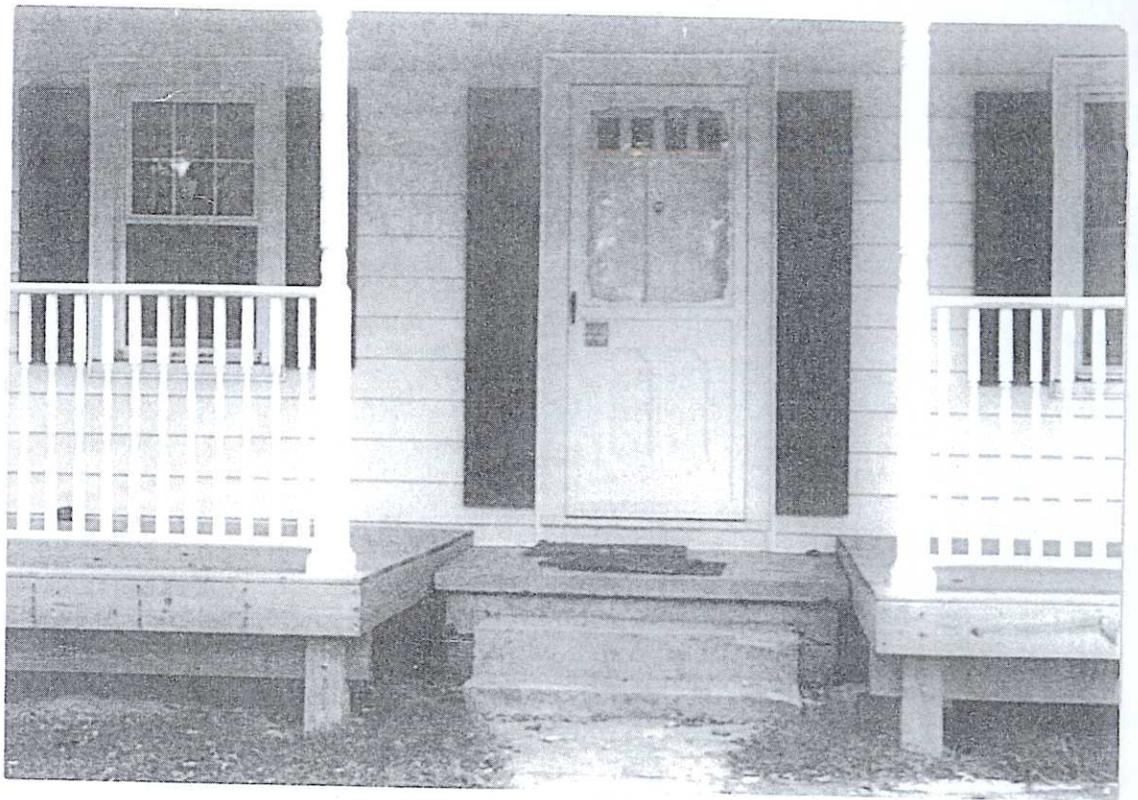


AREA OF BACK YARD:
3424 SQ. FT.
BUILDING FOOTPRINTS
(GARAGE, SHEDS, HOT TUB)
1175 SQ. FT.
% OF REAR YARD COVERAGE
34%



STEPHEN L. MOORE LAND SURVEYING, INC.
13554 MINNIEVILLE ROAD WOODBRIDGE, VA. 22192
(703) 878-6515 FAX: (703) 878-4594

WORK #2007-0245



Front View of Porch
Prior to Construction

RECEIVED
Department of Planning & Zoning
SEP 8 2010
Zoning Evaluation Division

#1



house with back structures
from the street

RECEIVED
Department of Planning & Zoning
SEP 3 2010
Zoning Evaluation Division

1/5

#2



↑
house

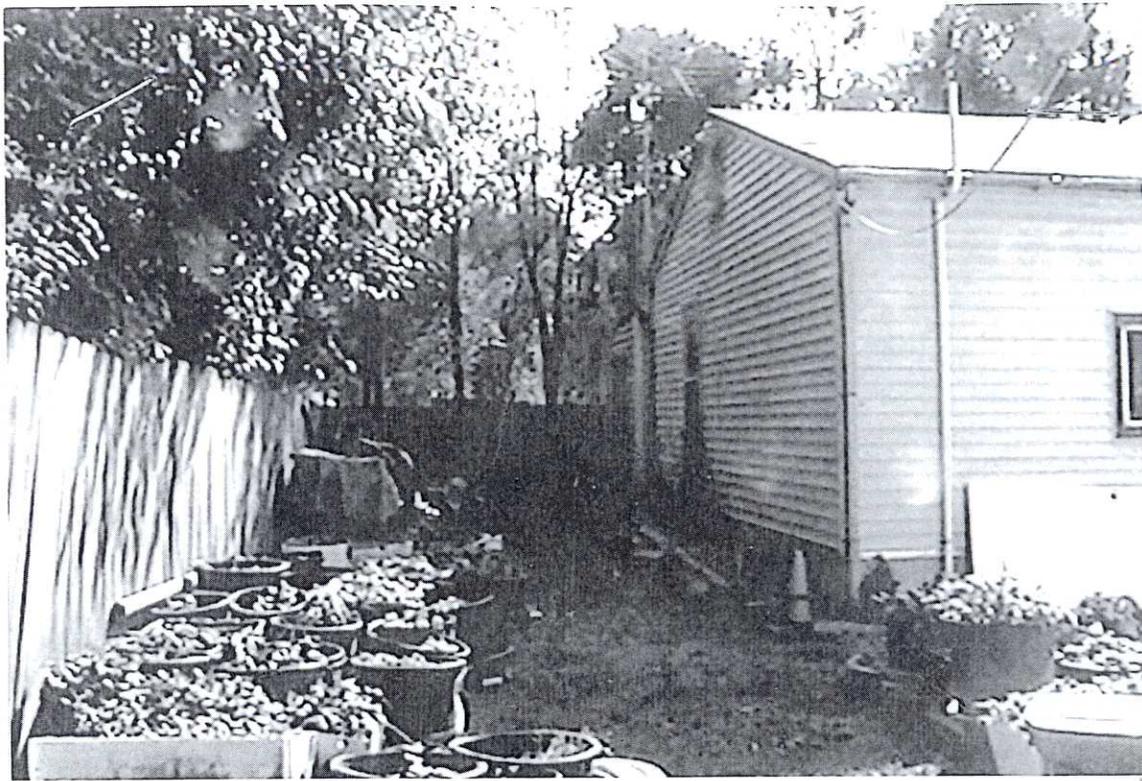
↑
11' high
1 story garage

↑
8.5' high shed
w/ hot tub

RECEIVED
Department of Planning & Zoning
SEP 3 2010
Zoning Evaluation Division

2/5

#3

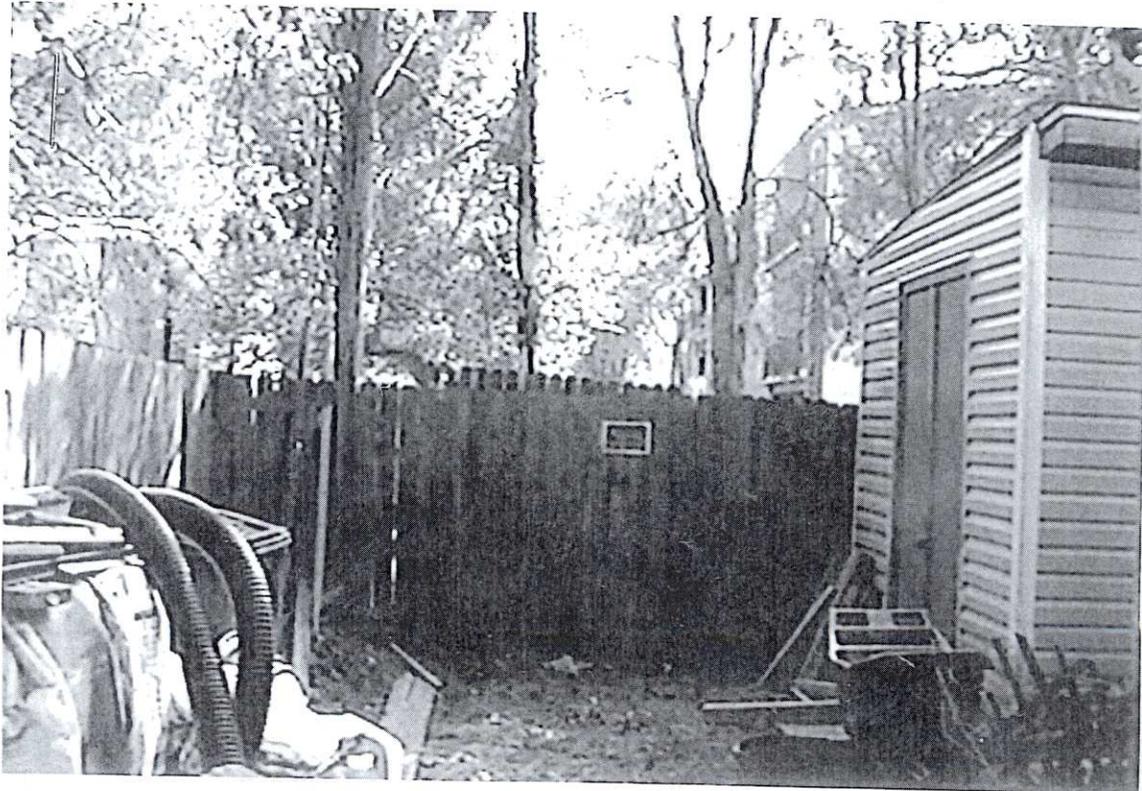


← 11' high
1 story
garage

RECEIVED
Department of Planning & Zoning
SEP 3 2010
Zoning Evaluation Division

↑
9' high shed
(behind 11' high 1 story garage)
(view from left-side yard)

