



County of Fairfax, Virginia

September 30, 2015

STAFF REPORT

**SPECIAL PERMIT SP 2015-MV-044
VARIANCE VC 2015-MV-003**

MOUNT VERNON DISTRICT

APPLICANT: Paul Christou

OWNERS: Paul Christou
Maria Christou

SUBDIVISION: Marlan Heights

STREET ADDRESS: 1220 Tudor Place, Alexandria, 22307

TAX MAP REFERENCE: 93-4 ((4)) (2) 6

LOT SIZE: 17,614 square feet

ZONING DISTRICT: R-3

ZONING ORDINANCE PROVISIONS: 8-914, 18-401

SPECIAL PERMIT PROPOSAL: To permit a reduction in minimum yard requirements based on an error in building location to permit an accessory structure (stone oven/grill) to remain 0.4 ft. from a side lot line and 0.0 ft. from the rear lot line, and a roofed deck and accessory structure (stone grill) to remain 0.3 ft. from the rear lot line.

VARIANCE PROPOSAL: To allow greater than 30% rear yard coverage, to permit a fence or wall greater than 6 ft. in height in a front yard of a corner lot and greater than 7 ft. in a side and rear yard, and an accessory structure in a front yard of a lot containing less than 36,000 square feet.

Erin M. Haley

STAFF RECOMMENDATION:

Staff recommends denial of VC 2015-MV-003 for rear yard coverage greater than 30 percent, a wall greater than 6 ft. in height in a front yard and greater than 7 feet in a side or rear yard, and an accessory structure in a front yard of a corner lot containing less than 36,000 square feet. However, if it is the intent of the BZA to approve the Variance application, the BZA should condition its approval by requiring conformance with 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 applicant/owner from compliance with the provisions of any applicable ordinances, regulations, or adopted standards.

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

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

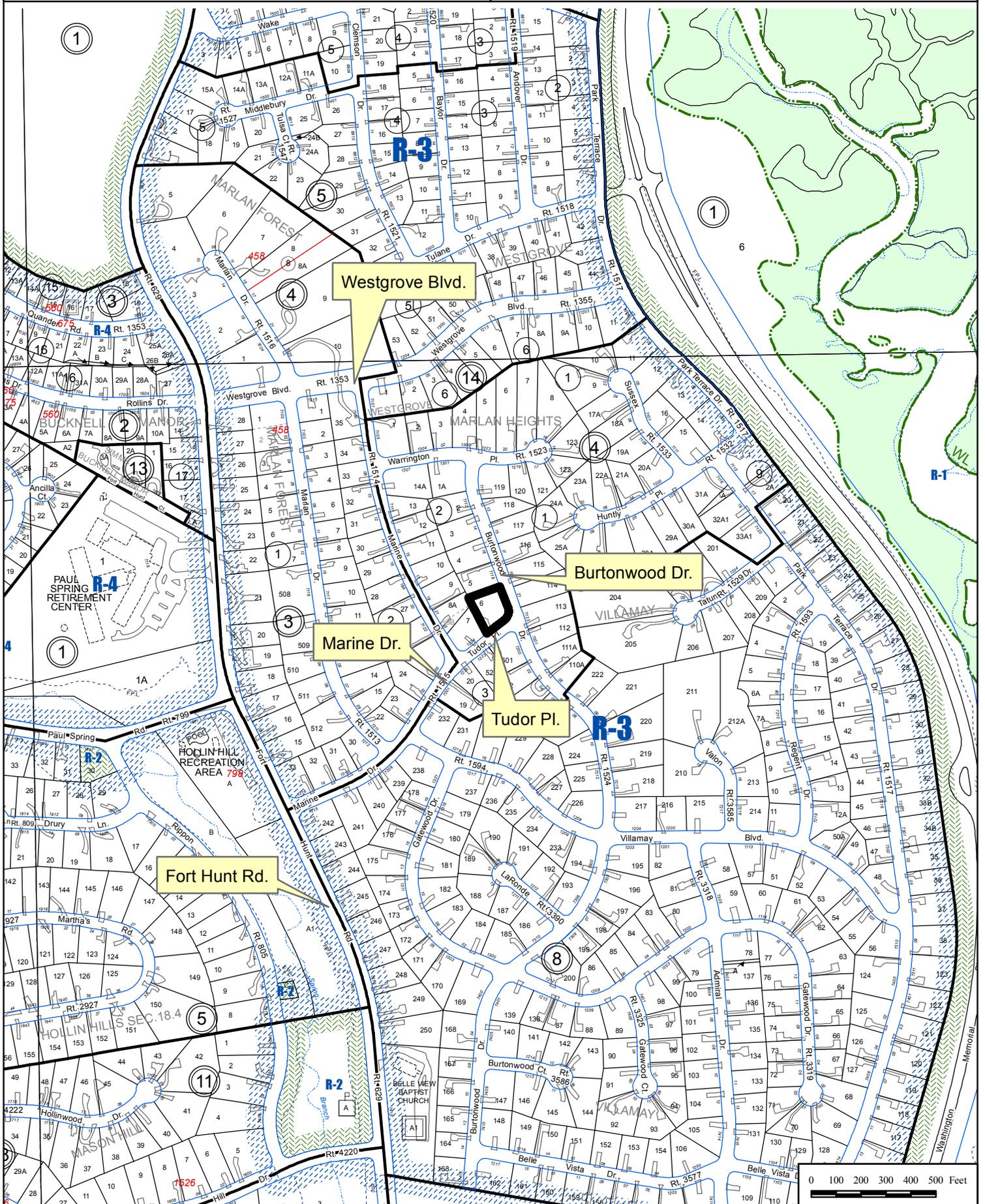
SP 2015-MV-044

PAUL CHRISTOU

Variance Application

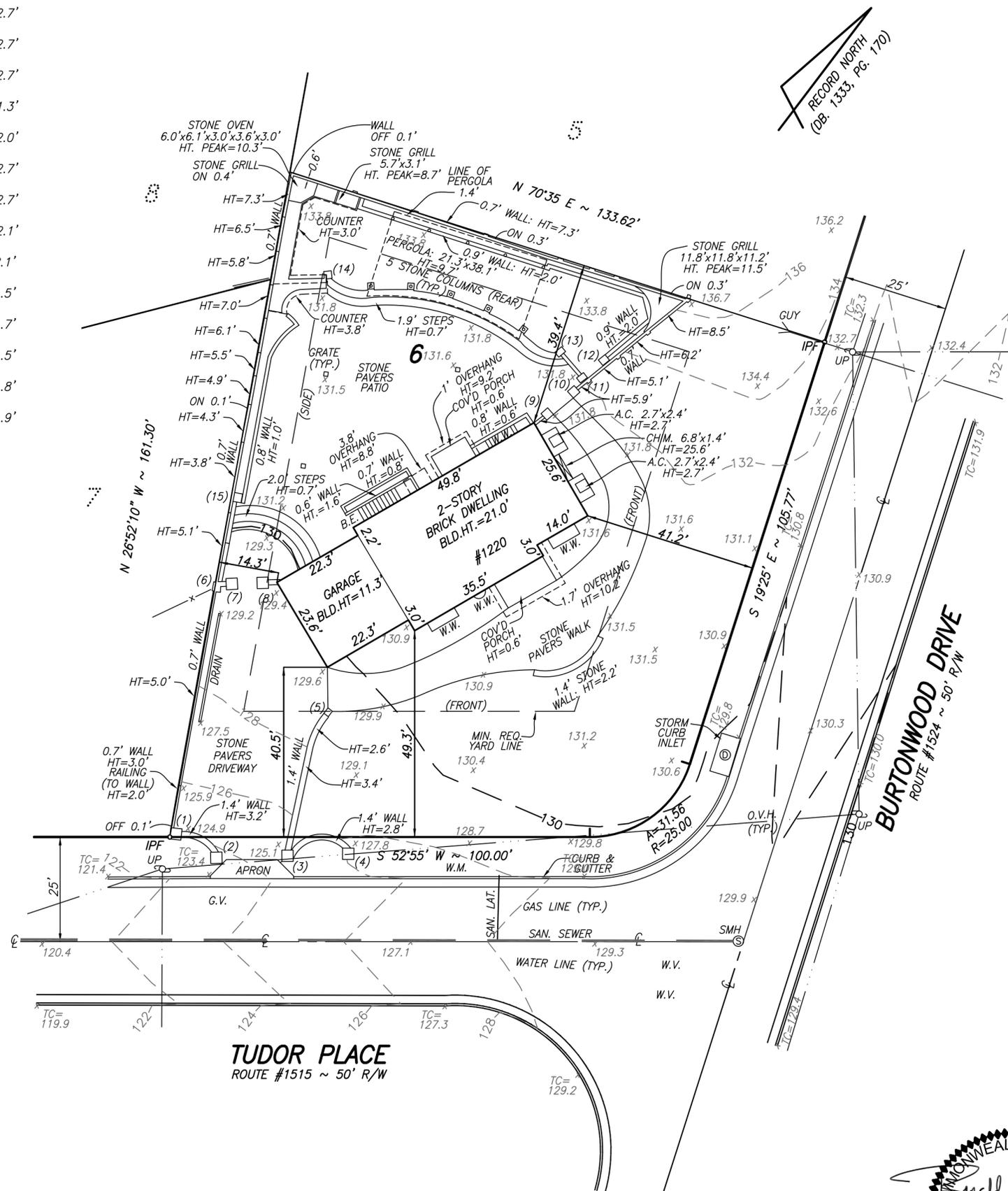
VC 2015-MV-003

PAUL CHRISTOU



STONE COLUMN INFORMATION
COL. # COL. HEIGHT & DIMENSIONS

- (1) STONE COLUMN 2.7'x2.7'
HEIGHT = 6.2'
- (2) STONE COLUMN 2.7'x2.7'
HEIGHT = 6.1'
- (3) STONE COLUMN 2.7'x2.7'
HEIGHT = 5.3'
- (4) STONE COLUMN 2.7'x2.7'
HEIGHT = 5.2'
- (5) STONE COLUMN 1.6'x1.3'
HEIGHT = 2.2'
- (6) STONE COLUMN 2.1'x2.0'
HEIGHT = 5.1'
- (7) STONE COLUMN 2.7'x2.7'
HEIGHT = 6.0'
- (8) STONE COLUMN 2.7'x2.7'
HEIGHT = 6.0'
- (9) STONE COLUMN 2.1'x2.1'
HEIGHT = 7.0'
- (10) STONE COLUMN 2.1'x2.1'
HEIGHT = 7.0'
- (11) STONE COLUMN 2.1'x1.5'
HEIGHT = 4.6'
- (12) STONE COLUMN 2.1'x1.7'
HEIGHT = 2.6'
- (13) STONE COLUMN 2.1'x1.5'
HEIGHT = 2.6'
- (14) STONE COLUMN 1.8'x1.8'
HEIGHT = 2.0'
- (15) STONE COLUMN 2.1'x1.9'
HEIGHT = 2.7'



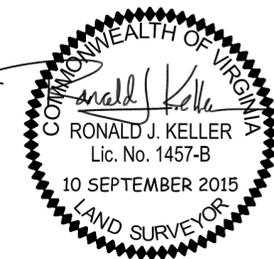
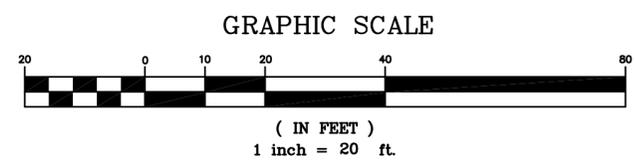
NOTES:

1. TAX MAP # 093-4-04-2-0006
2. ZONE: R-3
3. CLIENT: CHRIS CHRISTOU

OWNER: PAUL & MARIA CHRISTOU
1220 TUDOR PLACE
ALEXANDRIA, VA 22307
DB. 20546, PG. 1023
4. TOTAL SITE AREA:
17,614 SQ. FT. (RECORD)
5. TITLE REPORT IS NOT FURNISHED. THUS ALL EASEMENTS MAY NOT BE SHOWN.
6. EXISTING MAX. BUILDING HEIGHT = 21 FEET
MAXIMUM ALLOWED BUILDING HEIGHT = 35 FEET
7. REQUIRED YARD SETBACKS PER R-3 ZONE:
FRONT = 30 FEET
SIDE = 12 FEET
REAR = 25 FEET
8. PROPERTY SERVED BY PUBLIC WATER, GAS AND SANITARY SEWER.
9. ALL EXISTING STRUCTURES TO REMAIN.
10. PLAT SUBJECT TO RESTRICTIONS OF RECORD. NO TITLE REPORT FURNISHED.
11. THERE ARE 5' NON-EXCLUSIVE UTILITY EASEMENTS LOCATED ON THE PROPERTY OVER AND ALONG THE SIDELINES OF THE LOT RESERVED FOR THE CONSTRUCTION, MAINTENANCE AND OPERATION OF ELECTRICITY AND TELEPHONE SERVICE, WATER, SEWER, DRAINAGE OR OTHER SIMILAR FACILITIES. (DB. 1333, PG. 170) FURTHER, THERE ARE NO EASEMENTS 25' IN WIDTH OR GREATER ON THIS PROPERTY.
12. THE PARKING REQUIREMENT FOR THE PROPERTY IS MET WITH ON-SITE GARAGE AND SURFACE SPACES.
13. NO GRAVE, OBJECT OR STRUCTURE MARKING A PLACE OF BURIAL IS PRESENT ON THE PROPERTY.
14. THERE IS NO FLOODPLAIN OR RESOURCE PROTECTION AREA (RPA) LOCATED ON THE PROPERTY.
15. AREA OF REQUIRED REAR YARD= 1,100 SQ.FT.
AREA OF ACCESSORY USE IN REQUIRED REAR YARD= 993 SQ.FT. OR 90.3%
16. THE EXISTING DWELLING AND GARAGE WERE CONSTRUCTED IN 1956 AND ARE REMAINING.

IT IS OUR BEST ESTIMATE THAT THE EXISTING DRIVEWAY ENTRANCE WALLS AND REAR YARD WALLS WERE CONSTRUCTED IN 1956 AND ARE REMAINING.

ALL OTHER EXISTING ACCESSORY STRUCTURES SHOWN WERE CONSTRUCTED CIRCA 2010 AND ARE REMAINING.
17. NO TRAILS ARE LOCATED ON THE PROPERTY.
18. STORMWATER MANAGEMENT IS REQUIRED FOR THIS SITE. STORMWATER MANAGEMENT INFORMATION AS REQUIRED BY PFM CHAPTER 6 AND SWMO CHAPTER 124 WILL BE PROVIDED AND REVIEWED DURING INFILL LOT GRADING PLAN REVIEW.



SPECIAL PERMIT PLAT
SHOWING
LOT 6, BLOCK 2
MARLAN HEIGHTS
(1220 TUDOR PLACE)
MOUNT VERNON DISTRICT
FAIRFAX COUNTY, VIRGINIA
SCALE: 1" = 20' DATE: SEPTEMBER 10, 2015

PLANNING
ENGINEERING
LAND SURVEYING
730 S. Washington Street Alexandria, Virginia 22314 (703) 549-6422

RCF FIELDS & ASSOCIATES, INC.

COMP.	W.D.S.
DRAWN	W.D.S.
CHECKED	XX

FILE NO. 12-134
SHEET 1 OF 1

SPECIAL PERMIT REQUESTS

The applicant is seeking a special permit to allow a reduction of minimum yard requirements based on an error in building location to permit an accessory structure (stone oven/grill) to remain 0.4 feet from a side lot line and 0.0 feet from the rear lot line, and a roofed deck (pergola) and accessory structure (stone grill) to remain 0.3 feet from the rear lot line.

VARIANCE REQUESTS

The applicant is seeking a variance to allow greater than 30 percent rear yard coverage for an existing brick patio and accessory structures to remain. The applicant's minimum required rear yard currently has coverage of 90.3% due to the brick patio, stone oven, and stone grills.

The applicant is also requesting variances to permit a wall greater than 6.0 feet in height in a front yard of a corner lot and greater than 7.0 feet in height in a side and rear yard, and a detached accessory structure in a front yard of a lot containing less than 36,000 square feet. The northwestern-most portion of an accessory structure (a stone grill) extends into the front yard, which is also where the wall reaches a height of 8.5 feet. The northern section of wall along the side and rear lot lines reaches a height of 7.3 feet.

