APPLICATION ACCEPTED: May 5, 2011
DATE OF PUBLIC HEARING: July 20, 2011
TIME: 9:00 a.m.

County of Fairfax, Virginia

July 13, 2011

STAFF REPORT

SPECIAL PERMIT APPLICATION NO. SP 2011-MA-038

MASON DISTRICT

APPLICANT/OWNERS:	Jacqueline Stapleton Jorge J. Vivanco
LOCATION:	3431 Aston Street
SUBDIVISION:	Shamrock Heights
TAX MAP:	59-2 ((11) 1
LOT SIZE:	23,298 square feet
ZONING:	R-2
ZONING ORDINANCE PROVISION:	8-914
SPECIAL PERMIT PROPOSAL:	To permit a reduction to minimum yard requirements based on error in building location to permit an accessory structure to remain 4 feet from the side lot line and 1.7 feet from the rear lot line.

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

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

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/

Excellence * Innovation * Stewardship
Integrity * Teamwork * Public Service

DEPARTMENT OF PLANNING & ZONING

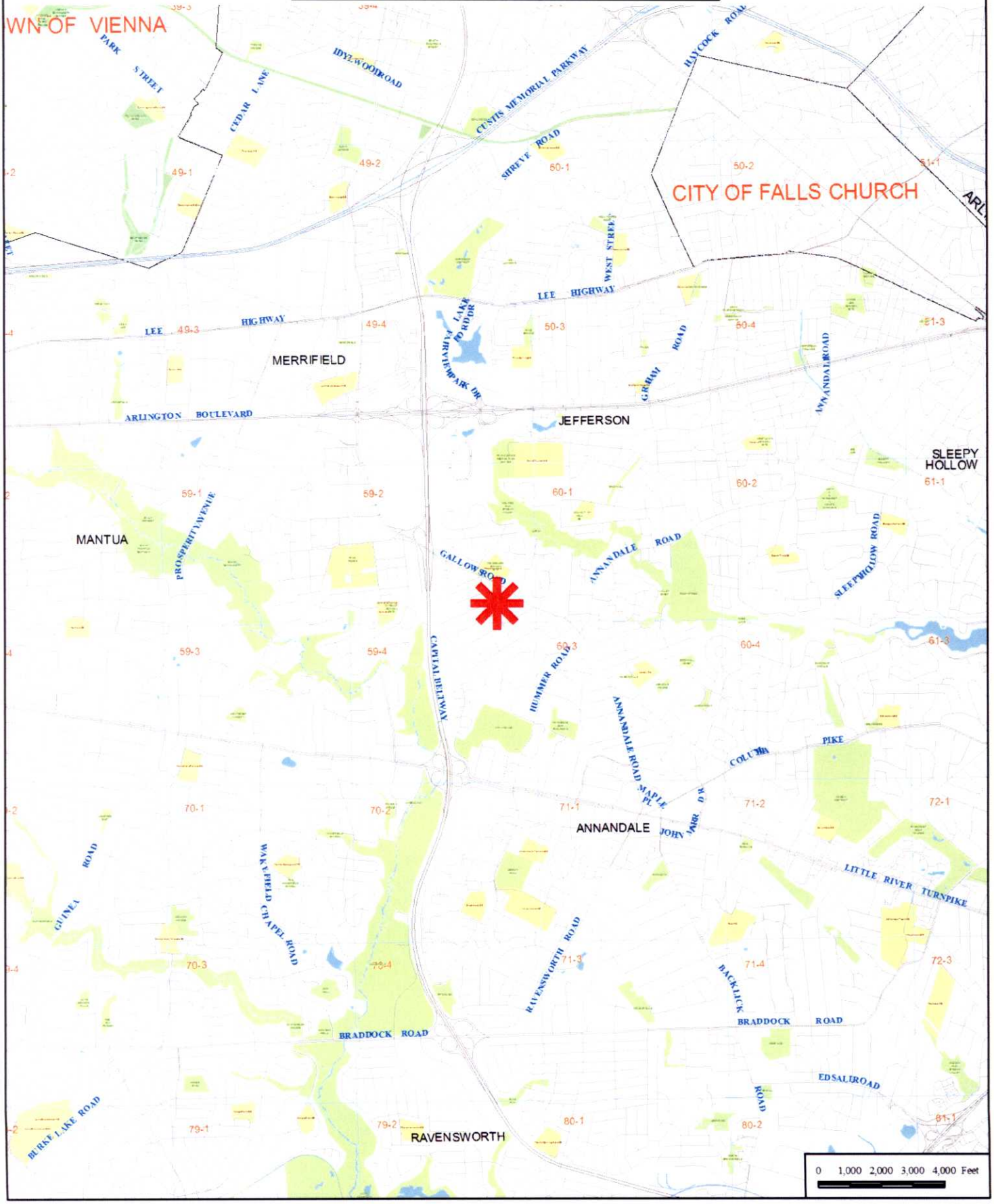
For additional information, call Zoning Evaluation Division, Department of Planning and Zoning at 324-1280, 12055 Government Center Parkway, Suite 801, Fairfax, Virginia 22035. **Board of Zoning Appeals' meetings are held in the Board Room, Ground Level, Government Center Building, 12000 Government Center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

