

ACCESSORY APARTMENT (In-law) APPLICATION / DECLARATION OF UNDERSTANDING GUIDE BALTIMORE COUNTY, MD

FYI: If your relatives live in your dwelling and share your kitchen facilities with you, the use is often not considered to be an accessory apartment. Speak to a Planner for more information.

New legislation regarding new Accessory Apartments under Bill No. 49-11 became effective Oct. 23rd 2011. Also, existing in-law apartments lawfully approved prior to the effective date of this Act must obtain a use permit in accordance with the Bill on or before October 1, 2012. The purpose of this Guide is to assist in coordinating the various actions and procedures needed to obtain the necessary use permit and / or approval by the Administrative Law Judge after public hearing.

There are 2 possible procedures required for an Accessory Apartment approval:

- 1.) **A use permit for the apartment within an existing single-family detached dwelling**
OR
- 2.) **A special hearing / use permit for the apartment in an accessory building.**

In either case, other zoning hearings may be required if determined to be necessary for approval. Please remember that all setback, use, height, area and permitting agencies regulations **MUST** be met for new construction and **in all cases** for section 400 BCZR compliance for apartments placed in existing or proposed accessory buildings.

The staff strongly suggests contacting all building permit review agencies well in advance of filing. A list of these agencies is available in the Single Family Residential Lot Hearing Checklist. **
Remember! The use permit must be renewed every two years!

THE PROCESS:

An appointment is required for an application filing review. When you have the required information for filing prepared, please call **Zoning Review at 410-887-3391** to make the appointment or for questions. Be aware that issues may arise at the review indicating that revisions to the application or related information will be necessary. Discuss the appropriate fees with staff before filing. Once an application has been formally accepted by this office, continue to use the same review intake planner as your contact person for this use permit process.

A special hearing filing requires a Declaration of Understanding be provided with the application for filing review. The Petitioner shall provide the Declaration of Understanding on a form approved by the Department, to include at least the information required by law, which is dependent on whether the request is for the accessory apartment to be within an existing single-family detached dwelling or located in an accessory building on the same owner-occupied property as the principal single-family detached dwelling. Prior to the application for a use permit, the Declaration of Understanding must be approved by the Director, and include all conditions and restrictions as determined by either the Director or the Administrative Law Judge after a public hearing. A copy of the executed Declaration of Understanding, with liber and folio noted, must be submitted to the Department prior to issuance of the use permit.

Be aware that this guide is for zoning review information only and it is not intended as legal advice. The applicant is responsible for the accuracy of all information filed with Baltimore County.

**** Zoning Forms and Checklists are available from the Zoning Counter or Online at:**
http://www.baltimorecountymd.gov/Agencies/permits/pdm_zoning/zonforms.html

SECTION 101.1 DEFINITIONS

ACCESSORY APARTMENT – A SECOND LIVING QUARTER WITHIN A PRINCIPAL SINGLE-FAMILY DETACHED DWELLING OR WITHIN AN ACCESSORY BUILDING SITUATED ON THE SAME LOT AS THE PRINCIPAL SINGLE-FAMILY DETACHED DWELLING AND IN COMPLIANCE WITH SECTION 400, WITH DEDICATED BATHING AND COOKING FACILITIES, AND LOCATED ON OWNER-OCCUPIED PROPERTY, SUBJECT TO THE FOLLOWING:

(A) THE OWNER MAY OCCUPY EITHER THE PRINCIPAL DWELLING OR THE ACCESSORY APARTMENT;

(B) THE OCCUPANT(S) OF THE ACCESSORY APARTMENT AND THE OCCUPANT(S) OF THE PRINCIPAL SINGLE FAMILY DETACHED DWELLING SHALL BE IMMEDIATE FAMILY, RELATED AS GRANDPARENTS, PARENTS, OR PARENTS' CHILDREN BY BLOOD, MARRIAGE OR ADOPTION;

(C) THE ACCESSORY APARTMENT IS PROVIDED WITHOUT COMPENSATION; AND

(D) THE ACCESSORY APARTMENT, WHETHER LOCATED WITHIN THE PRINCIPAL DWELLING OR IN THE ACCESSORY BUILDING, SHALL COMPLY WITH ALL LAWS, REGULATIONS, AND CODES AFFECTING RESIDENTIAL OCCUPANCY.

