



APPLICATION ACCEPTED: December 13, 2012  
BOARD OF ZONING APPEALS: March 6, 2013  
TIME: 9:00 a.m.

# County of Fairfax, Virginia

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February 27, 2013

## STAFF REPORT

**SPECIAL PERMIT AMENDMENT APPLICATION NO. SPA 2011-PR-083**

### PROVIDENCE DISTRICT

**APPLICANTS & OWNERS:** Robert M. Grims  
Yung H. Kim

**SUBDIVISION:** Wildwood

**STREET ADDRESS:** 9750 Hatmark Court, Vienna, 22181

**TAX MAP REFERENCE:** 048-1 ((25)) 10

**LOT SIZE:** 7,571 square feet

**ZONING DISTRICT:** R-4 (Cluster)

**ZONING ORDINANCE PROVISIONS:** 8-914

**SPECIAL PERMIT PROPOSAL:** To amend SP 2011-PR-083, to permit reductions in minimum yard requirements based on errors in building locations to permit additions to remain 16.3 feet and 11.6 feet from 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 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:\Ngumk2\SP Cases\3-6) SPA 2011-PR-083 Grims and Kim\SPA 2011-PR-083 Grims and Kim staff report.doc*

*Laura Gumkowski*

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.**

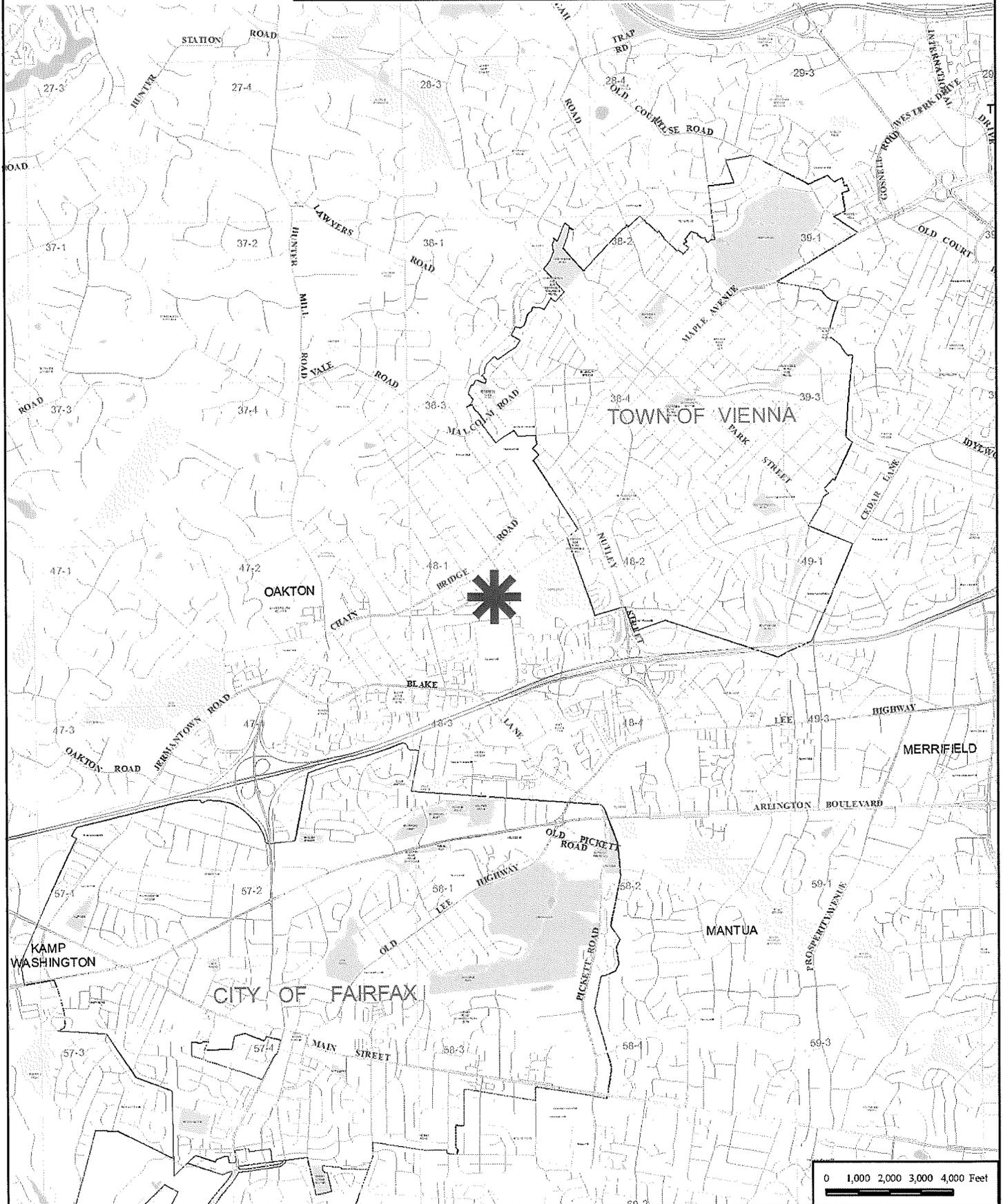


Americans with Disabilities Act (ADA): Reasonable accommodation is available upon 7 days advance notice. For additional information on ADA call (703) 324-1334 or TTY 711 (Virginia Relay Center).

# Special Permit Amendment

SPA 2011-PR-083

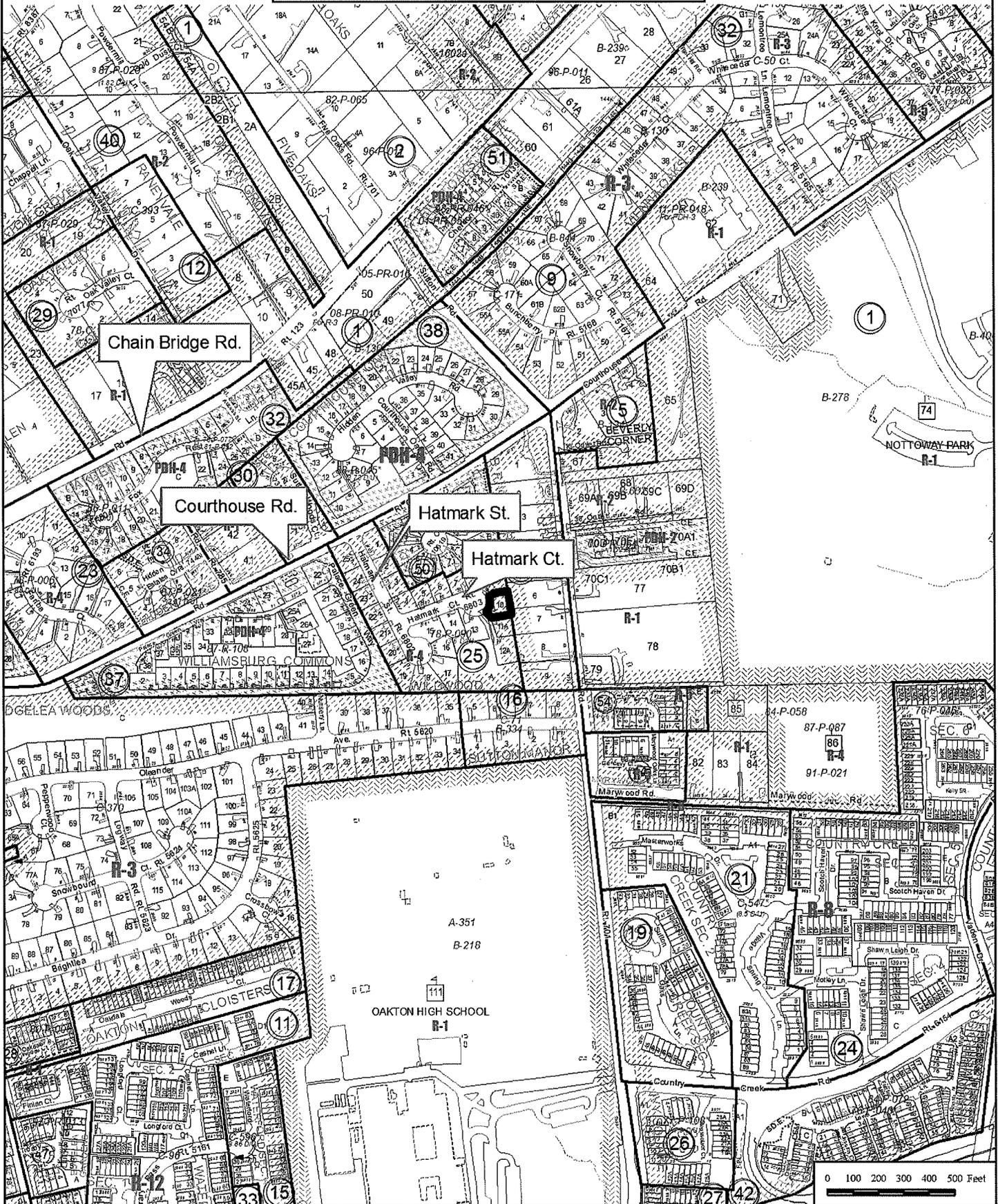
ROBERT M. GRIMS AND YUNG H. KIM



# Special Permit Amendment

SPA 2011-PR-083

ROBERT M. GRIMS AND YUNG H. KIM



Copyright Scartz Surveys - This is a service document and is valid for six months from date issued. This survey was performed according to the standards set forth in Virginia Code Section 54.1-407.

