



APPLICATION ACCEPTED: December 4, 2014

DATE OF PUBLIC HEARING: March 4, 2015

TIME: 9:00 a.m.

County of Fairfax, Virginia

February 25, 2015

STAFF REPORT

SPECIAL PERMIT SP 2014-BR-253

BRADDOCK DISTRICT

APPLICANT: Chau Nguyen
Hanh Pham-Nguyen

OWNERS: Chau Nguyen
Hanh Pham-Nguyen

LOCATION: 5209 Ox Road, Fairfax, 22030

SUBDIVISION: Mallam Property, Lot 1

TAX MAP: 068-3 ((1)) 8B

LOT SIZE: 25,966 square feet

ZONING: R-2

ZONING ORDINANCE PROVISION: 8-923

SPECIAL PERMIT PROPOSAL: To permit a fence greater than four feet in height in the front yard of an interior lot.

STAFF RECOMMENDATION: Staff recommends approval of SP 2014-BR-253 for a fence located in a front yard with the adoption of the proposed development conditions contained in Appendix 1.

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

Kelly M. Atkinson, AICP

It should be further noted that the content of this report reflects the analysis and recommendations of staff; it does not reflect the position of the Board of Zoning Appeals. A copy of the BZA's Resolution setting forth this decision will be mailed within five days after the decision becomes final.

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

For additional information, call Zoning Evaluation Division, Department of Planning and Zoning at 703-324-1280, 12055 Government Center Parkway, Suite 801, Fairfax, Virginia 22035. **Board of Zoning Appeals' meetings are held in the Board Room, Ground Level, Government Center Building, 12000 Government Center Parkway, Fairfax, Virginia 22035-5505.**