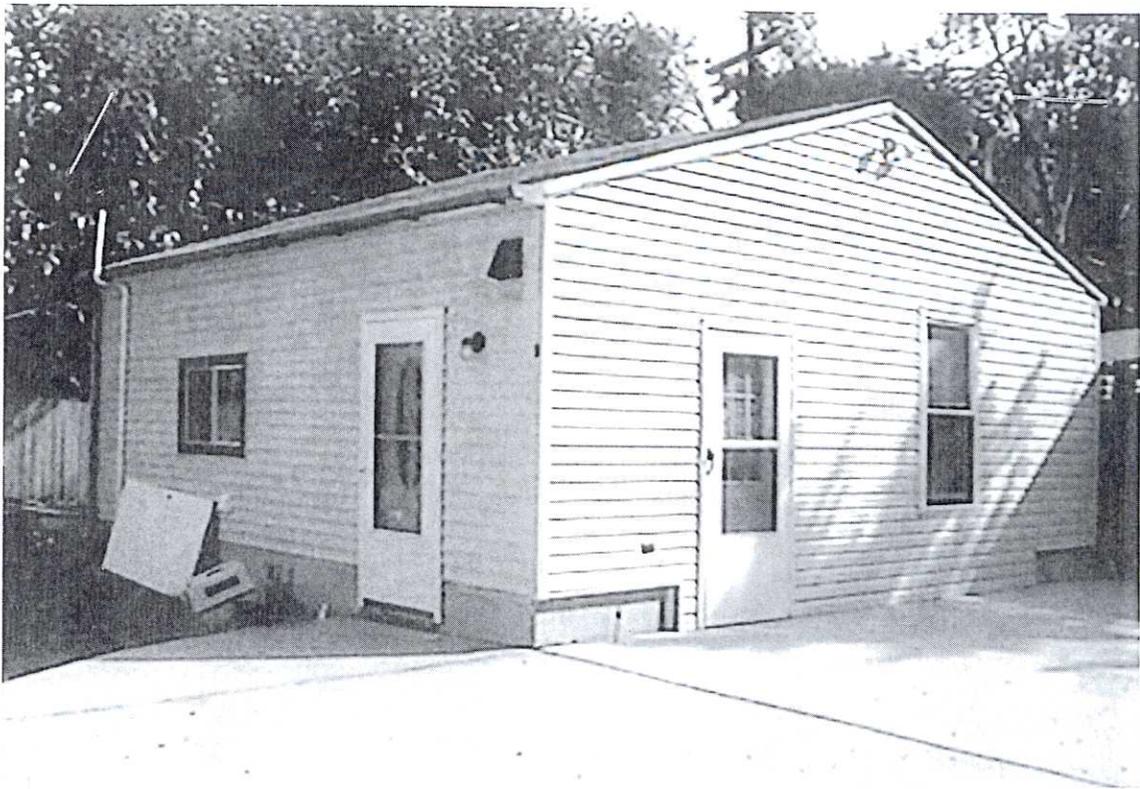
#4



← 9' high
shed

3/5

#5



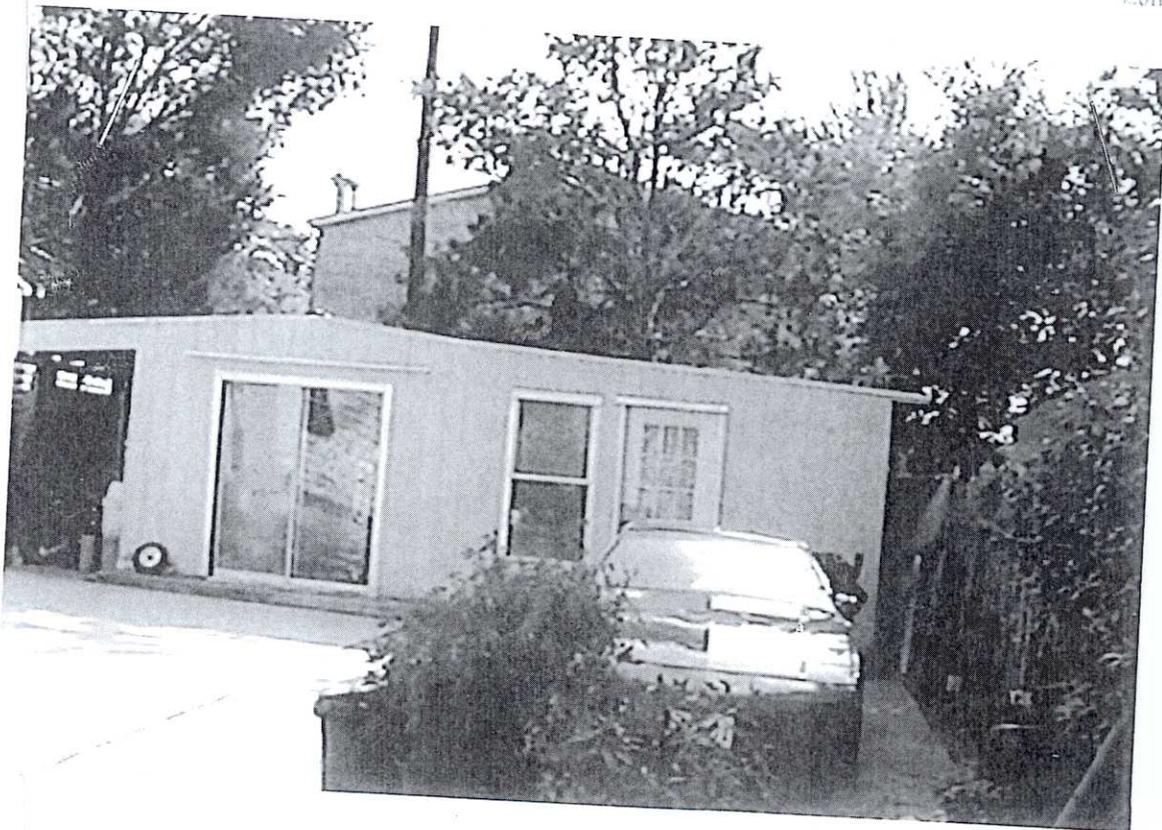
View of 11' high 1 story garage

RECEIVED
Department of Planning & Zoning

SEP 8 2010

Zoning Evaluation Division

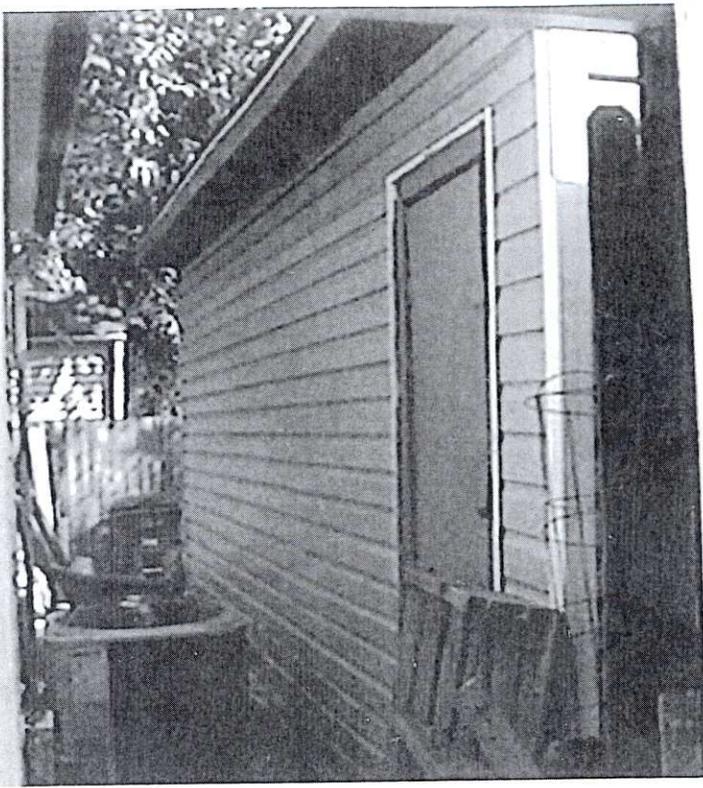
#6



View of 8.5' high shed

4/5

#7



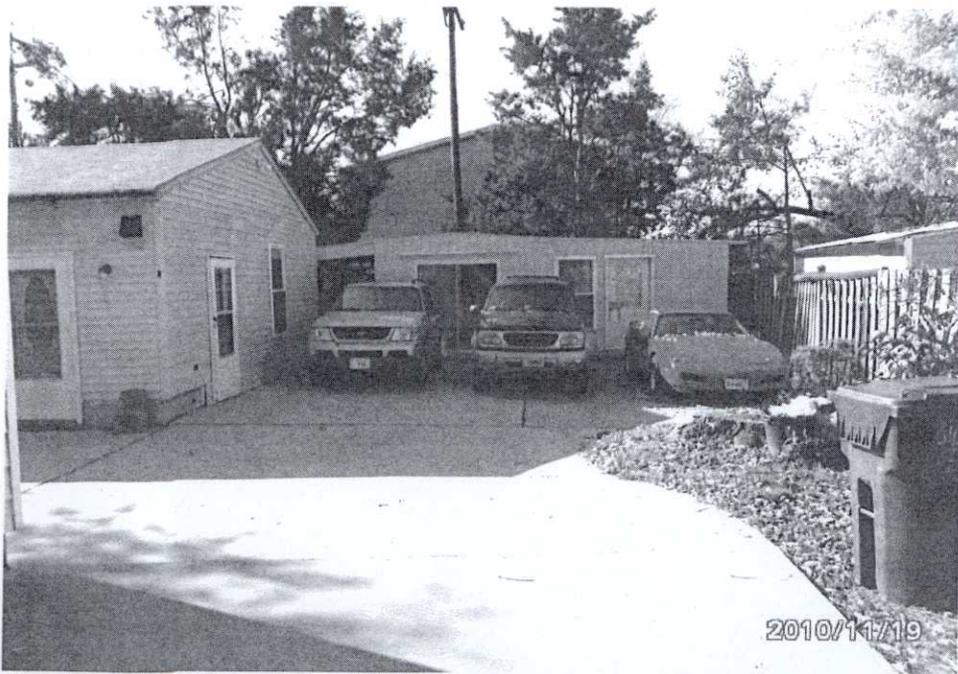
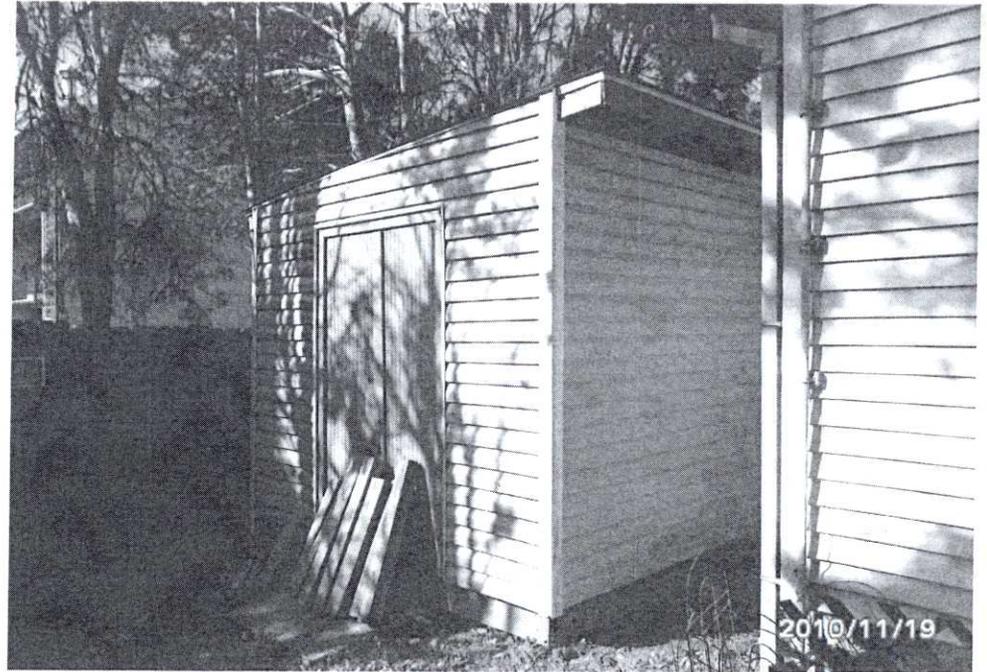
View of 9' high shed
between 11' high 1 story garage
and 8.5' high shed