SECTION 400.4 ACCESSORY APARTMENT.

AN ACCESSORY APARTMENT IS PERMITTED AS A TEMPORARY USE WITHIN A PRINCIPAL SINGLE-FAMILY DETACHED DWELLING OR WITHIN AN ACCESSORY BUILDING SITUATED ON THE SAME OWNER-OCCUPIED LOT AS THE PRINCIPAL DWELLING IN ANY ZONE THAT PERMITS SINGLE-FAMILY DWELLINGS, SUBJECT TO THE FOLLOWING REQUIREMENTS:

A. IF LOCATED WITHIN AN EXISTING SINGLE-FAMILY DETACHED DWELLING:

1. AN APPLICANT SHALL FILE WITH THE DEPARTMENT OF PERMITS, APPROVALS AND INSPECTIONS AN APPLICATION FOR A USE PERMIT FOR AN ACCESSORY APARTMENT, ON A FORM APPROVED BY THE DEPARTMENT. WITH THE APPLICATION, THE APPLICANT SHALL SUBMIT A DECLARATION OF UNDERSTANDING, ON A FORM APPROVED BY THE DEPARTMENT, INCLUDING BUT NOT NECESSARILY LIMITED TO THE FOLLOWING TERMS AND CONDITIONS:

A. THE SIZE OF THE ACCESSORY APARTMENT MAY NOT EXCEED ONE THIRD OF THE OVERALL FLOOR AREA OF THE DWELLING OR 2,000 SQUARE FEET, WHICHEVER IS LESS;

B. ANY AND ALL IMPROVEMENTS TO BE DEDICATED AS AN ACCESSORY APARTMENT SHALL BE USED SOLELY AS A SINGLE-FAMILY RESIDENCE; AND

C. THE ACCESSORY APARTMENT MAY NOT HAVE SEPARATE UTILITY METERS, SUCH AS GAS AND ELECTRIC SERVICE.

2. THE DIRECTOR MAY APPROVE THE APPLICATION UPON A FINDING THAT THE SIZE, LOCATION, AND PURPOSE OF THE ACCESSORY STRUCTURE WILL NOT NEGATIVELY AFFECT THE HEALTH, SAFETY, OR GENERAL WELFARE OF THE SURROUNDING COMMUNITY.

B. IF LOCATED WITHIN AN ACCESSORY BUILDING ON THE SAME OWNER-OCCUPIED PROPERTY AS THE PRINCIPAL SINGLE-FAMILY DETACHED DWELLING:

1. AN APPLICANT SHALL FILE A REQUEST FOR SPECIAL HEARING AND USE PERMIT WITH THE DEPARTMENT, TOGETHER WITH A DECLARATION OF UNDERSTANDING AS REQUIRED BY SUBSECTION A.1 OF THIS SECTION AND A PUBLIC HEARING BEFORE THE OFFICE OF ADMINISTRATIVE HEARINGS IS REQUIRED.

2. THE SIZE OF THE ACCESSORY APARTMENT MAY NOT EXCEED 1,200 SQUARE FEET, AND THE ACCESSORY BUILDING SHALL COMPLY WITH THE REQUIREMENTS OF SECTION 400.

3. FOLLOWING A PUBLIC HEARING, THE OFFICE OF ADMINISTRATIVE HEARINGS MAY GRANT A REQUEST UPON A FINDING THAT THE SIZE, LOCATION, AND PURPOSE OF THE ACCESSORY APARTMENT CONFORMS WITH SECTION 502.1. AND MAY IMPOSE SUCH CONDITIONS, RESTRICTIONS OR REGULATIONS CONSISTENT WITH SECTION 502.2 AS MAY BE DEEMED NECESSARY OR ADVISABLE FOR THE PROTECTION OF SURROUNDING AND NEIGHBORING PROPERTIES, INCLUDING THE EXPRESS PROHIBITION THAT THE ACCESSORY APARTMENT NOT BE CONVERTED TO A SECOND DWELLING BEYOND THE SCOPE OF THIS SECTION.

