



APPLICATION ACCEPTED: June 29, 2007
BOARD OF ZONING APPEALS: October 30, 2007
MOVED AT APPLICANT'S REQUEST
TIME: 9:00 a.m.

County of Fairfax, Virginia

October 23, 2007

STAFF REPORT

SPECIAL PERMIT APPLICATION VC 2007-MV-002

MOUNT VERNON DISTRICT

APPLICANT:	NV Homes
ZONING:	R-1
LOCATION:	9199 Marovelli Forest Drive
ZONING ORDINANCE PROVISION:	18-401
TAX MAP:	106-4 ((07)) 24, Outlot E
LOT SIZE:	1.35 acres
PLAN MAP:	Residential
VC PROPOSAL:	To permit an individual sewage disposal system to be located on a separate lot from the principal use.

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

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

N:/varga/sp/NVHomes/cover

Department of Planning and Zoning
Zoning Evaluation Division
12055 Government Center Parkway, Suite 801
Fairfax, Virginia 22035-5509
Phone 703 324-1290
FAX 703 324-3924
www.fairfaxcounty.gov/dpz/

Excellence * Innovation * Stewardship
Integrity * Teamwork * Public Service

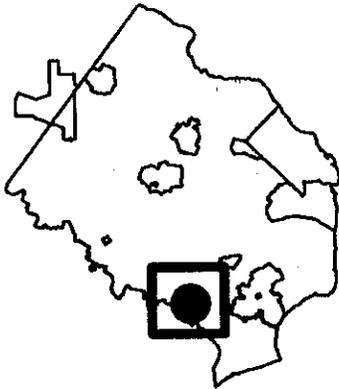
For additional information, call Zoning Evaluation Division, Department of Planning and Zoning at 324-1280, 12055 Government Center Parkway, Suite 801, Fairfax, Virginia 22035. **Board of Zoning Appeals' meetings are held in the Board Room, Ground Level, Government Center Building, 12000 Government Center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



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

Variance Application

VC 2007-MV-002



Applicant: NV HOMES
Accepted: 06/29/2007
Proposed: TO PERMIT AN INDIVIDUAL SEWAGE DISPOSAL SYSTEM TO BE LOCATED ON A SEPARATE LOT FROM THE PRINCIPAL USE