A copy of the special permit plat titled, "Variance Plat, Showing Lot 6, Block 2, Marlan Heights (1220 Tudor Place)," by Ronald J. Keller, Land Surveyor, of RC Fields & Associated, Inc., dated October 3, 2012, as revised through August 27, 2014, is included in the front of the staff report.

Copies of the proposed development conditions, the statement of justification with select file photographs, and the affidavit are contained in Appendices 1 through 4, respectively.

CHARACTER OF THE SITE AND SURROUNDING AREA

The application property is located at the corner of Burtonwood Drive and Tudor Place. It is developed with a two story single-family detached dwelling with a full basement. A brick driveway provides access from Tudor Place to an attached two car garage. A brick walkway leads from the driveway to the covered front porch and then around the north side of the house to the rear yard. A gate from the driveway leads to the rear yard. A covered rear porch is located at the rear of the house. The functional rear yard contains a large brick patio. A portion of the patio along the northern rear lot line is elevated by two steps. A pergola 9.7 feet in height is located in this area. A stone oven and grill is located in the northwestern corner of the rear yard. A second stone grill is located in the northeastern corner of the rear yard. A stone wall encloses the rear yard and runs along the western side lot line that varies in height from 2.0 feet to 8.5 feet in

height. Storm drainage grates are located in several locations around the patio that lead to outfall points in Tudor Place. The subject property and surrounding properties are zoned R-3 and developed with single-family detached houses.

BACKGROUND

Fairfax County Tax Records and building permit records indicate that the house was constructed in 1956 and purchased by the property owners in 2009.

In response to a complaint, staff from the Department of Public Works and Environmental Services (DPWES) inspected the property on May 13, 2011, and found that the amount of disturbance on the property exceeded 2,500 square feet and that the work being done was unpermitted in violation of the Fairfax County Code. A Notice of Violation (NOV) was issued on May 16, 2011 (Appendix 5). The applicant appealed the NOV to the Director of DPWES and was unsuccessful. During the investigation of the DPWES NOV, other violations of the Zoning Ordinance were noted. Initially, the Department of Code Compliance (DCC) issued an NOV for rear yard coverage in excess of 30 percent in May 2011. The applicant appealed that NOV to the Zoning Administrator in July 2011. During the investigation, other violations of the Zoning Ordinance were discovered, such as the detached accessory structure in the front yard, and the DCC NOV was rescinded, which caused the appeal to the Zoning Administrator to be administratively withdrawn. The DPWES NOV action was put on hold until the other zoning violations could be addressed. The applicant filed these special permit and variance applications to attempt to bring all of the violations into conformance. The applications were filed in April 2014 and accepted on March 4, 2015.

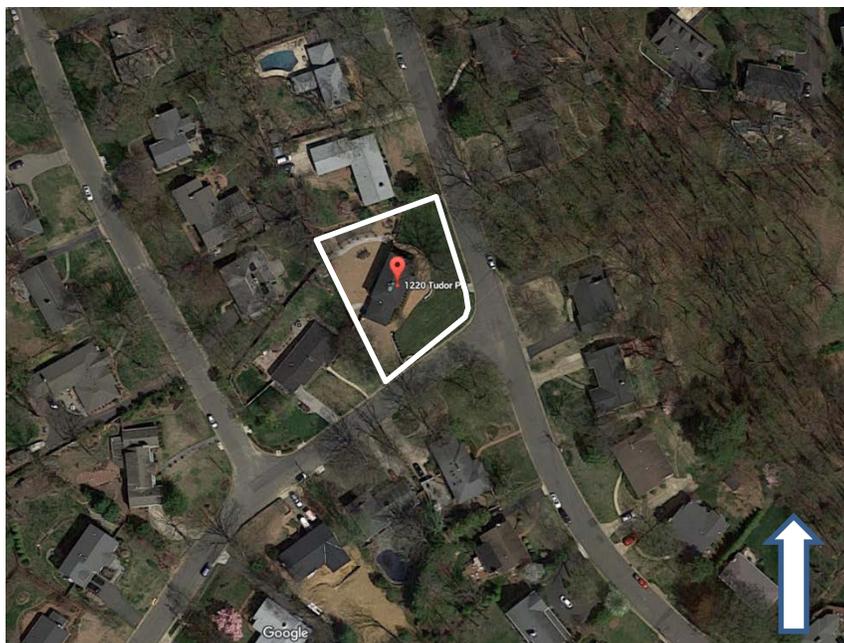


Figure 1: House Location
For illustrative purposes only

Records indicate that other similar special permit applications for an error in building location have been heard by the Board of Zoning Appeals (BZA) in the surrounding area. This information is included in Appendix 6.

DESCRIPTION OF THE PROPOSED USE

Special Permit Request

Errors in Building Location

The applicant requests a special permit for a reduction in yard requirements to allow an accessory structure (stone oven/grill) to remain 0.4 feet from the western side lot line and 0.0 feet from the northern side lot line (functional rear yard). The applicant also requests a reduction in yard requirements to allow a roofed deck (pergola) and accessory structure (stone grill) to remain 0.3 from the northern side lot line. The northern side yard is the functional rear yard of the property.

The stone oven and grill in the northwestern corner of the rear yard reaches a height of 10.3 feet. The pergola is 9.7 feet in height. The stone grill in the northeastern corner of the yard is 11.5 feet in height. Staff has found that the northeastern grill is actually located mostly within the front yard of the property, which is addressed through one of the variance requests.

The applicant states that all of the structures that were constructed by them were done by contractors and done under the assumption that all required permits were obtained.

Variance Requests

Wall Height

The applicant requests approval of a variance for a fence greater than 6.0 feet in height in a front yard of a corner lot and greater than 7.0 feet in height in a side and rear yard. The wall encloses the rear yard and a portion extends into the front yard. The wall varies in height from 2.0 feet (along the driveway) to 8.5 feet. Along the side and rear yard lot lines the wall reaches a height of 7.3 feet. Fences in side and rear yards are allowed a maximum of 7.0 in height. A portion of the wall enclosing the eastern-most stone grill extends into the front yard adjacent to Burtonwood Drive. This portion of wall varies in height from 6.2 feet to 8.5 feet in height. Fences located in a front yard are allowed a maximum of 4.0 feet in height.

Detached Accessory Structure in a Front Yard

The grill in the northeastern portion of the yard is largely located in the front yard of the property. Detached accessory structures are not allowed to be located within the front yards of properties less than 36,000 square feet in size.

Rear Yard Coverage

The applicant requests a variance to allow greater than 30 percent of rear yard coverage for a brick patio. The patio and other accessory structures cover the entire

area of the property to the rear of the house. The area of the required rear yard is 1,100 square feet, of which 993 square feet is covered, or 90.3 percent. Therefore, the applicant is requesting an increase of 60.3 percent or 598.78 square feet.

Due to the fact that the yard renovation caused land-disturbing activity in excess of 2,500 square feet, an approved grading/conservation plan will be required by DPWES. Stormwater management is also required for this site, which can be provided and reviewed during grading plan review, as noted on the Special Permit Plat. The applicant’s engineer provided staff with the information that all current stormwater runoff is directed to Tudor Place through existing stormwater grates and two outfall points.

The applicant states that he hired contractors to renovate the yard and believed all necessary permits were obtained. The applicant also states that the wall was already constructed at the time the applicant purchased the property and that he believes the rear yard coverage exceeded 30 percent before he began renovations, however no details are provided. Staff is not able to definitively confirm the previous amount of rear yard coverage using historic aerial photography.

ANALYSIS

Comprehensive Plan Provisions

Plan Area: Area IV, Mount Vernon Planning District
Planning Sector: Wellington Community Planning Sector (MV4)
Plan Map: Residential, 2-3 du/ac

Zoning District Standards

Bulk Standards (R-3)		
Standard	Required	Provided
Lot Size	10,500 sf.	17,614 sf.
Lot Width	Corner: 105 feet	100 ft.*
Building Height	35 feet	21 ft.
Front Yard	30 feet	Eastern: 41.2 ft. Southern: 40.5 ft.
Side Yard	12 feet	Northern: 12.3 ft. Western: 15.0 ft.

* The subject parcel was created and developed prior to the adoption of the current Zoning Ordinance; therefore it is considered a legal, buildable lot under Sect. 2-405.1 of the Zoning Ordinance.

Zoning Ordinance Requirements (Appendix 7)

- Sect. 8-006 General Special Permit Standards
- Sect. 8-914 Provisions for Approval of Reduction to the Minimum Yard Requirements Based on Error in Building Location

Variance Requirements (Appendix 8)

- Code of Virginia Sec. 15.2-2309, as amended

In addition to meeting the definition of variance, an application must satisfy a specific set of criteria in order for the Board to grant a variance. According to the recently amended Virginia state code in Sec. 15.2-2309, a variance meeting the definition shall be granted if the following elements are met:

The evidence shows that the strict application of the terms of the ordinance would unreasonably restrict the utilization of the property or that the granting of the variance would alleviate a hardship due to a physical condition relating to the property or improvements thereon at the time of the effective date of the ordinance (Sect. 15.2-2309.2)

The subject property is a corner lot that is generally square in shape with lot lines that are proportionately sized. The house is situated in roughly the center of the property with adequate room on each side for usable yard area. In staff's opinion, the request for a wall that exceeds the allowed height limits, a detached accessory structure to be located in a front yard, and additional rear yard coverage to keep the patio, stone oven, and two stone grills is not driven by a physical characteristic of the property. The wall varies in height but for the most part is within allowed height limits or does not exceed them by much in the side and rear yards. No justification is given for the stone grill to be located in a front yard. Staff believes that requiring the wall to meet the maximum height limits would not unreasonably restrict the utilization of the property or impose a hardship due to a physical condition relating to the property.

The applicant is currently exceeding the allowed rear yard coverage by 60.3 percent and staff believes this amount could be eliminated or greatly lessened and a usable patio would still be available for the applicant's use. Due to the fact that the property is a corner lot, the required rear yard takes the side yard measurement of 12 feet instead of 25 feet; therefore, the required rear yard area is smaller than it would be on most other properties. This means that most of the area to the rear of the house is not within the required yard area and staff believes the property contains sufficient space for a by-right patio with other accessory structures. Therefore, staff does not believe the application satisfies this standard.

The property interest for which the variance is being requested was acquired in good faith and any hardship was not created by the applicant for the variance (Sect. 15.2-2309.2(i))

Staff believes the property was acquired in good faith based on the information contained in the applicants' statement of justification. The hardship for which the rear yard coverage variance is being requested was created by the applicants when they renovated their yard and installed the patio and accessory structures (stone oven grill, pergola, and stone grill). The applicant states that the wall was in existence at the time they purchased the property but staff has not been able to substantiate this claim. Overall, staff does not believe the application satisfies this standard.

The granting of the variance will not be of substantial detriment to the adjacent property and nearby properties in the proximity of that geographical area (Sect. 15.2-2309.2(ii))

The wall height, stone grill (11.5 feet in height) located in the front yard, and the amount of paving currently on the property are inconsistent with other homes on the street and in staff's opinion negatively affects adjacent properties. The wall and stone grill are visually imposing and even a small reduction in height or relocation of the stone grill would lessen the visual impact on adjacent properties. Staff believes that the applicants could reduce the wall height, relocate the stone grill, and remove the excess portion of patio to bring the rear yard coverage within Zoning Ordinance standards and still have a functional wall and patio area. Staff does not believe that this standard is met.

The condition or situation of the property concerned is not of so general or recurring a nature as to make reasonably practicable the formulation of a general reduction to be adopted as an amendment to the ordinance (Sect. 15.2-2309.2(iii))

The residential lots in the vicinity of the subject property are similar in terms of area, width, depth, and shape and contain single family detached dwellings. Adequate screening and safety can be provided on a residential property without exceeding the maximum allowed wall or fence height of 7.0 feet in a side or rear yard and 4.0 feet in a front yard. No other applications to exceed rear yard coverage or wall height or to locate a detached accessory structure in a front yard have been heard by the BZA on properties in this area. Staff does not believe there is any general or recurring need for properties in this area to exceed wall height, to have detached accessory structures in a front yard, or to have rear yard coverage in excess of 30 percent. In staff's opinion this standard is not met.

The granting of the variance does not result in a use that is not otherwise permitted on such property or a change in the zoning classification of the property (Sect. 15.2-2309.2(iv))

Staff finds that the variance request for a wall that exceeds maximum allowable height, a detached stone grill in a front yard, and excess coverage in a rear yard would not result in a use that is otherwise permitted or cause a change in the zoning classification of the property.

The relief or remedy sought by the variance application is not available through a special exception process that is authorized in the ordinance pursuant to subdivision 6 of § 15.2-2309 or the process for modification of a zoning ordinance pursuant to subdivision A4 of § 15.2-2286 at the time of the filing of the variance application (Sect. 15.2-2309.2(v))

The variance application is the only mechanism to provide the relief requested.

CONCLUSION / RECOMMENDATION

If it is the intent of the BZA to approve the special permit application for errors in building location, the BZA should condition its approval by requiring conformance with the conditions set forth in Appendix 1 of this report.

Staff recommends denial of VC 2015-MV-003 to permit a fence or wall greater than 6 feet in height in a front yard of a corner lot and greater than 7 feet in a side and rear yard, for an accessory structure in a front yard of a lot containing less than 36,000 square feet, and for rear yard coverage greater than 30 percent. Staff believes that the applicant could have an adequate wall without exceeding the allowable height limitations and could have a sufficiently sized patio with accessory structures without encroaching into the required rear or front yards. Removal of a portion of patio will not eliminate the option of having a patio altogether. However, if it is the intent of the BZA to approve the Variance application, the BZA should condition its approval by requiring conformance with the proposed development conditions contained in Appendix 2.

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.

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.

APPENDICES

1. Proposed Special Permit Development Conditions
2. Proposed Variance Development Conditions
3. Applicant's Statement of Justification and Select File Photographs
4. Applicant's Affidavit
5. Notices of Violation
6. Similar Case History
7. Applicable Zoning Ordinance Provisions
8. Code of Virginia Sec. 15.2-2309, as amended

PROPOSED DEVELOPMENT CONDITIONS**SP 2015-MV-044****September 30, 2015**

If it is the intent of the Board of Zoning Appeals to approve SP 2015-MV-044 located at Tax Map 93-4 ((4)) (2) 6 to permit reductions of the minimum yard requirements based on an error in building location pursuant to Section 8-914 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 granted only for the location of the accessory structures (stone oven/grill, pergola, and stone grill) as indicated on the plat titled, "Variance Plat, Showing Lot 6, Block 2, Marlan Heights (1220 Tudor Place)," by Ronald J. Keller, Land Surveyor, of RC Fields & Associated, Inc., dated October 3, 2012, as revised through August 27, 2014, and approved with this application, as qualified by these development conditions.
2. All applicable permits and final inspections shall be obtained for the accessory structures (stone oven/grill, pergola, and stone grill) 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 take effect upon adoption of a resolution of approval by the Board of Zoning Appeals.

PROPOSED DEVELOPMENT CONDITIONS

VC 2015-MV-003

September 30, 2015

1. This variance is approved for the walls greater than 6.0 feet in height in a front yard and greater than 7.0 feet in height in a side and rear yard, for an accessory structure in a front yard of a lot containing less than 36,000 square feet and for rear yard coverage greater than 30 percent as shown on the plat titled, "Variance Plat, Showing Lot 6, Block 2, Marlan Heights (1220 Tudor Place)," by Ronald J. Keller, Land Surveyor, of RC Fields & Associated, Inc., dated October 3, 2012, as revised through August 27, 2014, as submitted with this application and is not transferable to other land.
2. At the time of grading plan review, stormwater management quantity and quality controls shall be provided and reviewed as required by the Public Facilities Manual and County Code.

This approval, contingent upon the above-noted conditions, shall not relieve the applicants from compliance with the provisions of any applicable ordinances, regulations or adopted standards including requirements for building permits.