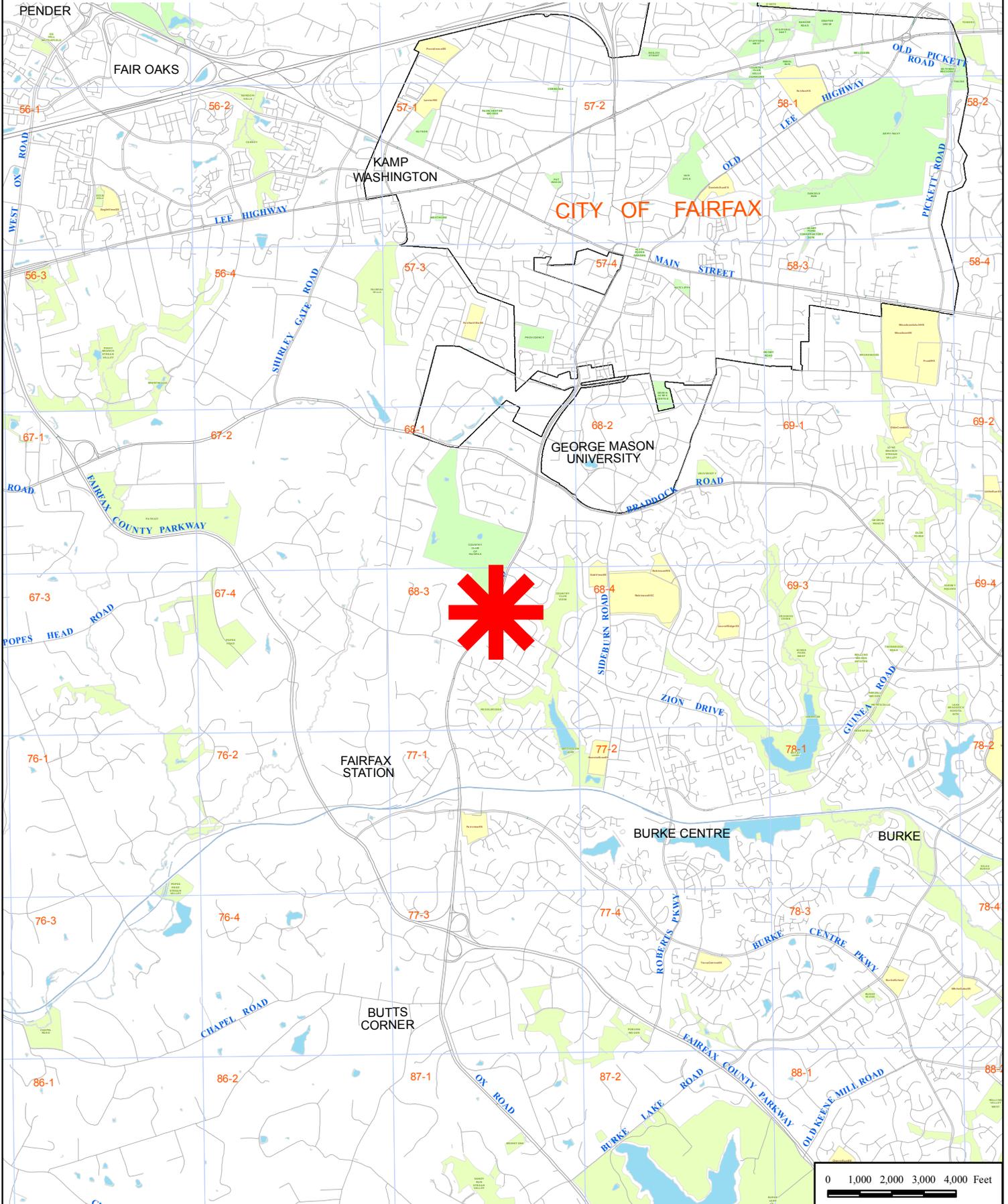


Americans with Disabilities Act (ADA): Reasonable accommodation is available upon 48 hours advance notice. For additional information on ADA call (703) 324-1334 or TTY 711 (Virginia Relay Center).