B.F. WEAVER SUBD. SECTION 1

NOTES:  
1. TAX MAP 04B-1-25-0010

2. PROPERTY SHOWN HEREON IS ZONED: R-4C (R-4 W/CLUSTER DEV.)

3. MINIMUM YARD REQUIREMENTS IN ZONE R-4C  
FRONT: 20'  
SIDE: 8'  
REAR: 25'

4. PROPERTY IS SERVED BY PUBLIC WATER AND SEWER.

5. THE PROPERTY SHOWN HERE IS LOCATED IN FLOOD ZONE "X" AS PER INSURANCE RATE MAP COMMUNITY PANEL NUMBER 51059C0145E EFFECTIVE DATE: SEPTEMBER 17, 2010.

6. THE RECORD PLAT DOES NOT SHOW ANY UTILITY EASEMENTS HAVING A WIDTH OF TWENTY-FIVE (25) FEET OR MORE EFFECTING THIS PROPERTY.

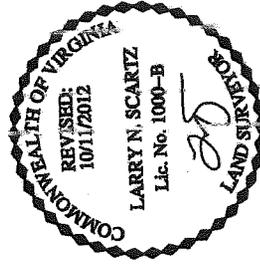
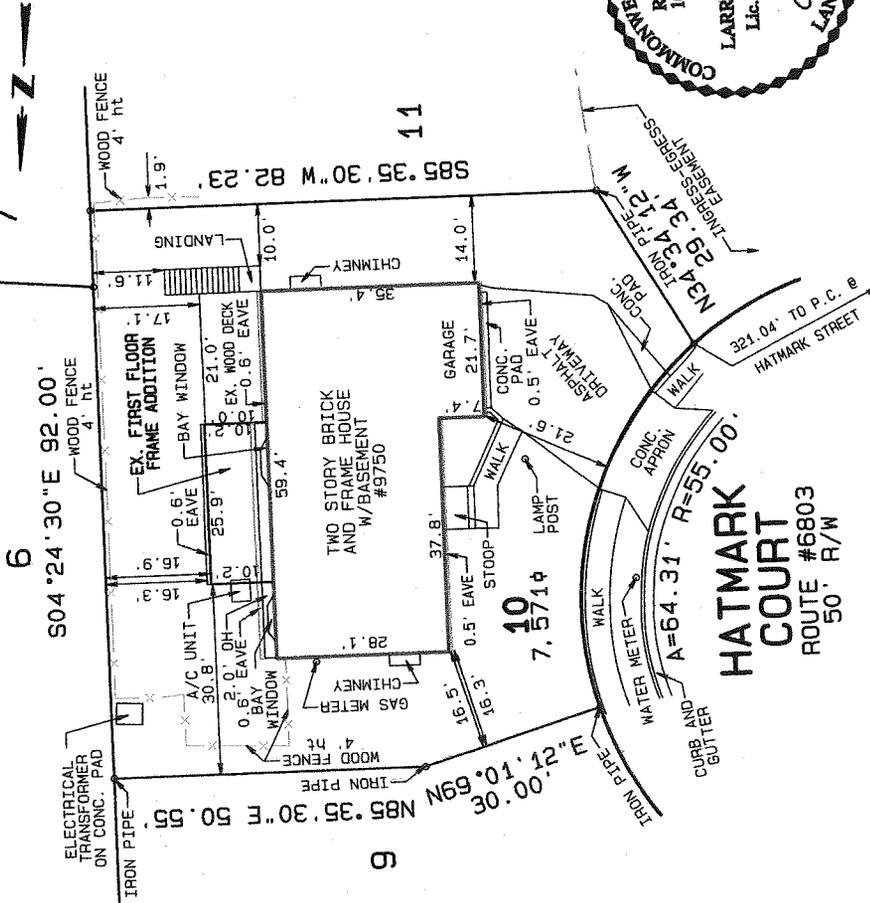
7. FLOOR AREA:  
EXISTING GROSS FLOOR AREA HOUSE 1,714 SQ. FT.  
EXISTING GROSS FLOOR AREA GARAGE 462 SQ. FT.  
EXISTING GROSS FLOOR AREA DECK 210 SQ. FT.  
EXISTING GROSS FLOOR AREA ADDITION 264 SQ. FT.

TOTAL FLOOR AREA 2,650 SQ. FT.

FLOOR AREA RATIO: 0.35

HEIGHT TABLE

EXISTING HEIGHT OF HOUSE:	26.4'
EXISTING HEIGHT OF ADDITION:	19.5'
EXISTING HEIGHT OF DECK:	7.5'



SPECIAL PERMIT PLAT AMENDMENT  
LOT 10

**WILDWOOD**

PROVIDENCE MAGISTERIAL DISTRICT  
FAIRFAX COUNTY, VIRGINIA

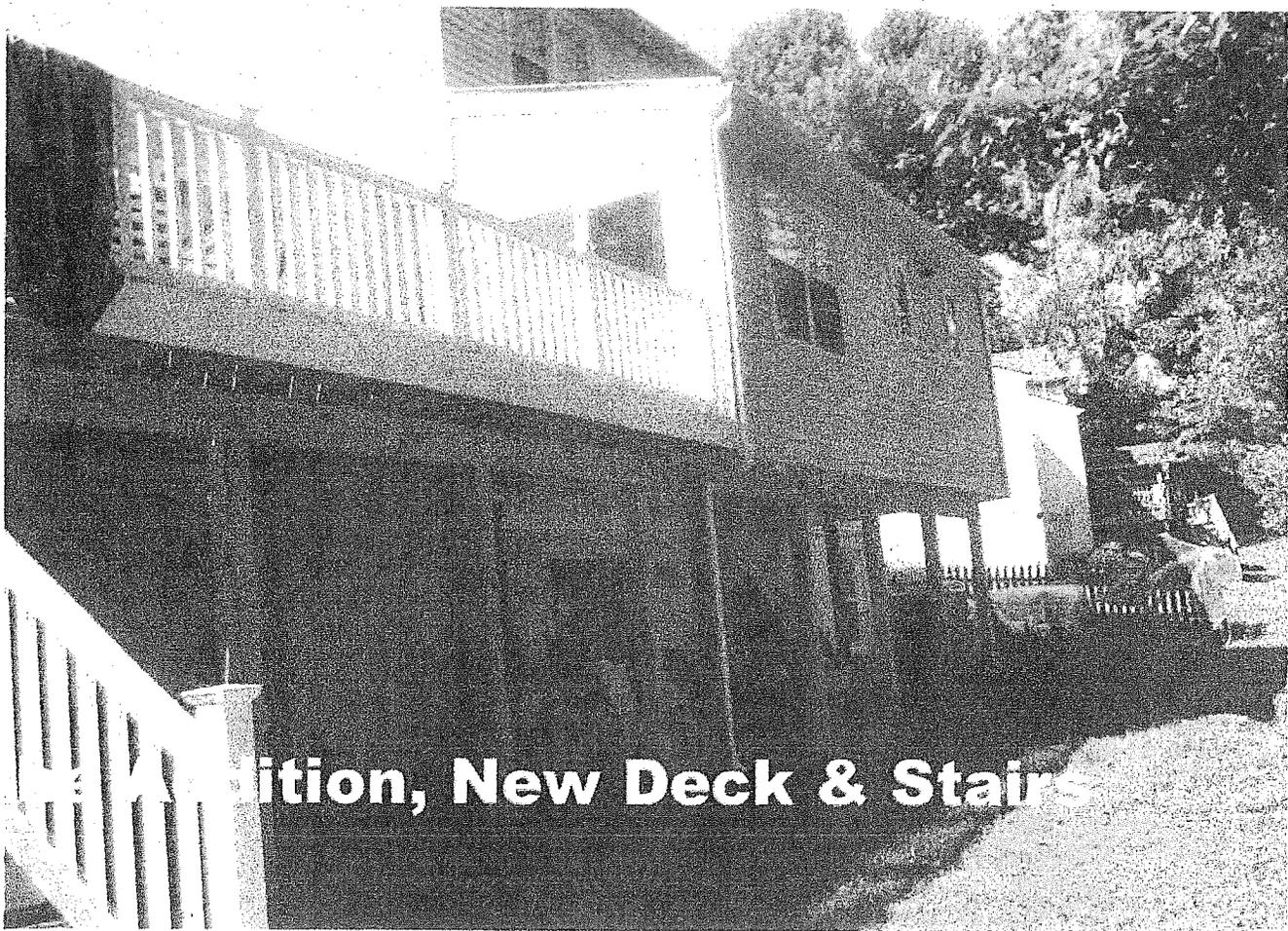
DATE: JUNE 28, 2011  
SCALE: 1"=20'

CASE NAME: GRIMS REMODELING & DESIGN  
NO TITLE REPORT FURNISHED.  
PLAT SUBJECT TO RESTRICTIONS & EASEMENTS OF RECORD OR OTHERWISE.  
FENCE LOCATIONS, IF SHOWN, ARE APPROXIMATE ONLY  
AND DO NOT CERTIFY AS TO OWNERSHIP.