January 20, 2015

RECEIVED
Department of Planning & Zoning

FEB 06 2015

Zoning Evaluation Division

Fairfax County Board of Zoning Appeals
Fairfax County Zoning Evaluation Division
Department of Planning and Zoning
12055 Government Center Parkway, Suite 801
Fairfax, VA. 22033-5503

RE: **Zoning Ordinance Special Permit Justification: 8-11**
Lot 6, Block 2, Marlan Heights
1220 Tudor Place
Alexandria, VA 22307
TM# 093-4-04-02-0006

Dear Board of Zoning Appeals,

On behalf of our client, Paul Christou, we are requesting consideration of a Special Permit on the above referenced property. Specifically, this Special Permit request is for multiple items that have already been constructed on the property. These existing structures will need a special permit of multiple sections of the zoning ordinance as specified below, all pertaining to permitted accessory uses and structures within the R-3 zone:

- to allow a wall which exceeds four (4) feet in height within a front yard (10-104.3(B));
- to allow a grill which exceeds seven (7) feet in height within a front yard on a lot which does not contain 36,000 square feet (10-104.12(C)(b));
- to allow a wall which exceeds seven (7) feet in height within a rear yard (10-104.3(C));
- to allow a Pergola & stone oven which exceeds seven (7) feet in height within a rear yard (10-104.12(E));
- to allow a structure (patio) accessory to a single family detached dwelling to encompass more than 30% of the minimum required rear yard (10-103.3).

Background

The owner of the property, Paul & Maria Christou, purchased the subject property in June of 2009 so as to relocate from New York with the intention of being closer to their children and to retire in the Northern Virginia area. Upon living in the house for a short period, the couple wished to renovate the dwelling itself and improve the front and rear yards. They hired architects, engineers, plumbers, electricians, etc., and believed they had procured all relevant permits for the work they wished to do and commenced with the renovations. However, upon inspection by County staff, a number violations were issued much to the surprise of the owners: they believed they had worked within all applicable regulations. It is the intention of this special permit request to address zoning issues that were identified by County staff and to continue the process of rectification of all violations.

From available records it appears that the brick wall (one of the structures for which this special permit is requested) which is excess of seven (7) feet in height, encircles the rear yard, and projects into the front yard, was present when the Christou's purchased the property. It also

appears from available records that 30% of the minimum required rear yard was covered by patios and a walkway at the time the Christou's purchased the property. These patios and walkway have been removed and replaced with a new patio that also encompasses more than 30% of the minimum required rear yard.

A stone grill which was installed inside the northeasterly walled portion of the property, and a stone oven inside the northwesterly, were not present at the time of purchase but built by the current owners. These improvements, however, are in harmony with the current style and surroundings of the dwelling and neighborhood.

Since the many of the conditions for which this special permit is requested were in existence when the Christou's purchased the property, and since said owners wish to rectify all violations and comply with all County regulations in their entirety, we believe a Special Permit of the Zoning Ordinance is justified and the following enumerated requirements are satisfied thusly:

Special Permit Justification (8-11.6)

1. Type of operation:

The property is for residential use and operation only; no change of the use is proposed.

2. Hours of operation:

Since the property is for residential use only there are no applicable business hours of operation.

3. Estimated number of patrons/clients/patients/pupils/etc:

There will be no applicable patrons/clients/patients/pupils/etc. as the permit is for residential use only.

4. Proposed number of employees/attendants/teachers/etc:

There will be no applicable employees/attendants/teachers/etc. as the permit is for residential use only.

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

There will be no applicable effect on traffic as the permit is for residential use only.

6. Vicinity or general area to be served by use:

There is no applicable vicinity or general area that will be served, as the permit is for residential use only, and no change of use is proposed.

7. Description of building façade and architecture of proposed new building or additions:

The building façade and architecture will remain in its existing condition. The existing conditions of the building include a brick exterior façade with stone and brick walls extending around the property. The existing building facade can be seen in the attached photographs included with the Special Permit application. There will be no new buildings or additions.

8. 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.:

There will be no applicable hazardous or toxic substances, waste, or containers since there are no proposed changes to the site. The site will remain in its existing condition as residential use only.

9. A statement of how 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.

There are no applicable new proposed uses for this site. The site will remain in its existing condition as residential use only. Since all improvements for which this special permit is requested are complete and in place, the removal of these improvements would be exceedingly inconvenient. Combine that with the fact that the existing brick wall was present before the current owner purchased the property, and since 30% of the minimum required rear yard was already encompassed by an accessory structure before the Christou's purchase of the property, we feel that the strict application of this Ordinance would produce an undue hardship to the owner.

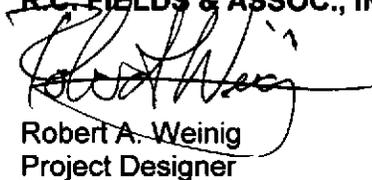
In reference to section 8-914, while the accessory structures do exceed an error of ten (10) percent, the noncompliance was done in good faith, the property owner believed he acquired all required permits and complied with all regulations. Such reduction or modification will not impair the purpose and intent of this Ordinance since it is of residential use only. The accessory structures which are common to residential use and blend well with the neighborhood will not be detrimental to the use and enjoyment of other property in the immediate vicinity nor will it create an unsafe condition with respect to both other property and public streets. To force compliance with the minimum yard requirements or location regulations would cause unreasonable hardship upon the owner. The reduction or modification will not result in an increase in density or floor area ratio from that permitted by the applicable zoning district regulations.

In conclusion, when the Christou's purchased the property with General Warranty of Title on the 19th of June, 2009 and recorded in Deed Book 20546 at page 1024, it was generally believed that all improvements upon the property were in compliance with all County regulations. Since all improvements for which this Special Permit is requested are complete and in place, the removal of

these improvements would be exceedingly inconvenient. All of the structures that were constructed by the current owner were built under the assumption that all required permits were obtained and in accordance with all County requirements and constructed in good faith. Since the owners believed they had acquired all required permits, and since the subject property had structures that were already in violation of the current Ordinance prior to the current owner's purchase of the property, and due to the fact that all construction of improvements was done openly, honestly and in good faith and believed to be in conformance with all regulation, we believe the granting of a Special Permit will be in harmony with the intended spirit and purposes of this Ordinance and will not be contrary to the public interest.

If you have any questions or require any additional information, please do not hesitate to contact our office. We appreciate your consideration of this request.

Respectfully submitted,
R.C. FIELDS & ASSOC., INC.

A handwritten signature in black ink, appearing to read "Robert A. Weinig", is written over the printed name. The signature is fluid and cursive, with a large initial "R" and "W".

Robert A. Weinig
Project Designer

**MINIMUM STORMWATER INFORMATION FOR REZONING, SPECIAL EXCEPTION,
SPECIAL PERMIT AND DEVELOPMENT PLAN APPLICATIONS**

The following information is required to be shown or provided in all zoning applications, or a waiver request of the submission requirement with justification shall be attached. Note: Waivers will be acted upon separately. Failure to adequately address the required submission information may result in a delay in processing this application.

This information is required under the following Zoning Ordinance paragraphs:

Special Permits (8-011 2J & 2L)	Special Exceptions (9-011 2J & 2L)
Cluster Subdivision (9-615 1G & 1N)	Commercial Revitalization Districts (9-622 2A (12)&(14))
Development Plans PRC District (16-302 2 & 4L)	PRC Plan (16-303 1E & 10)
FDP P Districts (except PRC) 916-502 1F & 1Q)	Amendments (18-202 10F & 10I)

1. Plat is at a minimum scale of 1"=50' (unless it is depicted on one sheet with a minimum scale of 1"=100).

2. A graphic depicting the stormwater management facility(ies) and limits of clearing and grading accommodate the stormwater management facility(ies), storm drainage pipe systems and outlet protection, pond spillways, access roads, site outfalls, energy dissipation devices, and stream stabilization measures as shown on Sheet _____

3. Provide:

Facility Name/ Type & No.	On-Site area served (acres)	Off-Site are served (acres)	Drainage area (acres)	Footprint area (sf.)	Storage Volume (cf.)	If pond, dam height (ft.)
<small>(e.g. dry pond A. inflt. Trench, underground vault, etc.)</small>	_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____	_____
						Totals

4. Onsite drainage channels, outfalls and pipe systems are shown on Sheet _____.

5. Maintenance accesses (road) to stormwater management facility(ies) are shown on Sheet _____.

6. Landscaping and tree preservation shown in and near the stormwater management facility is shown on Sheet _____.

7. A "stormwater management narrative" which contains a description of how detention and best management practices requirements will be met is provided on Sheet _____.

8. A description of the existing conditions of each numbered site outfall extended downstream from the site to a point which is at least 100 times the site area or which has a drainage area of at least one square mile (640 acres) is provided on Sheet _____.

9. A description of how the outfall requirements, including contributing drainage areas of the Public Facilities Manual will be satisfied is provided on Sheet _____.

10. Existing topography with maximum contour intervals of two (2) feet and a note as to whether it is an air survey or field run is provided on Sheets _____.

11. A submission waiver is requester for _____.

12. Stormwater management is not required because DISTURBED AREA IS LESS
THAN 2,500 SQ. FT.

March 15, 2013

Board of Zoning Appeals
Fairfax County Zoning Evaluation Division
Department of Planning and Zoning
12055 Government Center Parkway, Suite 801
Fairfax, VA. 22033-5503

RECEIVED
Department of Planning & Zoning
APR 18 2014
Zoning Evaluation Division

RE: **Zoning Ordinance Variance Justification: 18-400**
Lot 6, Block 2, Marlan Heights
1220 Tudor Place
Alexandria, VA 22307
TM# 093-4-04-02-0006

Dear Board of Zoning Appeals,

On behalf of our client, Paul Christou, we are requesting consideration of a Variance on the above referenced property. Specifically, this Variance request is for multiple items that have already been constructed on the property. These existing structures will need a variance of multiple sections of the zoning ordinance as specified below, all pertaining to permitted accessory uses and structures within the R-3 zone:

- to allow a wall which exceeds four (4) feet in height within a front yard (10-103.3(B));
- to allow a grill which exceeds seven (7) feet in height within a front yard on a lot which does not contain 36,000 square feet (10-104.12(C)(b));
- to allow a wall which exceeds seven (7) feet in height within a rear yard (10-103.3(C));
- to allow a structure (patio) accessory to a single family detached dwelling to encompass more than 30% of the minimum required rear yard (10-103.3).

Background

The owner of the property, Paul & Maria Christou, purchased the subject property in June of 2009 so as to relocate from New York with the intention of being closer to their children and to retire in the Northern Virginia area. Upon living in the house for a short period, the couple wished to renovate the dwelling itself and improve the front and rear yards. They hired architects, engineers, plumbers, electricians, etc., and believed they had procured all relevant permits for the work they wished to do and commenced with the renovations. However, upon inspection by County staff, a number violations were issued much to the surprise of the owners: they believed they had worked within all applicable regulations. It is the intention of this variance request to address zoning issues that were identified by County staff and to continue the process of rectification of all violations.

From available records it appears that the brick wall (one of the structures for which this variance is requested) which is excess of seven (7) feet in height, encircles the rear yard, and projects into the front yard, was present when the Christou's purchased the property. It also appears from available records that 30% of the minimum required rear yard was covered by patios and a walkway at the time the Christou's purchased the property. These patios and walkway have been removed and replaced with a new patio that also encompasses more than 30% of the

minimum required rear yard.

A stone grill which was installed inside the northeasterly walled portion of the property was not present at the time of purchase but built by the current owners. This grill, however, is in harmony with the current style and surroundings of the dwelling and neighborhood.

Since the majority of conditions for which this variance is requested were in existence when the Christou's purchased the property, and since said owners wish to rectify all violations and comply with all County regulations in their entirety, we believe a variance of the Zoning Ordinance is justified and the following enumerated requirements are satisfied thusly:

Variance Justification

1. That the property was acquired in good faith.

The Christou's purchased the property with General Warranty of Title on the 19th of June, 2009 and recorded in Deed Book 20546 at page 1024. It was generally believed that all improvements upon the property were in compliance with all County regulations.

2. That the subject property has an extraordinary situation or condition.

As detailed in the background section above, some structures were already in violation of the current zoning ordinance, and existed as such for some time, when the property was purchased by the current owners. This constitutes a situation that is unusual not only in fact, but also since general and cursory inspection of the property by would be owners, real estate agents, etc., did not reveal that anything was amiss. Indeed, the current structures' violations may be considered extraordinary in their banality. It should be noted that the subject wall is constructed behind the rear building plane of the house, but since this site is a corner lot, the wall actually extends into the front yard which faces Burtonwood Drive. It appears that the wall and all structures erected therein were intended to lie within the rear yard of the property. For example, the stone grill constructed on the northeasterly portion of the lot is within the confines of the wall and yet considered to be within the front yard of the lot. We feel that for these reasons the subject property has an extraordinary situation.

3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.

The existing brick wall that was present at the time of the purchase of the property by the present owners is at the heart of the zoning ordinance violations on this property: it is of an above average height, encircles the entire rear yard and extends into the front yard. Again, since this site is a corner lot, the wall and a portion of other accessory structures (e.g. the stone grill) actually extend into the front yard which faces Burtonwood Drive. Yet these structures appear to be within the rear yard of the site since the wall lies behind the rear plane of the building. We feel this is an unusual situation and understand that a wall (and other structures) of this nature could not be similarly constructed at present without special permission. Therefore we feel this is a situation that is not of a recurring nature and would not constitute a reasonable case to form a general regulation

amendment to the Zoning Ordinance.

4. That the strict application of this Ordinance would produce undue hardship.

Since all improvements for which this variance is requested are complete and in place, the removal of these improvements would be exceedingly inconvenient. Combine that with the fact that the existing brick wall was present before the current owner purchased the property, and since 30% of the minimum required rear yard was already encompassed by an accessory structure before the Christou's purchase of the property, we feel that the strict application of this Ordinance would produce an undue hardship to the owner.

5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.

Other properties in the same vicinity and zoning district do not currently have a wall in excess of seven (7) feet in height encompassing the entire rear yard and projecting into the front yard which has been standing for years. Such an established wall combined with the newly constructed accessory structures encompassed within this wall (e.g. grill, patio, etc) are relatively rare as a whole. Therefore the removal and undue hardship detailed above would not be generally shared by other properties in the same vicinity and zoning district.

6. That the granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.

As stated before, all the structures for which this variance is requested are in place and existing, one of which was present long before the acquisition of the property (i.e. the brick wall). The condition where more than 30% of the minimum required yard was encompassed by an accessory structure existed before the current owner purchased the property. All of the structures that were constructed by the current owner were built under the assumption that all required permits were obtained in accordance with all County requirements and constructed in good faith. Strict adherence to the Ordinance, which would cause the removal of, or significant alteration to, these structures would constitute an undo hardship approaching confiscation. Therefore the granting of this variance will alleviate this clearly demonstrable hardship.

7. That authorization of the variance will not be of substantial detriment to adjacent property.

Since the brick wall has existed on the property for years, and may be considered an asset in regards to privacy, we believe it would not be of substantial detriment to adjacent property. Since the coverage of the minimum required rear yard was covered in excess of 30% before the current owner, we believe this variance authorization will not be of detriment to adjacent properties. While the stone grill does exceed the height requirements of accessory structures in a rear yard, it is constructed of fine material in an elegant style that may be considered an enhancement to the area.

This grill is situated so that it does not inhibit any sightlines and therefore will not be of substantial detriment to adjacent property.

8. That the character of the zoning district will not be changed by the granting of the variance.

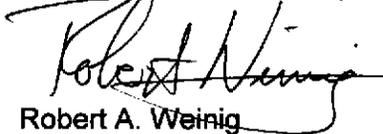
Nothing about the character of the R-3 zone will be affected by the granting of the variance: the site will continue to be of a residential use in the style of the adjacent properties.

9. That the variance will be in harmony with the intended spirit and purposes of this Ordinance and will not be contrary to the public interest.

Since the owners believed they had acquired all required permits, and since the subject property had structures that were already in violation of the current Ordinance prior to the current owner's purchase of the property, and due to the fact that all construction of improvements was done openly, honestly and in good faith, we believe the granting of the variance will be in harmony with the intended spirit and purposes of this Ordinance and will not be contrary to the public interest.