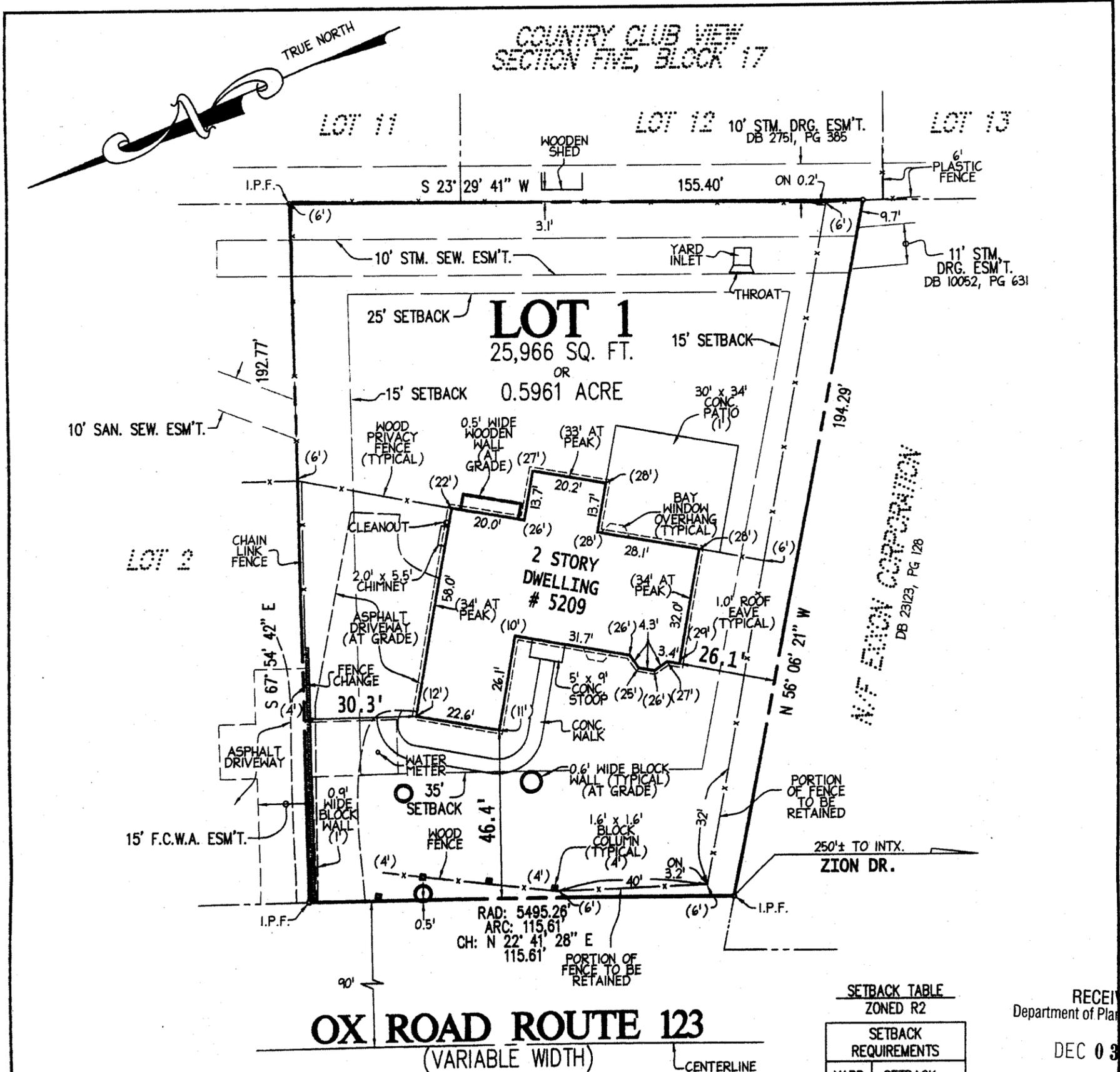
Special Permit

SP 2014-BR-253

CHAU NGUYEN / HANH PHAM-NGUYEN



COUNTRY CLUB VIEW
SECTION FIVE, BLOCK 17



OX ROAD ROUTE 123
(VARIABLE WIDTH) CENTERLINE

SETBACK TABLE
ZONED R2

| SETBACK REQUIREMENTS | |
|----------------------|---------|
| YARD | SETBACK |
| FRONT | 35' |
| REAR | 25' |
| SIDE | 15' |

LEGEND:

- I.P.F. DENOTES IRON PIPE FOUND
- X- DENOTES FENCE LINE
- DB, PG DENOTES DEED BOOK AND PAGE
- N/F DENOTES NOW OR FORMERLY
- (1') DENOTES HEIGHT FROM GRADE



NOTES:

- 1) THIS PLAT HAS BEEN PREPARED WITHOUT THE BENEFIT OF A TITLE REPORT AND DOES NOT THEREFORE NECESSARILY INDICATE ALL ENCUMBRANCES ON THE PROPERTY.
- 2) THE LOT SHOWN HEREON APPEARS TO PLOT IN FLOOD ZONE "X" AREA DETERMINED TO BE OUTSIDE THE 0.2% ANNUAL CHANCE FLOODPLAIN, AS SHOWN ON F.E.M.A. MAP# 51059C0255E EFFECTIVE DATE: SEPTEMBER 17, 2010
- 3) THE PROPERTY SHOWN ON THIS PLAT IS LOCATED ON TAX ASSESSMENT MAP # 068-3-01-0008-B
- 4) EASEMENTS, B.R.L.S & MERIDIAN, IF SHOWN HEREON, ARE AS DELINEATED ON PLAT RECORDED IN DEED BOOK 16787, PAGE 2171 (UNLESS NOTED OTHERWISE).
- 5) PROPERTY SERVED BY PUBLIC WATER AND SEWER.
- 6) NO BURIAL SITES ON LOT PER RECORD PLAT.
- 7) NO EXISTING UTILITY EASEMENTS HAVING A WIDTH OF TWENTY-FIVE FEET OR MORE PER RECORD PLAT.

SPECIAL PERMIT PLAT ON
LOT 1
MALLAM PROPERTY
BRADDOCK DISTRICT
FAIRFAX COUNTY, VIRGINIA

B.W. SMITH AND ASSOCIATES, INC.

PROFESSIONAL LAND SURVEYING
MANASSAS, VIRGINIA (703) 368-5866 1(800) 682-0996

FIELD CREW: J. SEEGER

REVISION: 11/24/14 (FENCE DIMENSION ADDED) T.J.F.
JOB# 20141671

DATE: 11/11/14

DFT: R.D.P.

CHK: T.J.F.

NO TITLE REPORT FURNISHED

SCALE= 1" = 30'

RECEIVED
Department of Planning & Zoning
DEC 03 2014
Zoning Evaluation Division

SPECIAL PERMIT REQUEST

The applicants are seeking approval of a special permit to allow a fence greater than four feet in height in portions of the front yard of an interior lot consisting of less than two acres. A more detailed description of the proposal is provided on pages two and three.

A copy of the special permit plat, titled "Special Permit Plat on Lot 1 Mallam Property" prepared by B.W. Smith and Associates, Inc., dated November 11, 2014, is included in the front of the staff report.

A copy of the proposed development conditions, statement of justification with select file photographs, and affidavit are contained in Appendices 1-3, respectively.