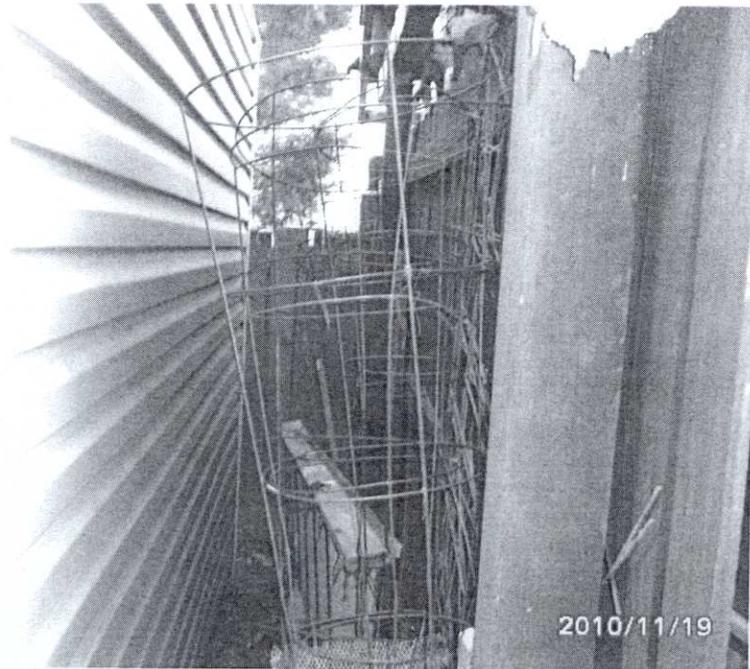
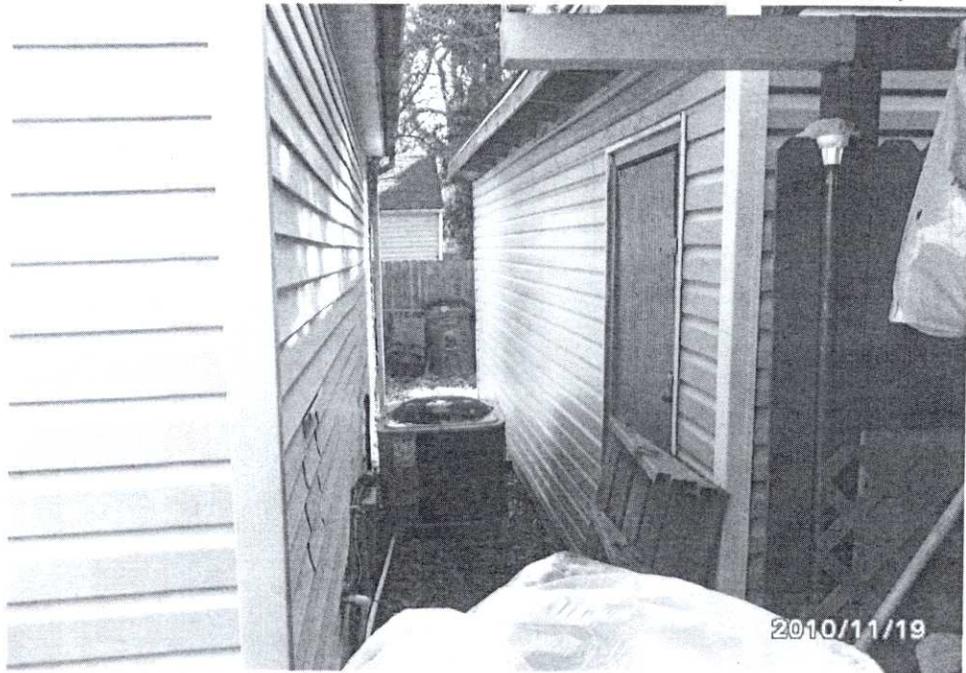
RECEIVED
Department of Planning & Zoning