If you have any questions or require any additional information, please do not hesitate to contact our office. We appreciate your consideration of this request.

Respectfully submitted,
R.C. FIELDS & ASSOC., INC.



Robert A. Weinig
Project Designer

August 19, 2014

Ms. Deborah Lesko Pemberton
Senior Applications Acceptance Planner
Special Projects/Applications Management Branch, ZED, DPZ
12055 Government Center Parkway, Suite 801
Fairfax, Virginia 22035-5509

RECEIVED
Department of Planning & Zoning
AUG 28 2014
Zoning Evaluation Division

Re: Variance Application – Paul Christou

COMMENT RESPONSE LETTER

The following is in response to the list of comments and recommendations made on the most recent review of the above referenced plan.

Requirement 1.0: A Variance Plat, certified by a Professional Engineer, Land Surveyor, or Architect licensed by the Commonwealth of Virginia, including any resubmissions and supporting graphics, shall be field in twenty two (22) copies, showing the following:

Comment: When Note 15 was added at staff's request – a revision date should have been provided on the plat. Please add.

Response: *Revision date notes have been added to the plat in the bottom right corner.*

Requirement 1.06: Location, dimensions and maximum height in feet, including penthouses of all existing and proposed structures.

Comment: Please provide dimension of "pergola" and its distance to the rear lot line. Provide dimension of "stone oven" and its distance to the rear lot line. Upon receipt of this information on the certified plat, further review will be provided which may result in an additional application type of an error in building location to permit these structures to remain at their locations.

Response: *The dimension of the pergola is 21.3'x38.1', and its distance to the rear lot line is 1.4'. The dimension of the stone oven is 6.0'x6.1'x3.0'x3.6'x3.0',*

and it is 0.1' off the rear lot line. These dimensions and associated distances from lot lines have been noted on the Plat.

Requirement 1.08: Construction date(s) of all existing structures, including signs and an indication whether they will be retained or demolished.

Response: Construction date(s) of all existing structures and an indication whether they will be retained or demolished have been noted on the plat. No structures are proposed or to be demolished with this plan. Refer to Note #16 of the Plat.

Requirement 1.09: All required minimum yards to include front, side and rear and a graphic depiction of the angle of bulk plane, if applicable, transitional yards and the distances from all existing and proposed structures to lot lines.

Comment: Please provide a BRL

Response: Required minimum yard requirements have been added to the Plat and listed in the Plat notes. Refer to Note #17 and the zone setback lines depicted on the Plat.

Requirement 1.23: Location of all trails required by the adopted comprehensive plan.

Response: No trails are located on the property.

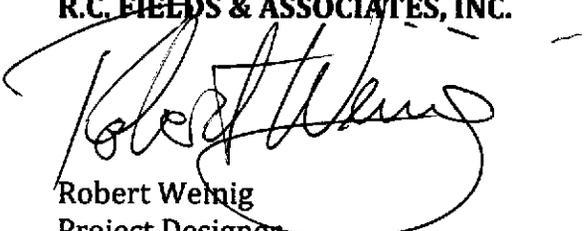
Requirement 1.25: Seal and Signature of Professional person certifying the plat.

Comment: Update revision dates – sealed 3 Oct 2012

Response: Revision date notes have been added to the plat in the bottom right corner.

Please do not hesitate to contact us if you or any member of your Staff has any questions or comments.

Respectfully,
R.C. FIELDS & ASSOCIATES, INC.


Robert Wenig
Project Designer

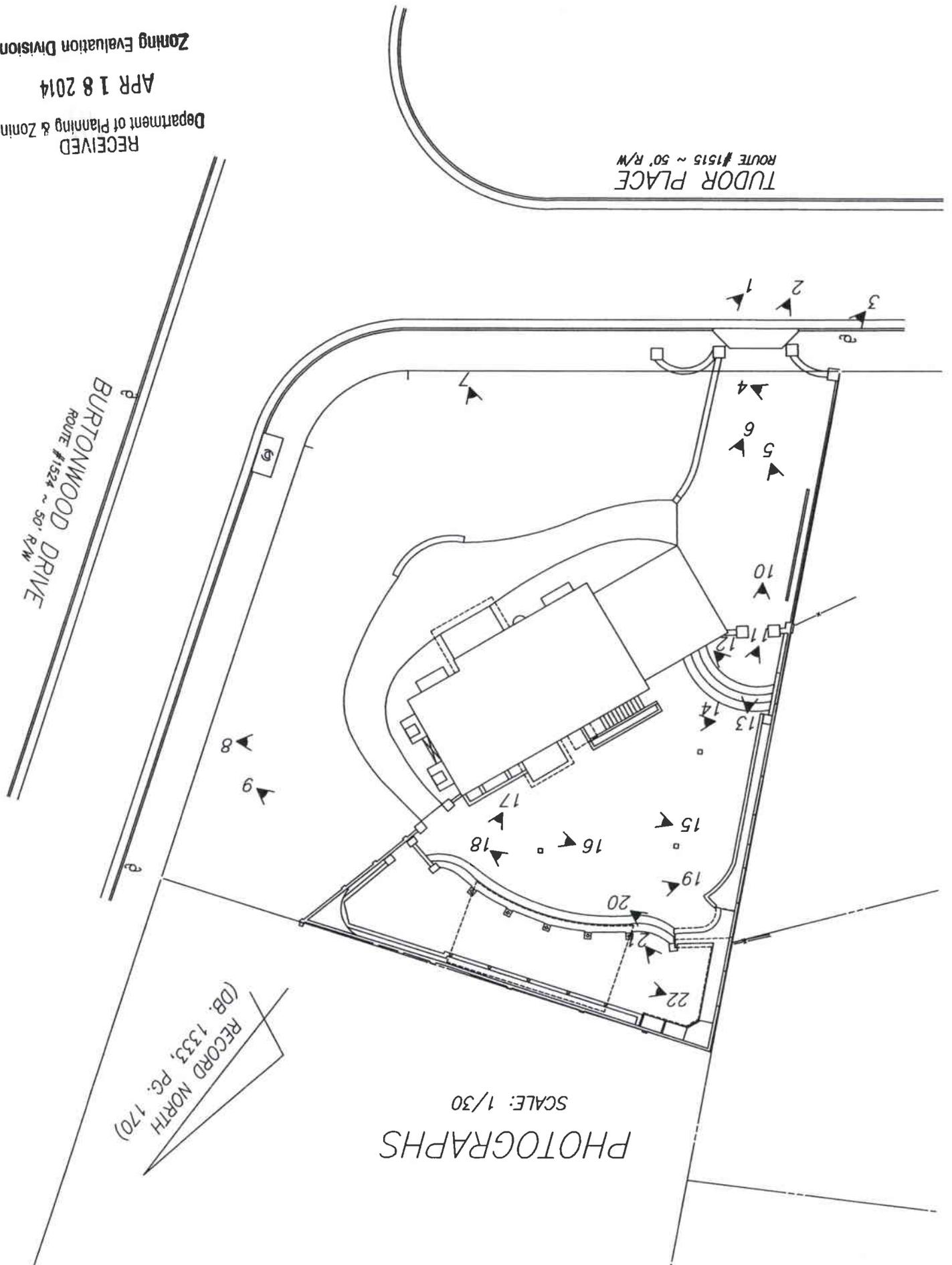
RECEIVED
Department of Planning & Zoning
APR 18 2014
Zoning Evaluation Division

TUDOR PLACE
ROUTE #1515 ~ 50' R/W

BURTONWOOD DRIVE
ROUTE #1524 ~ 50' R/W

RECORD NORTH
(DB. 1333, PG. 170)

PHOTOGRAPHS
SCALE: 1/30





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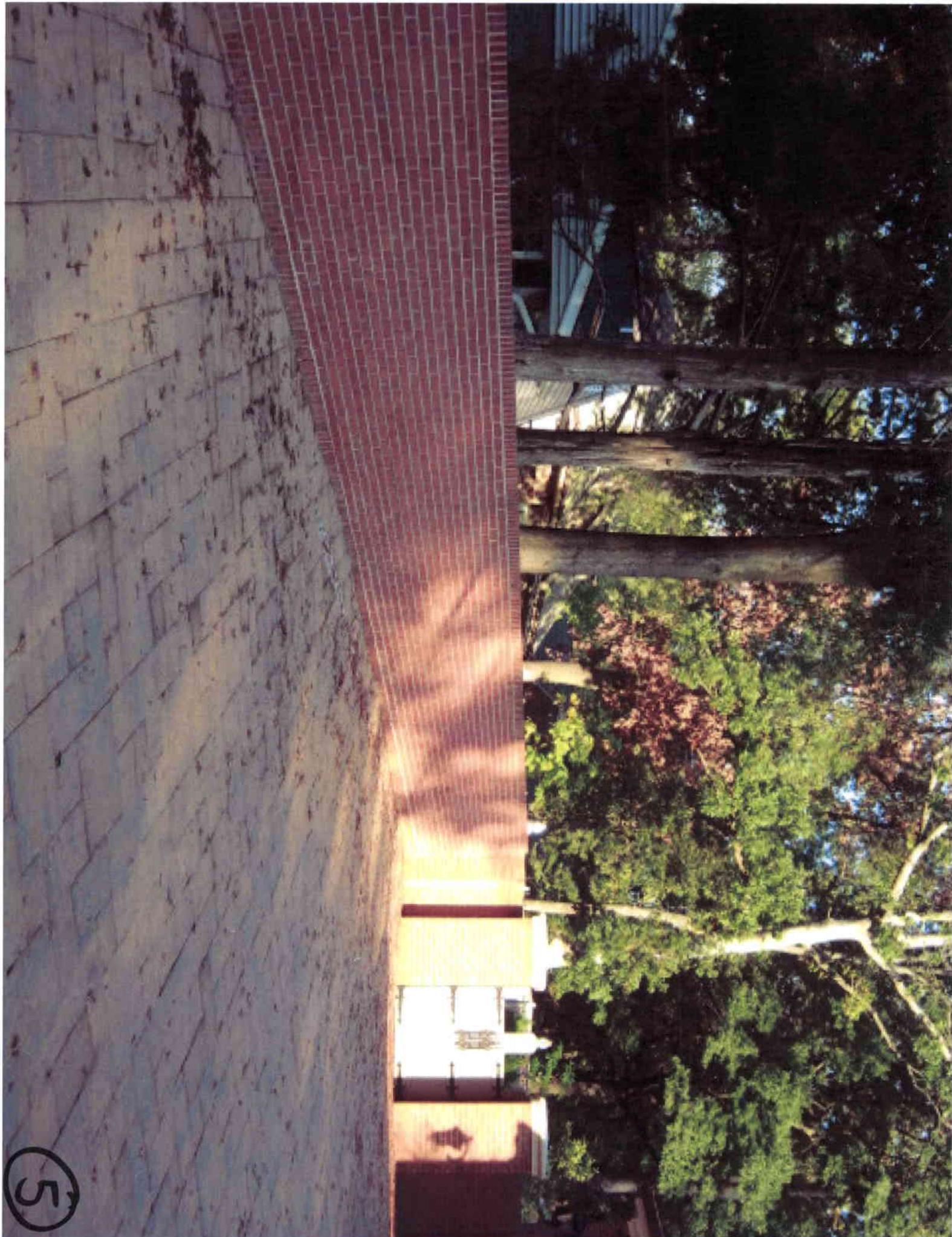


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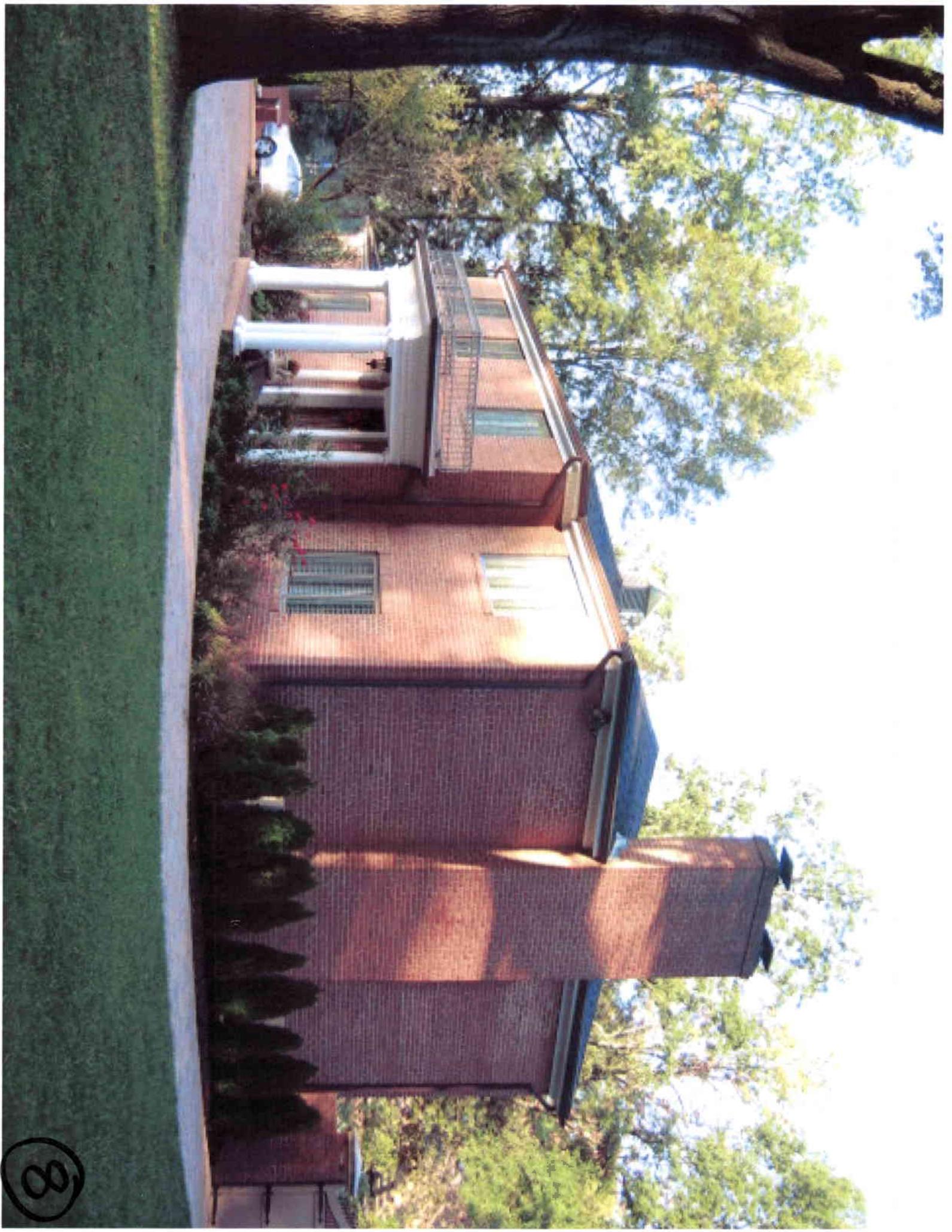
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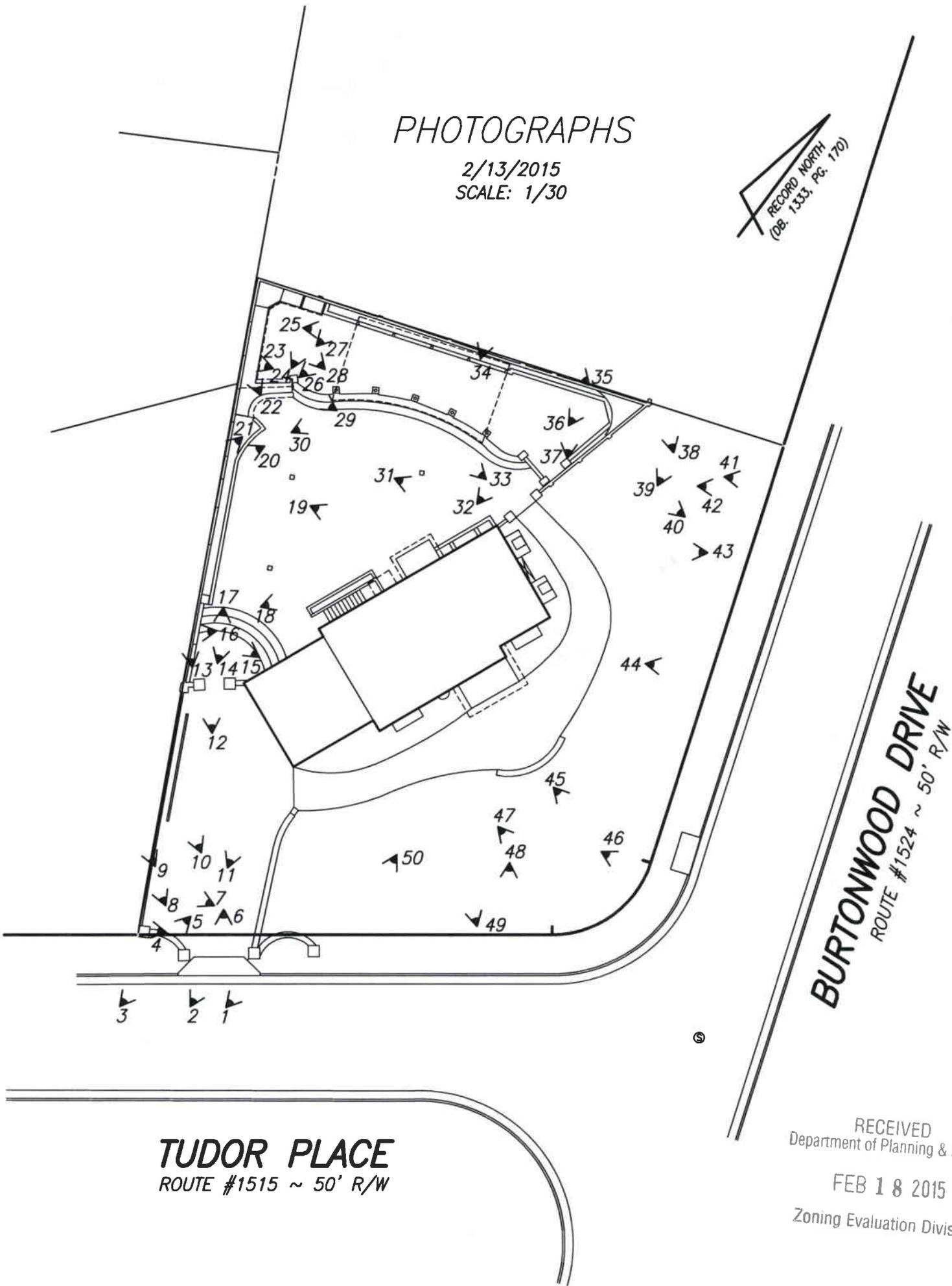