SCARTZ SURVEYS

LARRY N. SCARTZ SURVEYOR LOCAL (703) 494-181  
WOODBRIDGE, VIRGINIA FAX (703) 494-3330  
LARRY.N.SCARTZ@SCARTZ.COM



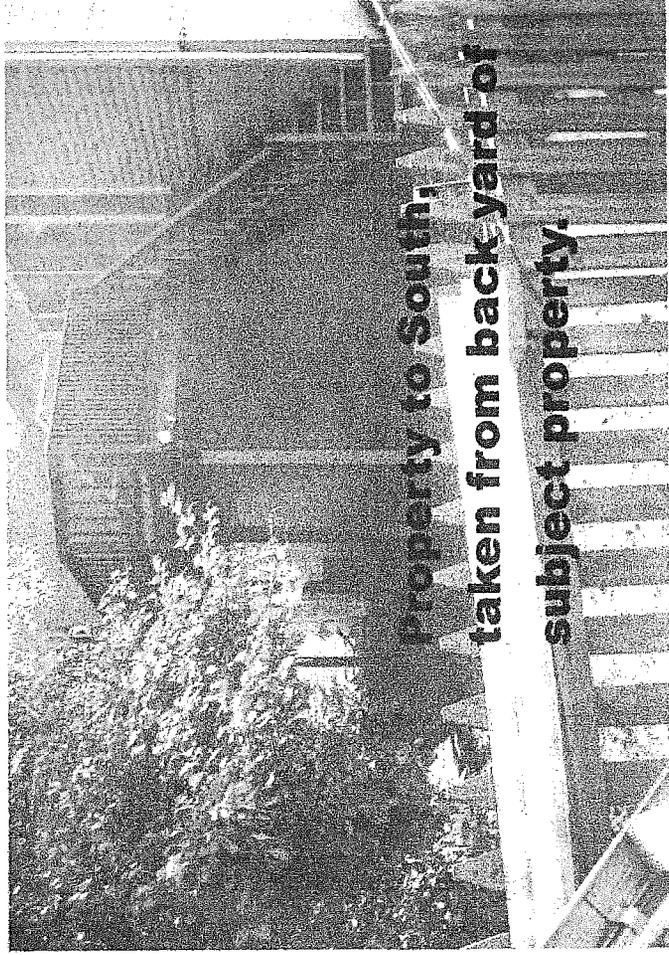


**New Addition, New Deck & Stairs**



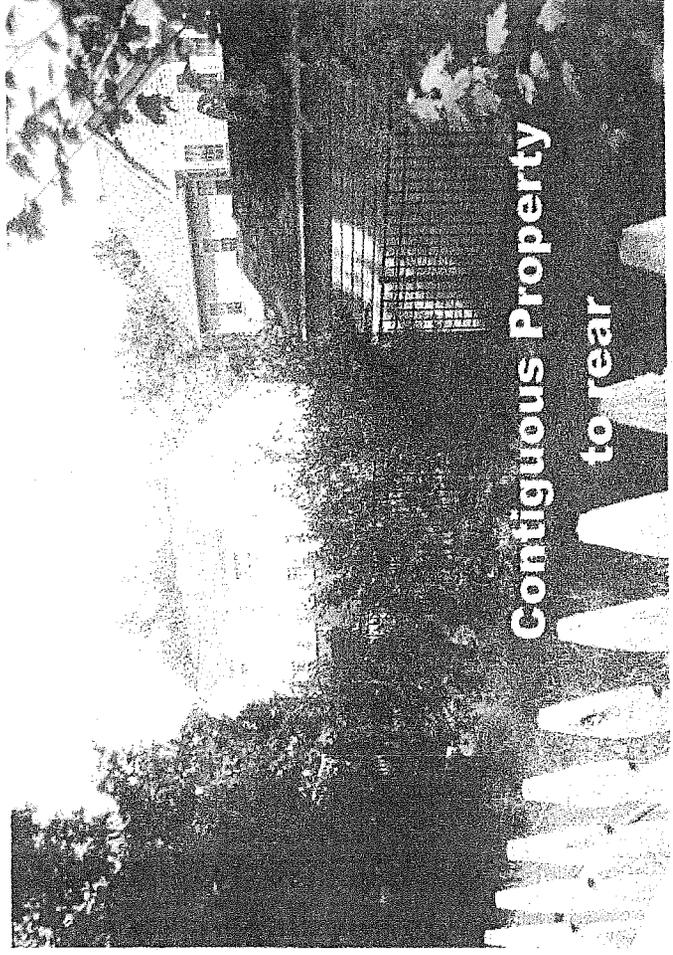
**New Stairs**

Pict.  
3

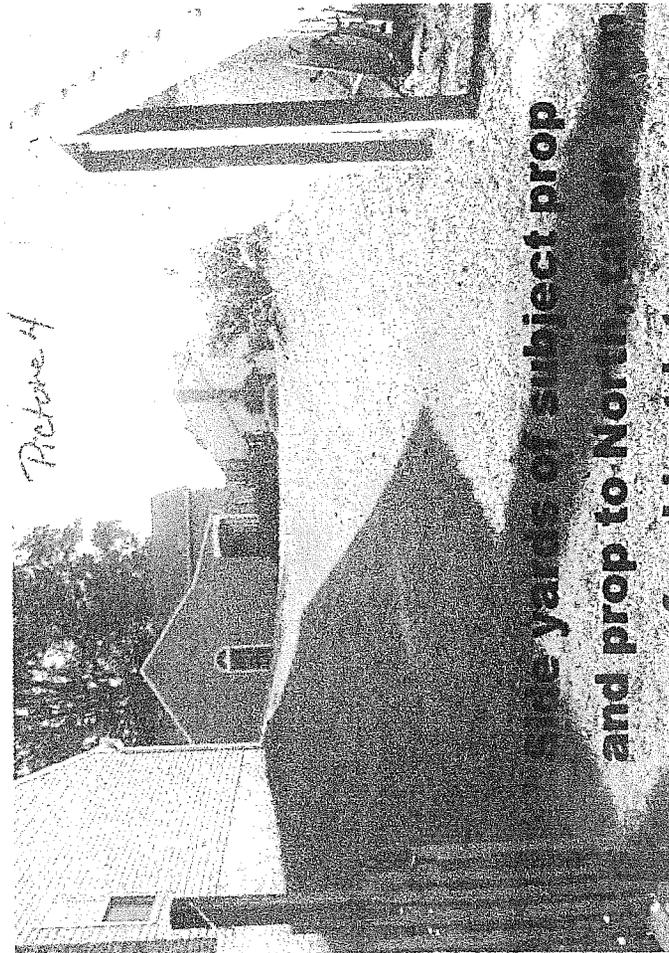


Property to South,  
taken from back yard of  
subject property

Pict.  
6



Contiguous Property  
to rear

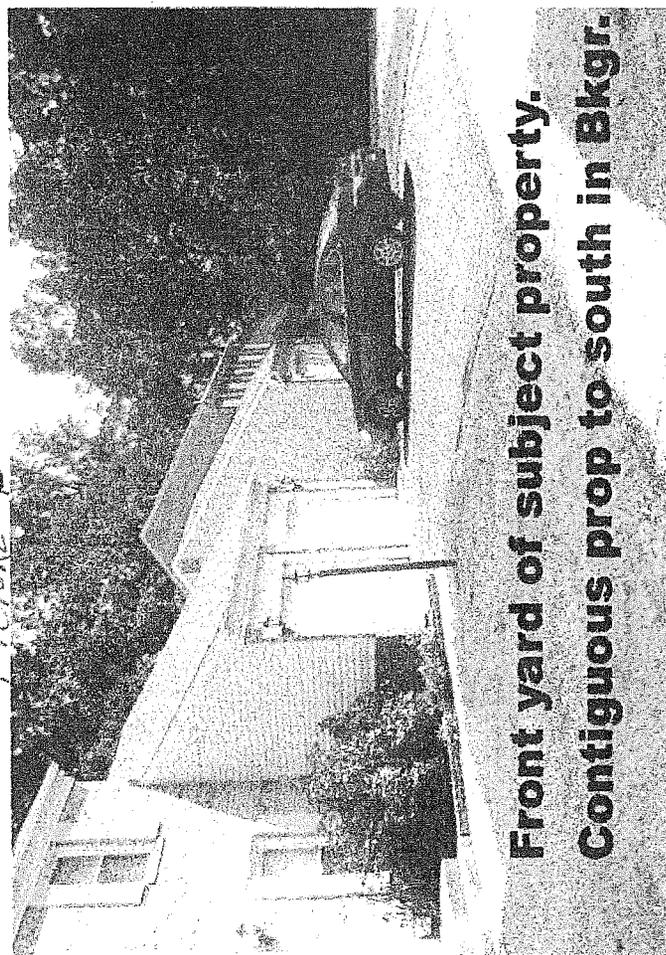


Side yards of subject prop  
and prop to North



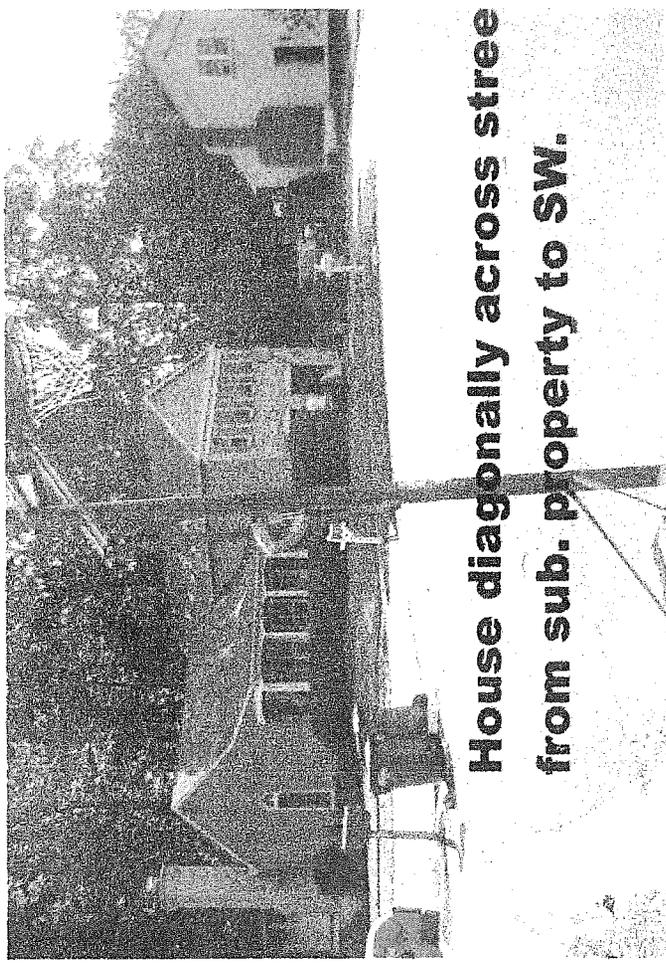
Side yards of Property to North (left)  
and subject prop; property to east

Picture B



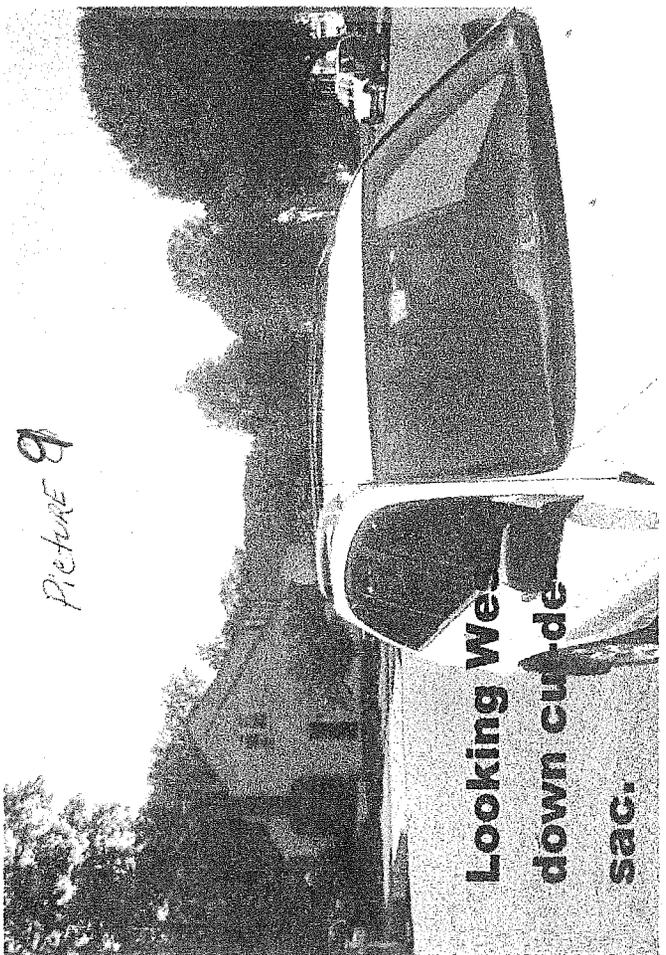
**Front yard of subject property.  
Contiguous prop to south in Bkgr.**

Picture 7

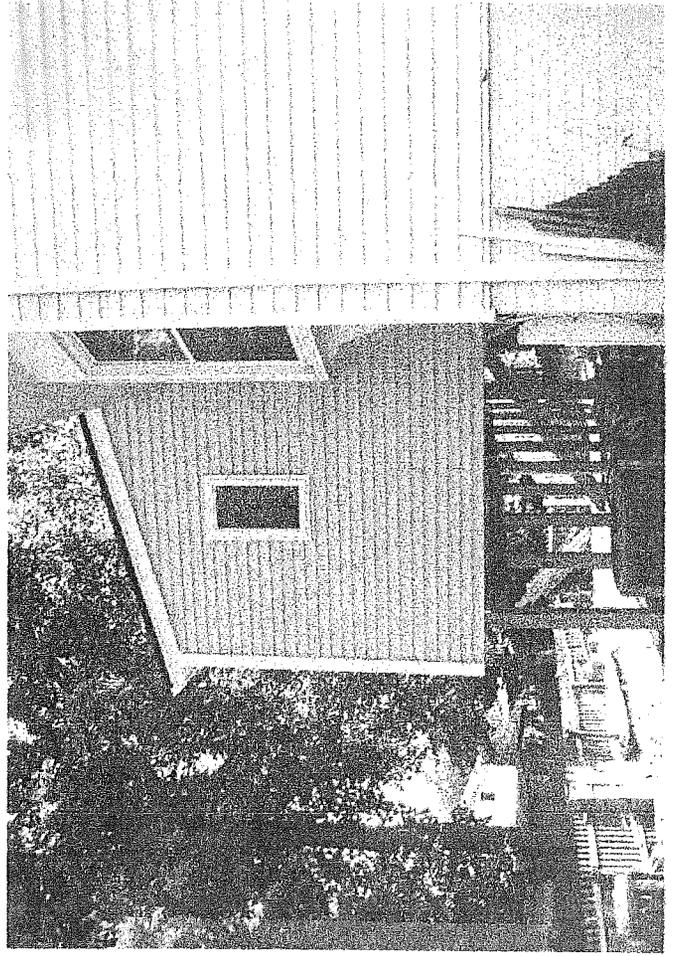


**House diagonally across stree  
from sub. property to SW.**

Picture 9



**Looking West  
down cur-de  
sac.**



*Picture No 10  
Taken from North lot line toward addition*



**DESCRIPTION OF THE APPLICATION**

The applicant is requesting approval of an amendment to a previously approved special permit to allow reductions in minimum yard requirements based on errors in building locations of two additions (both previously approved in SP 2011-PR-083. Please see Appendix 4). 1) The sunroom addition that was permitted to be 17.1 feet from the rear lot line is now 16.3 feet from the rear lot line. The other addition, 2) an approved deck with stairs and lattice beneath, is now 11.6 feet from the rear lot line instead of 15.2 feet.

	<b>Structure</b>	<b>Yard</b>	<b>Min. Yard Req.*</b>	<b>Structure Location</b>	<b>Proposed Reduction</b>	<b>Percent of Reduction</b>
<b>Special Permit #1</b>	<b>Sunroom Addition</b>	Rear	25.0 feet	16.3 feet	8.7 feet	34.8%
<b>Special Permit #2</b>	<b>Addition (deck with stairs)</b>	Rear	25.0 feet	11.6 feet	13.4 feet	53.6%

\* Minimum yard requirement per Section 3-407

**EXISTING SITE DESCRIPTION**

The 7,571 square foot lot is developed with a two story single family dwelling with a walk out basement. The dwelling was built in 1981 and has a brick facade and aluminum siding. An approximately 265 square foot addition, a sunroom, exists on the east side of the single family dwelling. There is a wood deck, approximately 210 square feet in area next to the sunroom addition. This deck is proposed to have lattice-work enclosing the bottom level and therefore is considered an addition. A set of stairs lead from the deck to the ground level. The edge of the stairs is located 11.6 feet from the rear lot line. A four foot high wood fence exists in the rear of the property. The lot slopes down from west to east. An asphalt driveway provides access to the property from Hatmark Court. There are several deciduous trees located near the rear property line.