Area: 1.35 AC OF LAND; DISTRICT - MOUNT VERNON

Zoning Dist Sect: 18-0401 02-0503

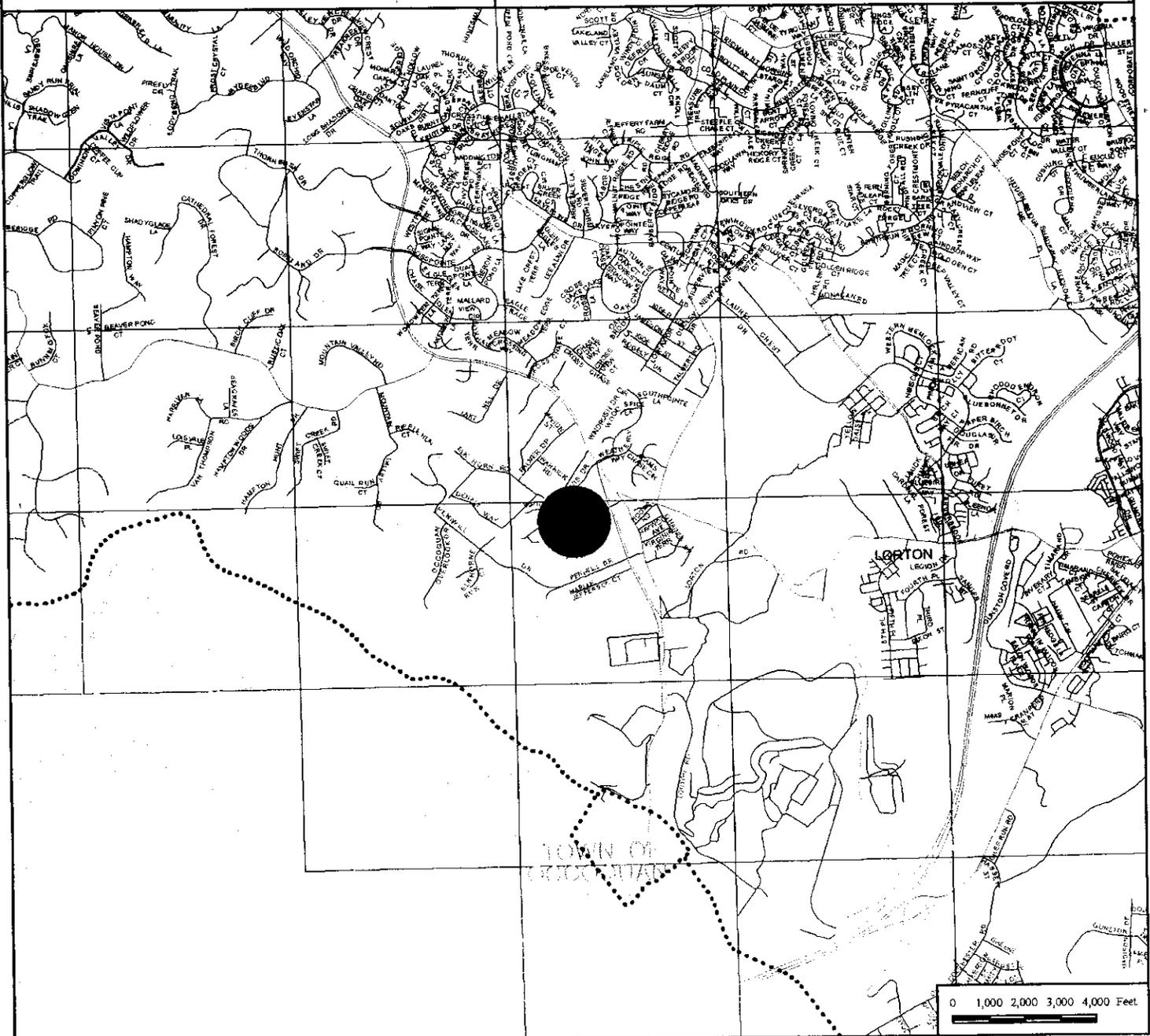
Paragraph: 1 /2

Located: 9199 MAROVELLI FOREST DRIVE

Zoning: R-1

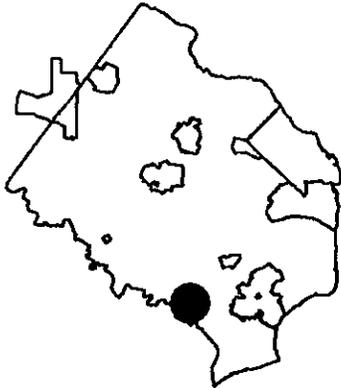
Overlay Dist:

Map Ref Num: 106-4 /07/ / E Pt. /07/ /0024



Variance Application

VC 2007-MV-002



Applicant: NV HOMES
Accepted: 06/29/2007
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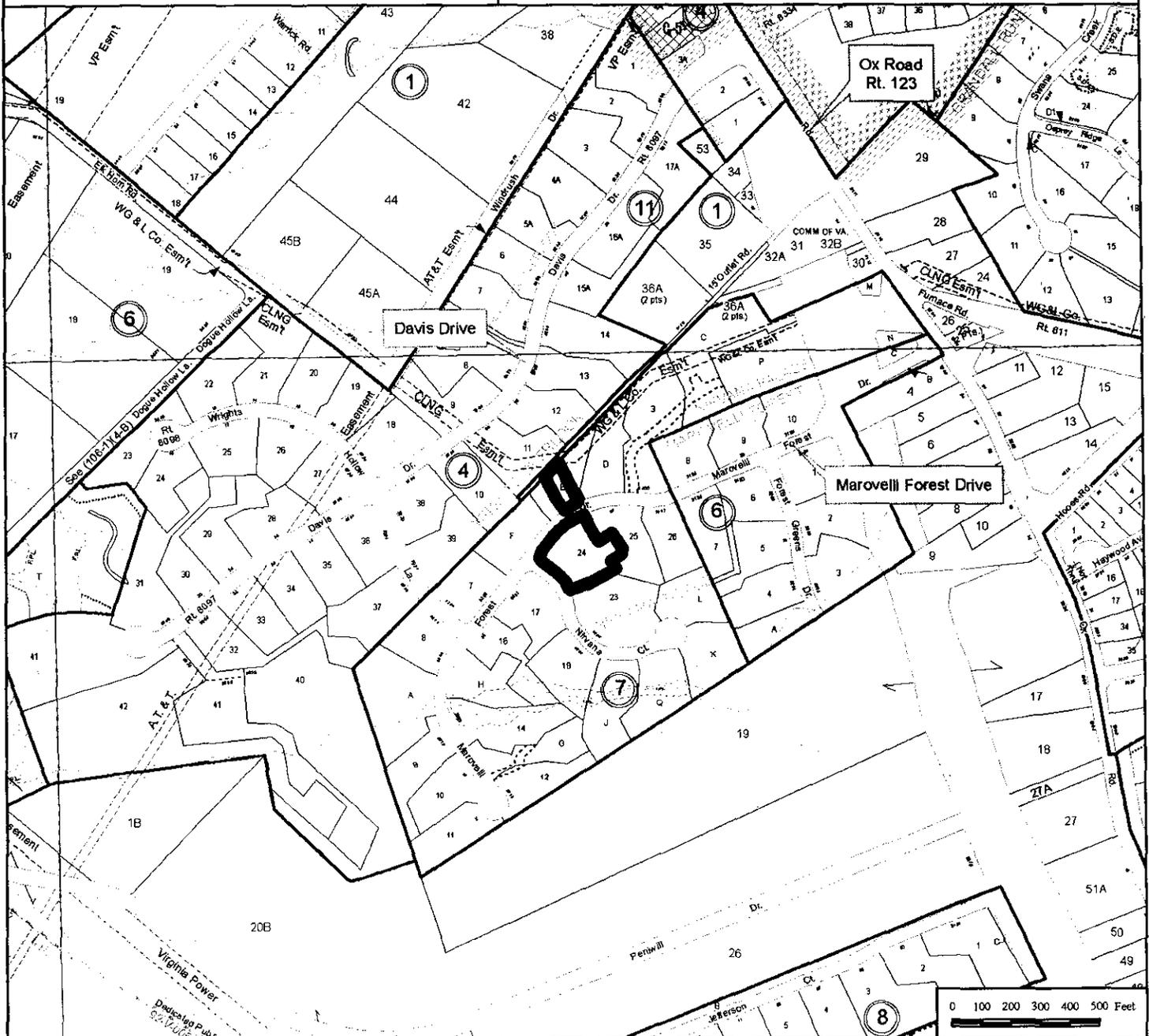
Paragraph: 1 /2

Located: 9199 MAROVELLI FOREST DRIVE

Zoning: R-1

Overlay Dist:

Map Ref Num: 106-4- /07/ / E Pt. /07/ /0024



**Nirvana Palace Lot 24
9199 Marovelli Forest Drive**



Photo 1: Looking Northeast Towards the Front of the House from Nirvana Court



Photo 2: Looking South Towards the Side of the House from Marovelli Forest Drive

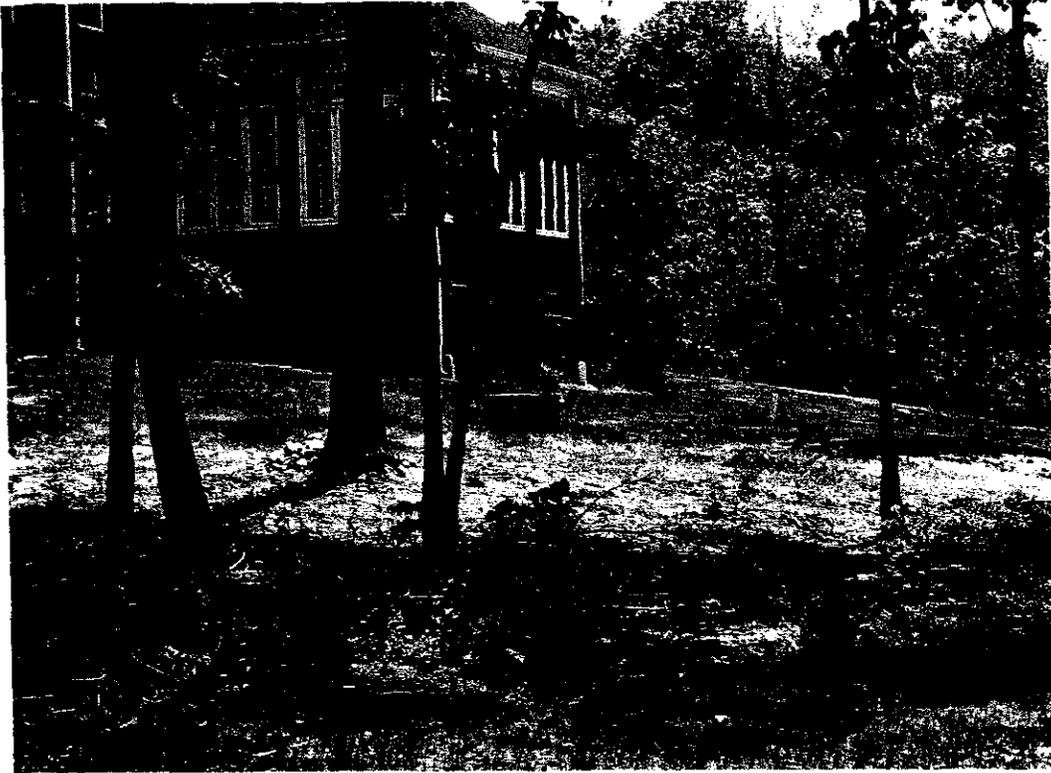


Photo 9: Un-Permitted Well on Lot 23



Photo 10: Looking North from Marovelli Forest Drive onto Proposed "Part of Lot 24" Where New Septic Field Proposed

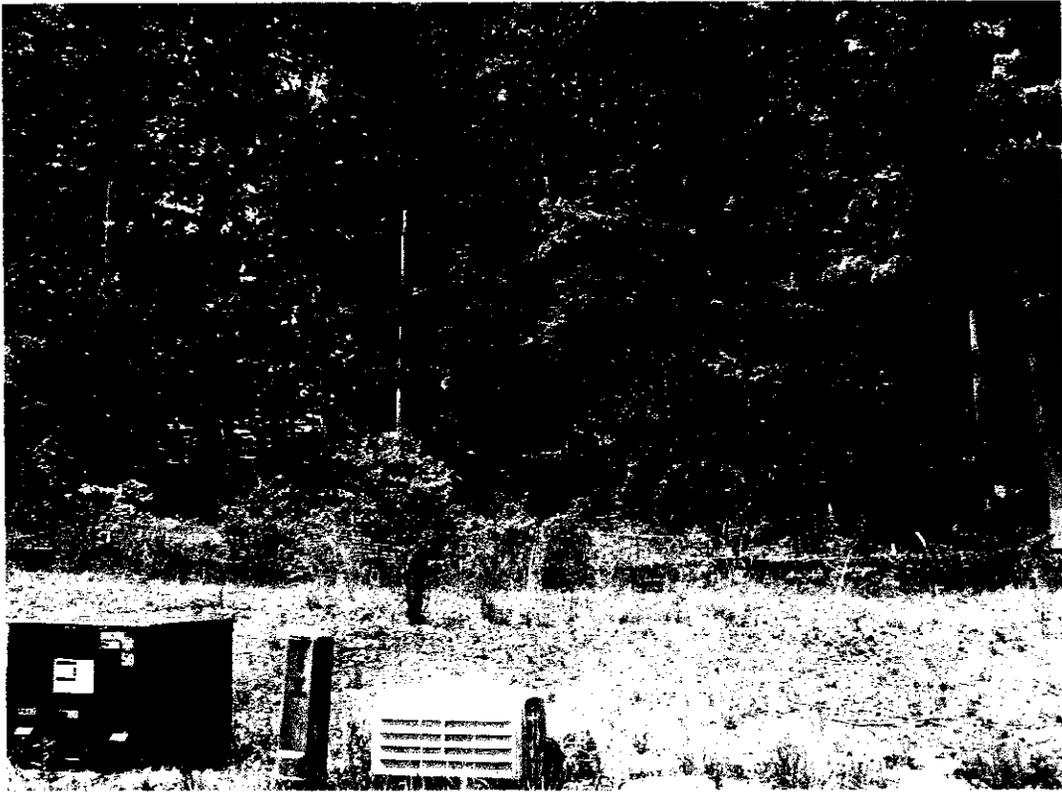


Photo 11: Looking North from Marovelli Forest Drive onto Proposed "Part of Lot 24" Where New Septic Field Proposed



Photo 5: Looking Southeast Towards the Rear of the House from Marovelli Forest Drive



Photo 6: Looking Northeast Towards the Rear of the Property from Nirvana Court



Photo 7: Looking North Towards the Rear of the Property on the Northeast Side Yard. This is the Area of the Approved/Failed Septic Field.



Photo 8: Looking North Towards the Rear of the Property, West of the Approved/Failed Septic Field. Note Excessive Water.