SEP 3 2010

Zoning Evaluation Division

5/5



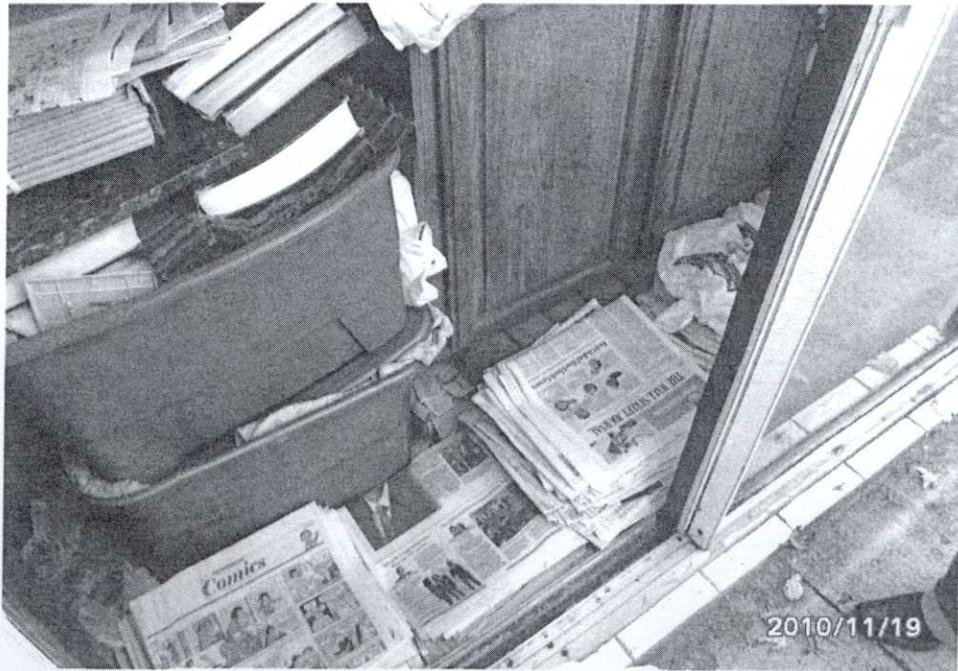




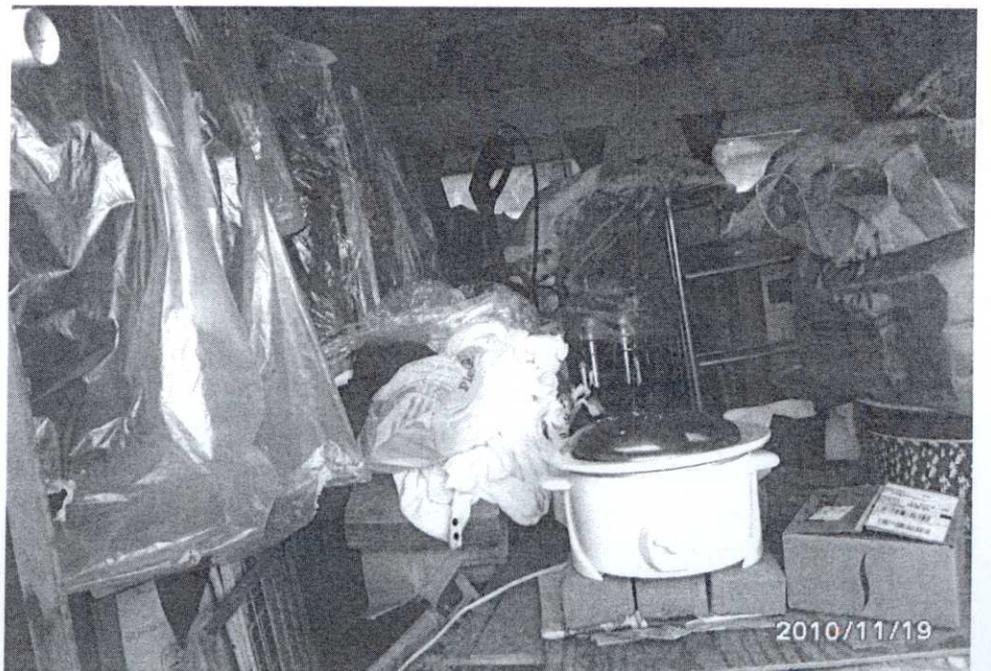
2010/11/19



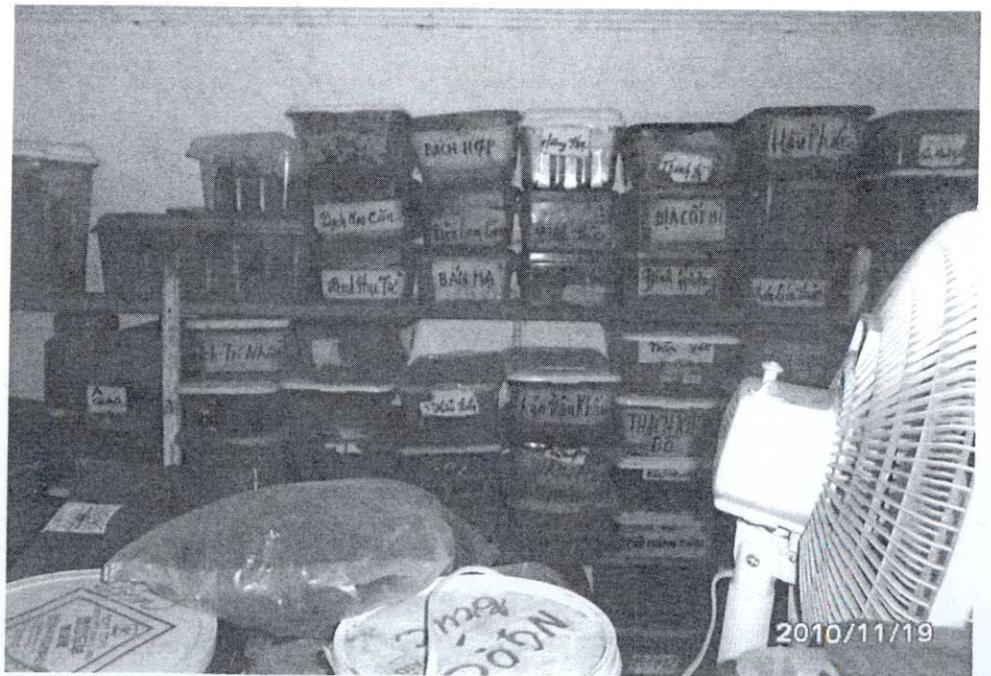
2010/11/19

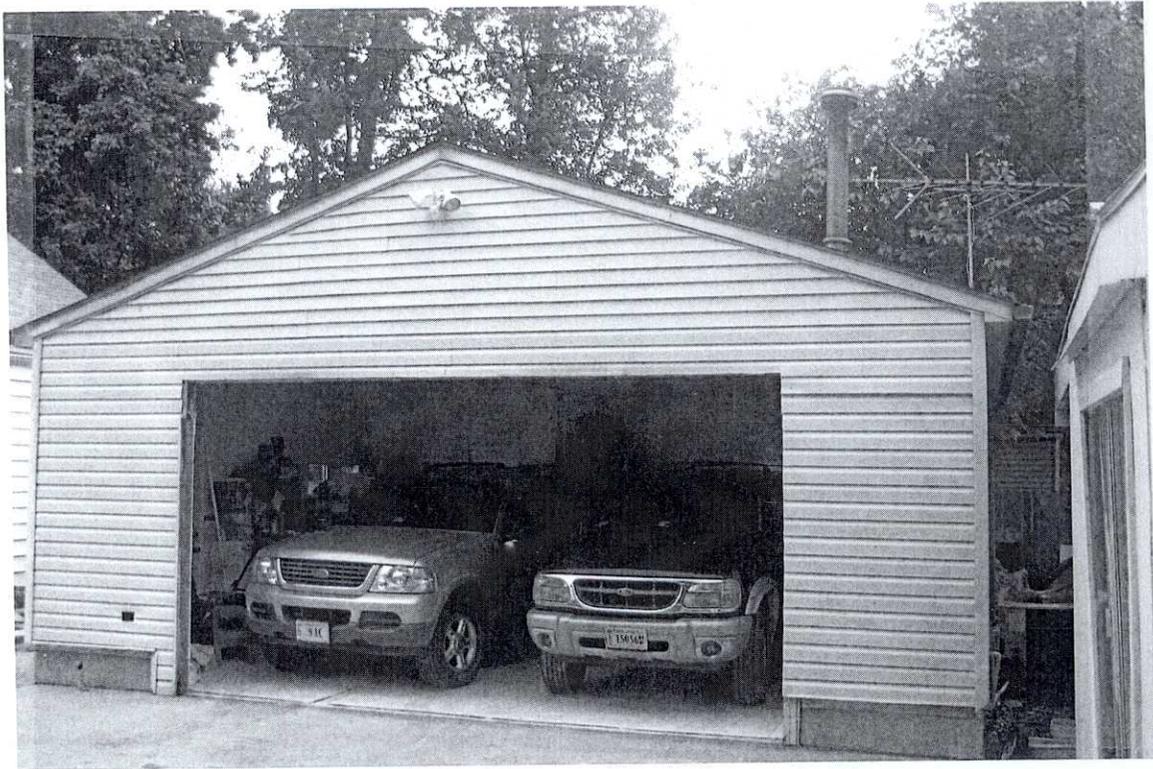
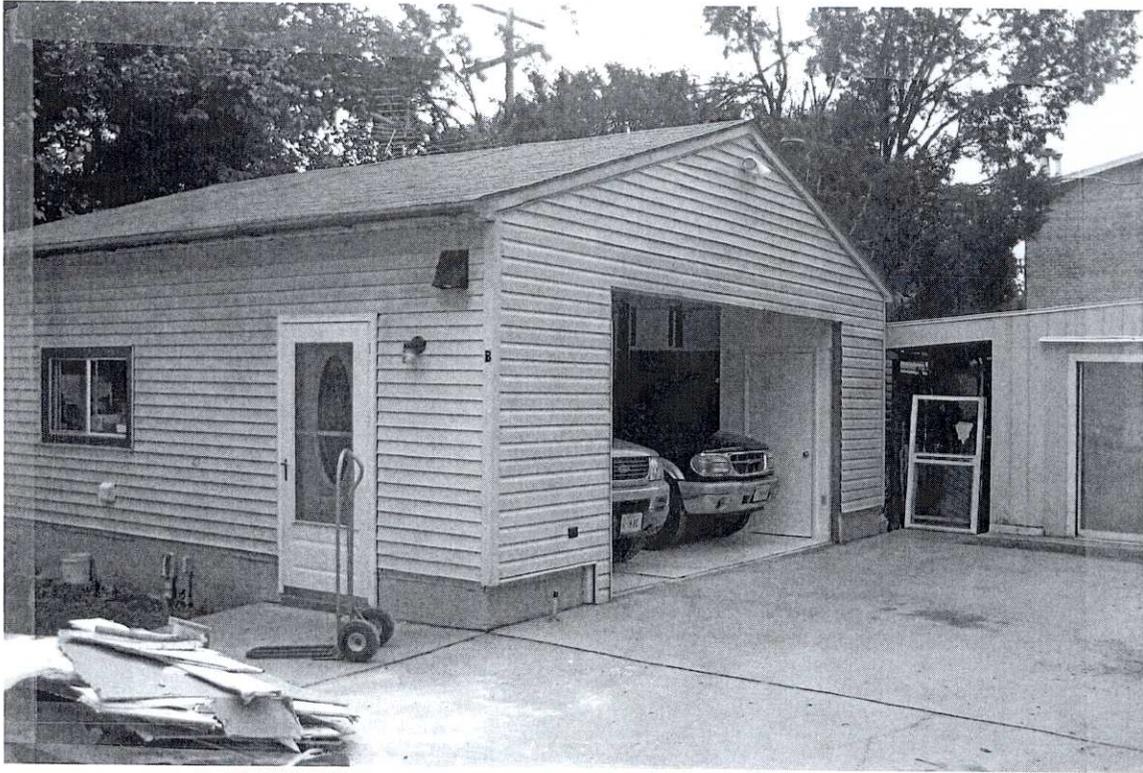


2010/11/19



2010/11/19





DESCRIPTION OF THE APPLICATIONS

Description of Special Permit Requests

The application contains two special permit requests for reductions to minimum yard requirements based on errors in building locations. The first request is to permit an addition to remain 20.0 feet from the front lot line. In the R-2 Zoning District, the minimum required front yard is 35.0 feet.

The second request is to permit an accessory storage structure shown as a 9-foot high shed, which measures 216.0 square feet in area, to remain 0.0 feet from the rear lot line. This structure encroaches into the adjacent lot to the west by 3.7 feet. The Zoning Ordinance prohibits an accessory storage structure which exceeds 8.5 feet in height from being located closer than a distance equal to its height to the rear lot line (Sect. 10-104, Par. 10(E)). In this instance, the minimum required rear yard is 9.0 feet.

	Structure	Yard	Min. Setback	Structure Location	Amount of Error	Percent of Error
Special Permit Request #1	Addition	Front	35.0 feet *	20.0 feet	15.0 feet	42.9%
Special Permit Request #2	Accessory Storage Structure (Shed)	Rear	9.0 feet **	0.0 feet	9.0 feet	100%

* Minimum yard requirement per Section 3-207

** Location Regulations per Section 10-104, Paragraph 10(E)

Description of Variance Applications

The application contains two variance requests. The first request is to permit greater than thirty (30) percent minimum rear yard coverage on the application property. Currently, the impervious area in the minimum required rear yard on this site measures 1,175 square feet, or 34.0% rear yard coverage. The coverage area includes a portion of a concrete driveway, the detached garage and two sheds.

The second variance request is to permit two sheds to each be greater than 200 square feet in size. One shed is 9 feet high and 216 square feet in area, and a second shed is 8.5 feet high and 303.71 square feet in area. Sect. 10-102 par. 25 of the Zoning Ordinance states that no storage structure that is accessory to a single family detached or attached dwelling in the R-2 through R-20 Districts shall exceed 200 square feet in gross floor area.

EXISTING SITE DESCRIPTION

Zoned to the R-2 Zoning District, the application property is located in the Gustafson Subdivision on the west side of Martha Street, west of the intersection of Martha Street and Richmond Highway (Route 1). The 7,259 square-foot property is developed with a 1 ½-story single family detached dwelling constructed of vinyl siding. County records indicate that the dwelling was constructed in 1942 and consists of 1,092 square feet of above-ground living area. A building permit was issued in 1988 for the construction of a 24 x 24 foot detached garage to be located 15 feet from the rear lot line. The garage however was constructed at 9.8 feet from the rear lot line. A copy of the building permit is included as Appendix 5 to the staff report. An addition measuring 8.1 feet x 27.1 feet in area and 10 feet in height was constructed at the front of the dwelling, located 20.0 feet from the front lot line. There are no records that a building permit was issued for this construction. Access to the site is provided from Martha Street via an existing concrete driveway that extends from the curb into the rear yard and connects to an additional concreted area. A small lawn area is located between the dwelling and the detached garage.