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

Special Permit

SP 2011-MA-038

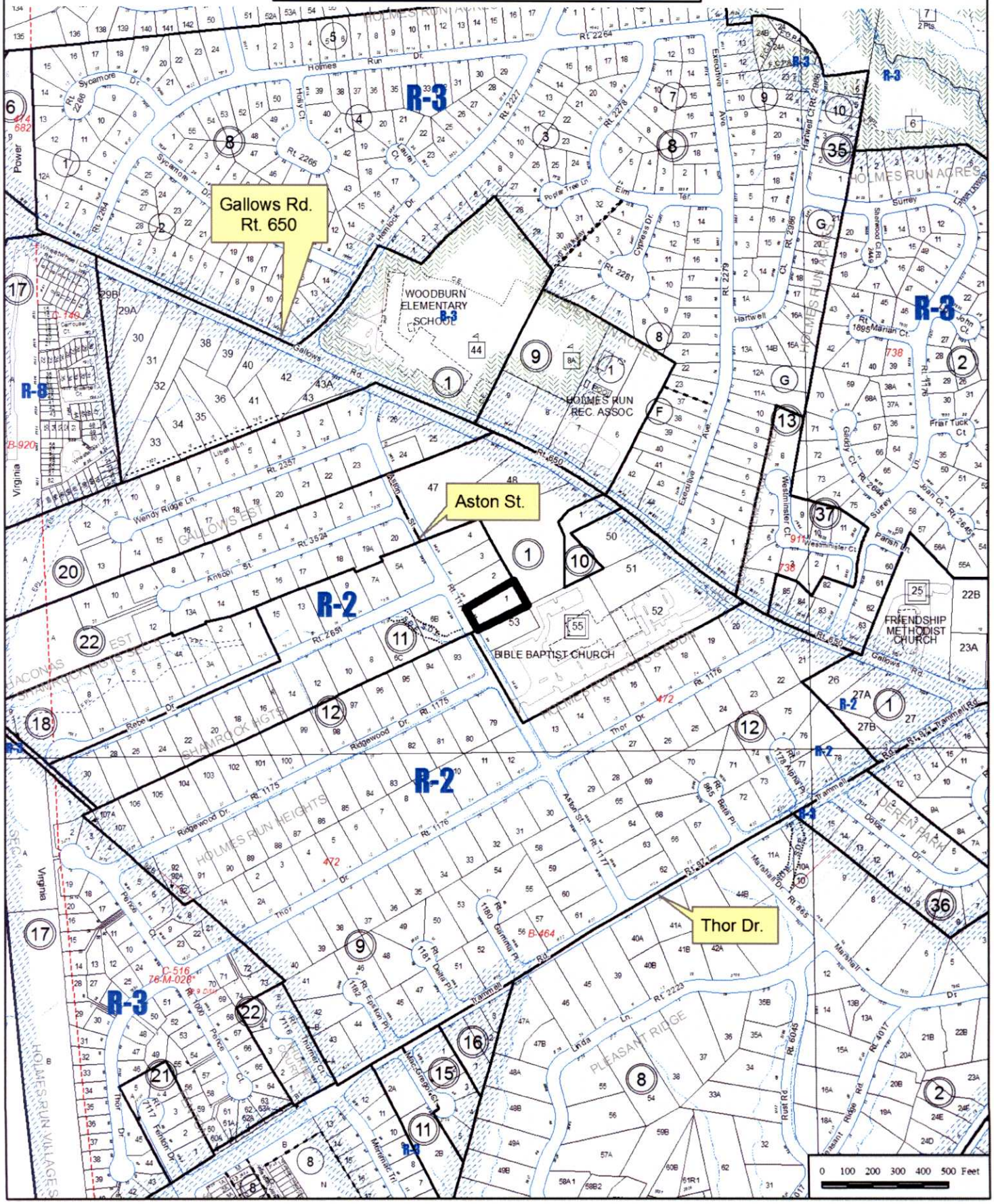
JACQUELINE STAPLETON AND JORGE J. VIVANCO

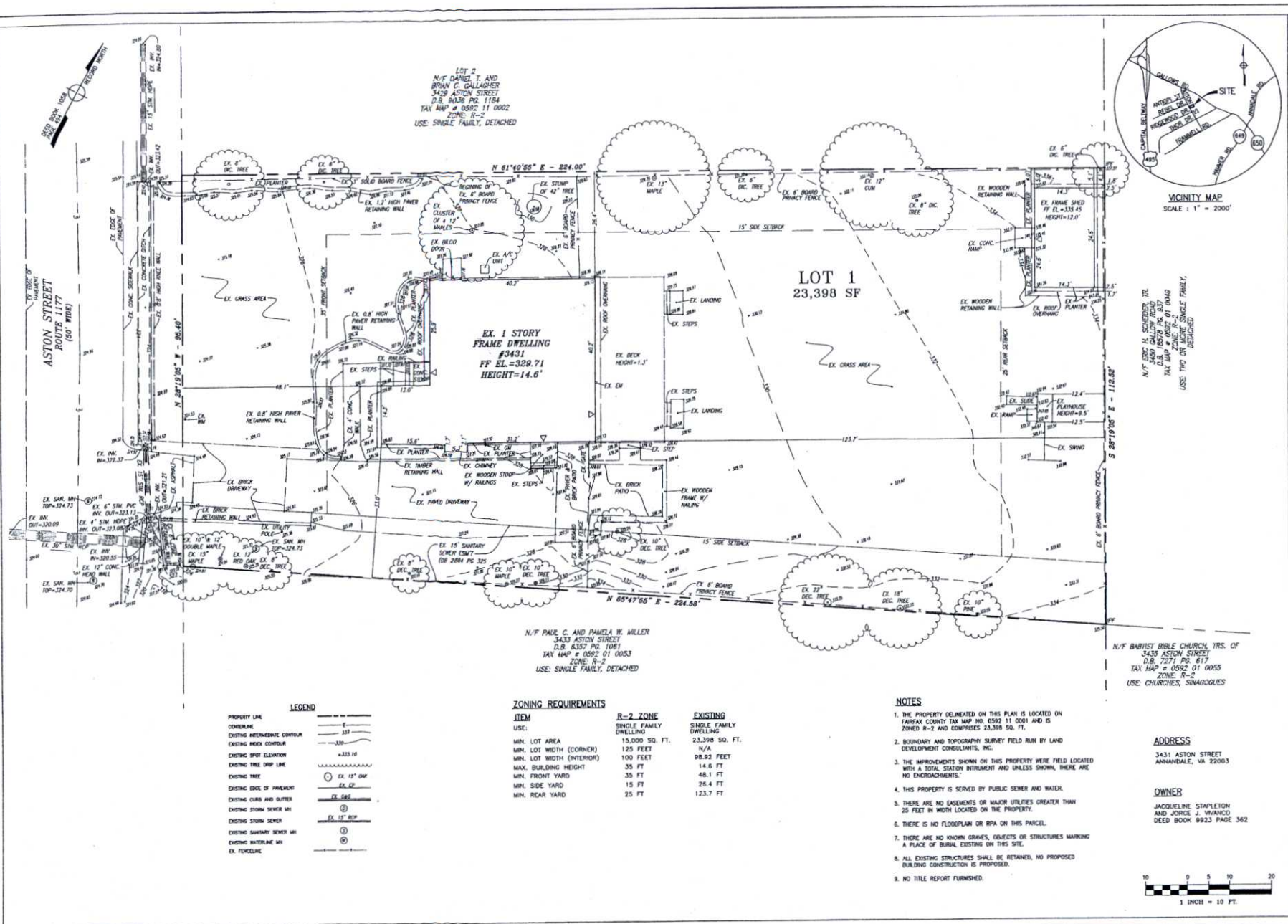


Special Permit

SP 2011-MA-038

JACQUELINE STAPLETON AND JORGE J. VIVANCO





LEGEND

PROPERTY LINE
CENTERLINE
EXISTING INTERMEDIATE CONTOUR
EXISTING INDEX CONTOUR
EXISTING SPOT ELEVATION
EXISTING TREE DRIP LINE
EXISTING TREE
EXISTING EDGE OF PAVEMENT
EXISTING CURB AND GUTTER
EXISTING STORM SEWER MH
EXISTING STORM SEWER
EXISTING SANITARY SEWER MH
EXISTING WATERLINE MH
EX. FENCELINE