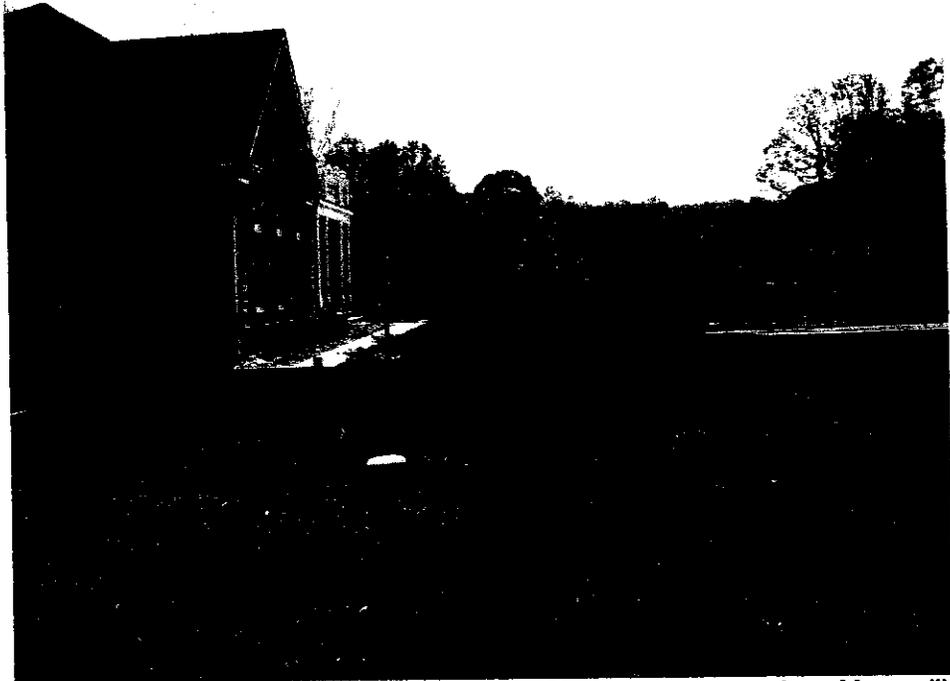


Photo 3: Looking Southwest Towards the Side and Front of the House from Marovelli Forest Drive



Photo 4: Looking Northeast Towards the Side of the House from Nirvana Court

DESCRIPTION OF THE APPLICATION

Variance Request: To permit an individual sewage disposal system to be located on a separate lot from the principal use.

Waivers and Modifications Requested: None

LOCATION AND CHARACTER OF THE AREA

Site Description and Use: The application property consists of two non-contiguous lots: Lot 24 is 40,304 square feet and contains a dwelling; The future Outlot E, located across Marovelli Forest Drive from Lot 24, is 18,621 square feet, and is currently undeveloped with a few evergreens and small deciduous trees. Adjacent properties in the Nirvana Palace Subdivision contain single family detached dwellings.

Surrounding Area Description:

Direction	Use	Zoning	Plan
North	Single Family Detached Dwellings	R-1	1 du/ac
South	Single Family Detached Dwellings	R-1	1 du/ac
East	Single Family Detached Dwellings	R-1	1 du/ac
West	Single Family Detached Dwellings	R-1	1 du/ac

BACKGROUND**Site History:**

- On April 1, 2002, the Nirvana Palace Preliminary Plat (1100-PL-002-1) was approved for 26 lots at an approved density of .89 dwelling units per acre.
- Nirvana Palace Preliminary Plate Re-Date: March 1, 2007
- On February 9, 2004, the Nirvana Palace Subdivision Plan (1100-SD-001-2) was approved with an approved septic field on Lot 24.
- On June 18, 2004, the Nirvana Palace Record Plat was approved (1100-RP-001-3). The plat was recorded June 25, 2004 in Deed Book 16206 on Page 132.
- On April 28, 2005, the grading plan was approved for Lot 24.
- On May 16, 2005, NVR, Inc. acquired Lot 24.

- In July 2005, construction commenced on the dwelling on Lot 24.

Subsequent to construction of the dwelling on the subject property in the summer of 2005, the applicants contacted the Fairfax County Health Department to obtain a permit to construct the septic field for the subject property, previously approved on the aforementioned grading plan. Upon completion of an on-site review, the Health Department determined that the approved septic field could not be constructed due to changes in the subsurface soil conditions. As a result, the Health Department rescinded their approval.

Subsequently, the applicant's soil engineer completed additional testing slightly uphill from the previous septic field to locate a new field on the subject property. A revised septic field design was submitted and approved by the Health Department on February 1, 2006. The Applicants contacted the Health Department again for a permit to construct the newly designed field. Once again, after an on-site review by the Health Department, the permit could not be issued for similar concerns. The area would have been suitable for a reserve field, but not for an active field, as determined by the Health Department. The dwelling had been completed at this point and was ready for occupancy except for completion of the septic system. A sales contract for Lot 24 and the constructed home had been pending for almost a year.

The applicant reviewed alternative locations for a septic field; however by this time, dwellings had been constructed on adjacent Lots 23 and 25 located on either side of the subject property. Therefore, options to relocate a septic field were limited. The applicant approached the owners of Lot 25 to determine if a Boundary Line Adjustment could be performed to locate a septic field for the subject property closer to Marovelli Forest Drive. According to the applicant, the owners of Lot 25 originally agreed, but decided not to participate prior to finalizing the agreement.

The applicant could not locate a field closer to Lot 23 due to the installation of a well on this property, despite the availability of public water. According to the applicant, the installation of the well occurred without proper permitting.

The Nirvana Palace Subdivision, including the subject property, is located outside of the Sanitary Sewer Service Area; therefore a septic field is the only option of providing a method of sewage disposal.

COMPREHENSIVE PLAN PROVISIONS

Plan Area: Pohick, Area III
Planning Sector: Dominion (P5)
Plan Map: Residential, 2-3 du/ac

ANALYSIS

Variance Permit Plat (Copy at front of staff report)

Title of VC Plat: Variance Plat, Nirvana Palace, Phase I, Lot 24 and Outlot E
Prepared By: Matthew T. Marshall

Dated: May, 2007, as revised through September 20, 2007

Proposed Use:

The applicant is seeking approval of a variance to the provisions of Sect. 2-503 of the Zoning Ordinance, which requires that septic fields and waste disposal systems be on the same lot as the dwelling that they serve, to permit Lot 24 to be served by a septic system located on proposed Outlot E, located across Marovelli Forest Drive.