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PHOTOGRAPHS

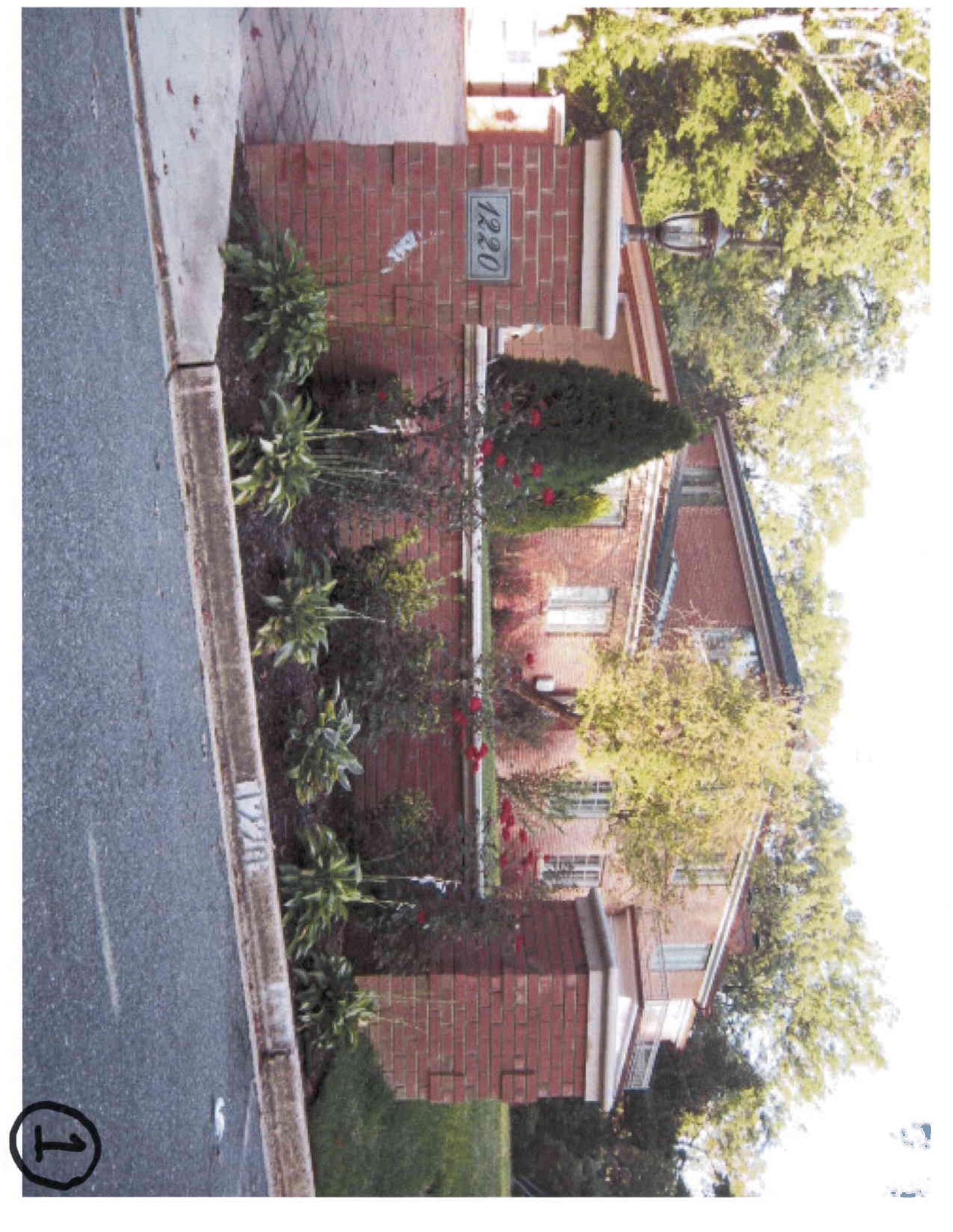
2/13/2015
SCALE: 1/30



TUDOR PLACE
ROUTE #1515 ~ 50' R/W

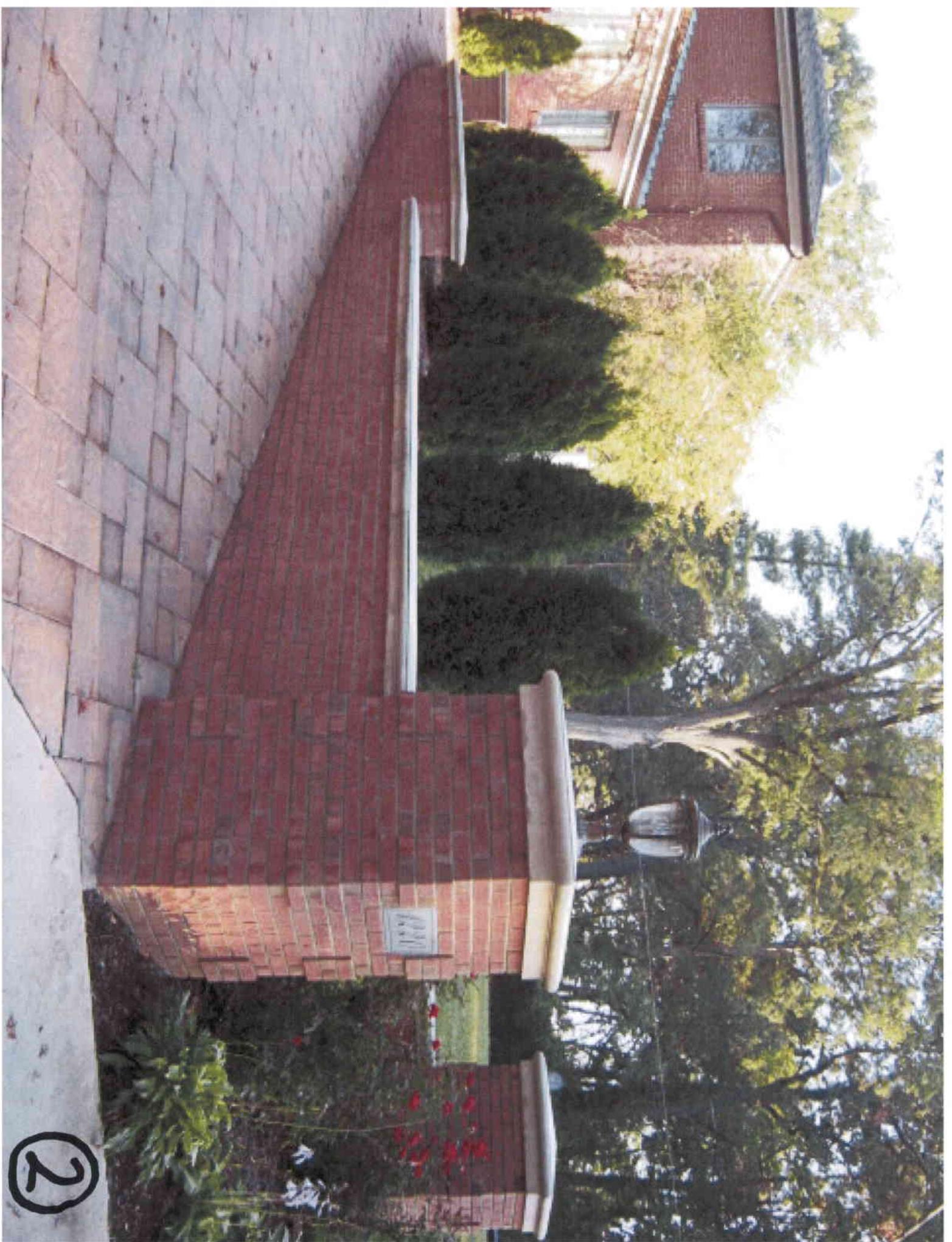
BURTONWOOD DRIVE
ROUTE #1524 ~ 50' R/W

RECEIVED
Department of Planning & Zoning
FEB 18 2015
Zoning Evaluation Division

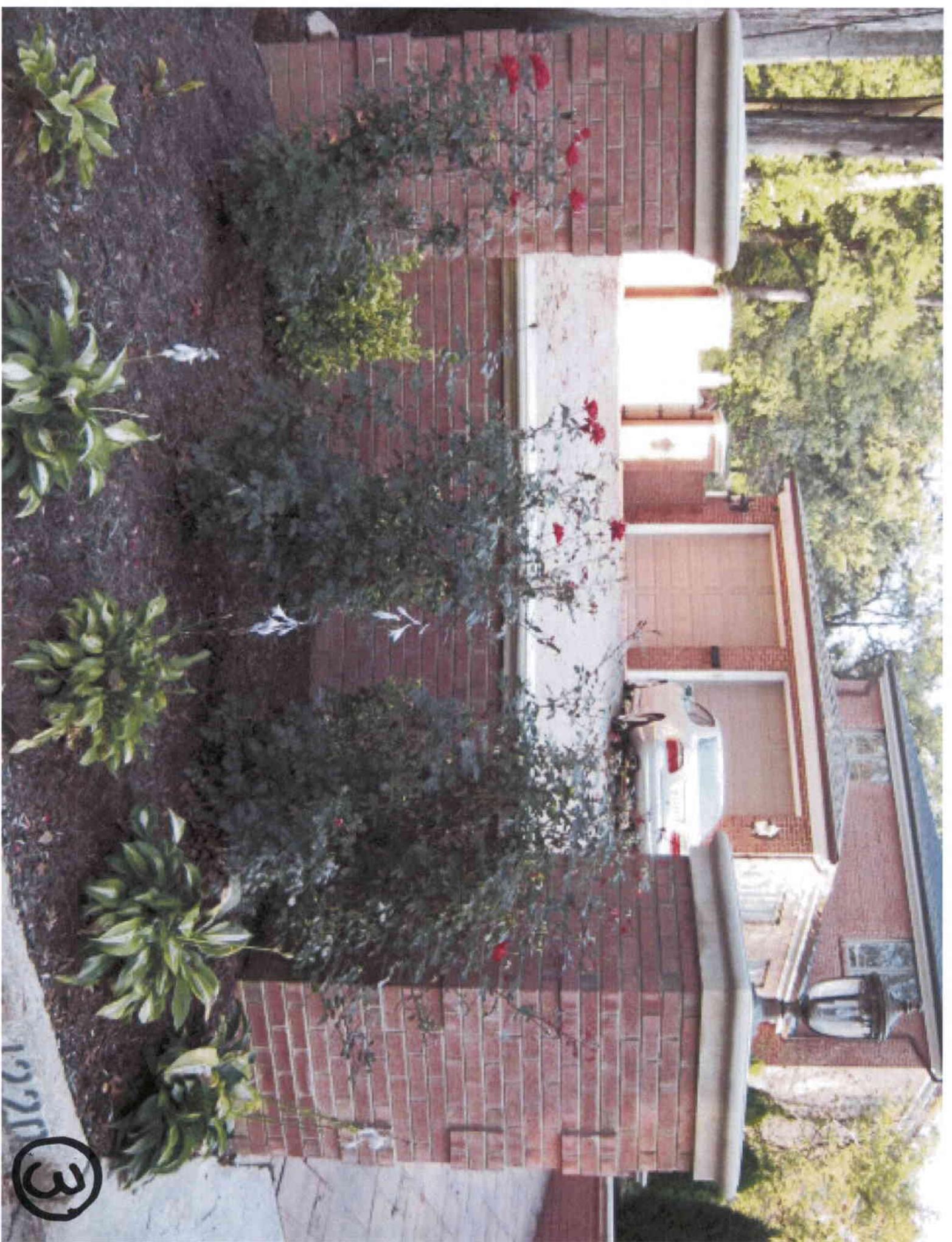


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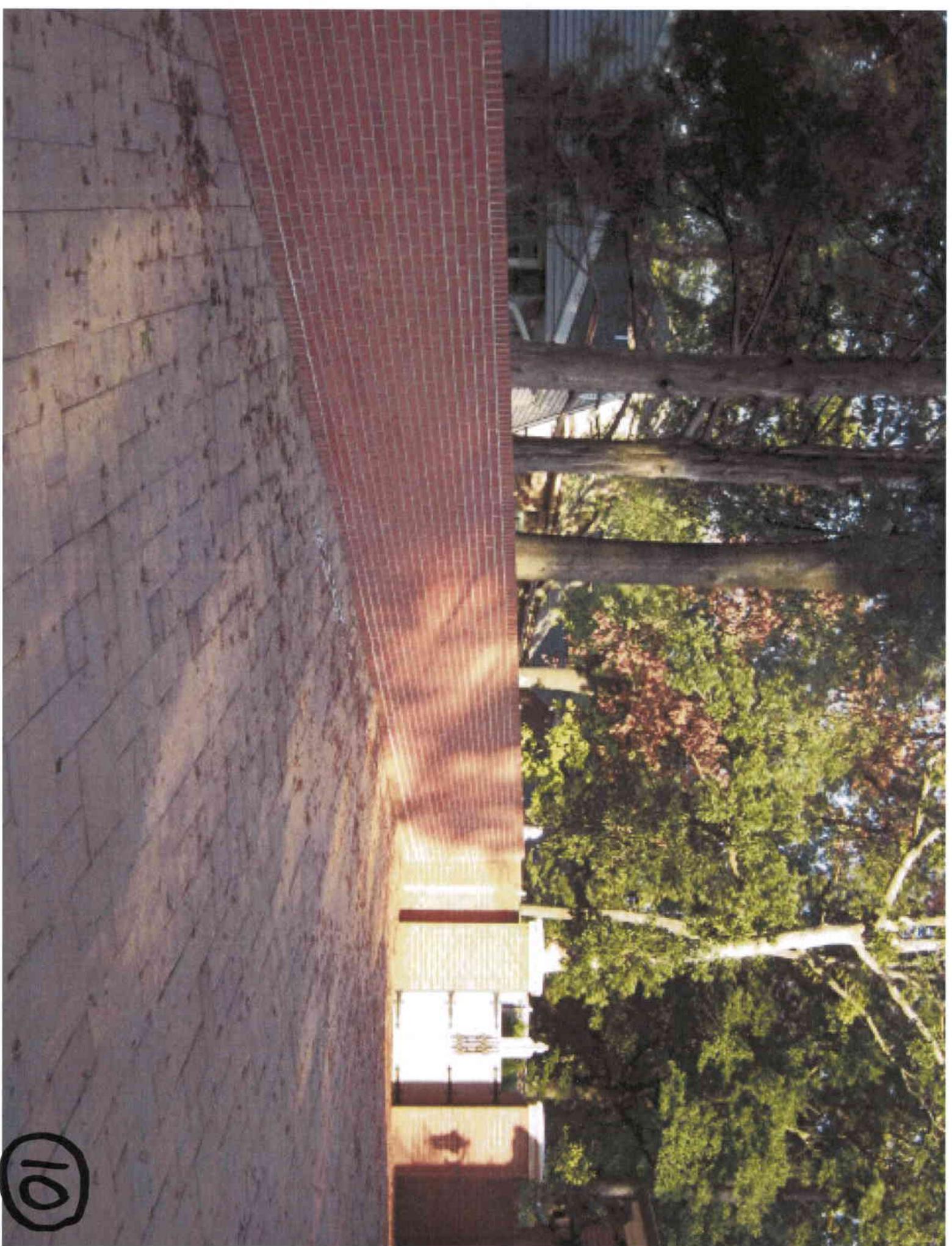
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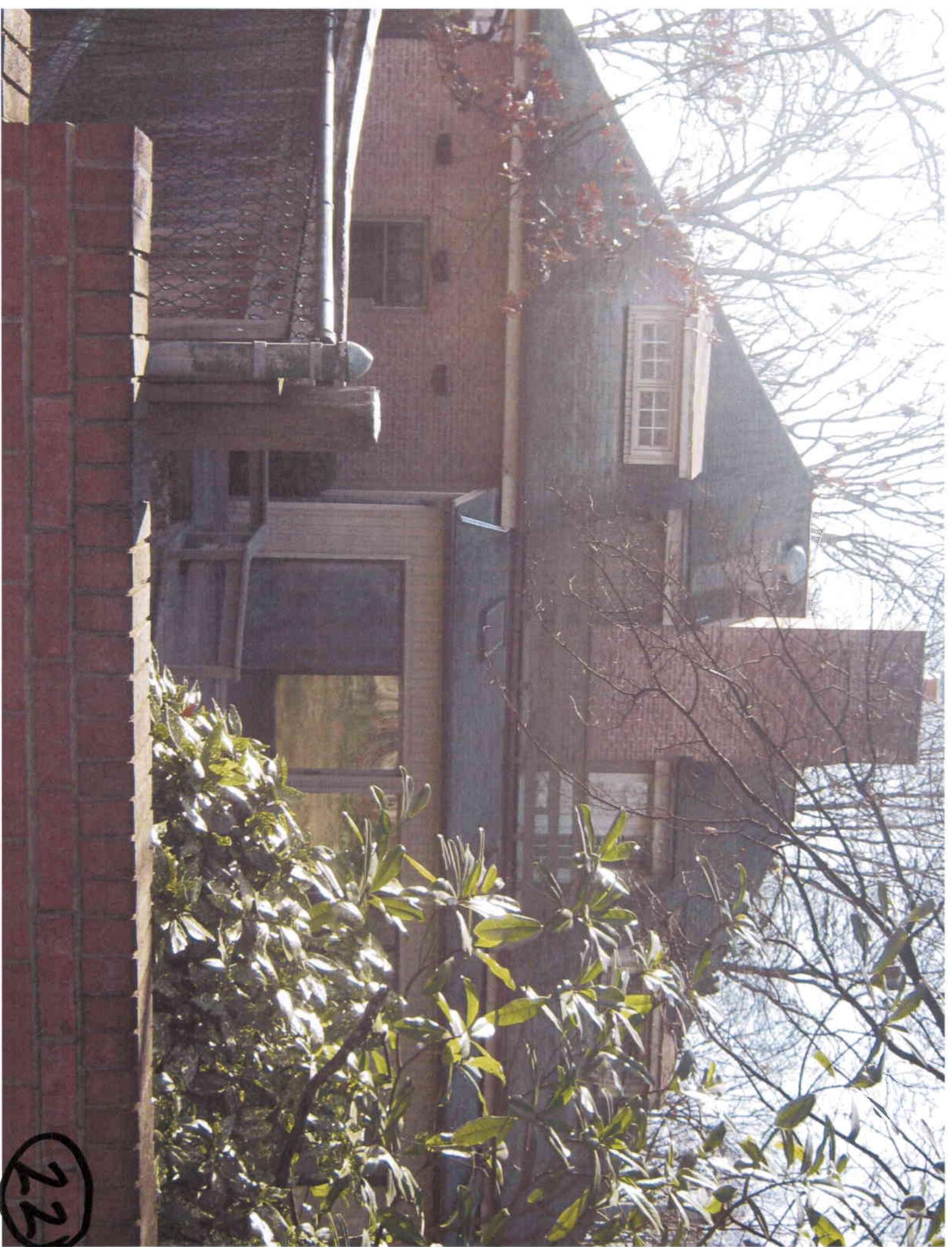




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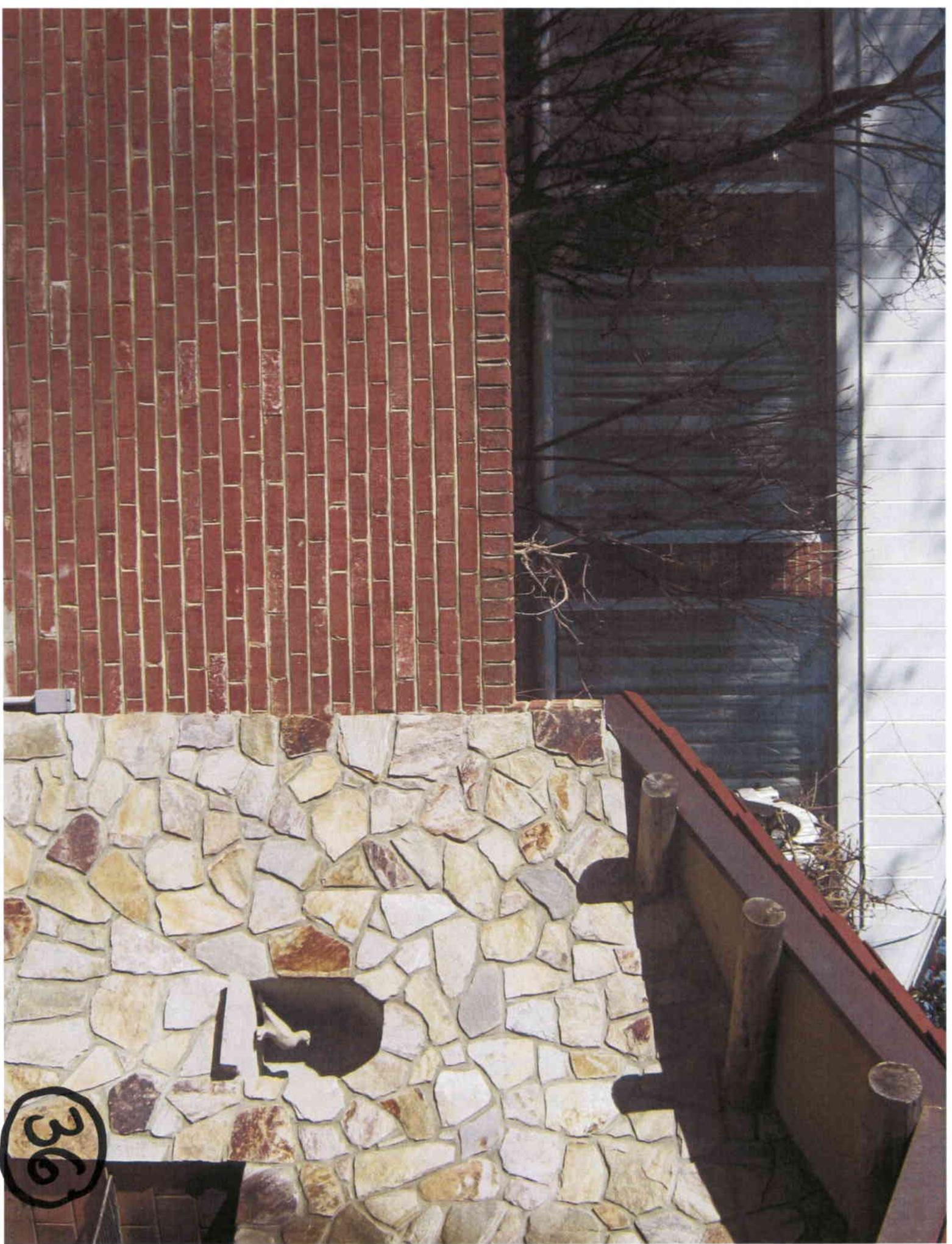
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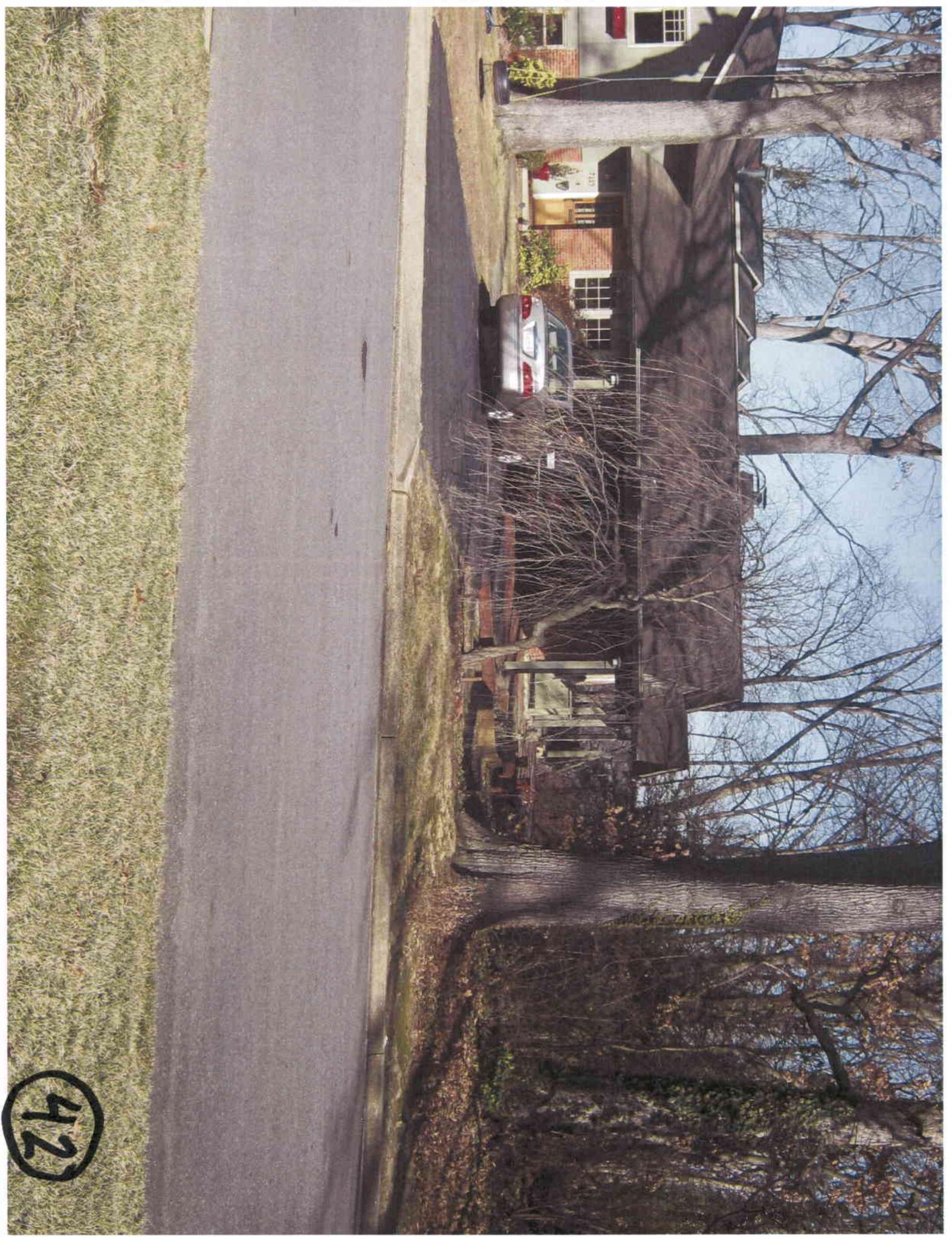
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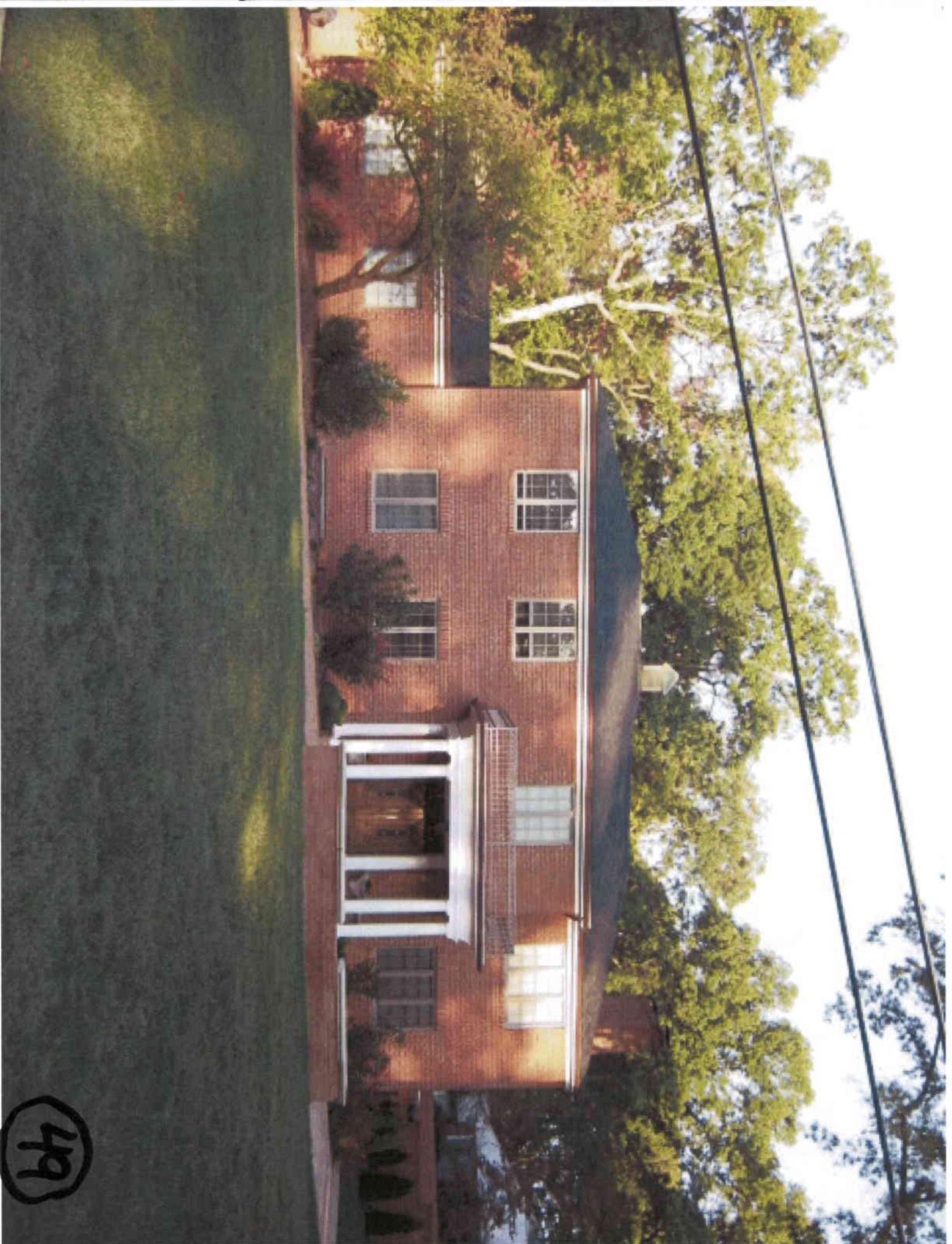




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Application No.(s): SP 2015-MV-044
 (county-assigned application number(s), to be entered by County Staff)

SPECIAL PERMIT/VARIANCE AFFIDAVIT

DATE: January 20, 2015
 (enter date affidavit is notarized)

128430

I, Robert Weinig, 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)
Paul & Maria Christou	1220 Tudor Place Alexandria, VA 22307	Owners
R. C. Fields & Associates, Inc.	730 S. Washington St. Alexandria, VA 22314	Agent
Robert A. Weinig	730 S. Washington St. Alexandria, VA 22314	Agent
Paul A. Wilder	730 S. Washington St. Alexandria, VA 22314	Agent
Ronald J. Keller	730 S. Washington St. Alexandria, VA 22314	Agent

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

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



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

SPECIAL PERMIT/VARIANCE AFFIDAVIT

DATE: January 20, 2015
(enter date affidavit is notarized)

128430

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

PARTNERSHIP INFORMATION

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

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

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

N/A

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

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

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

Page Four

SPECIAL PERMIT/VARIANCE AFFIDAVIT

DATE: January 20, 2015
(enter date affidavit is notarized)

128430

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: January 20, 2015
(enter date affidavit is notarized)

128430

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

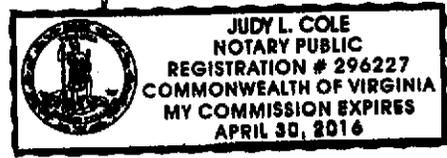
Robert Weinig

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

Subscribed and sworn to before me this 20th day of January, 2015, in the State/Comm. of Virginia, County/City of Fairfax.