ZONING REQUIREMENTS

ITEM	R-2 ZONE	EXISTING
USE:	SINGLE FAMILY DWELLING	SINGLE FAMILY DWELLING
MIN. LOT AREA	15,000 SQ. FT.	23,398 SQ. FT.
MIN. LOT WIDTH (CORNER)	125 FEET	N/A
MIN. LOT WIDTH (INTERIOR)	100 FEET	98.92 FEET
MAX. BUILDING HEIGHT	35 FT	14.6 FT
MIN. FRONT YARD	35 FT	48.1 FT
MIN. SIDE YARD	15 FT	26.4 FT
MIN. REAR YARD	25 FT	123.7 FT

NOTES

1. THE PROPERTY DELINEATED ON THIS PLAN IS LOCATED ON FAIRFAX COUNTY TAX MAP NO. 0592 11 0001 AND IS ZONED R-2 AND COMPRISES 23,398 SQ. FT.
2. BOUNDARY AND TOPOGRAPHY SURVEY FIELD RUN BY LAND DEVELOPMENT CONSULTANTS, INC.
3. THE IMPROVEMENTS SHOWN ON THIS PROPERTY WERE FIELD LOCATED WITH A TOTAL STATION INTRUMENT AND UNLESS SHOWN, THERE ARE NO ENCROACHMENTS.
4. THIS PROPERTY IS SERVED BY PUBLIC SEWER AND WATER.
5. THERE ARE NO EASEMENTS OR MAJOR UTILITIES GREATER THAN 25 FEET IN WIDTH LOCATED ON THE PROPERTY.
6. THERE IS NO FLOODPLAIN OR RPA ON THIS PARCEL.
7. THERE ARE NO KNOWN GRAVES, OBJECTS OR STRUCTURES MARKING A PLACE OF BURIAL EXISTING ON THIS SITE.
8. ALL EXISTING STRUCTURES SHALL BE RETAINED, NO PROPOSED BUILDING CONSTRUCTION IS PROPOSED.
9. NO TITLE REPORT FURNISHED.

ADDRESS

3431 ASTON STREET
ANNANDALE, VA 22003

OWNER

JACQUELINE STAPLETON
AND JORGE J. VIVANICO
DEED BOOK 9923 PAGE 362

10 0 5 10 20
1 INCH = 10 FT.

LAND DEVELOPMENT CONSULTANTS, INC.
CIVIL ENGINEERING · LAND PLANNING · SURVEYING
10605 MAIN STREET, SUITE 700, FAIRFAX, VA 22030
ph. 703 591-5800 fax. 703 273 7951
www.landdevelopment.ws mail@landdevelopment.ws

BASIS OF SURVEY
THIS SURVEY IS AN ORIGINAL SURVEY PERFORMED BY LAND DEVELOPMENT CONSULTANTS, INC. AND THE DATA AND PLAT CONTAINED HEREIN IS THE PROPERTY OF LAND DEVELOPMENT CONSULTANTS, INC. AND IS NOT TO BE COPIED, USED OR TRANSFERRED TO ANY PERSON OR ENTITY WITHOUT THE WRITTEN AUTHORIZATION OF LAND DEVELOPMENT CONSULTANTS, INC.
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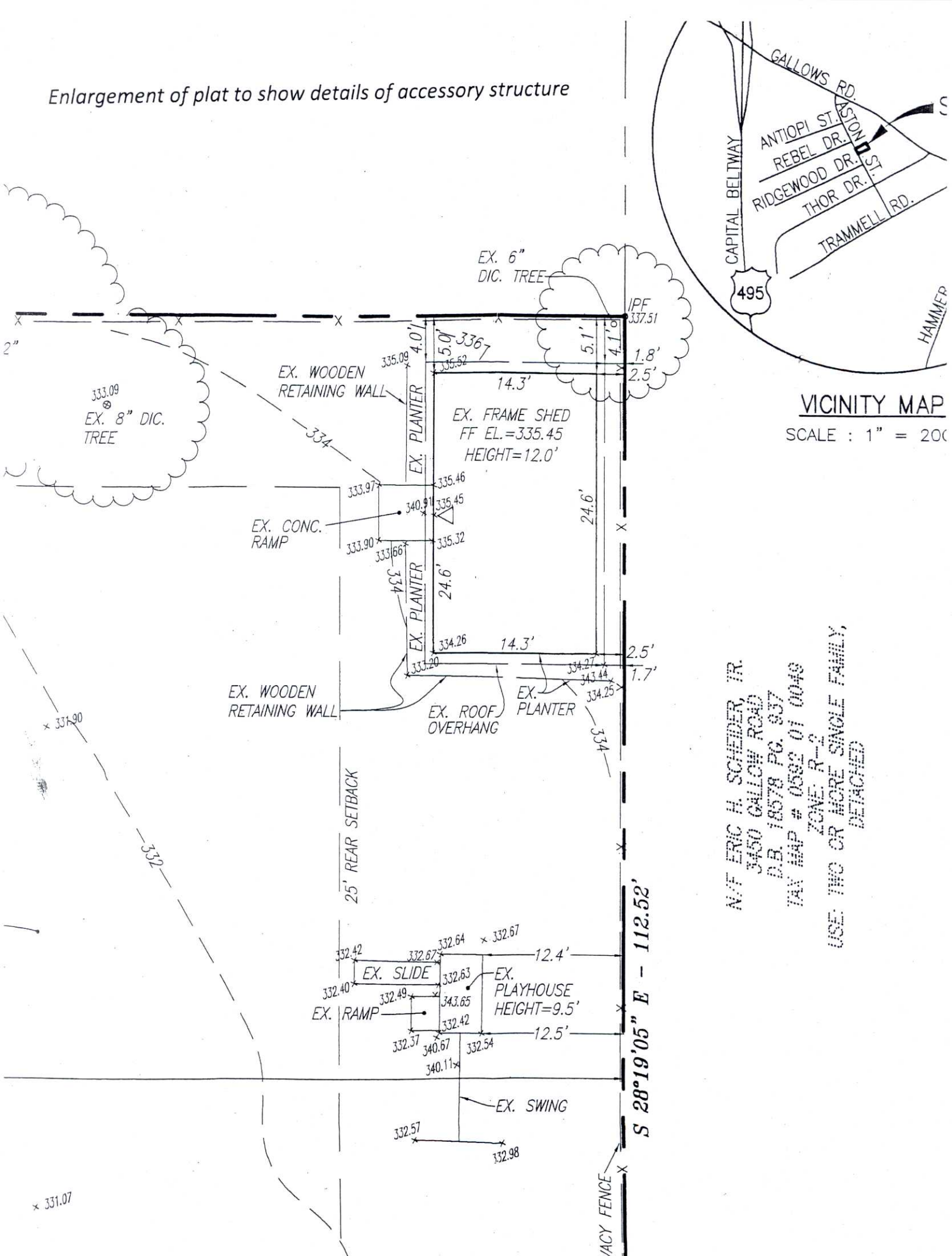
SPECIAL PERMIT PLAN
LOT 1
SECTION 1
SHAMROCK HEIGHTS
3431 ASTON STREET
MASON DISTRICT, FAIRFAX COUNTY, VIRGINIA