CHARACTER OF THE SITE AND SURROUNDING AREA

The 25,966 square foot subject property is located on Ox Road, Route 123, approximately 250 feet north of the intersection of Ox Road, Route 123 and Zion Drive, Route 654. Ox Road is a principal arterial road with 30,000 AADT (2013). The property is located within the R-2 District. The property to the north and east is also zoned R-2 and contains single-family detached dwellings. Property to the south is zoned C-5 and contains an existing gas station. Finally, property to the west is zoned R-C and contains an existing country club.



Figure 1: Subject Property, Source: Fairfax County Pictometry 2013

The property is developed with a two-story, vinyl with brick trim dwelling with a garage. According to the Department of Tax Administration, the dwelling contains approximately 5,830 square feet of above grade living area, not including the basement. The property

also contains an asphalt driveway and a rear patio. There is an existing multi-purpose trail adjacent to Ox Road, Route 123.

BACKGROUND AND HISTORY

Fairfax County Tax Records indicate that the single family dwelling was built in 2006 and the applicants purchased the property in 2009. A notice of violation for the fence height was issued on July 21, 2014 and is located in Appendix 4.

County databases indicate that a number of special permit or variance requests related to an increase in fence height in the front yard are located on similar properties within the Braddock District. Please see Appendix 5 for a list of related nearby cases.

DESCRIPTION OF THE APPLICATION

The applicants are requesting approval to retain approximately seventy-two linear feet of six foot high wood fence partially located in the front yard. Per photos submitted by the applicant, the portion of fence located adjacent to Ox Road (see Figure 2) consists of four feet of solid board on board fence, while the remaining top two feet consists of a wood lattice. For the portion of fence located along the southern property line and adjacent to the gas station (see Figure 3), this fence is a six foot board on board fence. Existing mature vegetation and a retaining wall on the gas station site provides screening for the fence.



Figure 2: Subject Property – Southwestern Property Line, Source: Applicant

The applicants have indicated that the fence is intended to limit access to their property, where four children reside, from the adjacent gas station as well as to preclude access to Ox Road for safety reasons. The existing topography along Ox Road in the southwestern portion of the site, where the fence is currently six feet high, is approximately 3-3.5 feet lower than the northwestern portion of the site, where the fence is currently four feet high.

Figure 3: Subject Property – Southern Property Line, Source: Applicant



According to photos and information submitted by the applicants, there have been instances of loitering and littering on the subject property, adjacent to the gas station on the southern property line. Additionally, the gas station generates noise from the repair shop, vacuum and air pumps, located adjacent to the property. The applicants state that this fence will reduce noise and access from this use and provide a continuous six foot fence along the southern property line.

ANALYSIS

Comprehensive Plan Provisions

Plan Area: III
Planning District: Pohick
Plan Sector: Main Branch Community Planning Sector (P2)
Plan Map: Residential, 1-2 du/acre

Zoning Ordinance Requirements

- Sect. 8-006, General Special Permit Standards
- Sect. 8-903, Group 9 Standards
- Sect. 8-923, Provisions for Increase in Fence and/or Wall Height in Any Front Yard

This special permit is subject to sections of the Zoning Ordinance as referenced above, a copy of which are included in Appendix 6. Subject to development conditions, the special permit must meet these standards.

The following tables provide an overview of the standards reviewed in Section 8-006, Section 8-903, and Section 8-923 for the Provisions for Increase in Fence Height in Any Front Yard.

General Standards for Special Permit Uses (Sect. 8-006)

| | |
|---|--|
| <p>Standards 1 and 2 Comprehensive Plan/ Zoning District</p> | <p>The Comprehensive Plan recommends residential uses and the property is developed with a residential use. The R-2 District allows an increase in fence height in a front yard with a special permit approval. The proposed use is in harmony with the Comprehensive Plan and the general purpose and intent of the R-2 District.</p> |
| <p>Standard 3 Adjacent Development</p> | <p>In staff's opinion, the proposed use will not hinder or discourage use or development of neighboring properties or value. The portion of fence subject to this request is located adjacent to a commercial gas station, which is a higher intensity use than the subject property, and a principal arterial road. Staff believes by observation of the neighborhood and through submitted photographs and aerial photography that the fence will not adversely affect the use or development of neighboring properties, as the property is surrounded to the south by a</p> |