The special permit plat and pictures submitted by the applicant depict multiple structures at the rear of the dwelling and garage. A 9-foot high shed measuring 216 square feet in area is located in the southwest corner of the lot and is the basis for the second special permit request for an error in building location. A second shed, 8.5 feet in height is located at the northwest corner of the lot. The entire structure measures approximately 303.71 square feet in area. There are no records that a building permit was issued for either of the two sheds, both of which encroach upon the adjoining lot to the west. A 6-foot high stockade fence is located to the rear of the sheds on the adjacent lot to the west. A 4-foot high chain link fence extends along the southern lot line from the curb to the rear lot line. The front yard consists of a grassy lawn with a significant amount of potted flowers and flowering shrubs. The site is surrounded by a mixture of single-family detached homes, townhouses and non-residential uses. A multi-family apartment complex abuts the rear of the property to the west; the Mount Vernon Shopping Center is just beyond the apartment complex.

CHARACTER OF THE AREA

	Zoning	Use
North	R-2; C-6	Single family detached dwellings; Home Depot
South	C-2; C-6	Motel; Gas station
East	PDH-8	Townhouse Development
West	C-8	Apartments; Mount Vernon Shopping Center

BACKGROUND

On April 16, 2007, a Notice of Violation was issued to the applicant for violating Sect. 2-501 of the Fairfax County Zoning Ordinance which states in part that there shall not be more than one dwelling unit on any one lot, nor shall a dwelling unit be located on the same lot with any other principal building. An inspection had revealed that the detached garage had been converted into a second dwelling unit. The property owner was directed to remove all facilities which served to establish more than one dwelling unit which included, at a minimum, removing cooking appliances, the sink, the refrigerator and to cease to use the detached garage as a dwelling unit. A subsequent inspection was conducted in May, 2007 and the violation was cleared.

During the review phase of the special permit and variance applications, staff inquired about the occupancy status of the detached garage. The applicant informed staff that a family member was residing in the detached garage. A site visit was conducted with staff from the Department of Code Compliance on November 19, 2010, which revealed that the garage not occupied however that it had been converted back to a second dwelling unit. A second Notice of Violation was issued on January 10, 2011, for multiple site violations including, but not limited to, having excessive dwelling units in violation of Sect. 2-501 of the Zoning Ordinance; failing to obtain applicable building permits for improvements and structures on the site, a violation of Sects. 18-601 and 18-603 of the Ordinance; and, locating accessory storage structures incorrectly under Sect. 10-104 (10E) of the Zoning Ordinance. Copies of these notices of violations are included as Appendix 6 of this staff report. A site inspection conducted by staff from the Department of Code Compliance in March 2011, revealed that the second kitchen had been removed and the structure converted back into a garage as shown in the last photograph included at the front of this report. However, the remaining violations are the basis for this application; therefore the Notice of Violation remains open.

On May 16, 2011, the applicant submitted a request to the Zoning Administrator requesting a vested rights determination for the location of the existing garage under Sect. 15.2-2307 of the Code of Virginia. The Zoning Administration Division determined that records from the Department of Tax Administration indicate that the detached garage has been taxed for at least 15 years. As such, the garage can remain in its current location. County records do not show that the accessory storage structures have been taxed for 15 years thereby the Vested Rights Section of the Virginia Code is not applicable to these structures. A copy of this determination can be found in Appendix 7 of the staff report. A copy of the special permit plat depicting the structures on site, titled "Special Permit Plat, Lot 10, Gustafson, prepared by Stephen L. Moore Land Surveying, Inc., dated September 25, 2007, revised by Son H. Nguyen, dated July 20, 2010, is included at the front of the staff report.

Following the adoption of the current Ordinance, the Board of Zoning Appeals (BZA) heard the following similar special permit and variance applications in the vicinity of the application parcel.

- *Variance VC 87-L-089* was approved on September 18, 1987 for Tax Map 101-4 ((5)) 8, zoned R-2, at 8120 Martha Street, to permit construction of enclosed porch 21.3 feet from a front lot line (35 feet minimum required front

yard).

- *Variance VC 2002-LE-125* was approved on November 13, 2002 for Tax Map 101-4 ((5)) 15, zoned R-2, at 8121 Martha Street, to permit construction of addition 5.6 feet from side lot line and 26.3 feet from a front lot line (35 feet minimum required front yard).

ZONING ORDINANCE REQUIREMENTS (See Appendix 8)

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

- Sect. 8-006 General Special Permit Standards
- Sect. 8-903 Group 9 Standards
- Sect. 8-914 Provisions for Approval of Reduction to the Minimum Yard Requirements Based on Error in Building Location
- Sect. 10-104 Location Regulations
- Sect. 18-404 Required Standards for Variances

This special permit and variance are subject to Sects. 8-006, 8-903, 8-914, 10-104 and 18-404 of the Zoning Ordinance as referenced above, a copy of which is included in Appendix 8. Subject to development conditions, the special permit must meet these standards.

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.

APPENDICES

1. Proposed Special Permit Development Conditions
2. Proposed Variance Development Conditions
3. Applicant's Affidavits
4. Applicant's Statements of Justification
5. Building Permit for Garage
6. Notices of Violations
7. Zoning Administrator's Determination
8. Applicable Zoning Ordinance Provisions

PROPOSED DEVELOPMENT CONDITIONS

SP 2010-LE-053

June 15, 2011

1. This special permit is approved for the location of the existing 10 foot high addition and the 9 foot high shed as shown on the plat prepared by Stephen L. Moore Land Surveying, Inc., dated September 25, 2007, revised by Son H. Nguyen, dated July 20, 2010, submitted with this application and is not transferable to other land.
2. Within six months of approval of this application, building permits and final inspections for the addition shall be diligently pursued and obtained or the structures shall be removed or brought into compliance with Zoning Ordinance Requirements.
3. No accessory structures/storage structures on site shall be used as living space.

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.

PROPOSED DEVELOPMENT CONDITIONS

VC 2010-LE-006

June 15, 2011

1. This variance is approved for the rear yard coverage and the size of the accessory storage structures (sheds) on the property as shown on the plat prepared by Stephen L. Moore Land Surveying, as revised by Son H. Nguyen on July 20, 2010, submitted with this application and is not transferable to other land.
2. Within six months of approval of this application, building permits and final inspections for the sheds shall be diligently pursued and obtained or the structures shall be removed or brought into compliance with Zoning Ordinance Requirements.
3. No accessory structures/storage structures on site shall be used as living space.

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 including requirements for building permits.

Application No.(s): SP 2010-LE-053
 (county-assigned application number(s), to be entered by County Staff)

SPECIAL PERMIT/VARIANCE AFFIDAVIT

DATE: 9/3/10
 (enter date affidavit is notarized)

I, Ashley Nicole M LE, 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 96554a

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)
Ashley Nicole M LE	8116 Martha St Alex, VA 22309	Applicant/ Title Owner

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

* In the case of a condominium, the title owner, contract purchaser, or lessee of 10% or more of the units in the condominium.
 ** List as follows: Name of trustee, Trustee for (name of trust, if applicable), for the benefit of: (state name of each beneficiary).

Application No.(s): SP 2010-LE-053
(county-assigned application number(s), to be entered by County Staff)

SPECIAL PERMIT/VARIANCE AFFIDAVIT

DATE: 9/3/10
(enter date affidavit is notarized)

96554a

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)

N/A

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)

N/A

(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-053
(county-assigned application number(s), to be entered by County Staff)

SPECIAL PERMIT/VARIANCE AFFIDAVIT

DATE: 9/03/10
(enter date affidavit is notarized)

96554a

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**)

N/A

(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-053
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SPECIAL PERMIT/VARIANCE AFFIDAVIT

DATE: 9/03/10
(enter date affidavit is notarized)

96554a

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-053
(county-assigned application number(s), to be entered by County Staff)

SPECIAL PERMIT/VARIANCE AFFIDAVIT

DATE: 9/3/10
(enter date affidavit is notarized)

9657a

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:

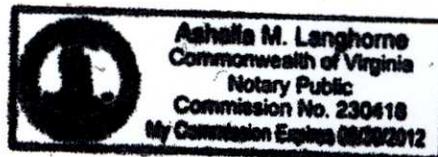
(check one) Applicant Ashley N M LE Applicant's Authorized Agent

Ashley Nicole M LE
(type or print first name, middle initial, last name, and title of signee)

Subscribed and sworn to before me this 3rd day of September 2010, in the State/Comm. of Virginia, County/City of Fairfax

Ashella M. Langhorne
Notary Public

My commission expires: 6/30/2012



Application No.(s): VC 2010-LE-006
(county-assigned application number(s), to be entered by County Staff)

SPECIAL PERMIT/VARIANCE AFFIDAVIT

DATE: 9/03/10 ✓
(enter date affidavit is notarized)

I, Ashley Nicole M Lee, 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 109710

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)
<u>Ashley Nicole M Lee</u>	<u>8116 Martha St. Alexandria, VA 22309</u>	<u>Applicant/ Title owner</u>

(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): VC 2010-LE-006
(county-assigned application number(s), to be entered by County Staff)

SPECIAL PERMIT/VARIANCE AFFIDAVIT

DATE: 9/3/10
(enter date affidavit is notarized)

✓ 109710

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)

N/A

DESCRIPTION OF CORPORATION: (check one statement)

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

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

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

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

Application No.(s): VC 2010-CE-006
(county-assigned application number(s), to be entered by County Staff)

Page Three

SPECIAL PERMIT/VARIANCE AFFIDAVIT

DATE: 9/3/10
(enter date affidavit is notarized)

✓ 109710

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**)

N/A

(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): VC 2010-LE-006
(county-assigned application number(s), to be entered by County Staff)

SPECIAL PERMIT/VARIANCE AFFIDAVIT

DATE: 9/3/10
(enter date affidavit is notarized)

✓ 109710

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:

N/A

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): VC 2010-LE-006
(county-assigned application number(s), to be entered by County Staff)

SPECIAL PERMIT/VARIANCE AFFIDAVIT

DATE: 9/3/10
(enter date affidavit is notarized)

✓ 109710

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 Ashley N M LE Applicant's Authorized Agent

Ashley N M LE
(type or print first name, middle initial, last name, and title of signee)

Subscribed and sworn to before me this 3rd day of September 2010, in the State/Comm. of Virginia, County/City of Fairfax.

Ashella M. Langhorne
Notary Public

My commission expires: 6/30/2012



SEP 3 2010

Zoning Evaluation Division

Statement of Justification

The following is an explanation of the situation regarding address 8116 Martha St., Alexandria, VA 22309.