4. THE ACCESSORY APARTMENT MAY NOT HAVE SEPARATE UTILITY METERS OR WATER AND SEWERAGE SERVICES UNLESS APPROVED BY THE OFFICE OF ADMINISTRATIVE HEARINGS BASED ON SPECIFIC FINDINGS OF NECESSITY FOR THE ACCESSORY BUILDING.

Bill No 49-11 Section excerpts as applied to a use permit and or special hearing application:

C. APPROVAL; RENEWAL.

1. APPROVAL. THE APPROVAL OF AN APPLICATION FOR USE PERMIT IN SUBSECTION A. OR REQUEST FOR SPECIAL HEARING AND USE PERMIT IN SUBSECTION B. SHALL BE SUBJECT TO THE FOLLOWING:

A. THE DECLARATION OF UNDERSTANDING AND PROPERTY DESCRIPTION, INCLUDING ANY CONDITIONS, RESTRICTIONS, OR REGULATIONS IMPOSED BY THE DEPARTMENT OR THE OFFICE OF ADMINISTRATIVE HEARINGS, SHALL BE RECORDED IN THE LAND RECORDS OF BALTIMORE COUNTY AND A COPY FILED WITH THE DEPARTMENT; AND

B. THE ACCESSORY APARTMENT SHALL ONLY BE UTILIZED BY IMMEDIATE FAMILY MEMBERS AS DEFINED IN SECTION 101 AND MAY NOT BE USED BY ANY PERSON OTHER THAN AN IMMEDIATE FAMILY MEMBER FOR ANY OTHER REASON.

C. IF THE ACCESSORY APARTMENT IS NO LONGER OCCUPIED BY ANY PERSON NAMED IN THE USE PERMIT OR IF THE PROPERTY IS SOLD, THE USE PERMIT SHALL TERMINATE, AND ANY PROPOSED CHANGES IN OCCUPANCY TO THE ACCESSORY APARTMENT BY THE PROPERTY OWNER OR SUBSEQUENT PURCHASER SHALL REQUIRE A NEW REQUEST FOR USE PERMIT AS APPLICABLE UNDER SUBSECTIONS A. OR B.

2. RENEWAL. THE APPLICANT SHALL RENEW THE USE PERMIT WITH THE DEPARTMENT EVERY TWO YEARS BY FILING A RENEWAL ON A FORM APPROVED BY THE DEPARTMENT, TO BE DATED FROM THE MONTH OF THE INITIAL APPROVAL, AND SHALL LIST THE NAME OF ANY PERSON OCCUPYING THE ACCESSORY APARTMENT.

ACCESSORY (In-law) APARTMENT FILING REQUIREMENTS

For an Accessory Apartment in an accessory building Special Hearing and temporary use permit:

1.) Provide the contents of the petition application as described on page 5 of the Single-Family Residential Hearing Checklist. ** Show Section 400 BCZR compliance regarding height, location, size and setbacks is of particular importance. The size of the accessory structure must clearly shown to be smaller than the footprint/area dimension of the principal dwelling. The accessory building size limit and or flood plain rules may restrict the Accessory Apartment building size to less than the allowed 1,200 square feet.

2.) Floor Plans: Areas, percentages, new as opposed to existing construction areas / dimensions, dedicated bathing and cooking facilities, etc., for the Apartment and accessory building are regulated. This information must be documented on engineer scale 1' = 10 ft. or 1" = 20 ft. use area/floor plans with all calculations and use area notes, and attached as a second plan sheet for the use permit or hearing plans. Separate utility meters or water and sewer service will require a specific request for findings of necessity, as part the special hearing.