| | |
|--|---|
| | number of commercial uses such as the gas station, country club, and church. The portion of fence subject to this request is not directly located adjacent to any residential use. |
| Standard 4 Pedestrian/Vehicular Traffic | No increased vehicular or pedestrian traffic is expected with this application. In staff's opinion, the proposed use is not hazardous and does not conflict with existing and anticipated traffic in the neighborhood. As there is a multi-purpose trail along this section of Ox Road, the fence does not pose a sight distance issue and VDOT has no objection to approval of this application. |
| Standard 5 Landscaping/Screening | The adjacent gas station has both existing mature vegetation and a retaining wall along the northern property line, which provides screening from the fence along the southern property line. Staff believes that the fence will not significantly impact the use and/or enjoyment of any adjacent property. |
| Standard 6 Open Space | There is no open space requirement. |
| Standard 7 Utilities, Drainage, Parking, and Loading | There are no changes to the utilities or drainage of the site. Further, there are no changes to the parking or loading requirements as they pertain to the public right-of-way as no additional curb cuts are proposed. |
| Standard 8 Signs | No signage is proposed. |

Standards for all Group 3 Uses (Sect. 8-903)

| | |
|--|--|
| Standard 1 Lot Size and Bulk Regulations | The lot size and bulk regulations for the subject property are satisfied with the existing development of the property. |
| Standard 2 Performance Standards | The use will comply with the performance standards set forth in Article 14 of the Zoning Ordinance. |
| Standard 3 Site Plan | If the construction disturbs more than 2,500 square feet, the application is subject to the submission of a conservation plan or grading plan. |

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

| 8-923 Standards | Provision met? | |
|---|----------------|----|
| | YES | NO |
| 1. The maximum fence and/or wall height shall not exceed 6 ft. | X | |
| 2. The fence and/or wall shall meet the sight distance requirements contained in Sect. 2-505. | X | |

| | | |
|--|---|--|
| 3. The BZA shall determine that the proposed fence and/or wall height increase is warranted based upon factors to include, but not limited to, orientation and location of the principal structure on the lot and nearby off-site structures, topography, multiple front yards, safety and/or noise. | X | |
| 4. The BZA shall determine that the fence and/or wall height increase will be in character with the on-site development, and will be harmonious with surrounding off-site uses and structures in terms of location, height, bulk, scale and historic designations. | X | |
| 5. The BZA shall determine that the fence and/or wall height increase shall not adversely impact the use and/or enjoyment of other properties in the immediate vicinity. | X | |
| 6. The BZA may impose such conditions as it deems necessary to satisfy these criteria, including but not limited to landscaping or fence and/or wall design requirements. | X | |
| 7. Submission requirements met. | X | |
| 8. Architectural depictions of the fence, materials and associated landscaping shall be provided. | X | |

CONCLUSION/ RECOMMENDATION

Staff believes that the request for an increase in fence height is in conformance with the applicable Zoning Ordinance provisions.

Staff recommends approval of SP 2014-BR-253 for a fence greater than 4 feet in a front yard, subject to the proposed conditions set forth in Appendix 1.

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

It should be further noted that the content of this report reflects the analysis and recommendations of staff; it does not reflect the position of the Board of Zoning Appeals.

APPENDICES

1. Proposed Development Conditions
2. Statement of Justification and Select Site Photos
3. Affidavit
4. Notice of Violation

5. Similar Case History
6. Applicable Zoning Ordinance Provisions

PROPOSED DEVELOPMENT CONDITIONS**SP 2014-BR-253****February 25, 2015**

If it is the intent of the Board of Zoning Appeals to approve SP 2014-BR-253 located at Tax Map 068-3 ((1)) 8B to permit a fence greater than 4.0 feet in height to be constructed in a front yard of an interior lot, under Sect(s). 8-923 of the Fairfax County Zoning Ordinance, staff recommends that the Board condition the approval by requiring conformance with the following development conditions.

1. This special permit is approved for the location of the fence as shown on the plat titled "Special Permit Plat on Lot 1 Mallam Property" prepared by B.W. Smith and Associates, Inc., dated November 11, 2014.
2. All applicable permits and final inspections shall be obtained within 180 days of the 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.

Pursuant to Sect. 8-015 of the Zoning Ordinance, this special permit shall automatically expire, without notice, 30 months after the date of approval unless construction has commenced and has been diligently pursued. 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.

SEP 19 2014

Zoning Evaluation Division

SPECIAL PERMIT STATEMENT OF JUSTIFICATION

A. **Type of operation:** Privacy Fence built to separate our private residential property from a commercial property, Exxon gas station, to minimize noise, trespassing, and loitering by Exxon customers and other individuals. We request to retain the 6 ft fence section.