I bought this house in May 2002. The land included the 15' high 1 ½ story-frame house, one 11' high 1 story garage, one 8.5' high shed that had a hot tub inside, and one 9' high shed. The real estate agent did not tell me that these structures were illegal in any way. I did not know that these structures were in violation of any zoning code, because no one told me. I trusted the real estate agent.

Two weeks after I moved in, in May 2002, I hired a contractor and gave him over \$100,000 to turn the garage into a guest house; to add more rooms to the 1 ½ story-frame house; to connect the house to the garage; and to build an open porch in front of the house. During this time my mother was diagnosed with cancer, and the doctor told us that she had only a couple of months to live. I had to go to Seattle to take care of my mother, so I gave the money (\$100,000) and the house key to the contractor, because he was my friend. The contractor told me that he would get all the necessary permits from the county and that when I return from Seattle that the house would be finished. I left for Seattle and was there for almost three months. After my mother passed away, I came back to my home and found that the contractor had disappeared with all my money and had also stolen some of my possessions. The only work that the contractor had done was the garage renovation and the porch, which was only 70% finished. The main house did not get renovated. I lost all my money, and I could not do anything to my house. Then in November 2006, my friends helped me to enclose the front porch, because water was coming into the house and was creating mold in the house. I was under the impression that the contractor had gotten a permit for the porch, that enclosing it would not affect anything, and that I was not violating any law. In March or April of 2007, I received a letter from Fairfax County asking me if I had a permit for the porch and for the structures behind my house. When I went to the county to respond to this letter, I was shocked to find out that the contractor had not obtained any permit for the work that was done in 2002. Since then I have been trying to resolve this issue with the county. Also during this time, my father, who was and is still living with me, was in the hospital for about two months, and I myself was diagnosed with rheumatoid arthritis and infection on my hand. Even though I was preoccupied with hospital appointments for my father and for myself for almost one year, I tried to cooperate with the county. Ms. Lynne Snyder of the Dept. of Public Works of Fairfax County was understanding and told me that the county would give me more time to resolve this issue.

My father's illness and my rheumatoid arthritis have prevented me from taking care of this issue quickly. I also have been busy going to court, because I am trying to sue the contractor to get my money back. I lost all my savings to the contractor, whom the police are still in search of today. I also have to pay back the bank about \$65,000 plus interest, that I had borrowed to pay the contractor. I am financially ruined, and my house is currently not finished and damaged from the contractor's unfinished and bad work.

When I bought the house in May 2002, I did not know that the structures on my lot was in any violation. When I asked the contractor to renovate my house, I did not in any way mean to do anything illegally; I trusted the contractor-friend to do all work legally. Because I am handicapped and because I am in financial ruin, I cannot afford to do anything to the structures on my lot. I do not have any money to tear down or fix anything. I apologize for this situation, but I did not mean to violate any law, and I am seeking assistance and understanding from Fairfax County.

See attached

**FAIRFAX COUNTY ZONING ORDINANCE
STATEMENT OF JUSTIFICATION
On the Error in Building Location
At 8116 Martha Street, Alexandria VA22309**

RECEIVED
Department of Planning & Zoning
JUL 14 2010
Zoning Evaluation Division

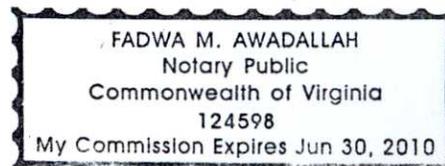
- A. The error exceeds ten (10) percent of the measurement involved, and
- B. The noncompliance was done in good faith, or no fault of the property owner because of the following reasons:
- The owner unfortunately hired a bad contractor, who promised to take care of the Building Permit prior to commence the construction.
 - The Contractor asked the owner to write blank checks, before the Owner left her home to go to California for a long period to take care of her seriously ill mother.
 - The Owner only came back after her mother's death, and found out that all her money from her equity loan in the Bank Account was emptied by the Contractor (almost \$100,000). Although, the job was incomplete, and there was no Building Permit applied or obtained!
 - The Contractor disappeared and did not return any phone call from the Owner. Now, the Owner desperately needs help from the County's tolerance.
- 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.

Respectfully submitted,

Ashley Nicole Le

ASHLEYNICOLE LE

6/24/10
Fairfax - Virginia
Fadwa M. Awadallah



STATEMENT OF JUSTIFICATION

The following is an explanation of the situation regarding address 8116 Martha Street., Alexandria, VA 22309.

RECEIVED
Department of Planning & Zoning

JUN 13 2011

ZONING ORDINANCE STANDARD FOR A VARIANCE

Zoning Evaluation Division

Pursuant to Section 18-404 of the Zoning Ordinance.

1. The subject property was acquired in good faith in 2002.
2. The subject property has the following characteristics - NOTE: "the effective date of the ordinance is August 14, 1978".

(F) An extraordinary situation or condition as the property was purchased with outdoor Jacuzzi, sheds, and a concrete area. (See enclosed photo.)

3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance. (As is.)
4. That the strict application of this Ordinance would produce undue hardship because included in purchase price we use, with no problems.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
6. A. That the strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict the utilization of the subject property.
7. That authorization of the variance will not be of substantial detriment to adjacent property for at least 10 or more years.
8. That the character of the zoning district will not be changed by the granting of the variance.
9. That the variance will be in harmony with the intended spirit and purposes of this Ordinance and will not be contrary to the public interest.

Thank you.

6/13/2011
Ashley Le

BUILDING -
 PERMIT APPLICATION

JOB LOCATION
 Street 8116 Martha St.
 Building _____ Floor _____ Suite _____
 Subdivision Gustafson Lot 10
 Tenants Name J. HALE

DO NOT WRITE IN THIS SPACE
 Permit No. 8109913 0540
 Map Reference 101 4-05 0010
 Building Permit No. _____ Control No. _____
 Std. _____ Mag. _____ Plan _____ Census _____

OWNER
 Name Jim HALE
 Address (Mailing) 8116 Martha St
 City Alex State VA Zip 22309
 Telephone 360-6853 (547-9714)
work

CONTRACTOR
 Company Name Sturdy Ruff Inc
 Master _____
 Address 14931 Jeff Davis Hwy
 City Woodbridge State VA Zip 22191
 Telephone 703-643-2229 License No. 027175 class A
 State Contractors License No. _____
 County Business Account No. 16503

For Wood Frame Garage

Description 21/2
34x24

Model/Use _____
 Sewage: Public Community Septic Tank None
 WATER: Public Individual Well None
 N-New D-Demolish
 R-Alter or Repair M-Move
 A-Add To O-Other

REMARKS:
 BUILDING DESCRIPTION QUANTITY
 # Units _____
 # Stories _____
 # Rooms _____
 # Bedrooms _____
 # To be Added _____
 # Baths _____
 # Half Baths _____
 # Kitchens _____
 # Fireplaces _____
 Basement _____
 % Basements to Finish _____

BUILDING DIMENSIONS			
No. Stories	Width	Depth	Sq. Ft.
	x	=	
	x	=	
	x	=	
	x	=	

ROUTING

	Date	Approved By:
Health Review		
Site Review	<u>4/8/88</u>	<u>JHC</u>
Zoning Review <u>3/d</u>		
Sanitation Review		
Building Review <u>4/10</u>	<u>4/8/88</u>	<u>Wm L</u>
Fire Review		

Use Group of Building R 3
 Type of Construction SR
 Building Area _____
 Estimated Const. Cost \$11,423.00

ZONING REVIEW
 Zoning Proffers Building _____
 Zoning Class R 2
 Zoning Case # _____

BUILDING CHARACTERISTICS
 Building Height 14'
 Exterior Walls _____
 Interior Walls _____
 Roofing Material _____
 Flooring Material _____
 Heating Fuel _____
 Heating System _____

GRADING AND DRAINAGE REVIEW
 Soils _____
 Historical _____
 Plan # _____
 Retaining Wall _____

YARDS	Front	Front	Left Side	Right Side	Rear
		<u>NC</u>	<u>15'</u>	<u>NC</u>	<u>15'</u>

REMARKS Gustafson
Lot 10
detached garage
plot attached

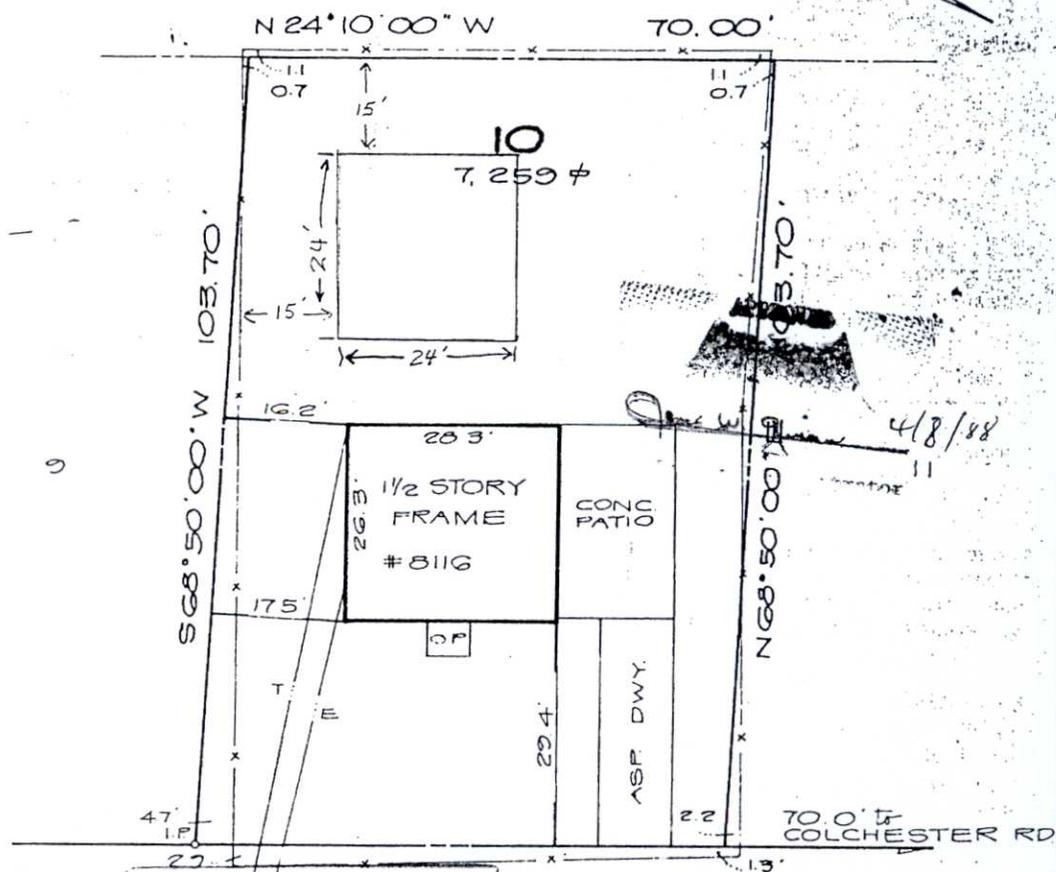
FOR COUNTY USE ONLY:

Date <u>4/8/88</u> By <u>RHW</u> Approved for Issuance of Building Permit	Fee <u>36.86</u> Filing Fee _____ Amount Due _____
--	--

The request for and use of personal information on this form is subject to the provisions of the Privacy Protection Act of 1976 and the Freedom of Information Act.