3.) All plans and forms MUST be on 8 ½ x 11 inch paper. Plan notes must certify compliance with the definitions and Section 400 rules and limitations as stated in this guide. List the requirements that apply to your site verbatim on the plans and clearly address each to satisfy the regulations. Be certain to list all occupants and family relationships as limited and required in the regulations

4.) A completed Declaration of Understanding for ALJ review and Directors' signature upon order approval pursuant to Section 400.4.B.1. *Use the Sample with this form as a guide.*

ACCESSORY (In-law) APARTMENT FILING REQUIREMENTS

(CONTINUED)

For an Accessory Apartment in an existing single family detached dwelling temporary use permit:

- 1.) A set of 6 site plans using the Single-Family Residential Lot Checklist** site plan sample and requirements as a guide.
- 2.) Floor Plans: Areas, percentages, new as opposed to existing construction areas / dimensions, dedicated bathing and cooking facilities, etc. This information must be documented on engineer scale 1' = 10 ft. or 1" = 20 ft. use area/floor plans with all calculations and use area notes, and attached as a second plan sheet for the use permit or hearing plans. Note that the apartment will not have separate utility meters.
- 3.) All plans and forms MUST be on 8 ½ x 11 inch paper. Plan notes must certify compliance with the definitions and Section 400 rules and limitations as stated in this guide. List the requirements that apply to your site verbatim on the plans and clearly address each to satisfy the regulations. Be certain to list all occupants and family relationships as limited and required in the regulations
- 4.) A completed and notarized Declaration of Understanding. *Use the Sample with this form as a guide.*

For both types of filing, the information on the plans and Declaration must agree. Other information or revisions may be needed as determined upon intake review.

DECLARATION OF UNDERSTANDING GUIDE FOR AN ACCESSORY (“In-law”) APARTMENT USE PERMIT

The following Declaration of Understanding is only a **sample**. Please draft your Declaration based on the particular circumstances on your site as adjusted to comply with the legislation under Bill Number 49-11 and the “ACCESSORY APARTMENT APPLICATION GUIDE” that accompanies this sample form. Though an attorney or an engineer/surveyor is not usually required for preparation of the use permit, or Individual Residential Lots, zoning hearing applications, you may wish to seek professional help at your own discretion. **Please be aware that this guide is for informational purposes only and it is not to be considered legal advice.**

- 1.) Please read and understand the entire Guide prior to preparing your Declaration of Understanding.
- 2.) Once you have determined the correct process for your application, prepare your Declaration of Understanding and your filing application and plans, etc. in accordance with this Application Guide.

11/08/11

SAMPLE DECLARATION - DO NOT COPY!

Notes in "italics" are instructions and are NOT part of the Declaration wording.

Revise as appropriate for your site

DECLARATION OF UNDERSTANDING

THIS DECLARATION OF UNDERSTANDING (hereinafter referred to as "Declaration") is made on this _____ day of _____ 20____, by and between _____ (hereinafter referred to as the "Declarant") and the Department of Permits, Approvals and Inspections (hereinafter referred to as "PAI").

Recitals

A. The Declarant(s) who is/are also the owner(s) of this property has/have filed an application for a use permit and special hearing to: *(add the special hearing only if in an accessory building) (clearly describe the proposed accessory apartment location in the existing buildings on the site and any new construction using as many lines as needed)*

The property being located at: _____ and is more particularly described by metes and bounds in **Exhibit A** (The Property) and **Exhibit B** (The use permit or hearing plans) attached hereto and made a part hereof. The property is zoned _____, which is the particular zone in which the property is located.

B. PAI (or) The Administrative Law Judge has approved the Declaration request to create an Accessory Apartment complete with dedicated bathing and cooking facilities, located on this owner-occupied property. The accessory apartment will be the housing for: _____ *(Name the occupant(s) of the apartment and the relationship in the immediate family.* The other residents of the property are: _____ *(list all residents with full names, their dwelling location in the building(s) and their relationship to the immediate family, in detail as required in Bill No. 49-11)* The use permit must be renewed with PAI every two years by filing a renewal on a PAI approved form, to be dated from the month of the initial approval.