B. **Hours of operation:** N/A

C. **Estimated number of patrons etc...:** N/A

D. **Proposed number of employees:** N/A

E. **Estimate of traffic impact of the proposed use:** This is a privacy fence built in the very far corner of our property, located adjacent to Exxon Gas Station. It is very far from our driveway and does not block any views of the street nor block any view when exiting our driveway. Since the neighbor's driveway is located next to ours, the fence does not block any views when entering or exiting the driveway. Please see pictures (#17, #35-#38) showing the proximity of the 2 driveways. At the end of the 2 separated private driveways is a portion that is a common driveway. From our fence to the street is approximately 30 feet of driveway. At the end of the driveway is a stop sign. So technically, everyone has to stop at the end of the driveway before entering Ox Road, regardless if there is a stop sign or not. So from our existing 4 foot fence in the front yard to the end of the street is still about 30 feet distance and it does not block any views for the driveway. Now if you look at the existing 6 foot fence section (the one we are requesting a permit to retain), it is even much further away from the driveway. As a result of the far distance of our 6 foot fence, it does not block any views for people to enter and exit the driveway.

This area of the fence is located in a "valley" portion, where the land slopes downward by about three to three and a half feet, towards the Exxon side. The pictures (#2, #3, #7, #8, #18, #21, #22, #24) clearly shows that the 4 foot mark on the fence is about the same level as the street, which is Route 123. Please see photo and captions. There are pictures (#6, #7, #7, #35-#40) taken with the view from our driveway, the picture shows that you can see the street as you are exiting the driveway. The fence does not block the street view and does not impact any one's field of vision. Furthermore, only a partial section of the fence located in the front of the property line is constructed with privacy wood while the adjacent section consist of a 4 foot privacy with a 2 foot lattice on top. You can still see through the lattice section

F. **Vicinity or general area to be served by the use:** Fence is located on private property. I am the owner of the property. Fence is on the side of the front yard, and on a smaller corner section of the front property line, which are both located next to Exxon Gas Station.

G. **Description of the building facade and architecture of proposed new building or additions:** N/A
This is a privacy fence built for the purpose of safety reasons, being our residential property is located right next to Exxon Gas Station.

H. **A listing, if known, of all hazardous or toxic substances:** N/A

I. I am the owner of the property, 5209 Ox Road (Route 123), would like to request approval to retain an existing a 6 foot fence section, located on the side and the front corner of our property that is located next to Exxon Gas Station. The county allows a 4 ft height fence without permit. This fence section is located in the front yard section of our property. We have 4 children living on a residential property, which is located next to Exxon Gas Station, a heavily congested and highly traffic commercial property. It is a heavily congested area with many customers and cars. There have been trespassers from Exxon,

SPECIAL PERMIT STATEMENT OF JUSTIFICATION (continue)

especially at night after closing. People have used this area of the land between our property and Exxon (#10, #11, #12, #25, #29, #31, #33, #34) for refuge or temporarily "camp outs", littering, and for hanging out. Young people have been seen to hang out in this grassy area, next to our fence and property. It is a secluded area where people can hang out to drink, smoke, etc...In addition, Exxon generates a lot of noise from their auto garage where they fix automobiles and test drive vehicle. Motorcycles driving through also generate a lot of noise at this Exxon. Our house is also located on a very busy main street, Route 123. Retaining this 6 foot fence will help to: 1) create a barrier to reduce some noise from Exxon and Route 123; 2) to prevent trespassers specially people hanging out in the grass area between our property and Exxon (see pictures), 3) to provide a safer separation between a residential home and a commercial gas station, 4) to minimize the chance of people climbing over to our property (a 6 foot fence is higher than 4 ft and would take more effort to climb), 5) to help deter any possible crimes from people coming from Exxon, thus making the community a safer place to live. In addition, the fence section is located down in a sloped land so if we were to cut the existing fence to a 4 foot fence, its height of 4 foot will be at the same level with the street, Route 123. Please see attached pictures. And a 4 foot fence can be much easier to climb as compare to a six foot fence. Our hope and goal is to promote and maintain a peaceful and safe community for our family as well as surrounding residents. Thank you, we really appreciate your time and consideration.

(Taken December 22, 2014)



5209 Ox Road Property.

Photo taken from our front door, demonstrates the street is leveled at higher ground than fence



Picture shows the elevation of street level (Ox Road- approximately 30 feet from the street) is much higher than the elevation of the land where the fence is located.