**CHARACTER OF THE AREA**

	<b>Zoning</b>	<b>Use</b>
<b>North</b>	R-4	Single-Family Detached Dwellings
<b>East</b>	R-1	Single-Family Detached Dwellings
<b>South</b>	R-4	Single Family Detached Dwellings
<b>West</b>	R-4	Single-Family Detached Dwellings

**BACKGROUND**

The applicants requested a Setback Certification determination for an addition and a new deck from the Zoning Administration Division (ZAD) on July 13, 2012. The Zoning Administration Division responded on August 1, 2012, that the setback certification had failed because the addition does not comply with the location requirements of Special Permit SP 2011-PR-083 and the deck does not comply with the location requirements of the Zoning Ordinance (see Appendix 4). At the time of the letter, the deck did not have lattice work underneath. Since this letter, however, the applicant has said that they wish to place lattice work underneath the deck, which will then make it an addition according to the definitions of the Zoning Ordinance, and in effect it will have a different minimum yard requirement than stated in the letter as outlined on page 1. A copy of the special permit plat entitled "Special Permit Plat Amendment, Lot 10, Wildwood" prepared by Scartz Surveys and dated June 28, 2011, is included at the front of the staff report.

Following the adoption of the current Ordinance, the BZA has heard the following special permit and variance applications in the vicinity of the application parcel:

- Special Permit SP 86-P-004 was approved on April 22, 1986 for Tax Map 48-1 ((30)) 05, zoned R-4, at 2722 Sutton Woods Court, for reduction to minimum yard requirements based on error in building location to allow dwelling to remain 20.8 feet from the rear lot line (25 feet required).
- Variance VC 89-P-075 was approved on September 14, 1989 for Tax Map 48-1 ((9)) 60A, zoned R-3, at 9712 Bunchberry Place, to allow construction of two additions 19.8 feet and 19.9 feet from rear lot line and to allow enclosure of existing carport for a garage 10.3 feet from side lot line.
- Special Permit SP 92-P-025 was approved on July 14, 1992 for Tax Map 48-1 ((7)) 100, zoned R-3 (Cluster), at 9802 Brightlea Drive, to allow reduction to minimum yard requirements based on an error in building location to allow addition to remain 21.9 feet from rear lot line (25' required).

- Variance VC 94-P-157 was approved on February 14, 1995 for Tax Map 48-1 ((9)) 67, zoned R-3, at 2700 Snowberry Court, to permit construction of addition 14.8 feet from rear lot line (25 feet required).
- Special Permit SP 2011-PR-083 was approved on November 11, 2011 for Tax Map 48-1 ((25)) 10, zoned R-4, at 9750 Hatmark Court, to permit reduction of certain yard requirements to permit construction of addition 15.2 feet from the

### **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, the special permit must meet these standards.

### **CONCLUSION**

If it is the intent of the BZA to approve this application, the BZA should 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. Setback Certification dated August 1, 2012
5. Approved Resolution for SP 2011-PR-083
6. Applicable Zoning Ordinance Provisions

**PROPOSED DEVELOPMENT CONDITIONS**

**SPA 2011-PR-083**

**February 27, 2013**

1. This special permit is approved for the location and size of the additions, as shown on the plat prepared by Scartz Surveys, dated June 28, 2011, as submitted with this application and is not transferable to other land.

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

Application No.(s): SPA 2011-PR-083  
 (county-assigned application number(s), to be entered by County Staff)

**SPECIAL PERMIT/VARIANCE AFFIDAVIT**

DATE: October 11 2011  
 (enter date affidavit is notarized)

I, Jane Kelsey, Jane Kelsey & Associates, Inc., 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

118265

and that, to the best of my knowledge and belief, the following is true:

1(a). The following constitutes a listing of the names and addresses of all **APPLICANTS, TITLE OWNERS, CONTRACT PURCHASERS, and LESSEES** of the land described in the application,\* and, if any of the foregoing is a **TRUSTEE,\*\*** each **BENEFICIARY** of such trust, and all **ATTORNEYS and REAL ESTATE BROKERS**, and all **AGENTS** who have acted on behalf of any of the foregoing with respect to the application:

(NOTE: All relationships to the application listed above in **BOLD** print must be disclosed. Multiple relationships may be listed together, e.g., **Attorney/Agent, Contract Purchaser/Lessee, Applicant/Title Owner**, etc. For a multiparcel application, list the Tax Map Number(s) of the parcel(s) for each owner(s) in the Relationship column.)

NAME (enter first name, middle initial, and last name)	ADDRESS (enter number, street, city, state, and zip code)	RELATIONSHIP(S) (enter applicable relationships listed in <b>BOLD</b> above)
Robert M. Grims Yung H. Kim	9750 Hatmark Court Vienna, VA 22181	Title Owners, Applicants
NVS Kitchen & Bath, Inc. John G. Monteith, Agent	8982 Hornbaker Road Manassas, VA 20109	Agent for Title Owners/Applicant
Jane Kelsey & Associates, Inc. Jane Kelsey Bruce E. Kelsey Donald E. Lucas	4041 Autumn Court Fairfax, VA 22030-5168 " "	Agent for Title Owners/Applicant Agent for Title Owners/Applicant Agent for Title Owners/Applicant Agent for Title Owners/Applicant

(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): SPA 2011-PR-083  
(county-assigned application number(s), to be entered by County Staff)

**SPECIAL PERMIT/VARIANCE AFFIDAVIT**

DATE: October 11, 2012  
(enter date affidavit is notarized)

118265

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)  
NVS Kitchen & Bath, Inc.  
8982 Hornbaker Road  
Manassas, VA 20109

**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)  
Glen M. Miracle  
Richard A. Perkins

(check if applicable)  There is more corporation information and Par. 1(b) is continued on a "Special Permit/Variance Attachment I(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): SPA 2011-PR-083  
(county-assigned application number(s), to be entered by County Staff)

Page Three

**SPECIAL PERMIT/VARIANCE AFFIDAVIT**

DATE: October 11, 2012  
(enter date affidavit is notarized)

118265

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)

N/A

(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): SPA 2011-PR-083  
(county-assigned application number(s), to be entered by County Staff)

Page Four

**SPECIAL PERMIT/VARIANCE AFFIDAVIT**

DATE: October 11 2012  
(enter date affidavit is notarized)

118765

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): SPA 2011-PR-083  
(county-assigned application number(s), to be entered by County Staff)

**SPECIAL PERMIT/VARIANCE AFFIDAVIT**

DATE: October 11 2012  
(enter date affidavit is notarized)

118 265

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

Applicant's Authorized Agent

Jane Kelsey  
Jane Kelsey, President, Jane Kelsey & Associates, Inc.  
(type or print first name, middle initial, last name, and title of signee)

Subscribed and sworn to before me this 11<sup>th</sup> day of October 2012, in the State/Comm. of Virginia County/City of Fairfax.

My commission expires: 4/30/2016

Amy L. Bain  
Notary Public



Application No.(s): SPA 2011-PR-083  
(county-assigned application number(s), to be entered by County Staff)

Page \_\_\_\_ of \_\_\_\_

**Special Permit/Variance Attachment to Par. 1(b)**

DATE: October 11, 2012  
(enter date affidavit is notarized)

**NAME & ADDRESS OF CORPORATION:** (enter complete name, number, street, city, state, and zip code)  
Jane Kelsey & Associates, Inc.  
4041 Autumn Court  
Fairfax, VA 22030-5168

**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 THE SHAREHOLDERS:** (enter first name, middle initial, and last name)  
  
Jane Kelsey

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

**DESCRIPTION OF CORPORATION:** (check one statement)  
 There are 10 or less shareholders, and all of the shareholders are listed below.  
 There are more than 10 shareholders, and all of the shareholders owning 10% or more of any class of stock issued by said corporation are listed below.  
 There are more than 10 shareholders, but no shareholder owns 10% or more of any class of stock issued by said corporation, and no shareholders are listed below.

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

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

**REVISED STATEMENT OF JUSTIFICATION- December 13, 2012**  
**9750 Hatmark Court**  
**Oakton, VA**  
**Wildwood Subdivision, Lot 10**

**This revised statement will incorporate and replace the previously revised statement dated November 26, 2012. The Zoning Administrator determined that all three requests for modifications could be an Error in Building Location, rather than a Special Permit Amendment. Therefore, this statement is revised to address those standards: General Standards for Special Permit Uses, Standards for all Group 9 Uses, and Standards for Error in Building Location.**

**Background:** On November 30, 2011, Special Permit, SP 2011-PR-083, was approved to permit the construction of a 234 sq. ft addition at the above address 17.1 feet from the rear lot line. In addition, approval was granted to reconstruct a 222 sq. ft. deck enclosed underneath with lattice 17.1 feet from the rear lot line. Because of the lattice enclosure underneath the deck, the County staff ruled the deck could not extend into the required rear yard as permitted in the Zoning Ordinance without Special Permit approval. Stairs were shown on the plat to be 11.0 feet from the side lot line which met the setback requirement. The architectural sketches which were part of the application showed the existing stairs 8.1 feet from the side lot line.