C. As a condition of approval of the Declarant(s) request, Bill No. 49-11 requires the filing of this Declaration among the Land Records of Baltimore County, to provide notice to any future owners, subsequent bona fide purchasers or users of the Property that no part of any improvements or addition on the Property may be used for separate living quarters and that all such improvements shall only be used as a single-family residence, unless otherwise approved by and at the discretion of PIA.

SAMPLE

(SAMPLE-----) DECLARATIONS (-----SAMPLE)

NOW, THEREFORE, in consideration of the premises and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledge, the Declarant(s) and PIA hereby declare as follows:

1. Any and all improvements now existing or to be constructed on the Property shall be used only as a single-family residence. No such improvements or additions shall ever be used as a separate living quarter or second residential unit. The kitchen for the Accessory Apartment will be constructed as part of the Property and shall be accessory to the principal use of the Property as a single-family residence. The Accessory Apartment shall house only the immediate family member(s) listed in this Declaration and it is not to be used as an independent residential unit, nor is it to be used for compensation, and it shall not be used by any other person or for any other reason. The use permit and this Declaration are subject to the order, conditions or restrictions of any required zoning hearing. The hearing order is to be made part of this Declaration when it is recorded in Land Records.
2. Once the Accessory Apartment is no longer occupied by the persons named in this Declaration or if the property is sold, or the use permit has not been renewed within the 2 year temporary use permit time limit, the use permit shall terminate, and any proposed changes in occupancy to the Accessory Apartment by the property owner or subsequent purchaser shall require a new request for a use permit.
3. Upon use permit termination: *(Adjust this statement for the location of the Apartment)*
 - A. In the Accessory Apartment in the principal dwelling, use permit termination requires removal of the second kitchen and the former Accessory Apartment space to be occupied by the Declarant(s) or subsequent purchaser.
 - B. In the Accessory Apartment in the accessory building requires removal of the kitchen and possibly other residential elements, at the discretion of PAI.
 - C. The Declarant(s) upon termination of the use permit will provide written notification to PAI for the closing of the Department file.
5. The covenants, conditions, and restrictions stated above shall run with and bind the Property and shall be enforceable by Baltimore County, MD and by the owners of all or any portion of the Property.
6. Enforcement of the Covenants shall be by proceedings at law or in equity against any person or persons violating or attempting to violate any of the covenants, either to restrain the violation or to recover damages.

IN WITNESS WHEREOF, the parties hereto have duly executed this Declaration under seal on the date first above written.

WITNESS: _____

State of Maryland, County of Baltimore to wit:

I HEREBY CERTIFY that on this _____ day of 20____, before the Subscriber, a Notary Public of State of Maryland, personally appeared

The declarant(s) herein, who is/are also the owner(s) of this property, known to me (or satisfactorily proven) to be the person(s) whose name(s) is/are subscribed to the within instrument, and who acknowledged that he/she/they executed for the foregoing instrument for the purposes therein contained.

IN WITNESS WHEREOF, have hereunto set my hand and Notarial Seal.

My Commission Expires:

Notary Public

FOR THE DECLARATION “EXHIBIT A”, USE THE PROPERTY DESCRIPTION FROM YOUR DEED (SIMILAR TO ONE OF THE SAMPLES SHOWN BELOW). FOLLOW ONLY ONE OF THESE SAMPLES AS A GUIDE:

TYPE 1 SAMPLE (When the Lot is located in a Recorded Subdivision):

EXHIBIT A

BEING KNOWN AND DESIGNATED as Parcel, B in Block C as shown on the Plat of Section 2-B, Forest Hills, which Plat is recorded among the Plat Records of Baltimore County in Plat Book R. R. G. No. 29, folio 57.

The improvements thereon being known as No. 2717 Lanamer Road.

BEING THE SAME lot of ground which by Deed dated July 10, 1979, and recorded among the Land Records of Baltimore County in Liber E. H. K., Jr. No. 6049, folio 577, was granted and conveyed by Yale Z. Smith and Sandra Smith, his wife, unto Arnold E. Jones and Lisa H. Jones, his wife, the Grantors herein.