Judy L Cole
Notary Public

My commission expires: April 30, 2016



PSA

Application No.(s): VC 2015-MV-003
(County-assigned application number(s), to be entered by County Staff)

SPECIAL PERMIT/VARIANCE AFFIDAVIT

DATE: March 22, 2013
(enter date affidavit is notarized)

I, Robert Weinig, 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: 125301

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)
Paul & Maria Christou	1220 Tudor Place Alexandria, VA 22307	Owners / <i>Applicants</i>
R.C. Fields & Assoc Inc.	730 S. Washington St. Alexandria, VA 22314	Agent
Robert A. Weinig	730 S. Washington St. Alexandria, VA 22314	Agent
Paul A. Wilder	730 S. Washington St. Alexandria, VA 22314	Agent
Ronald J. Keller	730 S. Washington St Alexandria, VA 22314	Agent

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

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

CAB

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

Page Three

SPECIAL PERMIT/VARIANCE AFFIDAVIT

DATE: March 22, 2013
(enter date affidavit is notarized)

125301

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

PARTNERSHIP INFORMATION

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

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

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

N/A

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

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

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

SPECIAL PERMIT/VARIANCE AFFIDAVIT

DATE: March 22, 2013
(enter date affidavit is notarized)

125301

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: March 22, 2013
(enter date affidavit is notarized)

125301

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:

Robert Weinig

(check one)

[] Applicant

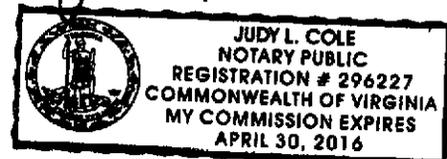
[X] Applicant's Authorized Agent

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

Subscribed and sworn to before me this 22nd day of MARCH 2013, in the State/Comm. of Virginia, County/City of Fairfax.

Judy L Cole
Notary Public

My commission expires: April 30, 2016



CAB



County of Fairfax, Virginia

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

NOTICE OF VIOLATION

VIOLATION ISSUED TO: Paul Christou and Maria Christou
1220 Tudor Pl
Alexandria, Va. 22307

LOCATION OF VIOLATION: 1220 Tudor Pl.

COMPLAINT NUMBER: 201102674

MAP REFERENCE: 0934 04 02 0006

On May 13, 2011, I inspected the above referenced site and found the following violation:

Land-disturbing activity in excess of 2500 square feet without an approved grading/conservation plan.

This is a violation of Section 104-1-2 of the Fairfax County Code which requires:

No person may engage in land-disturbing activity until he has submitted to the County a conservation plan for the land-disturbing activity and the plan has been reviewed and approved by the Director.

You are directed to correct this violation within ten (10) days of receipt of this Notice of Violation. No additional work is permitted until the required corrective action is completed. The following corrective action is required:

- 1. Immediately, cease and desist all land disturbing activities.**
- 2. Immediately, install erosion and sediment control measures to protect waterways and off-site properties.**
- 3. Immediately, seed and/or mulch all denuded areas.**
- 4. Submit and obtain the required grading/conservation plan and permit as approved by Fairfax County.**
- 5. Correct the violation in accordance with the approved plan and permit.**

Section 104-1-12 (a) Violations, reads as follows: Violators of Section 104-1-2 or 104-1-5 of this Article shall be guilty of a Class 1 misdemeanor.

Section 104-1-12(h) Civil Penalty, reads as follows: Without limiting the remedies which may be obtained in this Section, any person violating or failing, neglecting or refusing to obey any injunction, mandamus or other remedy obtained pursuant to this Section shall be subject, in the discretion of the court, to a civil penalty not to exceed Two Thousand Dollars (\$2,000.00) for each violation.





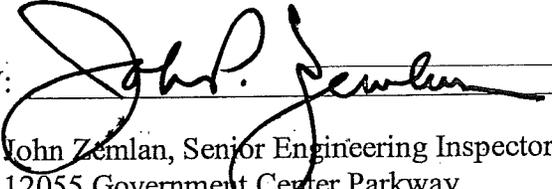
County of Fairfax, Virginia

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

Failure to correct the violation within the prescribed time limit may result in further legal action under the applicable state and county codes.

Any person aggrieved by the requirements of this Notice of Violation has the right to petition the Director for reconsideration. The petition needs to be made in writing within ten (10) days of the date the Notice of Violation was issued. This reconsideration procedure is not applicable where an emergency situation exists, as determined by the Director, which would require immediate and necessary action under this Chapter.

ISSUED BY:



John Zemlan, Senior Engineering Inspector
12055 Government Center Parkway
Fairfax, Virginia 22035-5503
Phone: (703) 324-1523
Email: john.zemlan@fairfaxcounty.gov

DATE ISSUED: May 16, 2011

Department of Public Works and Environmental Services
Land Development Services, Land Disturbance and Post Occupancy Division
12055 Government Center Parkway, Suite 210
Fairfax, VA 22035-5503
Phone: 703-324-1523, TTY: 711, Fax: 703-968-2886



SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

PAUL + MARIA CHRISTOU
 1220 TUDOR PL.
 ALEXANDRIA, VA.
 22307

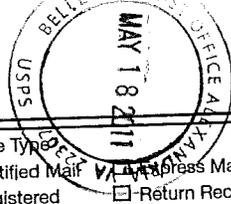
COMPLETE THIS SECTION ON DELIVERY

A. Signature Agent
 Addressee

B. Received by (Printed Name) _____

C. Date of Delivery
 5/18/11

D. Is delivery address different from item 1? Yes
 If YES, enter delivery address below: No



3. Service Type Certified Mail Registered Mail
 Registered Return Receipt for Merchandise
 Insured Mail C.O.D.

4. Restricted Delivery? (Extra Fee) Yes

2. Article Number
 (Transfer from service label)

7008 3230 0003 1331 4055

PS Form 3811, February 2004

Domestic Return Receipt

102595-02-M-1540

7008 3230 0003 1331 4055

**U.S. Postal Service™
 CERTIFIED MAIL™ RECEIPT
 (Domestic Mail Only; No Insurance Coverage Provided)**

For delivery information visit our website at www.usps.com

OFFICIAL USE

Postage	\$
Certified Fee	
Return Receipt Fee (Endorsement Required)	
Restricted Delivery Fee (Endorsement Required)	
Total Postage & Fees	\$

Postmark
 Here

Sent To PAUL + MARIA CHRISTOU
 Street, Apt. No.,
 or PO Box No. 1220 TUDOR PL.
 City, State, ZIP+4 ALEX, VA 22307

PS Form 3800, August 2006

See Reverse for Instructions

Similar Case History

Group: 01-V-058

SP 01-V-058

APPLICANT: KOSTER, MARK S. & MOUNTCASTLE, KATHARINE R.
STATUS: APPLICATION APPROVED
STATUS/DECISION DTE: 12/11/2001
ZONING DISTRICT: R-3
DESCRIPTION: REDUCTION TO MINIMUM YARD REQUIREMENTS BASED ON ERROR IN BUILDING LOCATION FOR EXISTING PORCH TO REMAIN 10.4 FEET FROM SIDE LOT LINE. **THE BOARD WAIVED THE 8-DAY WAITING PERIOD**
LOCATION: 7204 BURTONWOOD DRIVE, ALEXANDRIA, VA 22307
TAX MAP #S:
 0934 04030003

Group: 2004-MV-035

SP 2004-MV-035

APPLICANT: DIANA A. HARRISON - CRAUN
STATUS: APPLICATION APPROVED
STATUS/DECISION DTE: 08/10/2004
ZONING DISTRICT: R-3
DESCRIPTION: REDUCTION TO MINIMUM YARD REQUIREMENTS BASED ON ERROR IN BUILDING LOCATION TO PERMIT ACCESSORY STORAGE STRUCTURE TO REMAIN 3.1 FEET WITH EAVE 2.1 FEET FROM THE REARLOT LINE AND 5.7 FEET FROM SIDE LOT LINE
LOCATION: 7113 FORT HUNT ROAD
TAX MAP #S:
 0934 03010022

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, or
- B. The error is up to ten (10) percent of the measurement involved and such reduction or modification is requested in conjunction with the approval of a special permit for another use or application for a variance on the property, or is in conjunction with another special permit for an error in building location on the property that exceeds ten (10) percent of the measurement involved, and
- C. 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
- D. Such reduction or modification will not impair the purpose and intent of this Ordinance, and
- E. It will not be detrimental to the use and enjoyment of other property in the immediate vicinity, and
- F. It will not create an unsafe condition with respect to both other property and public streets, and
- G. To force compliance with the minimum yard requirements or location regulations would cause unreasonable hardship upon the owner.
- H. The reduction or modification 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.

CHAPTER 597

An Act to amend and reenact §§ 15.2-2201, 15.2-2308, 15.2-2309, and 15.2-2314 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 15.2-2308.1, relating to variances.

[H 1849]

Approved March 26, 2015

Be it enacted by the General Assembly of Virginia:

1. That §§ 15.2-2201, 15.2-2308, 15.2-2309, and 15.2-2314 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding a section numbered 15.2-2308.1 as follows:

§ 15.2-2201. Definitions.

As used in this chapter, unless the context requires a different meaning:

"Affordable housing" means, as a guideline, housing that is affordable to households with incomes at or below the area median income, provided that the occupant pays no more than thirty percent of his gross income for gross housing costs, including utilities. For the purpose of administering affordable dwelling unit ordinances authorized by this chapter, local governments may establish individual definitions of affordable housing and affordable dwelling units including determination of the appropriate percent of area median income and percent of gross income.

"Conditional zoning" means, as part of classifying land within a locality into areas and districts by legislative action, the allowing of reasonable conditions governing the use of such property, such conditions being in addition to, or modification of the regulations provided for a particular zoning district or zone by the overall zoning ordinance.

"Development" means a tract of land developed or to be developed as a unit under single ownership or unified control which is to be used for any business or industrial purpose or is to contain three or more residential dwelling units. The term "development" shall not be construed to include any tract of land which will be principally devoted to agricultural production.

"Historic area" means an area containing one or more buildings or places in which historic events occurred or having special public value because of notable architectural, archaeological or other features relating to the cultural or artistic heritage of the community, of such significance as to warrant conservation and preservation.

"Incentive zoning" means the use of bonuses in the form of increased project density or other benefits to a developer in return for the developer providing certain features, design elements, uses, services, or amenities desired by the locality, including but not limited to, site design incorporating principles of new urbanism and traditional neighborhood development, environmentally sustainable and energy-efficient building design, affordable housing creation and preservation, and historical preservation, as part of the development.

"Local planning commission" means a municipal planning commission or a county planning commission.

"Military installation" means a base, camp, post, station, yard, center, homeport facility for any ship, or other activity under jurisdiction of the U.S. Department of Defense, including any leased facility, or any land or interest in land owned by the Commonwealth and administered by the Adjutant General of Virginia or the Virginia Department of

Military Affairs. "Military installation" does not include any facility used primarily for civil works, rivers and harbors projects, or flood control projects.

"Mixed use development" means property that incorporates two or more different uses, and may include a variety of housing types, within a single development.

"Official map" means a map of legally established and proposed public streets, waterways, and public areas adopted by a locality in accordance with the provisions of Article 4 (§ 15.2-2233 et seq.) hereof.

"Planned unit development" means a form of development characterized by unified site design for a variety of housing types and densities, clustering of buildings, common open space, and a mix of building types and land uses in which project planning and density calculation are performed for the entire development rather than on an individual lot basis.

"Planning district commission" means a regional planning agency chartered under the provisions of Chapter 42 (§ 15.2-4200 et seq.) of this title.

"Plat" or "plat of subdivision" means the schematic representation of land divided or to be divided and information in accordance with the provisions of §§ 15.2-2241, 15.2-2242, 15.2-2258, 15.2-2262, and 15.2-2264, and other applicable statutes.

"Preliminary subdivision plat" means the proposed schematic representation of development or subdivision that establishes how the provisions of §§ 15.2-2241 and 15.2-2242, and other applicable statutes will be achieved.

"Resident curator" means a person, firm, or corporation that leases or otherwise contracts to manage, preserve, maintain, operate, or reside in a historic property in accordance with the provisions of § 15.2-2306 and other applicable statutes.

"Site plan" means the proposal for a development or a subdivision including all covenants, grants or easements and other conditions relating to use, location and bulk of buildings, density of development, common open space, public facilities and such other information as required by the subdivision ordinance to which the proposed development or subdivision is subject.

"Special exception" means a special use; that is a use not permitted in a particular district except by a special use permit granted under the provisions of this chapter and any zoning ordinances adopted herewith.

"Street" means highway, street, avenue, boulevard, road, lane, alley, or any public way.

"Subdivision," unless otherwise defined in an ordinance adopted pursuant to § 15.2-2240, means the division of a parcel of land into three or more lots or parcels of less than five acres each for the purpose of transfer of ownership or building development, or, if a new street is involved in such division, any division of a parcel of land. The term includes resubdivision and, when appropriate to the context, shall relate to the process of subdividing or to the land subdivided and solely for the purpose of recordation of any single division of land into two lots or parcels, a plat of such division shall be submitted for approval in accordance with § 15.2-2258.

"Variance" means, in the application of a zoning ordinance, a reasonable deviation from those provisions regulating the **shape, size, or area** of a lot or parcel of land; or the size, **height, area, bulk,** or location of a building or structure

when the strict application of the ordinance would ~~result in unnecessary or unreasonable hardship to the property owner~~ *unreasonably restrict the utilization of the property*, and such need for a variance would not be shared generally by other properties, and provided such variance is not contrary to the ~~intended spirit and~~ purpose of the ordinance, ~~and would result in substantial justice being done~~. It shall not include a change in use, which change shall be accomplished by a rezoning or by a conditional zoning.

"Zoning" or "to zone" means the process of classifying land within a locality into areas and districts, such areas and districts being generally referred to as "zones," by legislative action and the prescribing and application in each area and district of regulations concerning building and structure designs, building and structure placement and uses to which land, buildings and structures within such designated areas and districts may be put.

§ 15.2-2308. Boards of zoning appeals to be created; membership, organization, etc.