**Current Request:** The change proposed to the Special Permit SP 2011-PR-083 requests approval to allow the 264 addition to remain 16.9 feet from the rear lot line with the eave 16.3 feet from the rear lot line, and the stairs 10.0 feet from the side lot line. Per the Zoning Ordinance, stairs are allowed to extend five feet into any required minimum yard. Per County Staff since the stairs were shown to be 11.0 feet from the side lot line, this change requires approval of the BZA. The original addition design reflected a gable roof. The change to a shed type roof also requires BZA approval, per County staff. Although the lattice has not yet been installed, after thoughtful discussion with some members of Staff it was decided best to leave the request for the lattice in the application. There is no change in its distance to the lot line.

**Zoning Ordinance Provisions and**

**Justification for Change:** Section 8-011 of the Zoning Ordinance sets forth the items that must be on the plat. We believe the plat satisfies all of those requirements. In addition to the items that must be on the SPA plat, Section 8-011 requires the following statements:

**G. Description of building facade and architecture of proposed new building or additions.**

See attached photos showing the existing building with its additions.

**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 generated, utilized, stored, treated, and/or disposed of on site and the size and contents of any existing or proposed storage tanks or containers.**

The only material that might be considered hazardous would be fuel for the lawn mower. The lawn mower might be stored in the garage, but is similar to gasoline stored in automobiles and should present no more of a hazard than would gasoline in automobiles.

**I. A statement that the proposed use conforms to the provisions of all applicable ordinances, regulations, adopted standards and any applicable conditions, or, if any waiver, exception or variance is sought by the applicant from such ordinances, regulations, standards and conditions, such shall be specifically noted with the justification for any such modification.**

The use of the property is residential and will continue to be residential. To the best of our knowledge and belief the use (residential dwelling) conforms to the provisions of all applicable ordinances, regulations, adopted standards and any applicable conditions except for the modifications sought in this application.

**7. A statement which confirms the ownership of the subject property, and the nature of the applicant's interest in same. If the applicant is not the owner of the property involved in the application, evidence must be submitted showing that the applicant will have the right to use the property as proposed. For a condominium, the provisions of Sect. 2-518 shall be applicable.**

The applicants confirm that they are the owners of the subject property and this is further confirmed by the Real Estate Assessment tax records, a copy of which was attached to the original submitted application.

**8. Where applicable, any information as may be required by the provisions of Article 7, including the submission of the Archaeological Survey Data Form and a Phase I Archaeological Survey to the Fairfax County Park Authority as may be required pursuant to Sect. 7-210 for applications resulting in 2500 square feet or more of land disturbing activity and where the application property is located wholly or partially within or contiguous to a Historic Overlay District.**

This is not applicable to this application.

**9. An application fee as provided for in Sect. 18-106.** The filing fee was attached to the original submission of the application.

**Further Justification for Error in Building Location:** The builder, NVS Kitchen & Bath, Inc., was not fully aware of the Special Permit conditions. In changing from a gable roof to a shed roof, the addition was extended farther toward the rear lot line to obtain the correct roof slope. It was not until the addition was completed and the setback certification made, did they become aware that they had extended the addition beyond the distance approved by the BZA. The special permit permitted the addition to be 17.1 feet from the rear lot line. The addition is 16.9 feet from the rear lot line with its eave as constructed 16.3 feet from the lot line at its closest point, a distance of 0.2 feet for the addition and 0.8 feet for the eave. The location of the deck which was reconstructed with proposed lattice underneath has not changed. The new deck and stairs replaced the previous deck and the stairs. The previous stairs have been removed from along the side of the house. They were 8.1 feet from the side lot line. The plat for Special Permit SP 2011-PR-083 showed the stairs 11.0 feet from the side lot line and 15.2 feet from the rear lot line. In order to meet the Building Code requirements, the steps had to be increased in width resulting in an 11.6 feet rear yard, rather than the 15.2 feet previously approved. The stairs meet the rear and side setback requirements. The builder was not as aware of the new yard requirements approved by the BZA since the previous stairs were closer to the lot line than the stairs that have been constructed. Again, it was not until the setback certification, that the builder and owner became aware that the addition and the stairs did not conform to the BZA Special Permit approval.

Approval of this application is the only avenue of relief for the above described building errors. These errors were made in good faith. The setback error will not adversely affect contiguous properties. There is sufficient vegetation between the addition and the adjacent homes to the rear to provide more than adequate screening. Even without the screening, a distance of 0.2 for the addition and 0.8 feet for the eave would not be visually distinguishable. The stairs should not be a visual issue for the neighbors.

It would be a hardship on both the owners and the builder to change the addition's roof line. It would not be possible to reduce the size of the roof line of the addition without a major modification of the addition and significant related costs.

The application meets the General Special Permit Standards. The building modification requested for SPA 2011-PR-083 will meet General Standard 3. The home will continue to be harmonious with and not adversely affect the use or development of neighboring properties in accordance with the applicable zoning district regulations and the adopted comprehensive plan. The stair addition will not adversely affect the neighbors to the north, south, or east. The dwellings to the east are farther away and are shielded by deciduous trees.

As previously stated, Staff and the BZA found the original Special Permit request met this standard and we do not believe these minor additional encroachments should change the BZA's original finding. The minor extensions into the required yards will not affect the utilities, drainage, parking, loading or other necessary facilities.

As previously stated we do not believe these minor changes will adversely impact the use and/or enjoyment of any adjacent properties.

This is the minimum modification that will afford relief.

The BZA's condition No. 4 required the additions be generally consistent with the renderings shown on Attachment 1 to the development conditions. The change from a gable to a shed roof is consistent with the design of the dwelling and does not adversely any of the neighboring properties.

Attached are photographs of the property with the constructed addition, deck, and stairs.

**Standards for All Group 9 Uses**

Standard 1: The existing addition meets the bulk regulations except for the minor extensions as set forth in this application.

Standard 2. Not applicable. There will be no lights or loud noise.

Standard 3. N/A



---

Jane Kelsey  
Jane Kelsey & Associates, Inc.

**Supplement to Statement of Justification, 9750 Hatmark Court,  
Oakton, VA - Special Permit Amendment Application**

On page 2 of the Statement of Justification submitted with the application, I stated the following:

**“The application meets the General Special Permit Standards. The building modification requested for SPA 2011-PR-083 will meet General Standard 3. The home will continue to be harmonious with and not adversely affect the use or development of neighboring properties in accordance with the applicable zoning district regulations and the adopted comprehensive plan. The addition will meet the minimum required side yard of 8.0 feet and will not adversely affect the neighbors to the north, south, or east. The dwellings to the east are farther away and are shielded by deciduous trees.”**

While I only referenced specifically Standard 3, I did that because the previous Special Permit Staff Report only specifically addressed No. 3. However, The application meets **Standard 1** in that it is in harmony with the adopted comprehensive plan for this area.

**Standard 2.** The minor extension further into the required yards will be in harmony with the general purpose and intent of the applicable zoning district regulations.

**Standard 3.** I previously address in my original statement and is noted above.

**Standard 4.** This addition extension will not affect the pedestrian and vehicular traffic.

**Standard 5.** The BZA makes the determination if additional landscaping and screening is needed. The applicant will agree to additional landscaping if such is determined to be reasonable and necessary.

**Standard 6.** Not applicable.

**Standard 7.** This minor extension into the required yards will not affect the utility, drainage, parking, loading or other necessary facilities.

**Standard 8.** There will be no signs on this property.

**Standards for All Group 9 Uses**

**Standard 1:** The existing addition meets the bulk regulations except for the minor extensions as set forth in this application.

**Standard 2.** Not applicable. There will be no lights or loud noise.

**Standard 3.** N/A

**Standards for Reduction of Certain Yard Requirements.** Addressed in the original submission.

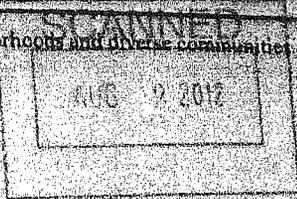
**Submission Statement:** The only hazardous material that might be stored on this property would be gasoline for the lawn mowers. However, that will be stored outside in a separate container. The lawn mower might be stored in the garage, but is similar to gasoline stored in automobiles and should present no more of a hazard than would gasoline in automobiles.