I hereby certify that I have authority of the owner to make this application, that the information is complete and correct, and that if a permit is issued the construction and/or use will conform to the building code, the zoning ordinance and other applicable laws and regulations including private building restrictions, if any, which relate to the property. He/She and the company or organization named and represented herein is duly registered or exempt from registration in accord with the provisions of Chapter 7 of the Code of Virginia.

Signature of Owner of Agent _____ Date 4/8/88
 Notary Signature _____ Date _____



AP 24' 10" 00" E 70.00'
 DIVISION OF
MARTHA STREET
 DESIGN REVIEW 50' R/W
 By ALC
 Date 2-28-88



PLAT
 SHOWING HOUSE LOCATION ON
 LOT 10
GUSTAFSON
 FAIRFAX COUNTY, VIRGINIA
 SCALE 1" = 20' FEB 23, 1978



County of Fairfax, Virginia

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

April 16, 2007

NOTICE OF VIOLATION

CERTIFIED MAIL

Return Receipt Requested

Receipt #7006 2150 0000 9341 1340

Ashleynicole Le
8116 Martha Street
Alexandria, VA 22309



Re: 8116 Martha Street
Gustafson, Lt. 10
Tax Map Ref.: 101-4 ((5)) 10
Zoning District: R-2

Dear Mrs. Le:

A zoning inspection of the above-referenced property and a conversation with you on March 29, 2007, revealed that the detached garage has been converted into a second dwelling unit consisting of an independent living facility, which includes: permanent provisions for living, sleeping, eating, cooking, and sanitation. For your information and review, a dwelling unit is defined in Part 3 of Article 20 of the Fairfax County Zoning Ordinance 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.

The maintenance of two or more separate dwelling units, on this lot is a violation of Sect. 2-501 of the Fairfax County Zoning Ordinance, which states, in part

There shall be not more than one (1) dwelling unit on any one (1) lot, nor shall a dwelling unit be located on the same lot with any other principal building.....

Department of Planning and Zoning
Zoning Administration Division
Zoning Enforcement Branch

12055 Government Center Parkway, Suite 829
Fairfax, Virginia 22035-5508

Phone 703-324-1300 FAX 703-324-1343
www.fairfaxcounty.gov/dpz/

Ashleynicole Le
April 16, 2007
Page 2

You are, hereby, directed to clear this violation within thirty (30) days of receipt of this notice. Compliance can be accomplished by:

For the second dwelling unit located in the detached accessory garage on the above-referenced property in violation of Sect. 2-501 of the Zoning Ordinance, compliance may be achieved as follows:

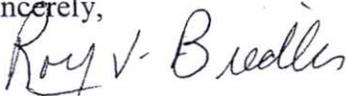
- . Removing all facilities which serve to establish any more than one (1) dwelling unit. This requires that you do the following, at a minimum, with respect to the second kitchen in the garage:
 - . Remove cooking appliances;
 - . Remove the sink;
 - . Remove the refrigerator; and
 - . Cease to use the detached garage as a dwelling unit.

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, written statement setting forth the decision being appealed, date of decision, the grounds for the appeal, how the appellant is an aggrieved party and any other information you may wish to submit and a \$375.00 filing fee. Once an appeal application is accepted, it is scheduled for public hearing and decision before the BZA.

Failure to comply, with this notice, may result in the initiation of appropriate legal action to gain compliance with the Zoning Ordinance.

Should you have any questions or need additional information, please do not hesitate to contact me at (703) 324-1331 or (703) 324-1300.

Sincerely,



Roy V. Biedler
Senior Zoning Inspector

RVB/acg



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 10, 2011

SHERIFF'S LETTER

CASE #: 201006258 **SR#:** 65304

SERVE: Ashleynicole Le
8116 Martha Street
Alexandria, VA 22309

LOCATION OF VIOLATION 8116 Martha Street
Alexandria, VA 22309-3720
Tax Map Ref: 101-4 ((5)) 10
Zoning District: R-2

Dear Property Owner:

An inspection of the above referenced property on November 19, 2010 revealed the following violations of the Fairfax County Zoning Ordinance.

§ 2-501 Excessive Dwelling Units:

The inspection revealed there is two (2) complete and separate dwelling units on this single family residential lot at the above-referenced property. Part 3 of Article 20 of the Zoning Ordinance defines a dwelling unit as:

One (1) or more rooms in a residential building or residential portion of a building which are arranged, designed, used, or intended for use as a complete, independent living facility which includes permanent provisions for living, sleeping, eating, cooking and sanitation. Occupancy shall be in accordance with the provisions of Sect. 2-502.

Therefore, the presence of more than one dwelling unit on the above-referenced property is in violation of Sect. 2-501 of the Zoning Ordinance which states, in part:

Department of Code Compliance
12055 Government Center Parkway, Suite 1016
Fairfax, Virginia 22035-5508
Phone 703-324-1300 FAX 703-324-9346
www.fairfaxcounty.gov/code

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 thirty (30) days of the date of this notice. Compliance can be achieved as follows:

- Applying for and obtaining approval from the Fairfax County Building Official, (12055 Government Center Parkway, Second Floor, Permit Application Center) of a valid demolition permit for the removal of all electrical circuits, plumbing fixtures and piping and natural gas piping systems which were installed to establish the second kitchen in the dwelling unit at this property, and obtaining a passing final inspection of such demolition work; and
- 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
- 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.

§ 18-601 Building Permit

§ 18-603 Compliance with Other Codes:

A review of Fairfax County Land Development records indicates that Building Permits were never obtained for the construction/erection of the accessory dwelling unit and two accessory storage structures as required by Sect. 18-601 of the Zoning Ordinance. They are, therefore, in violation of Sect. 18-601 of the Zoning Ordinance which specifies:

The erection of all buildings and all structures, as well as additions, deletions and modifications thereto, shall be subject to the provisions of Chapter 61 of The Code, Buildings. No building or structure which is required to have a Building Permit pursuant to Chapter 61 of The Code shall be erected until a Building Permit Application has been approved by the Zoning Administrator.

In addition, you are advised a Building Permit cannot be issued for the accessory dwelling unit or the two accessory storage structures until the property is in compliance with Par. 1 of Sect. 18-603 of the Zoning Ordinance which states:

No Building Permit shall be issued for the erection of any building or structure on a lot or addition or modification to a building or structure that is in violation of any of the provisions of Chapter 101, Chapter 116 or Chapter 118 of The Code, this Ordinance, all other applicable laws and ordinances, any proffered conditions, or any development conditions of any approved rezoning, special permit, special exception or variance. Appeals of decisions made pursuant to Chapter 118 of The Code which are appealable shall be processed in accordance with Article 8 of Chapter 118.

You are hereby directed to clear these violations within thirty (30) days after of the date of this notice. Compliance must be accomplished by:

- Removing the accessory dwelling unit and two accessory storage structures from the property; or
- Applying for and obtaining the Zoning Administrator's approval of a Building Permit for the accessory dwelling unit and two accessory storage structures.

§ 10-104 (10E) Accessory Storage Structure Location
§ 2-302 (6) Accessory Use must comply with Article 10:

The presence of two accessory storage structures, which measured approximately nine (9) feet, one (1) inch in height, are approximately 240 and 250 square feet in area respectively. Both structures are located approximately one (1) foot from the rear lot line. One of the accessory storage structures is located approximately two (2), three (3) inches from the side lot line.

The Fairfax County Zoning Ordinance permits accessory storage structures to be located in minimum required yards; however, if the structure exceeds eight and one-half (8½) feet in height, it must be located on the lot so as to comply with Par. 10E of Sect. 10-104 of the Zoning Ordinance which states:

An accessory storage structure which exceeds eight and one-half (8 ½) feet in height shall not be located closer than a distance equal to its height to the rear lot line or located closer than a distance equal to the minimum required side yard to the side lot line.

The minimum required side yard distance in the R-2 District is fifteen (15) feet as detailed in Par. 2 of Sect. 3-207 of the Zoning Ordinance.

Therefore, as these accessory storage structures exceed eight and one-half (8 ½) feet in height and are not located in accordance with the provisions of Par. 10E of Sect. 10-104 above, and are in violation of Par. 10E of Sect. 10-104 and Par. 6 of Sect. 2-302 of the Zoning Ordinance which states:

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

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

- Removing the storage structure from the property in its entirety; or
- Reducing the height of the structure to eight and one-half (8 ½) feet or less to allow it to remain at its present location; or
- Relocating the structure to a distance from the rear and side lot lines in accordance with Par. 10E of Sect. 10-104 of the Zoning Ordinance as outlined above.

As an alternative you may apply to the Fairfax County Board of Zoning Appeals (BZA) and actively pursue and ultimately obtain approval of a Group 9 Special Permit for an error in building location to allow the accessory storage structure to remain at its present height and at its present location. For information and answers to any questions regarding this application process, you may contact the Zoning Evaluation Division at (703) 324-1290.

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 \$600.00 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) 324-1931 or (703) 324-1300.

Sincerely,

Wayne Bass



County of Fairfax, Virginia

APPENDIX 7

5/23/11 Ashley Nicole

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

May 23, 2011

Ashley Nicole M. Le
8116 Martha Street
Alexandria, Virginia 22309

RE: § 15.2-2307 Determination for Garage
Gustafson, Lot 10
8116 Martha Street
Tax Map Ref.: 101-4 ((5)) 10
Zoning Districts: R-2

Dear Ms. Le:

This letter is in response to your letter dated May 16, 2011 to Eileen M. McLane, Zoning Administrator, in which you requested a vested rights determination for the existing garage on the referenced property under §15.2-2307 of the *Code of Virginia*.