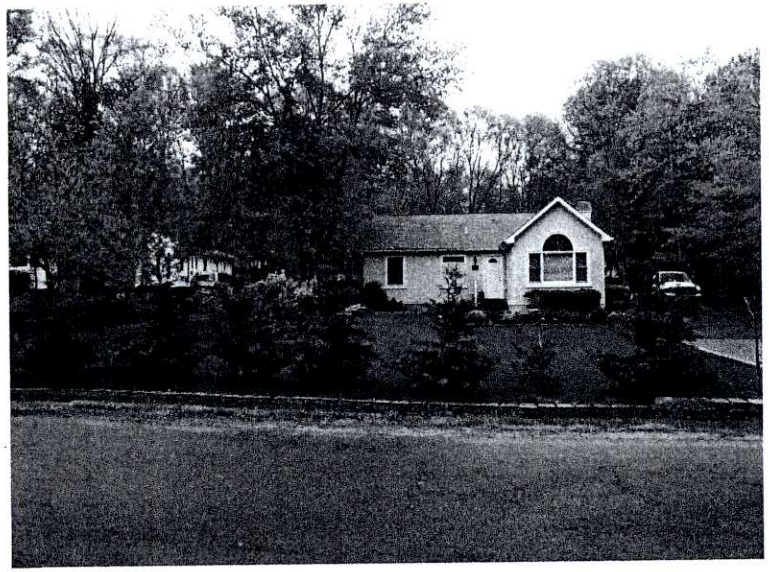
COMMONWEALTH OF VIRGINIA
JOHN C. MANCHESTER III
Lic. No. 2019
4-25-11
LAND SURVEYOR

REV. NO.	DATE	REVISIONS PRIOR TO APPROVAL
1.	4/25/11	COUNTY COMMENTS

COUNTY PROJ. NO.:
LDCI PROJ NO.: 12270
SCALE: 1" = 10'
DATE: 05/11/2010
SHEET: 1 OF 1

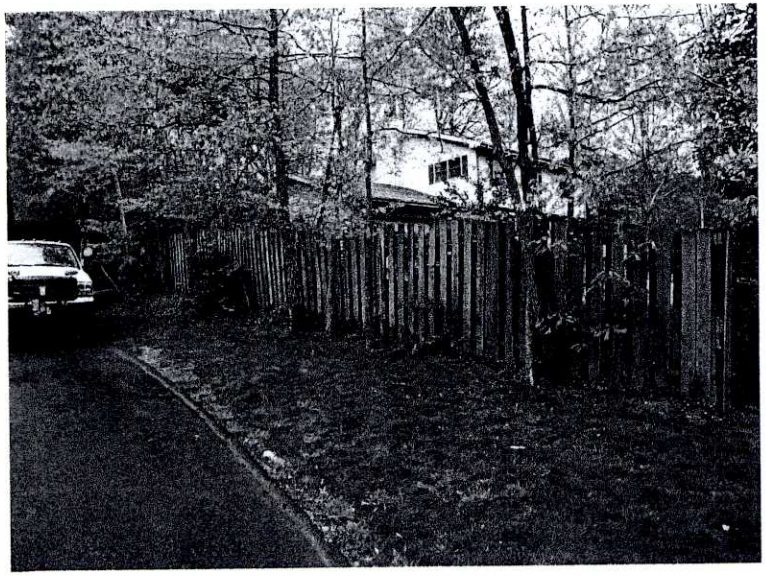
Enlargement of plat to show details of accessory structure