Taken from driveway, as you can see the fence does not block any views as we are leaving our drive way



Photo taken from the front of the property



View taken from the street



Photo taken from Ox Road looking down at the fence and our house. To the left is neighbor's house (5207 Ox Road). You can see from the street right through my driveway as well as the neighbor next door's driveway.



The fence is built very far back from the street



Another picture taken from the view of Ox Road.

You can clearly see through to the driveways



Close up photo of fence

To the right of fence is Exxon gas station



View taken from the fence, you can see from the street



Close up view of fence in the front



Section without lattice is 4 ft. and with lattice is 6 ft. Photo is taken as we are leaving our driveway. The view does not block any views of the street from the driveway. There is a stop sign at the end of the driveway (approximately 30 ft. past the fence)



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

SPECIAL PERMIT/VARIANCE AFFIDAVIT

DATE: 11/24/2014
(enter date affidavit is notarized)

127007

I, Chau Nguyen & Hanh Pham-Nguyen, 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

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) |
|---|--|---|
| Chau Nguyen | 5209 Ox Road, Fairfax VA 22030 | Applicant |
| Hanh Pham-Nguyen | 5209 Ox Road, Fairfax VA 22030 | Co-Owners |

(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): _____
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Page Two

SPECIAL PERMIT/VARIANCE AFFIDAVIT

DATE: 11/24/2014
(enter date affidavit is notarized)

127007

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)

DESCRIPTION OF CORPORATION: (check one statement)

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

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

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

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

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

Page Three

SPECIAL PERMIT/VARIANCE AFFIDAVIT

DATE: 11/24/2014
(enter date affidavit is notarized)

121007

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): _____
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SPECIAL PERMIT/VARIANCE AFFIDAVIT

DATE: 11/24/2014
(enter date affidavit is notarized)

127007

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: 11/24/2014
(enter date affidavit is notarized)

127007

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

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

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

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

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

WITNESS the following signature:

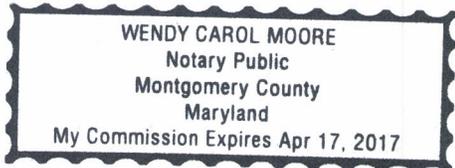
(check one) [] Applicant [x] Applicant's Authorized Agent

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

Subscribed and sworn to before me this 24th day of November 2014, in the State/Comm. of MARYLAND, County/City of MONTGOMERY.

Wendy C Moore
Notary Public

My commission expires: 04/17/2017



Ball



County of Fairfax, Virginia

Return Copy

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

NOTICE OF VIOLATION Fairfax County Zoning Ordinance

DATE OF ISSUANCE: July 21, 2014

METHOD OF SERVICE: OFFICE OF THE SHERIFF

LEGAL NOTICE ISSUED TO: Chau N. Nguyen
Hanh Pham-Nguyen

ADDRESS: 5209 Ox Road
Fairfax, Virginia 22030

LOCATION OF VIOLATION: 5209 Ox Road
Fairfax, Virginia 22030-0000

TAX MAP REF: 0683 01 0008B

ZONING DISTRICT: R- 2

CASE #: 201404974 **SR #:** 107354

ISSUING INVESTIGATOR: Ronald Gibson, (703)324-8247

POTENTIAL CIVIL PENALTIES UNDER ZONING ORDINANCE

| § 18-903(1): | Zoning Violation | First Offense | Each Subsequent Offense |
|---------------|------------------|------------------|-------------------------|
| | §10.104.3B | \$ 200.00 | \$ 500.00 |
| TOTAL: | | \$ 200.00 | \$ 500.00 |

Dear Responsible Party:

An inspection of the above referenced property on July 14, 2014 revealed the following violations of the Fairfax County Zoning Ordinance:

§ 10-104 (3B) Accessory Fence Exceeding 4' in the Front Yard
§ 2-302 (6) Accessory Use must comply with Article 10:

An inspection has determined the presence of a six (6) feet tall accessory fence in the front yard of this

Department of Code Compliance
12055 Government Center Parkway, Suite 1016
Fairfax, Virginia 22035-5508
Phone 703-324-1300 Fax 703-653-9459 TTY 711
www.fairfaxcounty.gov/code

property, which is less than two (2) acres in area. The Fairfax County Zoning Ordinance permits accessory fences in the front yard so long as they are in conformance with Par. 3B of Sect. 10-104 of the Zoning Ordinance, which states:

Except as may be qualified by Sect. 2-505, a fence or wall may be located as follows. Such regulations shall not be deemed to negate the screening requirements of Article 13.