The individual sewage disposal system proposed is a Puraflo system and will be located in the rear portion of the 18,621 square foot lot designated Outlot E. Outlot E will be formed from the subdivision of existing Lot E. The applicant has indicated that the Puraflo system will be screened by evergreens so that it is inconspicuous to surrounding dwellings. The proposal also necessitates the installation of an approximately 75 foot long private forcemain beneath Marovelli Forest Drive leading from Lot 24 to the approved septic field location at the rear of the future Outlot E.

Health Department Analysis

Issue: Location of Adequate Septic Field

The applicant received a letter from the Health Department, dated September 17, 2007 which documents the process of evaluation undertaken by the Health Department in determining that Lot 24 cannot support an adequate septic field, and in locating an adequate septic field in an alternate location. Staff from the Health Department indicates that Lot 24 was evaluated by the Health Department staff to determine the suitability for an onsite sewage disposal system on September 13, 2002. It was determined by that evaluation that although the proposed area was limited because of topographical features, the soils met the requirements for testing and that a percolation test could be conducted as required by Fairfax County.

Prior to issuing the construction permit to install the onsite sewage disposal system it was witnessed by the Health Department staff that the lot was holding a lot of drainage water directly below the lower corners of the proposed drainfield. The Health Department determined that the proposed drainfield was not sufficient enough to meet the stand off requirements for installing an onsite sewage disposal above the water table at the current proposed installation depth.

Resolution

Once it was determined that Lot 24 would no longer support an onsite sewage disposal system that met the requirements, the applicants proposed an alternative site to serve this lot. Soil evaluations and testing were conducted on additional lots. The determination of the Health Department was that the best solution was to locate the septic field on future Outlot E. Therefore, this issue has been resolved.

The letter from the Health Department is included in Appendix 4.

Transportation Analysis (Appendix 5)

Issue: Permit for a private forcemain

Early in the application process, the applicant was informed by the Virginia Department of Transportation (VDOT) that a permit would be required to allow the private forcemain in the public right-of-way. In order for the septic field to be located on Outlot E, it was determined that the forcemain will have to be installed under Marovelli Forest Drive, which is a public street. Staff determined that the applicant needed to secure permission from VDOT to install the forcemain beneath Marovelli Forest Drive.

Resolution

The applicant worked in close contact with VDOT regarding the application process to gain approval for the construction of this pipe. The applicant secured a letter from VDOT dated October 17, 2007, which allows the installation of a private forcemain under the roadway. The letter indicates that, with adoption of the "terms" listed, the proposed application would not create any significant additional impacts on the surrounding public street system. A development condition has been incorporated to ensure that the applicant fulfills these terms. This issue has been resolved.

The letter from VDOT is included in Appendix 6.

ZONING ORDINANCE REQUIREMENTS

The application meets all of the following standards, copies of which are attached as Appendix 7:

- Sect. 18-404, Required Standards for Variances

CONCLUSION

If it is the intent of the BZA to approve this application, the BZA should condition its approval by requiring conformance with the conditions set forth in Appendix 1 of this report, Proposed Development Conditions.

The approval of this 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 Development Conditions
2. Applicants' Affidavit
3. Applicants' Statement of Justification
4. Health Department Letter
5. Transportation Analysis
6. VDOT letter
7. Applicable Zoning Ordinance Provisions

PROPOSED DEVELOPMENT CONDITIONS

October 23, 2007

If it is the intent of the Board of Zoning Appeals to approve VC 2007-MV-002 located at Tax Map 106-4 ((07)) 24, future Outlot E to permit an individual sewage disposal system to be located on a separate lot from the principal use pursuant to Sect. 18-401 of the Fairfax County Zoning Ordinance, staff recommends that the Board condition the approval by requiring conformance with the following development conditions.

1. This variance is approved for an individual sewage disposal system for Lot 24 to be located on the proposed Outlot E, as shown on the plat prepared by Matthew T. Marshall, dated June, 2007. All development shall be in conformance with this plat as qualified by these development conditions. These conditions shall be recorded among the land records of Fairfax County for this lot. A certified copy of the recordation shall be provided to DPWES prior to issuance of the grading plan for proposed Outlot E.
2. The deed of title to proposed Outlot E shall be conveyed to the new ownership only with the deed of title to Lot 24. The title owner of Lot 24 shall be prohibited from conveying title to Lot 24 without conveying title to Outlot E containing the septic system. All sales contracts associated with the subject property shall contain a disclosure of the location of the septic filed on a separate lot and shall state that transfer of ownership of Lot 24 shall require transfer of ownership of Outlot E. Such disclosure shall also contain a written statement notifying all prospective owners of the maintenance requirements associated with the Puraflo system, as set forth in the manufacturers' guidelines that shall be attached to the sales contract.
3. Prior to grading plan approval for the installation of the septic system, a Hold Harmless agreement shall be executed with the County for all adverse effects which may arise as a result of the location of a septic field on a lot separate from the dwelling it serves.
4. Prior to any land disturbing activity, both a grading plan and a tree preservation plan showing the improvements on proposed Outlot E shall be submitted to the Department of Public Works and Environmental Services (DPWES), including Urban Forest Management (UFM), for review and approval. The plan shall depict preservation of trees, to the extent possible, as determined feasible by the Urban Forester, and the limits of clearing and grading which protect the trees. Prior to any land disturbing activities for construction, if deemed necessary by the Urban Forester, a pre-construction conference shall be held on site between DPWES and representatives of the applicant to include the construction site superintendent responsible for on-site construction activities for the purpose of discussing the limits of clearing and grading, areas of tree preservation and the erosion and sedimentation control plan to be implemented during construction. The limits of clearing and grading shall be strictly adhered to.
5. Prior to any land disturbing activities for Outlot E, a landscaping plan shall be submitted to DPWES, including Urban Forest Management, to show the provision of additional vegetation to be planted around the perimeter of the

septic system with the intent of providing additional screening of the system. Type, size and number of plantings shall be determined in consultation with Urban Forest Management.