OR

TYPE 2 SAMPLE (When the Lot is not located in a Recorded Subdivision):

EXHIBIT A

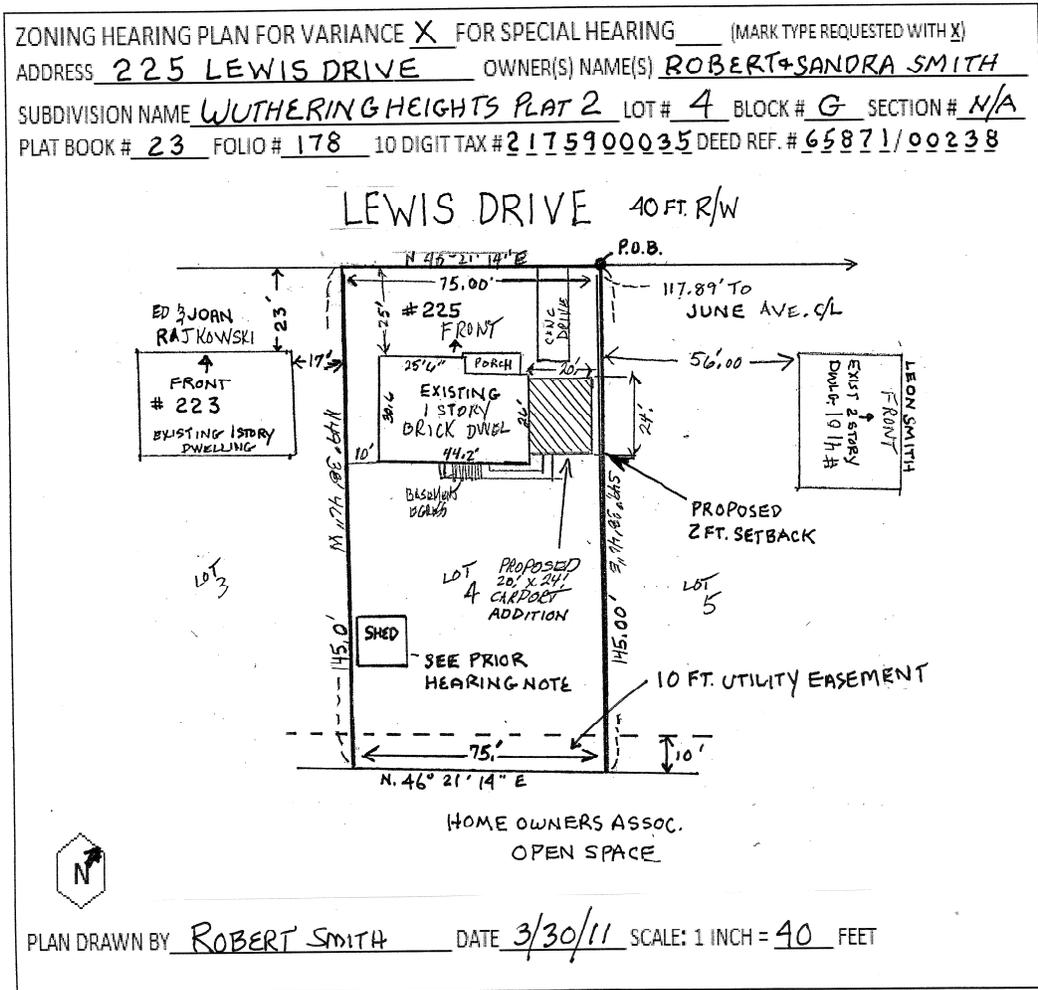
BEGINNING FOR THE SAME at a point on the north side of Forest Hill Road, as laid out 50 feet wide, said point being located north 44 degrees 15 minutes east 640 feet from the intersection formed by the north side of Forest Hill Road and the east side of Forest Dale Avenue and running thence with the courses of this description referred to the True Meridian North 45 degrees 45 minutes west 145 feet, thence north 44 degrees 15 minutes east 55 feet, thence south 45 degrees 45 minutes east 145 feet to the north side of Forest Hill Road, thence binding on the north side of said road, south 44 degrees 15 min minutes west 55 feet to the place of beginning.