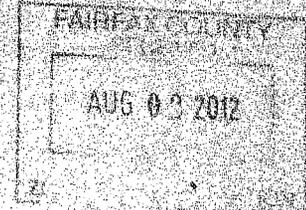
# County of Fairfax, Virginia

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



August 1, 2012

John Monteith  
8982 Hombaker Road  
Manassas, VA 20109



RE: Request for Setback Certification: Application Permit: 113550036  
9750 Hatmark Court  
Wildwood, Lot 10  
Tax Map: 48-1 ((25)) 10  
Zoning District: R-4 (developed with cluster provisions)

Dear Mr. Monteith:

This letter is in response to your July 13, 2012, request for approval of a setback certification for an addition and a new deck with stairs at the referenced property. Special Permit SP 2011-PR-083 was approved for this property to allow the addition to be 17.1 feet from the rear lot line and to allow a covered deck with stairs that are greater than 4 feet in height to be 15.2 feet from the rear lot line. As measured from the eaves, the submitted plat shows that the addition is 16.3 feet from the rear lot line and was therefore not constructed according to the requirements of the special permit. Additionally, when the special permit was approved the deck was determined to be covered because it included lattice. However, according to the building plans the deck no longer includes lattice so it now considered an open deck. Pursuant to Par. 2B of Sect. 2-412, an open deck with a floor that is higher than 4 feet may extend into the minimum required rear yard by up to 12 feet. As the minimum required rear yard is 25 feet, the deck with stairs may be as close as 13 feet to the rear lot line. The submitted plat shows that the stairs of the deck are 11.6 feet from the rear lot line so they do not meet the requirements of Par. 2B of Sect. 2-412, as described above. Therefore, because the addition does not comply with the location requirements of Special Permit SP 2011-PR-083 and the stairs of the deck do not comply with the location requirements of the Zoning Ordinance, the setback certification has been failed. To address these issues the addition and stairs will either need to be reduced in size to comply with the location requirements described above or a special permit amendment will need to be approved. All special permit applications require the submission of an application, plat, and fees, notification of adjacent property owners, and a public hearing before the Board of Zoning Appeals. Please contact the Zoning Evaluation Division at (703) 324-1290 for information and assistance.

Further, according to Condition #4 of Special Permit SP 2011-PR-083, the addition was to be constructed in general conformance with the approved architectural renderings. However, according to the building plans the architecture of the addition as it was constructed appears to differ from that of the approved architectural renderings. To determine if the architecture of

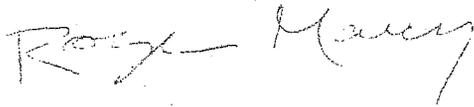
Department of Planning and Zoning  
Zoning Administration Division  
Ordinance Administration Branch  
12053 Government Center Parkway, Suite 607  
Fairfax, Virginia 22035-5507  
Phone 703-324-1314 FAX 703-324-1317  
www.fairfaxcounty.gov/planning



the addition is in general conformance with the approved renderings and is therefore in compliance with the requirements of the special permit please contact the Zoning Evaluation Division at the number above.

Your cooperation in this matter is greatly appreciated, as a final inspection cannot occur until a setback certification is approved. Although this is not the desired response, I trust this information adequately responds to your request. If you have any questions regarding this response, please feel free to contact me at 703-324-1396. I note that this response has been coordinated with staff from the Special Permit and Variance Evaluation Branch of the Zoning Evaluation Division.

Sincerely,



Roger Marcy  
Assistant to the Zoning Administrator

cc: Robert and Kim Grims, 9750 Hatmark Court, Vienna, VA 22181  
Mavis E. Stanfield, Deputy Zoning Administrator for Appeals  
Diane Johnson-Quinn, Deputy Zoning Administrator for Zoning Permit Review Branch ✓  
Charles O'Donnell, Residential Inspections Division, DPWES  
Betsy Smith, Environmental and Facilities Inspections Division, DPWES  
Susan Langdon, Branch Chief, Special Permit and Variance Evaluation Branch, Zoning Evaluation Division.

## SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

ROBERT GRIMS & YUNG HAE KIM, SP 2011-PR-083 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of additions 17.1 ft. and 15.2 ft. from rear lot line. Located at 9750 Hatmark Ct., Vienna, 22181, on approx. 7,571 sq. ft. of land zoned R-4 (Cluster). Providence District. Tax Map 48-1 ((25)) 10. Mr. Beard moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on November 30, 2011; and

WHEREAS, the Board has made the following findings of fact:

1. The owners of the property are the applicants.
2. The lot size is 7,571 square feet in an R-4 Cluster zoning.
3. The applicant meets all the submission requirements pursuant to Section 8-922 as listed in the special permit resolution, 1 through 6.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in the Zoning Ordinance.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED** with the following limitations:

1. These conditions shall be recorded by the applicant among the land records of Fairfax County for this lot prior to the issuance of a building permit. A certified copy of the recorded conditions shall be provided to the Zoning Permit Review Branch, Department of Planning and Zoning.
2. This special permit is approved for the location and size of a one-story addition (234 gross square feet) and a deck with lattice (222 gross square feet), as shown on plat prepared by Larry N. Scartz, dated June 28, 2011, as revised through September 7, 2011, as submitted with this application and is not transferable to other land.
3. Pursuant to Paragraph 4 of Section 8-922 of the Zoning Ordinance, the resulting gross floor area of an addition to the existing principal structure may be up to 150 percent of the gross floor area of the dwelling that existed at the time of the first expansion (2,176 square feet existing + 3,264 square feet (150%) = 5,440 square feet maximum permitted on lot) regardless of whether such addition complies with the minimum yard requirement or is the subject of a subsequent yard reduction special permit. Notwithstanding the definition of gross floor area as set forth in the Ordinance, the gross floor area of a single family dwelling for the purpose of this paragraph shall be deemed to include the floor area of any attached garage. Subsequent additions that meet minimum yard requirements shall be permitted without an amendment to this special permit.

- 4. The additions shall be generally consistent with the architectural renderings and materials as shown on Attachment 1 to these conditions.

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.

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

Ms. Gibb seconded the motion, which carried by a vote of 4-0. Mr. Smith was not present for the vote. Mr. Byers and Mr. Hammack were absent from the meeting.

A Copy Teste:

Suzanne Frazier  
 Suzanne Frazier, Deputy Clerk  
 Board of Zoning Appeals

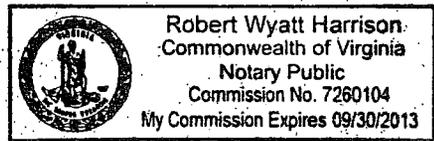
ACKNOWLEDGEMENT

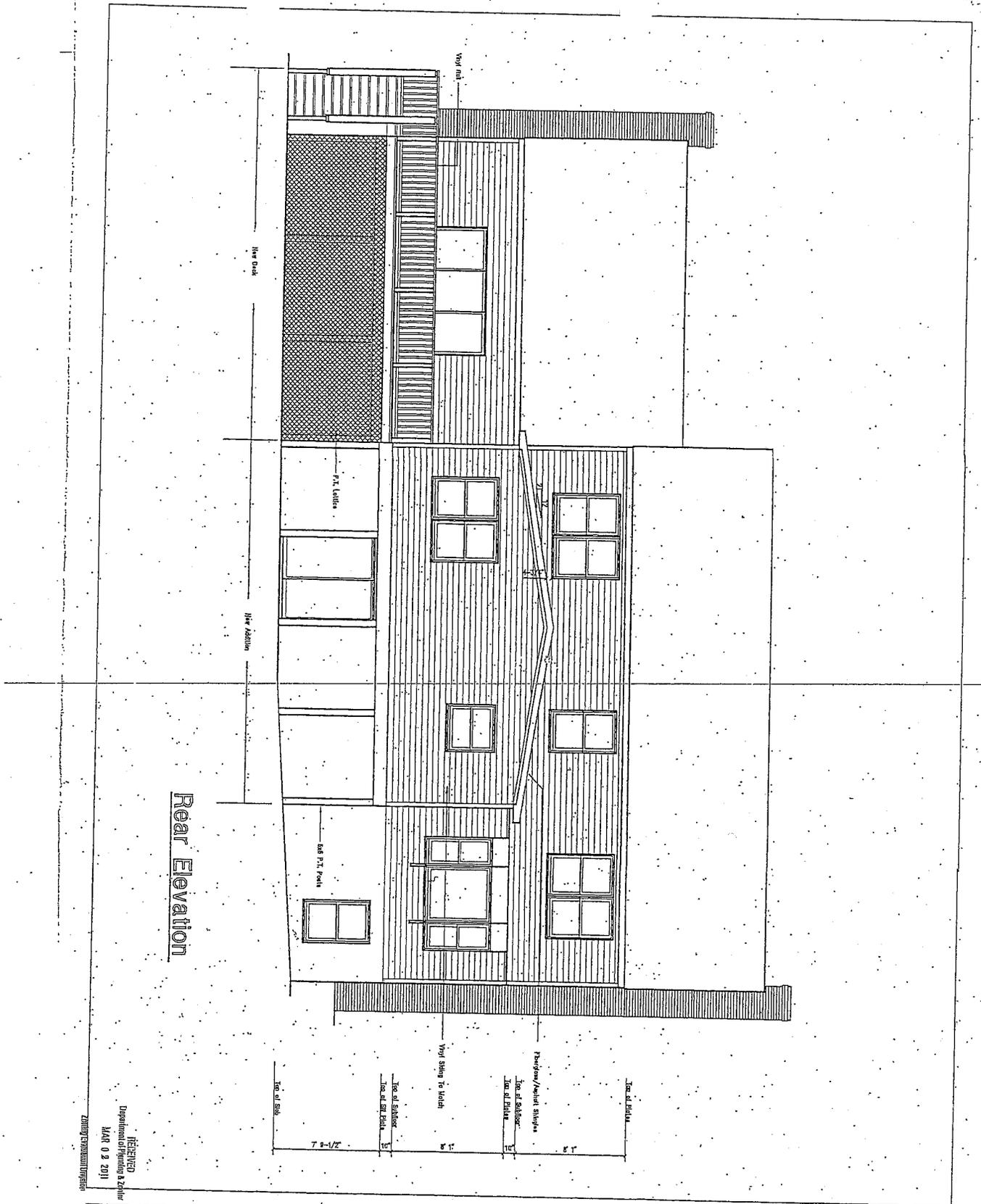
County of Fairfax,  
 Commonwealth of Virginia:

The foregoing instrument was acknowledged before me this 7 day of December, 2011.

Robert Wyatt Harrison  
 Notary Public

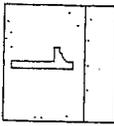
My commission expires: 9/30/2013





Rear Elevation

RECEIVED  
 Department of Planning & Zoning  
 MAR 03 2011  
 Zoning Commission Office

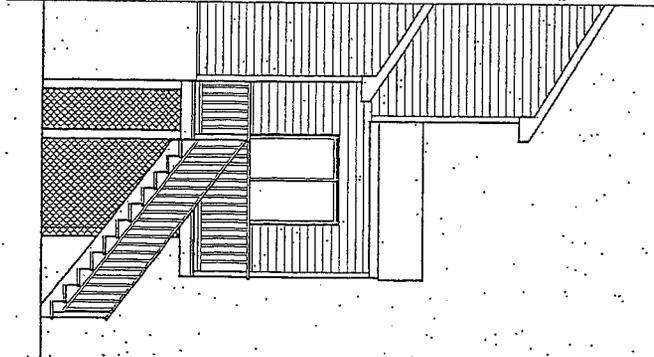


Permit  
 Set

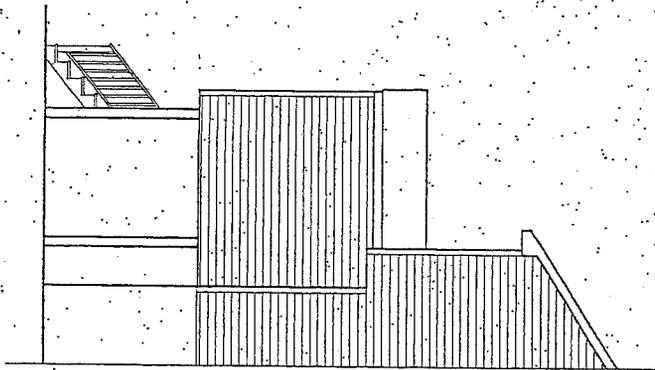
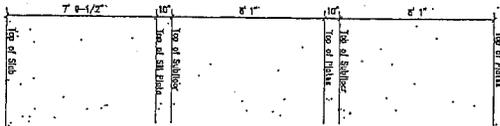
Permit  
 Set

**NVS Kitchen & Bath, Inc.**  
 8982 Hornbaker Rd. Manassas, Va. 20109  
 Phone: 703-378-2600 Fax: 703-378-9660

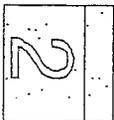
Kim Residence  
 9750 Hatmark Ct.  
 Vienna, Va. 22181



Left Side Elevation



Right Side Elevation

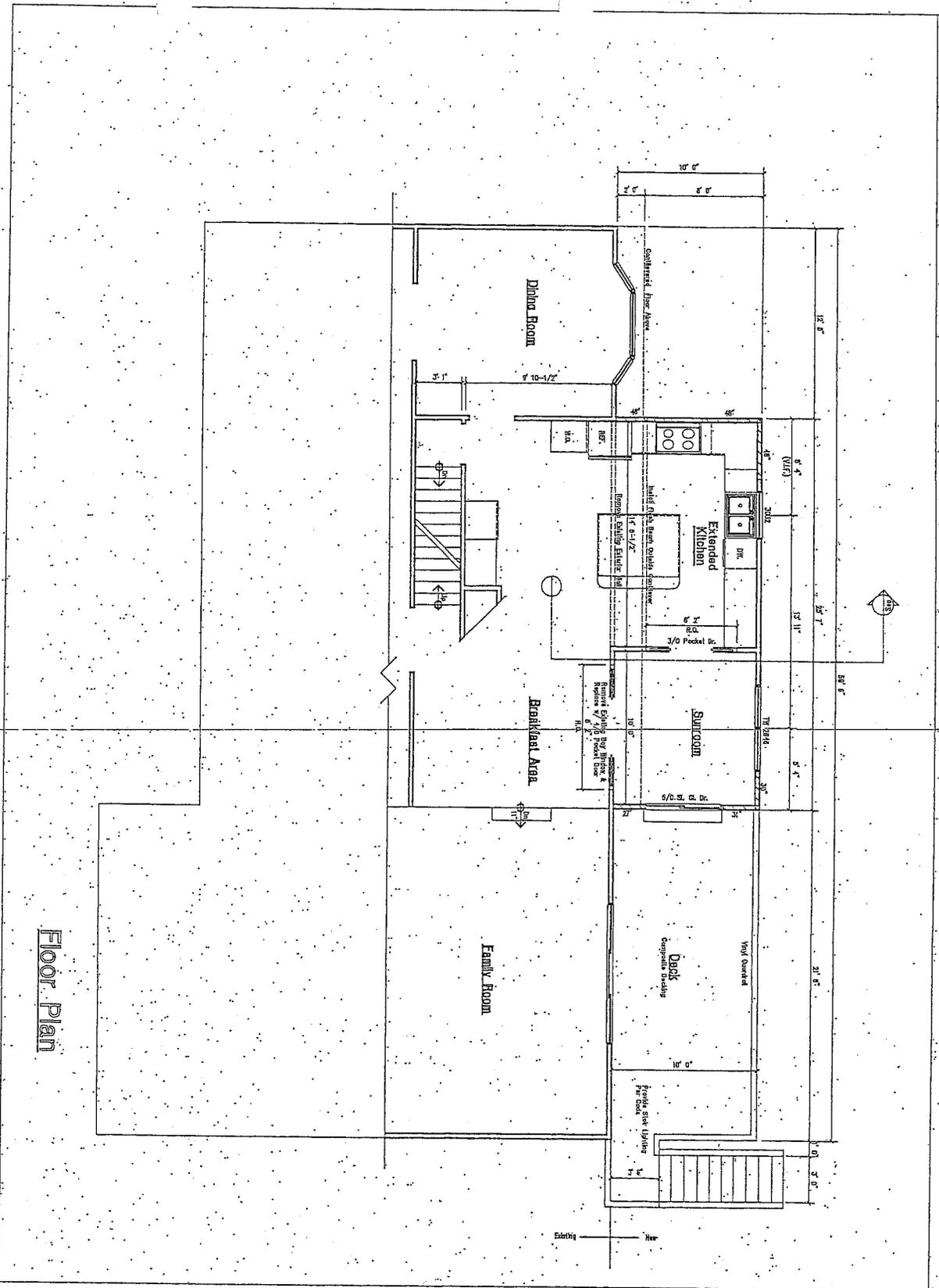


Scale: 1/4" = 1'-0"  
 Plot Date: 1-10-11  
 © Copyright

Permit  
 Seal

**NVS Kitchen & Bath, Inc.**  
 8982 Hornbaker Rd. Manassas, Va. 20109  
 Phone: 703-378-2600 Fax: 703-378-9560

Kim Residence  
 9750 Hatmark Ct.  
 Vienna, Va. 22181



Floor Plan

	<p>Permit Bat</p>	<p><b>NVS Kitchen &amp; Bath, Inc.</b> 8982 Hornbaker Rd. Manassas, Va. 20109 Phone: 703-378-2600 Fax: 703-378-9560</p>	<p>Kim Residence 9750 Hatmark Ct. Vienna, Va. 22181</p>
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Permit Date: 1-10-11  
 Scale: 1/4" = 1'-0"  
 © Download



**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.