A. In any yard on any lot containing not less than two (2) acres located in the R-A through R-1 Districts, a fence or wall not exceeding seven (7) feet in height is permitted.

B. In any front yard on any lot, a fence or wall not exceeding four (4) feet in height is permitted. However, in that portion of a front yard on a residential corner lot that abuts a major thoroughfare, a solid wood or masonry fence or wall not exceeding eight (8) feet in height, located flush to the ground, may be permitted, provided that:

- (1) the driveway entrance to the lot is from a street other than the major thoroughfare and the principal entrance of the dwelling faces a street other than the major thoroughfare, and
- (2) the lot is not contiguous to a lot which has its only driveway entrance from the major thoroughfare or service drive adjacent to the major thoroughfare.

The fence shall not extend into the front yard between the dwelling and the street other than the major thoroughfare and shall also be subject to the provisions of Sect. 2-505.

In addition, an increase in fence height in the front yard up to six (6) feet may be permitted with the approval of a special permit by the BZA in accordance with Part 9 of Article 8.

Therefore, as this accessory fence exceeds four feet (4') in height in the front yard contrary to the provisions of Par. 3B of Sect. 10-104 of the Zoning Ordinance, you are in violation of Par. 3B of Sect. 10-104 and Par. 6 of Sect. 2-302 of the Zoning Ordinance which states:

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

Châu N. Nguyen
Hanh Pham-Nguyen
July 18, 2014
SR 107354
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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 fence from the property in its entirety; or
- Reducing the height of the fence to four feet (4') in the front yard.

As an alternative, you may apply to the Fairfax County Board of Zoning Appeals (BZA) and seek approval of a Special Permit to allow the accessory fence to remain at a height of up to six (6) feet and at its present location. For information and answers to any questions regarding this application process, you may contact the Zoning Evaluation Division at 703-324-1290.

A follow-up inspection will be made at the expiration of the time period outlined in this Notice. Failure to comply with the notice will result in the initiation of appropriate legal action to gain compliance with the Zoning Ordinance which can result in court ordered sanctions or civil penalties. Civil penalties may be ordered in the amount of \$200.00 for each violation of the Zoning Ordinance cited herein for the first violation and \$500.00 for each violation of the Zoning ordinance cited herein for any subsequent violation, in accordance with Zoning Ordinance §18-903(1).

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, any other information that you may wish to submit and a \$600.00 filing fee. Once an appeal application is accepted, it will be scheduled for public hearing and decision before the BZA. For information regarding an appeal contact:

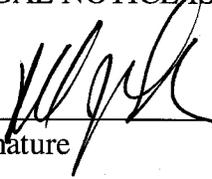
Zoning Administration Division
12055 Government Center Parkway, Suite 807
Fairfax, Virginia 22035
Office: (703)324-1314

Information and forms can also be obtained at <http://www.fairfaxcounty.gov/dpz/bza/appeals/>.

If you have questions, would like to schedule an appointment to meet with an investigator, or schedule a follow up inspection, please contact me directly at (703)324-8247.

Chau N. Nguyen
Hanh Pham-Nguyen
July 18, 2014
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LEGAL NOTICE ISSUED BY:



Signature

Ronald Gibson
Code Compliance Investigator
(703)324-8247
Ronald.Gibson@fairfaxcounty.gov

SIMILAR CASE HISTORY

- VC 85-A-003 – Fairfax County Tax Map 58-4 ((32)) 9
- VC 94-B-037 – Fairfax County Tax Map 58-4 ((35)) 9
- VC 94-B-038 – Fairfax County Tax Map 58-4 ((35)) 8
- VC 98-B-074 – Fairfax County Tax Map 71-3 ((4)) (31) 6
- VC 99-B-157 – Fairfax County Tax Map 59-4 ((10)) 4
- VC 99-B-177 – Fairfax County Tax Map 59-4 ((10)) 5
- VC 01-B-153 – Fairfax County Tax Map 079-2 ((2)) (69) 7A
- SP 2007-BR-052 – Fairfax County Tax Map 80-1 ((2)) (14) 16
- SP 2008-BR-073 – Fairfax County Tax Map 70-4 ((4)) (58) 19
- SP 2008-BR-099 – Fairfax County Tax Map 80-1 ((2)) (19) 18

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.

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

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

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

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