6. The installation of the forcemain beneath Marovelli Forest Drive shall meet all specifications, standards and maintenance requirements, as determined by the Fairfax County Department of Transportation (DOT) and the Virginia Department of Transportation (VDOT).
7. Notwithstanding what is depicted on the plat, no other structures or uses, including driveways shall be located on Outlot E.

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. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval construction on the dwelling has commenced and been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

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

SPECIAL PERMIT/VARIANCE AFFIDAVIT

DATE: June 20, 2007
 (enter date affidavit is notarized)

I, Kelly M. Atkinson, 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 96092a

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)
NVR, Inc.	11700 Plaza America Drive, Suite 500 Reston, VA 20190	Title Owner of TM 106-4((7)) 24
Park View, LP John C. Pyles C. Wayne Caples	1101 Mercantile Lane, Suite 122 Largo, MD 20774	Title Owner of TM 106-4((7)) E Agent/Title Owner of TM 106-4((7)) E Agent/Title Owner of TM 106-4((7)) E
NV Homes Gerald P. Johnson Theodore A. Herbert	3130 Fairview Park Drive, Suite 100 Falls Church, VA 22042	Applicant/Agent for Contract Purchaser Agent for Applicant Agent for Applicant
Land Design Consultants, Inc. Matthew T. Marshall Kelly M. Atkinson	9401 Centreville Road, Suite 300 Manassas, VA 20110	Agent for Applicant Agent for Applicant Agent for Applicant

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

* In the case of a condominium, the title owner, contract purchaser, or lessee of 10% or more of the units in the condominium.

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

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

Page 1 of 1

Special Permit/Variance Attachment to Par. 1(a)

DATE: June 20, 2007
(enter date affidavit is notarized)

96092a

(NOTE: All relationships to the application are to 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)
Sack, Harris & Martin, PC Keith C. Martin	8270 Greensboro Drive, Suite 810 McLean, VA 22102	Attorney/Agent for Applicant Attorney/Agent
Dr. Hossein Khorashadi Dr. Kimberly E. Khorashadi	8209 Stationhouse Court Lorton, VA 22079	Contract Purchaser for TM 106-4((7)) 24 Contract Purchaser for TM 106-4((7)) 24

(check if applicable)

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

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

Page 1 of 2

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

DATE: June 20, 2007
(enter date affidavit is notarized)

96092a

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

NV Homes
3130 Fairview Park Drive, Suite 100
Falls Church, VA 22042

DESCRIPTION OF CORPORATION: (check one statement)

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

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

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

Sack, Harris & Martin, PC
8270 Greensboro Drive, Suite 810
McLean, VA 22102

DESCRIPTION OF CORPORATION: (check one statement)

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

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

James M. Sack
Robert A. Harris, IV
Keith C. Martin

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

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

Page 2 of 2

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

DATE: June 20, 2007
(enter date affidavit is notarized)

96092a

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

Land Design Consultants, Inc.
9401 Centreville Road, Suite 300
Manassas, VA 20110

DESCRIPTION OF CORPORATION: (check one statement)

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

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

John L. Marshall
Matthew T. Marshall

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

Washington Management & Development Company, Inc.
1101 Mercantile Lane, Suite 122
Largo, MD 20774

DESCRIPTION OF CORPORATION: (check one statement)

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

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

Soo S. Park
Kong J. Park
John C. Pyles

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

Application No.(s): _____
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Page Three

SPECIAL PERMIT/VARIANCE AFFIDAVIT

DATE: June 20, 2007
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96092a

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)

Park View, LP
1101 Mercantile Lane, Suite 122
Largo, MD 20774

(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**)

Washington Management & Development
Company, Inc., General Partner

Soo S. Park, Limited Partner
Kong J. Park, Limited Partner
John C. Pyles, Limited Partner

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

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

Application No.(s): _____
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Page Four

SPECIAL PERMIT/VARIANCE AFFIDAVIT

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(enter date affidavit is notarized)

96092a

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: June 20, 2007
(enter date affidavit is notarized)

96092a

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.)

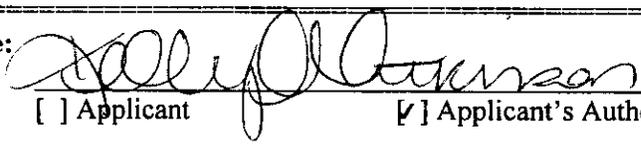
Land Design Consultants, Inc. and Supervisor Elaine McConnell have a business relationship; however, the business relationship is not related to any party to this application.

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

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

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

WITNESS the following signature:



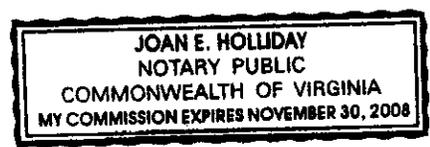
(check one) [] Applicant [x] Applicant's Authorized Agent

Kelly M. Atkinson
(type or print first name, middle initial, last name, and title of signee)

Subscribed and sworn to before me this 20 day of June 2007, in the ~~State~~/Comm. of Virginia, ~~County~~/City of Manassas.