The improvements being known as 3674 Forest Hill Road.

BEING THE SAME lot of ground which by Deed dated June 19, 1979 and recorded among the Land Records of Baltimore County at Liber O.T.G. 5104, Folio 185, was granted and conveyed by Robert D. Smith and Katherine M. Smith, his wife, unto Arnold E. Jones and Lisa H. Jones, his wife, the Grantors herein.

DECLARATION EXHIBIT B

AND USE PERMIT SITE PLAN. EXAMPLE (FROM THE RESIDENTIAL HEARING CHECKLIST) FOR AN ACCESSORY APARTMENT IN A SINGLE FAMILY RESIDENCE THIS WILL BE THE SITE PLAN FOR THE USE PERMIT FILING REVIEW. ALL SHEETS MUST BE 8 1/2 X 11 INCHES AND KEPT AT THE HEARING CHECKLIST REQUIRED ENGINEERS SCALE. (FOR THE ACCESSORY APARTMENT IN AN ACCESSORY STRUCTURE SEE ** BELOW)



SITE VICINITY MAP
 LIBERTY RD. JUNE AVE. LEWIS DR. SITE

N
 MAP IS NOT TO SCALE
 ZONING MAP# 108C1
 SITE ZONED DR 5.5
 ELECTION DISTRICT 1st
 COUNCIL DISTRICT 13TH
 LOT AREA ACREAGE 0.249
 OR SQUARE FEET 10,875
 HISTORIC? NO
 IN CBCA? NO
 IN FLOOD PLAIN? NO
 UTILITIES? MARK WITH X
 WATER IS: PUBLIC X PRIVATE _____
 SEWER IS: PUBLIC X PRIVATE _____
 PRIOR HEARING? YES
 IF SO GIVE CASE NUMBER AND ORDER RESULT BELOW
2009-0327-A
VARIANCE GRANTED
FOR 1 FT. SHED SETBACK

ADDITIONAL INSTRUCTIONS FOR THE USE PERMIT PLAN FILING DECLARATION

- 1) USE THE RESIDENTIAL ZONING HEARING SITE PLAN EXAMPLE WITH THE HEARING PLAN REQUIREMENTS AS A BASE FOR THE SITE PLAN. ADJUST AS NEEDED.
- 2) ADD DWELLING FLOOR PLANS SHEET(S) SCALED AT 1"=10 FT. OR 1'=20 FT. SHOWING EACH ROOM AND USE, THE SQUARE FOOTAGE OF THE DWELLING AND THE ACCESSORY APARTMENT, ALONG WITH THE PERCENTAGE AND SQUARE FT. LIMITS.

**

IN AN ACCESSORY STRUCTURE; USE THE PLAN FOR THE RESIDENTIAL ZONING HEARING AND REPLACE NUMBER 2 (ABOVE) INFORMATION AS FOLLOWS:

ADD THE ACCESSORY STRUCTURE AND ACCESSORY APARTMENT FLOOR PLANS SHEET(S) SCALED AT 1"=10 FT. OR 1'=20 FT. SHOW EACH ROOM AND USE, THE SQUARE FOOTAGE OF THE ACCESSORY STRUCTURE AND THE ACCESSORY APARTMENT. THIS SITE PLAN INFORMATION SHOULD BE THE SAME AS FILED FOR THE ZONING HEARING.

FOR EITHER USE, ALSO SEE THE FLOOR PLAN REQUIREMENTS ON PAGE 4 OF THE ACCOMPANYING CHECKLIST. NOTE THAT SEPARATE METERS ETC. ARE NOT PROPOSED. SEE THIS CHECKLIST FOR FULL DETAILS ON THE CORRECT NOTE.



The Declaration of Understanding for the Accessory Apartment at:

Address of property

is approved: _____
Arnold Jablon, Director-PAI

Date