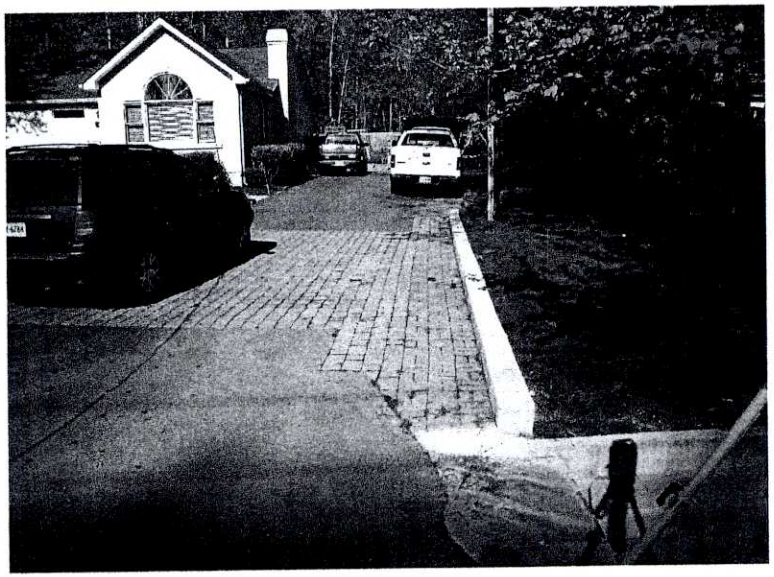


Front of house, view of adjacent property - taken from Aston Street

Front of house, view of adjacent property - taken from Aston Street

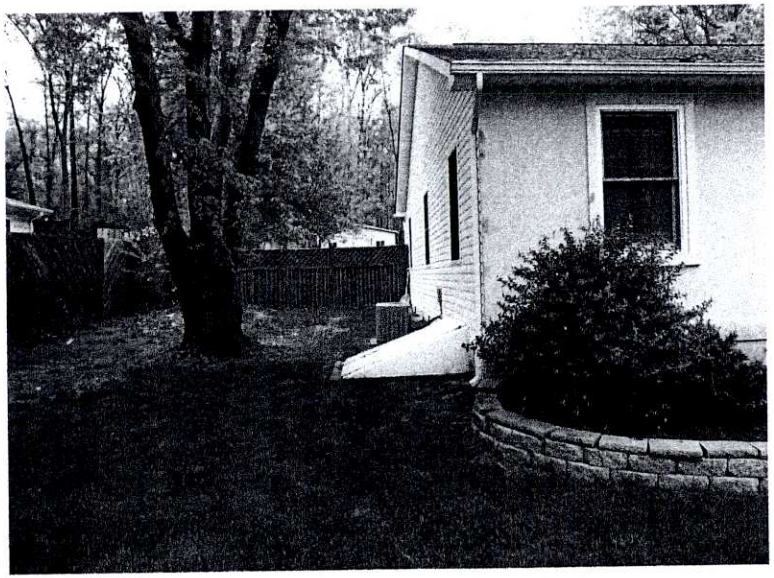


Adjacent property (East side)– taken from front of driveway

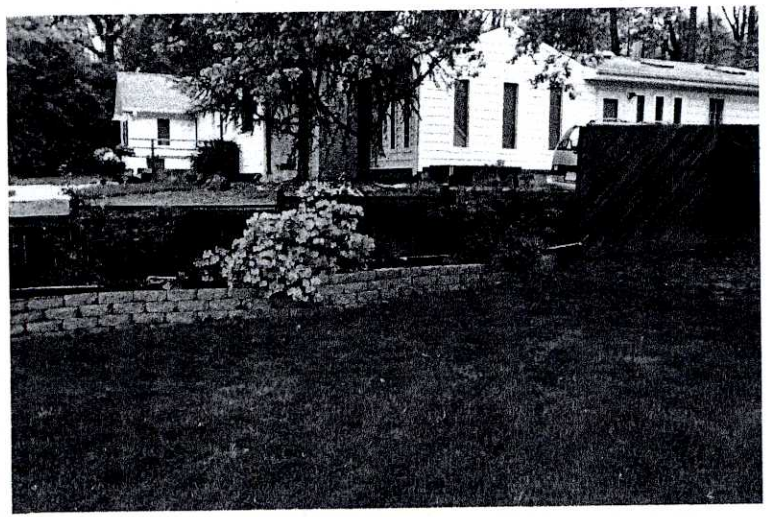


Owner driveway, side yard (East side)– taken from Aston Street.

View of adjacent property (West side) – taken from owners' Front yard.



View of side yard (West side) – taken from owners' Front yard

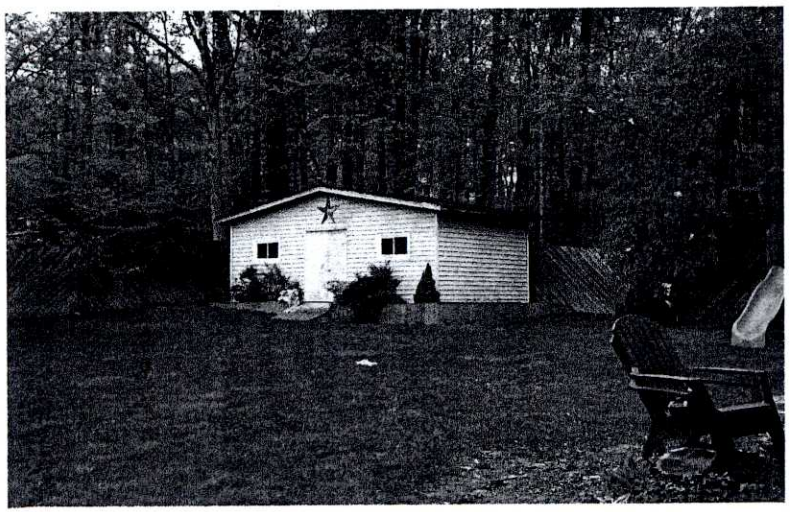


Adjacent property (West side)– taken from side yard

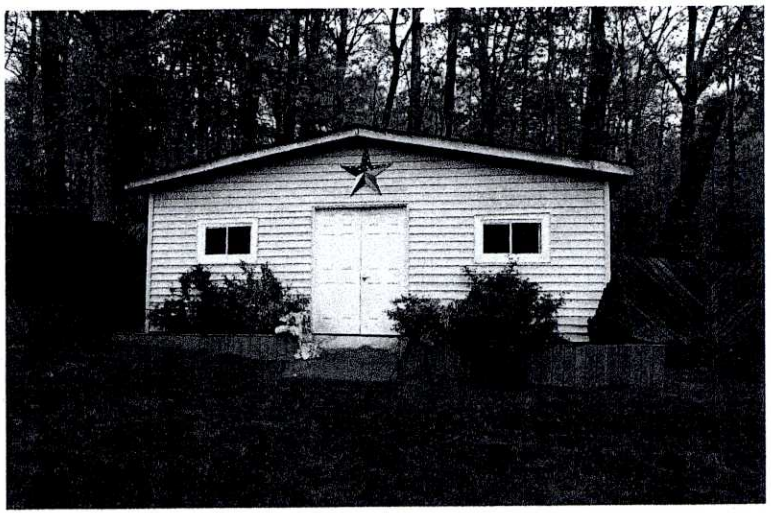
Back porch facing West – taken from backyard

Rear of property - taken from rear of driveway

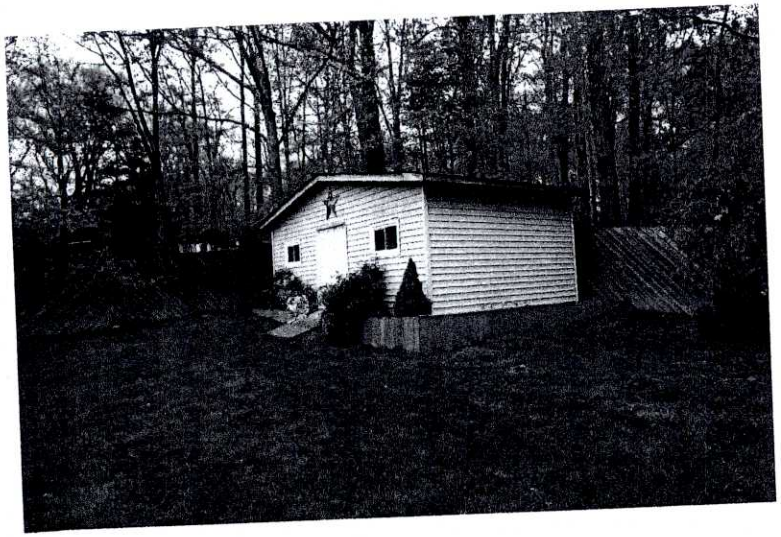
Rear of property - taken from rear of driveway



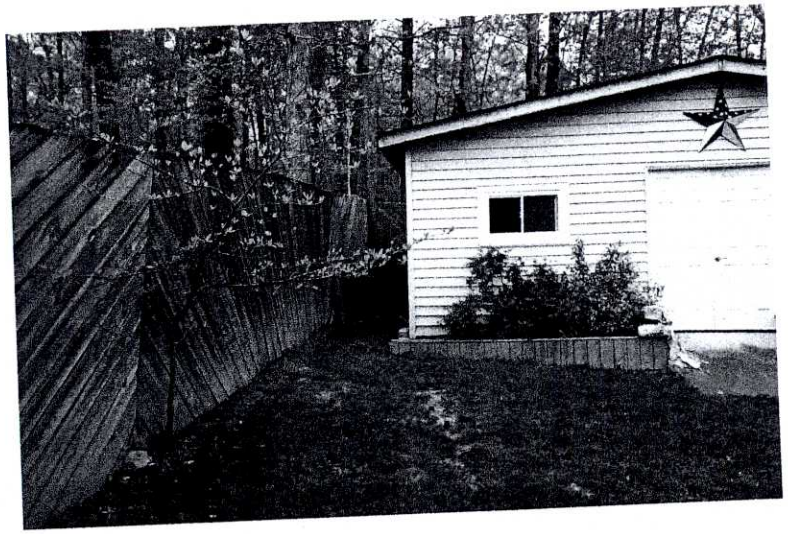
Shed in rear of property – taken from middle of back yard