Notary Public

My commission expires: 11/30/08





May 21, 2007
June 7, 2007 (Revised)

Ms. Barbara A. Byron, Director
Fairfax County Department of Planning and Zoning
12055 Government Center Parkway, Suite 801
Fairfax, VA 22035

Re: Statement of Justification
Nirvana Palace Subdivision, Parcel 24 and Outlot E
9199 Marovelli Forest Drive and No Address
Fairfax County Tax Map #106-4 ((7)) Parcel 24 and Outlot E, Zoned R-1
LDC Project #20123-1-0

Dear Ms. Byron:

Land Design Consultants, Inc. (LDC) represents the property owners, NVR, Inc. and Park View LP, and Applicant, NV Homes, in the filing of a variance application on Fairfax County Tax Map 106-4 ((7)) Parcel 24 and Outlot E of the Nirvana Palace subdivision. This variance application, filed under Section 18-401 of the Fairfax County Zoning Ordinance ("Ordinance"), is seeking relief from Section 2-503 of the Ordinance requiring a septic field be located on the same lot as the principal use. All other applicable Zoning Ordinance requirements are met by this application.

On April 11, 2007, LDC submitted a request for a determination to Ms. Lorrie Kirst, Zoning Administration Division, whether the septic field for Lot 24 ("subject property") in the Nirvana Palace Subdivision could be located across Marovelli Forest Drive, a public street, on an Outlot (part of Outlot E). This Outlot would be conveyed to Lot 24; therefore both lots would be under common ownership and combined for building permit purposes. A copy of this letter is also attached for your reference. In Ms. Kirst's response, dated April 13, 2007, the following was determined:

"It has been a longstanding interpretation of this office that individual lots may be consolidated into one lot, via the lot definition, provided the lots are contiguous. However, if the lots are separated by a road, it has been staff's position that they can not be consolidated into one lot as that is similar to transfer of development rights."

Ms. Kirst also went on to reference Section 2-503 of the Ordinance, which requires an individual sewage disposal system ("septic field") be located on the same lot as the principal use.

Based on further review of the Ordinance and similar conditions in the County, LDC and the Applicant have found numerous examples of lots separated by a street that have been approved by Fairfax County and meet the requirements of the Ordinance and are in spirit of the same. The lots in these examples also contain septic fields located across the street from the house or principal use. In addition, we believe there are additional circumstances surrounding this particular lot, which have caused an extremely undue hardship on the Applicants and future homeowner's and require additional consideration. An appeal of Ms. Kirst's April 13th letter was formally submitted for review on May 3rd and is being processed concurrently with this request. Based on further discussions with Staff, it was recommended that this request be submitted.

Appendix 3

RECEIVED
Department of Planning & Zoning
JUN 08 2007
Zoning Evaluation Division

Ms. Barbara A. Byron, Director
Fairfax County Department of Planning and Zoning
Re: Statement of Justification
Nirvana Palace Subdivision, Parcel 24 and Outlot E
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LDC Project #20123-1-0

May 21, 2007
June 7, 2007 (Revised)
Page 2 of 6

The following shall outline our justifications for this variance:

1. *The subject property was acquired in good faith.*

Please find below a timeline of the development of the Nirvana Palace Subdivision, specifically Lot 24:

- Nirvana Palace Preliminary Plat Approved (1100-PL-002-1): April 1, 2002. Established an approved density of .89 dwelling units per acre.
- Nirvana Palace Preliminary Plat Re-Date: March 1, 2007
- Nirvana Palace Subdivision Plan Approved and Approved Septic Field on Lot 24 (1100-SD-001-2): February 9, 2004
- Nirvana Palace Record Plat Approved (1100-RP-001-3): June 18, 2004. The plat was recorded June 25, 2004 in Deed Book 16206 at Page 132.
- Grading Plan Approved for Lot 24 with Septic Field Design by the Health Department and County: November 3, 2004
- Building Permit for Lot 24 Issued: April 28, 2005
- NVR, Inc. acquired Lot 24 in Deed Book 17284 at Page 1818: May 16, 2005
- House Constructed and Ready for Occupancy: July 2005

As you can see by the above referenced dates, the Applicants abided by all applicable rules and regulations and diligently worked to obtain a permit to construct and occupy a house on the subject property. The house on the subject property has been constructed in accordance with the approved subdivision plan, grading plan and building permit and was acquired by the owner in good faith based on these approvals and a contract placed on the home by a family anxious to move in due to an eminent childbirth.

Subsequent to construction of the house on the subject property and in the summer of 2005, the Applicants contacted the Fairfax County Health Department to obtain a permit to construct the septic field for the subject property, previously approved on the aforementioned grading plan. Upon completion of an on-site review with the Health Department, they determined that the approved septic field could not be constructed due to changes in the subsurface soil conditions. As a result, the Health Department rescinded their approval.

As a result, the Applicant's soil engineer completed additional testing slightly uphill of the previous field to locate a new field for the subject property. A revised septic field design was submitted and approved by the Health Department on February 1, 2006. The Applicants contacted the Health Department again for a permit to construct the newly designed field. Once again, after an on-site review by the Health Department, the permit could not be issued for similar concerns. Please note that both of the fields would have been suitable for a reserve field, but not for an active field, as determined by the Health Department. Please note that the house had been completed at this point.

Ms. Barbara A. Byron, Director
Fairfax County Department of Planning and Zoning
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Based on this information, the Applicants then reviewed alternative locations for a septic field; however by this time, houses had been constructed on adjacent Lots 23 and 25 located on either side of the subject property. Therefore options to relocate a septic field were limited. Regardless, the Applicants approached Lot 25 to determine if a Boundary Line Adjustment could be performed to locate a septic field for the subject property closer to Marovelli Forest Drive. Lot 25 originally agreed, but decided not to participate prior to finalizing the agreement. In regards to Lot 23, the Applicant could not locate a field closer to this lot due to the installation of a well on this property, despite the availability of public water. Please note that the installation of this well occurred without proper permitting. The Nirvana Palace Subdivision, including the subject property, is located outside of the Sanitary Sewer Service Area; therefore a septic field is the only option of providing a method of sewage disposal. As a result of all of these factors, the Applicant appeared to have exhausted all options for providing a septic field. Please note that by this time, the Health Department reviews and the negotiations with the adjacent neighbors had been completed and the house had been constructed with a pending sales contract for almost a year. Due to this unresolved issue, a Residential Use Permit (RUP) could not be issued.