A. Every locality that has enacted or enacts a zoning ordinance pursuant to this chapter or prior enabling laws, shall establish a board of zoning appeals that shall consist of either five or seven residents of the locality, appointed by the circuit court for the locality. Boards of zoning appeals for a locality within the fifteenth or nineteenth judicial circuit may be appointed by the chief judge or his designated judge or judges in their respective circuit, upon concurrence of such locality. Their terms of office shall be for five years each except that original appointments shall be made for such terms that the term of one member shall expire each year. The secretary of the board shall notify the court at least thirty days in advance of the expiration of any term of office, and shall also notify the court promptly if any vacancy occurs. Appointments to fill vacancies shall be only for the unexpired portion of the term. Members may be reappointed to succeed themselves. Members of the board shall hold no other public office in the locality except that one may be a member of the local planning commission. A member whose term expires shall continue to serve until his successor is appointed and qualifies. The circuit court for the City of Chesapeake and the Circuit Court for the City of Hampton shall appoint at least one but not more than three alternates to the board of zoning appeals. At the request of the local governing body, the circuit court for any other locality may appoint not more than three alternates to the board of zoning appeals. The qualifications, terms and compensation of alternate members shall be the same as those of regular members. A regular member when he knows he will be absent from or will have to abstain from any application at a meeting shall notify the chairman twenty-four hours prior to the meeting of such fact. The chairman shall select an alternate to serve in the absent or abstaining member's place and the records of the board shall so note. Such alternate member may vote on any application in which a regular member abstains.

B. Localities may, by ordinances enacted in each jurisdiction, create a joint board of zoning appeals that shall consist of two members appointed from among the residents of each participating jurisdiction by the circuit court for each county or city, plus one member from the area at large to be appointed by the circuit court or jointly by such courts if more than one, having jurisdiction in the area. The term of office of each member shall be five years except that of the two members first appointed from each jurisdiction, the term of one shall be for two years and of the other, four years. Vacancies shall be filled for the unexpired terms. In other respects, joint boards of zoning appeals shall be governed by all other provisions of this article.

C. With the exception of its secretary and the alternates, the board shall elect from its own membership its officers who shall serve annual terms as such and may succeed themselves. The board may elect as its secretary either one of its members or a qualified individual who is not a member of the board, excluding the alternate members. A secretary who is not a member of the board shall not be entitled to vote on matters before the board. ~~For~~ *Notwithstanding any other provision of law, general or special, for* the conduct of any hearing, a quorum shall be not less than a majority of all the members of the board *and the board shall offer an equal amount of time in a hearing on the case to the applicant, appellant or other person aggrieved under § 15.2-2314, and the staff of the local governing*

body. Except for matters governed by § 15.2-2312, no action of the board shall be valid unless authorized by a majority vote of those present and voting. The board may make, alter and rescind rules and forms for its procedures, consistent with ordinances of the locality and general laws of the Commonwealth. The board shall keep a full public record of its proceedings and shall submit a report of its activities to the governing body or bodies at least once each year.

D. Within the limits of funds appropriated by the governing body, the board may employ or contract for secretaries, clerks, legal counsel, consultants, and other technical and clerical services. Members of the board may receive such compensation as may be authorized by the respective governing bodies. Any board member or alternate may be removed for malfeasance, misfeasance or nonfeasance in office, or for other just cause, by the court that appointed him, after a hearing held after at least fifteen days' notice.

E. Notwithstanding any contrary provisions of this section, in the City of Virginia Beach, members of the board shall be appointed by the governing body. The governing body of such city shall also appoint at least one but not more than three alternates to the board.

§ 15.2-2308.1. Boards of zoning appeals, ex parte communications, proceedings.

A. The non-legal staff of the governing body may have ex parte communications with a member of the board prior to the hearing but may not discuss the facts or law relative to a particular case. The applicant, landowner or his agent or attorney may have ex parte communications with a member of the board prior to the hearing but may not discuss the facts or law relative to a particular case. If any ex parte discussion of facts or law in fact occurs, the party engaging in such communication shall inform the other party as soon as practicable and advise the other party of the substance of such communication. For purposes of this section, regardless of whether all parties participate, ex parte communications shall not include (i) discussions as part of a public meeting or (ii) discussions prior to a public meeting to which staff of the governing body, the applicant, landowner or his agent or attorney are all invited.

B. Any materials relating to a particular case, including a staff recommendation or report furnished to a member of the board, shall be made available without cost to such applicant, appellant or other person aggrieved under § 15.2-2314, as soon as practicable thereafter, but in no event more than three business days of providing such materials to a member of the board. If the applicant, appellant or other person aggrieved under § 15.2-2314 requests additional documents or materials be provided by the locality other than those materials provided to the board, such request shall be made pursuant to § 2.2-3704. Any such materials furnished to a member of the board shall also be made available for public inspection pursuant to subsection F of § 2.2-3707.

C. For the purposes of this section, "non-legal staff of the governing body" means any staff who is not in the office of the attorney for the locality, or for the board, or who is appointed by special law or pursuant to § 15.2-1542. Nothing in this section shall preclude the board from having ex parte communications with any attorney or staff of any attorney where such communication is protected by the attorney-client privilege or other similar privilege or protection of confidentiality.

D. This section shall not apply to cases where an application for a special exception has been filed pursuant to subdivision 6 of § 15.2-2309.

§ 15.2-2309. Powers and duties of boards of zoning appeals.

Boards of zoning appeals shall have the following powers and duties:

1. To hear and decide appeals from any order, requirement, decision, or determination made by an administrative officer in the administration or enforcement of this article or of any ordinance adopted pursuant thereto. The decision on such appeal shall be based on the board's judgment of whether the administrative officer was correct. *The determination of the administrative officer shall be presumed to be correct. At a hearing on an appeal, the administrative officer shall explain the basis for his determination after which the appellant has the burden of proof to rebut such presumption of correctness by a preponderance of the evidence.* The board shall consider ~~the purpose and intent of~~ any applicable ordinances, laws, and regulations in making its decision. *For purposes of this section, determination means any order, requirement, decision or determination made by an administrative officer. Any appeal of a determination to the board shall be in compliance with this section, notwithstanding any other provision of law, general or special.*

2. ~~To authorize~~ *Notwithstanding any other provision of law, general or special, to grant* upon appeal or original application in specific cases ~~such a~~ variance as defined in § 15.2-2201 ~~from the terms of the ordinance as will not be contrary to the public interest, when, owing to special conditions a literal enforcement of the provisions will result in unnecessary hardship;~~ provided that ~~the spirit of the ordinance shall be observed and substantial justice done, as follows:~~ *the burden of proof shall be on the applicant for a variance to prove by a preponderance of the evidence that his application meets the standard for a variance as defined in § 15.2-2201 and the criteria set out in this section.*

~~When a property owner can show that his~~ *Notwithstanding any other provision of law, general or special, a variance shall be granted if the evidence shows that the strict application of the terms of the ordinance would unreasonably restrict the utilization of the property or that the granting of the variance would alleviate a hardship due to a physical condition relating to the property or improvements thereon at the time of the effective date of the ordinance, and (i) the property interest for which the variance is being requested was acquired in good faith and where by reason of the exceptional and any hardship was not created by the applicant for the variance; narrowness, shallowness, size, or shape of a specific piece of property at the time of the effective date of the ordinance, or where by reason of exceptional topographic conditions or other extraordinary situation or condition of the piece of property, or of the condition, situation, or development of property immediately adjacent thereto, the strict application of the terms of the ordinance would effectively prohibit or unreasonably restrict the utilization of the property or where the board is satisfied, upon the evidence heard by it, that the granting of the variance will alleviate a clearly demonstrable hardship, as distinguished from a special privilege or convenience sought by the applicant, provided that all variances shall be in harmony with the intended spirit and purpose of the ordinance. (ii) the granting of the variance will not be of substantial detriment to adjacent property and nearby properties in the proximity of that geographical area; (iii) the condition or situation of the property concerned is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted as an amendment to the ordinance; (iv) the granting of the variance does not result in a use that is not otherwise permitted on such property or a change in the zoning classification of the property; and (v) the relief or remedy sought by the variance application is not available through a special exception process that is authorized in the ordinance pursuant to subdivision 6 of § 15.2-2309 or the process for modification of a zoning ordinance pursuant to subdivision A4 of § 15.2-2286 at the time of the filing of the variance application.*

~~No such variance shall be authorized by the board unless it finds:~~

~~a. That the strict application of the ordinance would produce undue hardship relating to the property;~~

~~b. That the hardship is not shared generally by other properties in the same zoning district and the same vicinity; and~~

~~c. That the authorization of the variance will not be of substantial detriment to adjacent property and that the character of the district will not be changed by the granting of the variance.~~

No variance shall be ~~authorized~~ **considered** except after notice and hearing as required by § 15.2-2204. However, when giving any required notice to the owners, their agents or the occupants of abutting property and property immediately across the street or road from the property affected, the board may give such notice by first-class mail rather than by registered or certified mail.

~~No variance shall be authorized unless the board finds that the condition or situation of the property concerned is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted as an amendment to the ordinance.~~

In ~~authorizing~~ **granting** a variance, the board may impose such conditions regarding the location, character, and other features of the proposed structure or use as it may deem necessary in the public interest; and may require a guarantee or bond to ensure that the conditions imposed are being and will continue to be complied with. Notwithstanding any other provision of law, **general or special**, the property upon which a property owner has been granted a variance shall be treated as conforming for all purposes under state law and local ordinance; however, the structure permitted by the variance may not be expanded unless the expansion is within an area of the site or part of the structure for which no variance is required under the ordinance. Where the expansion is proposed within an area of the site or part of the structure for which a variance is required, the approval of an additional variance shall be required.

3. To hear and decide appeals from the decision of the zoning administrator after notice and hearing as provided by § 15.2-2204. However, when giving any required notice to the owners, their agents or the occupants of abutting property and property immediately across the street or road from the property affected, the board may give such notice by first-class mail rather than by registered or certified mail.

4. To hear and decide applications for interpretation of the district map where there is any uncertainty as to the location of a district boundary. After notice to the owners of the property affected by the question, and after public hearing with notice as required by § 15.2-2204, the board may interpret the map in such way as to carry out the intent and purpose of the ordinance for the particular section or district in question. However, when giving any required notice to the owners, their agents or the occupants of abutting property and property immediately across the street or road from the property affected, the board may give such notice by first-class mail rather than by registered or certified mail. The board shall not have the power to change substantially the locations of district boundaries as established by ordinance.

5. No provision of this section shall be construed as granting any board the power to rezone property or to base board decisions on the merits of the purpose and intent of local ordinances duly adopted by the governing body.

6. To hear and decide applications for special exceptions as may be authorized in the ordinance. The board may impose such conditions relating to the use for which a permit is granted as it may deem necessary in the public interest, including limiting the duration of a permit, and may require a guarantee or bond to ensure that the conditions imposed are being and will continue to be complied with.

No special exception may be granted except after notice and hearing as provided by § 15.2-2204. However, when giving any required notice to the owners, their agents or the occupants of abutting property and property immediately

across the street or road from the property affected, the board may give such notice by first-class mail rather than by registered or certified mail.

7. To revoke a special exception previously granted by the board of zoning appeals if the board determines that there has not been compliance with the terms or conditions of the permit. No special exception may be revoked except after notice and hearing as provided by § 15.2-2204. However, when giving any required notice to the owners, their agents or the occupants of abutting property and property immediately across the street or road from the property affected, the board may give such notice by first-class mail rather than by registered or certified mail. If a governing body reserves unto itself the right to issue special exceptions pursuant to § 15.2-2286, and, if the governing body determines that there has not been compliance with the terms and conditions of the permit, then it may also revoke special exceptions in the manner provided by this subdivision.

8. The board by resolution may fix a schedule of regular meetings, and may also fix the day or days to which any meeting shall be continued if the chairman, or vice-chairman if the chairman is unable to act, finds and declares that weather or other conditions are such that it is hazardous for members to attend the meeting. Such finding shall be communicated to the members and the press as promptly as possible. All hearings and other matters previously advertised for such meeting in accordance with § 15.2-2312 shall be conducted at the continued meeting and no further advertisement is required.

§ 15.2-2314. Certiorari to review decision of board.

Any person or persons jointly or severally aggrieved by any decision of the board of zoning appeals, or any aggrieved taxpayer or any officer, department, board or bureau of the locality, may file with the clerk of the circuit court for the county or city a petition that shall be styled "In Re: date Decision of the Board of Zoning Appeals of [locality name]" specifying the grounds on which aggrieved within 30 days after the final decision of the board.

Upon the presentation of such petition, the court shall allow a writ of certiorari to review the decision of the board of zoning appeals and shall prescribe therein the time within which a return thereto must be made and served upon the secretary of the board of zoning appeals or, if no secretary exists, the chair of the board of zoning appeals, which shall not be less than 10 days and may be extended by the court. The allowance of the writ shall not stay proceedings upon the decision appealed from, but the court may, on application, on notice to the board and on due cause shown, grant a restraining order.

Any review of a decision of the board shall not be considered an action against the board and the board shall not be a party to the proceedings; however, the board shall participate in the proceedings to the extent required by this section. The governing body, the landowner, and the applicant before the board of zoning appeals shall be necessary parties to the proceedings *in the circuit court*. The court may permit intervention by any other person or persons jointly or severally aggrieved by any decision of the board of zoning appeals.

The board of zoning appeals shall not be required to return the original papers acted upon by it but it shall be sufficient to return certified or sworn copies thereof or of the portions thereof as may be called for by the writ. The return shall concisely set forth such other facts as may be pertinent and material to show the grounds of the decision appealed from and shall be verified.

~~If, upon the hearing, it shall appear to the court that testimony is necessary for the proper disposition of the matter, it may take evidence or appoint a commissioner to take evidence as it may direct and report the evidence to the court with his findings of fact and conclusions of law, which shall constitute a part of the proceedings upon which the~~

~~determination of the court shall be made.~~ The court may reverse or affirm, wholly or partly, or may modify the decision brought up for review.

In the case of an appeal from the board of zoning appeals to the circuit court of an order, requirement, decision or determination of a zoning administrator or other administrative officer in the administration or enforcement of any ordinance or provision of state law, or any modification of zoning requirements pursuant to § 15.2-2286, the findings and conclusions of the board of zoning appeals on questions of fact shall be presumed to be correct. The appealing party may rebut that presumption by proving by a preponderance of the evidence, including the record before the board of zoning appeals, that the board of zoning appeals erred in its decision. Any party may introduce evidence in the proceedings in the court. The court shall hear any arguments on questions of law de novo.

In the case of an appeal by a person of any decision of the board of zoning appeals that denied or granted an application for a variance, ~~or application for a special exception,~~ the decision of the board of zoning appeals shall be presumed to be correct. The petitioner may rebut that presumption by ~~showing to the satisfaction of the court that the board of zoning appeals applied erroneous principles of law, or where the discretion of the board of zoning appeals is involved, the decision of the board of zoning appeals was plainly wrong and in violation of the purpose and intent of the zoning ordinance~~ *proving by a preponderance of the evidence, including the record before the board of zoning appeals, that the board of zoning appeals erred in its decision.*

In the case of an appeal by a person of any decision of the board of zoning appeals that denied or granted application for a special exception, the decision of the board of zoning appeals shall be presumed to be correct. The petitioner may rebut that presumption by showing to the satisfaction of the court that the board of zoning appeals applied erroneous principles of law, or where the discretion of the board of zoning appeals is involved, the decision of the board of zoning appeals was plainly wrong, was in violation of the purpose and intent of the zoning ordinance, and is not fairly debatable.

In the case of an appeal from the board of zoning appeals to the circuit court of a decision of the board, any party may introduce evidence in the proceedings in the court in accordance with the Rules of Evidence of the Supreme Court of Virginia.

Costs shall not be allowed against the locality, unless it shall appear to the court that it acted in bad faith or with malice. In the event the decision of the board is affirmed and the court finds that the appeal was frivolous, the court may order the person or persons who requested the issuance of the writ of certiorari to pay the costs incurred in making the return of the record pursuant to the writ of certiorari. If the petition is withdrawn subsequent to the filing of the return, the locality may request that the court hear the matter on the question of whether the appeal was frivolous.