Front of shed – taken from backyard

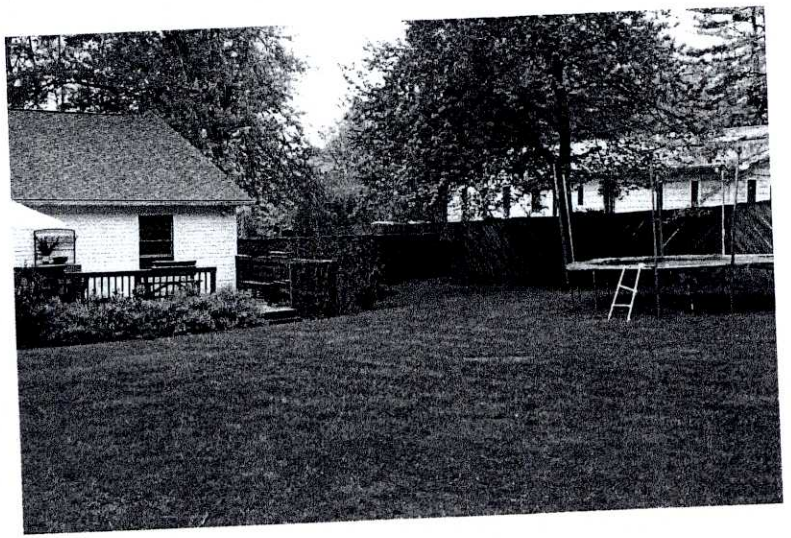


Side of shed – taken from backyard



Side of shed along fence line – taken from backyard

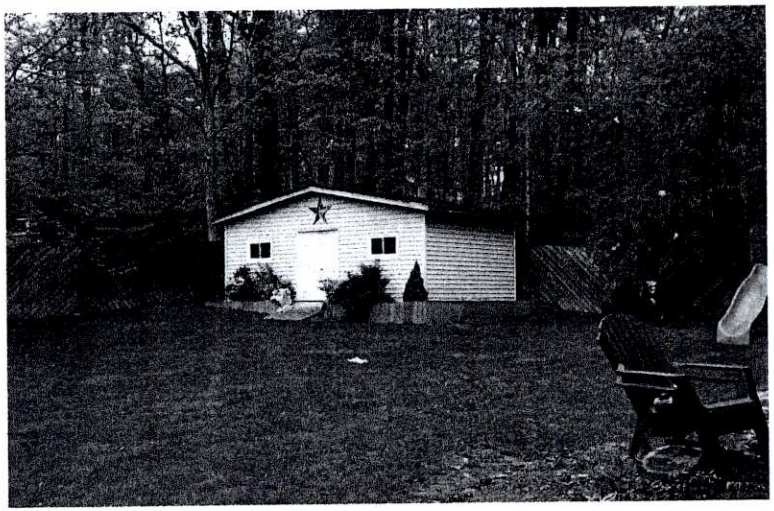
Rear of house - taken from backyard

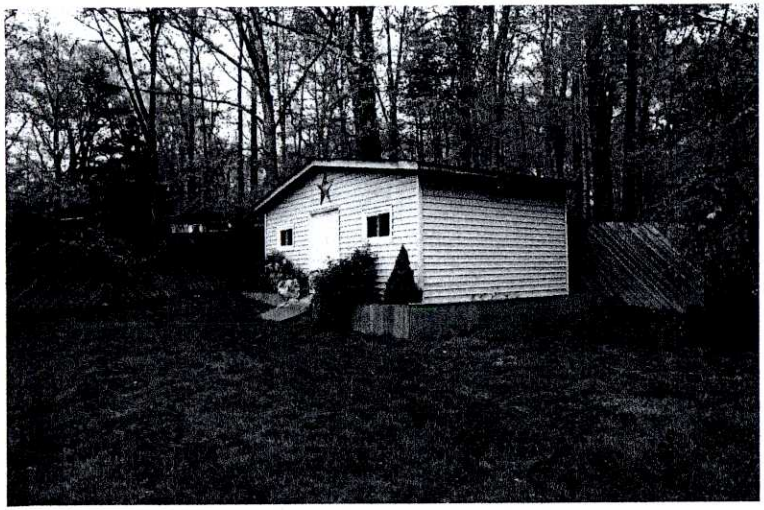


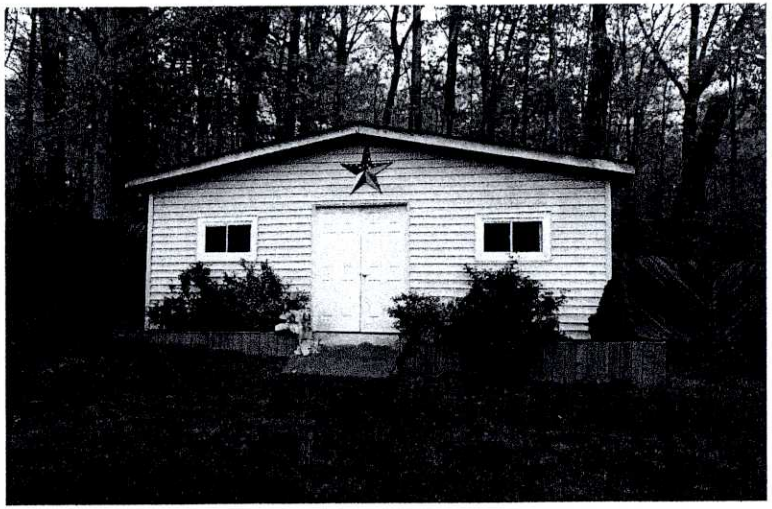
Rear of house facing West - taken from backyard