A plat entitled, "Special Permit Plat, Lot 10, Gustafson" prepared by Stephen L. Moore, L.S. and recertified by Son H. Nguyen, L.S. on July 20, 2010, indicates that the subject property contains the following structures:

- A 1 ½ story, 28.5 foot by 26.5 foot single family detached frame dwelling with a 27.1 foot by 8.1 foot by 10 foot tall front building addition. The addition is setback 20 feet from the front lot line and the dwelling is setback 28 feet from the front lot line; neither structure meets the 35 foot minimum required front yard requirements of the R-2 District.
- A 24.4 foot by 24.4 foot by 11 foot tall garage that has been converted into a dwelling unit. The garage door has been removed from this structure and the interior contains a two bedroom dwelling unit with kitchen, bath and two separate entries. This structure is located 15.7 feet from the south side property line and 9.8 feet from the rear lot line. The structure does not comply with the locational requirements for accessory structures as it is not setback a distance equal to its height from the rear lot line. In the R-2 District, except in very limited circumstances which are not applicable in this situation, only one dwelling unit is permitted on a lot. Therefore, there are too many dwelling units on this lot.
- A 21.6 foot by 10 foot by 9 foot tall shed that encroaches 3.7 feet into the adjoining lot to the rear and does not comply with the requirements for accessory structures from the rear lot line. It does, however, meet the minimum required 15 foot side yard requirements of the R-2 District.

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/



Ashley Nicole M. Le

May 23, 2011

Page 2

- o A 8.0 foot by 7.5 foot by 3.0 foot tall hot tub enclosure which encroaches 3.2 feet into the adjoining property and does not comply with the rear yard locational requirements for accessory structures.
- o A 16.0 foot by 12.1 foot by 8.5 foot tall shed encroaches 4.9 feet into the adjoining lot and does not meet the accessory structure location requirements from the rear lot line.

Special Permit Application SP 2010-LE-053 has been filed to allow a reduction to the minimum yard requirements based on an error in building location to permit:

- The dwelling to remain 20 feet from the front lot line;
- An accessory structure to remain 9.8 feet from the rear lot line; and
- Three accessory structures to remain zero (0) feet from the rear lot line.

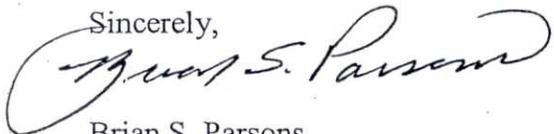
Variance VC 2010-LE-006 has been submitted to permit storage sheds greater than 200 square feet in size and to permit minimum required rear yard coverage greater than 30 percent.

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. Records from the Department of Tax Administration indicate that the garage has been taxed for at least 15 years. As such, §15.2-2307 is applicable and the garage can remain in its current location. However, any expansion or replacement of the garage must meet the current requirements discussed above and obtain all necessary building permits. Furthermore, this determination pertains only to the location of the structure and does not in any manner legitimize the use of this structure as a dwelling unit. The applicant has indicated that the dwelling unit will be converted back to a detached garage including the replacement of the garage door.

In addition, there is no evidence in the Department of Planning and Zoning files that the sheds, hot tub enclosure or addition ever received Building Permit approval. Furthermore, the Department of Tax Administration records do not show that these structures have been taxed for at least 15 years. As such § 15.2-2307 is not applicable to the sheds, hot tub enclosure or building addition. Therefore, these structures must be relocated, removed or the requested applications must be approved. It should be noted that the accessory structures must be located entirely on the subject property and cannot be partially located on the abutting property.

I trust that this letter satisfactorily responds to your request. Should you have any additional questions, please feel free to contact me at 703-324-1314.

Sincerely,



Brian S. Parsons
Senior Assistant to the Zoning Administrator

cc: Jeffrey C. McKay, Supervisor, Lee District
Eileen M. McLane, Zoning Administrator
✓ Barbara C. Berlin, Director, Zoning Evaluation Division
Lorrie Kirst, Deputy Zoning Administrator for Ordinance Administration Branch

Ashley Nicole M. Le
May 23, 2011
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Diane E. Johnson-Quinn, Deputy Zoning Administrator for Zoning Permit Review Branch
Shelby Johnson, Staff Coordinator, Zoning Evaluation Division

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Ashley Nicole M. Le
8116 Martha Street
Alexandria, Virginia 22309



2011-0529

Ms. Eileen McLane
Department of Planning and Zoning
12055 Government Center Parkway, Suite 807
Fairfax, Virginia 22035

Dear Ms. McLane,

I'm writing to you for a vested rights determination 2307. I purchased this property in 2002 and all the accessory structures were on the property when I brought it. The 24 x 24 garage shown on the attached plat was built by building permit in 1988. (see attached building permit and plat). I was not able to locate building permits for the sheds but I did locate the ones for the garage please review my request and make a vest right determination for me. I look forward to hearing from you and would like to thank you in advance.

Sincerely,

Ashley Le

Ashley Nicole M. Le

(703) 338 4279

5/16/2011

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.

18-401 Initiation

A property owner, tenant, government official, department, board, bureau or condominium, in accordance with the provisions of Sect. 2-518, may apply to the BZA for a variance of the strict application of the terms of this Ordinance; provided, however, application shall be made to the Board of Supervisors for a special exception pursuant to those provisions set forth in Part 6 of Article 9.

18-404 Required Standards for Variances

To grant a variance the BZA shall make specific findings based on the evidence before it that the application satisfies all of the following enumerated requirements:

- 1. That the subject property was acquired in good faith.
- 2. That the subject property has at least one of the following characteristics:
 - A. Exceptional narrowness at the time of the effective date of the Ordinance;
 - B. Exceptional shallowness at the time of the effective date of the Ordinance;

- C. Exceptional size at the time of the effective date of the Ordinance;
 - D. Exceptional shape at the time of the effective date of the Ordinance;
 - E. Exceptional topographic conditions;
 - F. An extraordinary situation or condition of the subject property; or
 - G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
 4. That the strict application of this Ordinance would produce undue hardship.
 5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
 6. That:
 - A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict the utilization of the subject property, or
 - B. The granting of a variance will alleviate a clearly demonstrable hardship as distinguished from a special privilege or convenience sought by the applicant.
 7. That authorization of the variance will not be of substantial detriment to adjacent property.
 8. That the character of the zoning district will not be changed by the granting of the variance.
 9. That the variance will be in harmony with the intended spirit and purposes of this Ordinance and will not be contrary to the public interest.

10-104 Location Regulations

10. The following regulations shall apply to the location of freestanding accessory storage structures:
 - A. For purposes of determining height, the height of an accessory storage structure shall be measured in accordance with Par. 4 of Sect. 10-103 above.
 - B. An accessory storage structure shall not be located (a) in any minimum required front yard on any lot or (b) in any front yard on any lot containing 36,000 square feet or less.
 - C. An accessory storage structure which does not exceed eight and one-half (8 ½) feet in height may be located in any part of any side yard or rear yard, except as qualified in Sect. 2-505.
 - D. An accessory storage structure which exceeds eight and one-half (8 ½) feet in height shall not be located in any part of any minimum required side yard.
 - E. An accessory storage structure which exceeds eight and one-half (8 ½) feet in height shall not be located closer than a distance equal to its height to the rear lot line or located closer than a distance equal to the minimum required side yard to the side lot line.
 - F. On a corner lot, the rear lot line of which adjoins a side lot line of a lot to the rear, an accessory storage structure which exceeds eight and one-half (8 ½) feet in height shall not be located:
 - (1) Nearer to any part of the rear lot line that adjoins the side yard on the lot to the rear than a distance equal to the minimum required side yard on such lot to the rear, or
 - (2) Nearer to the side street line than a distance equal to the minimum required front yard on the lot to the rear.
11. Solid waste and recycling storage containers may be located in any yard, provided that any container located in a minimum front yard shall be located no closer than fifteen (15) feet to a front lot line and shall be screened from view from the abutting street by either plantings or solid fencing. Notwithstanding the provisions of Par. 3 above, the maximum height of such solid fencing shall not exceed one (1) foot above the solid waste and recycling storage containers. In addition, no

containers shall be located in any required parking space, driveway, parking aisle, open space or landscaped area.

12. The following regulations shall apply to the location of all freestanding structures or uses except those specifically set forth in other paragraphs of this Section:
 - A. For purposes of determining height, the height of an accessory structure shall be measured in accordance with Par. 4 of Sect. 10-103 above.
 - B. An accessory structure or use, which does not exceed seven (7) feet in height, may be located in any part of any side or rear yard, except as qualified in Sect. 2-505.
 - C. No accessory structure or use, except a statue, basketball standard or flagpole, shall be located (a) in any minimum required front yard on any lot or (b) in any front yard on any lot containing 36,000 square feet or less. When located in a front yard, basketball standards shall not be located closer than fifteen (15) feet to a front lot line and twelve (12) feet to a side lot line, and shall not be used between the hours of 8:00 PM and 8:00 AM.
 - D. No accessory structure or use which exceeds seven (7) feet in height shall be located in any minimum required side yard.
 - E. No accessory structure or use which exceeds seven (7) feet in height shall be located closer than a distance equal to its height to the rear lot line or located closer than a distance equal to the minimum required side yard to the side lot line.
 - F. On a corner lot, the rear lot line of which adjoins a side lot line of a lot to the rear, no accessory structure or use which exceeds seven (7) feet in height shall be located:
 - (1) Nearer to any part of the rear lot line that adjoins the side yard on the lot to the rear than a distance equal to the minimum required side yard on such lot to the rear, or
 - (2) Nearer to the side street line than a distance equal to the minimum required front yard on the lot to the rear.
13. Except as may be qualified by Sect. 2-505, conventional television antennas and satellite dish antennas designed to receive television or

video programming with a diameter or diagonal measurement of 39 inches (one meter) or less shall be permitted in any yard on any lot.

14. Except for lighting fixtures mounted on poles that are associated with outdoor recreation/sports facilities playing fields/courts and as noted below, the mounting height of lighting fixtures on light poles shall not exceed a maximum height of forty (40) feet as measured from the ground level or the surface on which the light pole is mounted to the bottom of the lighting fixture. Light poles mounted on the top of parking decks or parking