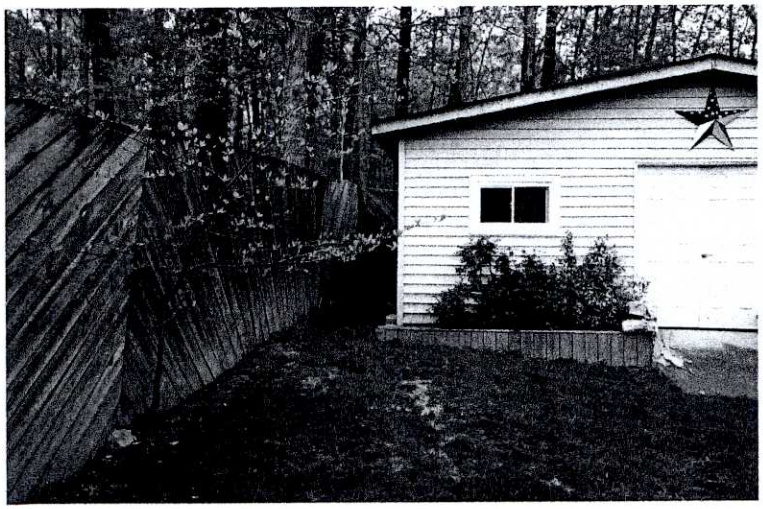
View of backyard and adjacent backyard facing West - taken from backyard

Rear of house and adjacent backyard facing East - taken from backyard









DESCRIPTION OF THE APPLICATION

The applicant is requesting approval of a special permit for a reduction to the minimum yard requirements based on an error in building location to permit a twelve foot tall accessory structure to remain 4 feet from a side lot line and 1.7 feet from the rear lot line.

	Structure	Yard	Minimum Distance or Yard*	Structure Location	Amount of Error	Percent of Error
Special Permit	**Accessory Structure**	Rear	12.0 feet	4.0 feet	8.0 feet	67%
Special Permit	**Accessory Structure**	Side	15 feet	1.7 feet	13.3 feet	89%

* Par. 12 (E) of Sect. 10-104 states that any accessory structure which exceeds seven (7) feet in height shall be located at a distance equal to its height to the rear lot line and equal to the minimum required side yard to the side lot line.

EXISTING SITE DESCRIPTION

The subject site, which measures 23,398 square feet in area, is zoned R-2 and developed with a single story frame single family detached dwelling, which was constructed in 1953. An addition was completed in 1996. There is an expansive open wood deck at the rear of the house, and a brick and paver patio in the side yard. A paved and brick driveway off Aston Drive is located in front and in the side yard. There are play structures in the rear yard, and a board fence surrounds the rear yard. The site is landscaped with mature trees and other plantings.

CHARACTER OF THE AREA

	Zoning	Use
North	R-2	Single Family Detached Dwelling
South	R-2	Single Family Detached Dwelling
East	R-2	Single Family Detached Dwelling
West	R-2	Single Family Detached Dwelling

BACKGROUND

A Notice of Violation (NOV) was issued on March 2, 2010 for the accessory structure. Contrary to the depiction of the structure as a "frame shed" on the plat, the uses of the structure are for a workshop and storage. A Complaint for Judgment was subsequently filed by the County, and an Agreed Order was completed to allow the special permit process to continue without further court action. The property owner will have to comply with the NOV if the Board of Zoning Appeals (BZA) denies the application. A copy of the NOV is included as Appendix 4.

Following adoption of the current Ordinance, the BZA heard the following similar special permit application in the vicinity of the application parcel:

- Special Permit SP 1998-P-043 was approved on February 17, 1999 for Tax Map 59-2 ((8)) (8) 3, zoned R-3 at 3404 Cypress Drive, to permit a reduction to minimum yard requirements based on error in building location to permit a carport to remain 0.0 feet from the side lot line and a shed to remain 1.4 feet from the side lot line and 1.3 feet from the rear lot line.

ZONING ORDINANCE REQUIREMENTS

- General Special Permit Standards (Sect. 8-006)
- Group 9 Standards (Sect. 8-903)
- Provisions for Approval of Reduction of the Minimum Yard Requirements Based on an Error in Building Location (Sect. 8-914)

This special permit is subject to Sects. 8-006, 8-903 and 8-914 of the Zoning Ordinance as referenced above, a copy of which is included in Appendix 6. Subject to development conditions, this 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.

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

APPENDICES

1. Proposed Development Conditions
2. Applicant's Affidavit
3. Applicant's Statement of Justification
4. Notice of Violation dated March 2, 2010
5. Zoning Ordinance Provisions

PROPOSED DEVELOPMENT CONDITIONS

SP 2011-MA-038

July 13, 2011

1. This special permit is approved for the location and size of the accessory structure, as shown on the plat prepared by Land Development Consultants, Inc., dated May 11, 2010, signed April 25, 2011, as submitted with this application and is not transferable to other land.

2. Appropriate permits and final inspections shall be diligently pursued and obtained within six months of final approval of this application.

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

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

SPECIAL PERMIT/VARIANCE AFFIDAVIT

DATE: MAY 2, 2011
(enter date affidavit is notarized)

I, John C. Manganello, 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

110736a

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)
Jacqueline Stapleton	3431 Aston Street Annandale, VA 22003	Applicant/Owner
Jorge J. Vivanco	3431 Aston Street Annandale, VA 22003	Applicant/Owner
John C. Manganello	10805 Main Street, Suite 700 Fairfax, VA 22030	Agent
Land Development Consultants, Inc.	10805 Main Street, Suite 700 Fairfax, VA 22030	Agents

(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: MAY 2, 2011 (enter date affidavit is notarized)

11073 6a

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)

Land Development Consultants, Inc.
10805 Main Street, Suite 700
Fairfax, VA 22030

DESCRIPTION OF CORPORATION: (check one statement)

[✓] There are 10 or less shareholders, and all of the shareholders are listed below.

[ ] There are more than 10 shareholders, and all of the shareholders owning 10% or more of any class of stock issued by said corporation are listed below.

[ ] There are more than 10 shareholders, but no shareholder owns 10% or more of any class of stock issued by said corporation, and no shareholders are listed below.

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

John, C, Manganello

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

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

Application No.(s): _____

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

SPECIAL PERMIT/VARIANCE AFFIDAVIT

DATE: _____ 110736a

(enter date affidavit is notarized)

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

PARTNERSHIP INFORMATION

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

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

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

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

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

Application No.(s): _____

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

SPECIAL PERMIT/VARIANCE AFFIDAVIT

DATE: MAY 2, 2011 (enter date affidavit is notarized)

1107360a

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: MAY 2, 2011 (enter date affidavit is notarized)

11 0736a

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:

John C Manganello

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

JOHN C. MANGANELLO

(type or print first name, middle initial, last name, and title of signee)

Subscribed and sworn to before me this 2nd day of May 2011, in the State/Comm. of Virginia, County/City of Fairfax

Notary Public

My commission expires: 01/31/2012

KRISHMA M. MAHMOODI
NOTARY PUBLIC 7074965
COMMONWEALTH OF VIRGINIA
MY COMMISSION EXPIRES JANUARY 31, 2012

APPENDIX 3

RECEIVED
Department of Planning & Zoning
MAY 02 2011
Zoning Evaluation Division

Special Permit Statement of Justification
Stapleton/Vivanco Property
3431 Aston Street, Annandale, VA 22033
Tax Map: 59-2 ((11)) Lot 1
April 27, 2011

The following as a statement of justification for a special permit application is being prepared for the property located at 3431 Aston Street, Annandale, VA 22033. The subject property consists 23,398 square feet or 0.537144 acres of land and is located in the Mason District. The property is currently zoned as R-2 and is located in the Shamrock Heights, Section 1.

This Special Permit has been prepared to comply with a notice of violation that the owner received in 2010 , Case #: 201000202 SR#: 57351, for the presence of an accessory building which measures approximately 12' in height, is approximately 350 square feet in area and is located four (4') feet and (1.7') feet from the side and rear property lines respectively. The accessory structure is located in the rear of the property. There was an existing shed already in this location; the owner received the violation for increasing the size of the existing foundation, in essence replacing the old shed with a larger accessory structure at the same location. The new shed shall be used as a work area and for storage. The storage component shall be less than 200 square feet with the remaining 150 square feet used as a work area. The building is buffered from the adjoining properties via an existing (6) six foot tall wooden privacy fence and a densely wooded landscape minimizing any disturbance to the neighbors.

The owner is seeking to obtain approval of a Group 9 Special Permit in order to allow that the building remain at its present location on the property, which is four (4.0') feet and (1.7') feet from the side and rear property line respectively. The owner now realizes the regulations and is willing to do what is necessary to mitigate as the county seems appropriate. The Special Permit Plat includes the building on the plan as it is currently constructed.

The following information is offered in support of this application:

A. *Type of operation:*

N/A; Residential Single family use

B. *Hours of operation:*

N/A; Residential Single family use

C. *Estimated number of patrons/clients/patients/pupils/etc:*

The maximum number of permanent residents will be one family.

D. *Proposed number of employees/attendants/teachers/etc:*

There will be no employees since it is a single family residence.

E. *Estimate of the traffic impact of the proposed use, including the maximum expected trip generation and the distribution of such trips by mode and time of day:*

Traffic generation is anticipated to be equal to the size of the family, essentially minimal.

F. *Vicinity or general area to be served by the use:*

The vicinity or general area that is served is the Washington Metropolitan area.

G. *Description of building façade and architecture of proposed new buildings or additions:*

There are no proposed improvements to the existing residential home and there are no proposed structural additions. The appearance of the existing home will be compatible with the existing buildings on the adjacent properties.

H. *A listing, if known, of all hazardous or toxic substances as set forth in Title 40, Code of Federal Regulations Parts 116.4, 302.4, and 355; all hazardous waste as set forth in Virginia Department of Environmental Quality Hazardous Waste Management Regulations; and/or petroleum products as defined in Title 40, Code of Federal Regulations Part 280; to be generalized, utilized, stored, treated, and/or disposed of on site and the size and contents of any existing or proposed storage tanks or containers.*

The Applicant is unaware of any hazardous or toxic substances on the Subject Property.

I. *Statement of how proposed use conforms to provisions of all applicable ordinances, regulations, adopted standards, and any applicable conditions; and listing of any waiver, exception, or variance which is sought from such ordinances, regulations, standards, and conditions:*

The Applicant hereby respectfully request the approval of a Group 9 Special Permit from the Board of Zoning Appeals (BZA) for an error in building location to allow the shed to remain at it's present location on the property. The request of a Group 9 Special Permit is in response to the following zoning ordinances:

- *In violation of § 10-102 (25) Accessory storage structure exceeding 200 feet in GFA.*

The accessory structure measures approximately 350 square feet, however, the storage component of the shed shall not exceed 200 square feet while the remaining 150 square feet shall be used as a work area

- *In violation of § 10-104 (10E) 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 accessory structure which exceeds eight and one-half (8 ½) feet is located four (4') feet and (1.7') feet from the side and rear property lines respectively.

- *In violation of § 2-302 (6) Accessory structure or use must comply with provisions of Par. 1 Article 10;* Listed above.

Please find attached a letter from the property owner indicating that the noncompliance was done in good faith. The owner wanted to increase the size of the shed already in place and did not realize that

doing so would violate any ordinances. The shed was built to be aesthetically pleasing, is buffered from the neighbors due to the existing vegetation (wooded area) and a six (6') foot privacy fence.

County of Fairfax, Virginia

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

FAIRFAX COUNTY
RECEIVED
MAR 0 2 2010
DIVISION OF
ZONING ADMINISTRATION

NOTICE OF VIOLATION

DATE OF ISSUANCE: March 2, 2010

SHERIFF'S LETTER

CASE #: 201000202 **SR#**: 57351

SERVE: Jacqueline Stapleton
Jorge J. Vivanco
3431 Aston Street
Annandale, VA 22003

LOCATION OF VIOLATION 3431 Aston Street
Annandale, VA 22003-1408
Shamrock Heights, Sec. 1, Lot 1
Tax Map #: 0592 11 0001
Zoning District: R-2

Dear Property Owners:

An inspection of the above referenced property on February 23, 2010 revealed the following violations of the Fairfax County Zoning Ordinance.

§ 10-102 (25) Accessory Storage Structure exceeding 200 square feet in GFA
§ 2-302 (6) Accessory Use must comply with Article 10:

The presence of an accessory storage structure (shed) which measured approximately 350 square feet in area on this property which is zoned R-2. The Fairfax County Zoning Ordinance permits accessory storage structures so long as they conform to Par. 25 of Sect. 10-102 of the Zoning Ordinance is which permits:

> Storage structure, incidental to a permitted use, provided no such 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.

Therefore, as this accessory storage structure exceeds 200 square feet in area in the R-2 District,

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/

DEPARTMENT OF PLANNING & ZONING

you are in violation of Par. 25 of Sect. 10-102 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 square footage of this accessory storage structure so it does not exceed 200 square feet in area.

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

The presence of an accessory storage structure (shed) which measured approximately 12' in height, is approximately 350 square feet in area, and is located approximately 3'8" and 1'9" from the side and rear lot lines, respectively.

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. 2A (1) (b) of Section 3-207 of the Zoning Ordinance.

Therefore, as this accessory storage structure exceeds eight and one-half (8 ½) feet in height and is not located in accordance with the provisions of Par. 10E of Sect. 10-104 above, it is in violation of 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.
- Making an application for and ultimately obtaining approval of a Group 9 Special Permit from the Board of Zoning Appeals (BZA) for an error in building location to allow the shed to remain at its present location on the property. Information about a Special Permit is being mailed to the property address indicated at the top of this Notice.

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 $2455.00 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)324-1330 or 703-324-1300.

Sincerely,

Peggy Delean

Peggy Delean
Property Maintenance/Zoning Enforcement Inspector

ZONING ORDINANCE PROVISIONS

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.