- 2. That the subject property has at least one of the following characteristics: an extraordinary situation or condition of the subject property and an extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.*

The subject property has experienced extraordinary circumstances and conditions unique to only this lot. As previously stated, the Applicant constructed the house on the subject property in accordance with all applicable rules and regulations. Specifically, the Applicant constructed the house based on an approved grading plan, septic field location/design and building permit. The Applicant worked with the Health Department on numerous occasions to find a suitable location for the construction of the septic field. Each time a field location/design was approved, the approval was rescinded prior to issuance of a construction permit for the septic field. The Applicant exhausted all alternatives to locate a septic field on the same side of the street as the existing house. During the past seven months, the Applicants, LDC, the Health Department, and the Virginia Department of Transportation (VDOT) have worked together to find an appropriate solution to this problem. The general consensus was to locate a new septic field for the subject property, across Marovelli Forest Drive and on a separate outlot. A CE-7 permit would be required to permit the private forcemain in the public right-of-way, according to VDOT. This is the only option remaining to provide an adequate sewage disposal system for this house as all other options have been exhausted. In order to accommodate this septic field, the Applicants will be losing one buildable lot within the overall subdivision and the subsequent density will be reduced below that set forth by the approved preliminary plat.

The Applicant is also affected by an extraordinary situation on the adjacent lots, which contain existing houses. As previously stated, the Applicant attempted to work with the adjacent property owners to complete a boundary line adjustment in order to

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LDC Project #20123-1-0

May 21, 2007

June 7, 2007 (Revised)

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locate a suitable area for a septic field on these lots. However due to the desire of the adjacent homeowner and installation of an illegally permitted well, these are no longer viable options.

Due to this unusual condition, the Applicant is not able to obtain a Residential Use Permit (RUP) for this house, which has remained unoccupied for almost two years. During this time, the contract purchasers have had two children and maintain an earnest, almost anxious, desire to move in as soon as possible.

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 situation is not of a recurring nature and LDC and the Applicant were unable to foresee this situation. The Applicant proceeded with the construction of this house in accordance with an approved plans and permits. The Applicant has successfully obtained RUP's for adjacent lots in this subdivision, therefore this is situation is not recurring. Due to the unique circumstances surrounding this lot, LDC and the Applicants do not believe a precedent will be set beyond the original intent of the Ordinance.

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

The strict application of this Ordinance produces an undue hardship on the Applicant and contract purchaser. The Applicant in good faith diligently pursued approvals of all appropriate agencies and the issues associated with the subject property are unique and do not establish a precedent, which is in conflict with the spirit of the Ordinance. The house has been unoccupied for almost two years and the original sales contract is still pending. A RUP cannot be issued for this house without an approved, constructed septic field. Again, the property is outside the Sewer Service Area, therefore public sewer is not an option. If this variance is not approved, the house will need to be demolished and the contract purchasers will not have a home they have waited patiently for, for almost two years.

In order to lessen the burden on the contract purchasers, NV Homes has generously allowed the purchasers to place their furniture in the house to avoid storage charges. These purchasers hoped to be in the house prior to the birth of their first child and have since had their second child and spent two Holiday Seasons in temporary housing. Every morning, the contract purchasers drive to this house, from their temporary house, to drop their kids off at the bus stop so their kids can attend schools in this district. This house represents the heart of the contract purchasers, who picked out the type of house, selections, etc. to make this house their home. These purchasers are committed to buying this house and the Applicants have done everything within their power to resolve this issue so that a RUP can be issued. The circumstances surrounding this lot are unique and not self imposed.

Ms. Barbara A. Byron, Director
Fairfax County Department of Planning and Zoning
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May 21, 2007

June 7, 2007 (Revised)

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

All lots in this subdivision, share a similar lot design and will ultimately all be served by septic fields. There are existing lots within the subdivision that are occupied and have approved, constructed septic fields. LDC and the Applicant are currently in the process of converting the remaining outlots to buildable lots upon the approval of septic fields. Lot 24 is the only lot with this current situation. The adjacent properties do not share the hardship encountered by the subject property.

6. *That strict application of the Zoning Ordinance would effectively prohibit or unreasonable restrict all reasonable use of the subject property.*

Strict application of the Ordinance will unreasonably restrict the use of the property. In its current configuration, no active drainfield can be constructed on the subject property. Without this variance, a RUP cannot be issued and the house will need to be demolished. No house will be permitted on this lot without this variance. The Applicant has exhausted all other options.

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

The approval of this variance will not be a substantial detriment to any adjoining properties. By placing the septic field across the street from the subject property it can be easily maintained and is clearly visible from the house. In addition, the Applicant will need to lose a buildable lot to permit the proposed configuration within the overall subdivision. The proposed septic field has been reviewed by the Health Department and is acceptable for construction and will not adversely impact the adjacent properties.

8. *That the granting of the variance will not change the character of the zoning district.*

The character of the zoning district will not be changed. All performance standards will be met by this proposal.

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.*

The granting of this variance will be in harmony with the intended spirit and purpose of the Ordinance. The spirit and intent of the Ordinance is to provide septic fields in a reasonable location for ease of maintenance. The proposed septic field is visible to the existing house and has easy access from Marovelli Forest Drive. In addition, the Applicant has exhausted all alternative solutions and this appears to be the only alternative. Again, the Applicant in good faith diligently pursued approvals of all appropriate agencies and the issues associated with the subject property are unique and do not establish a precedent, which is in conflict with the spirit of the Ordinance.

Ms. Barbara A. Byron, Director
Fairfax County Department of Planning and Zoning
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LDC Project #20123-1-0

May 21, 2007
June 7, 2007 (Revised)
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Please accept this as the statement of justification for this application. Thank you for your prompt attention to this matter and please contact me with any questions.

Sincerely,

Land Design Consultants, Inc.



Kelly M. Atkinson
Senior Project Planner

cc: Mr. Jerry Johnson, NV Homes, Applicant
Mr. Keith Martin, Esq., Sack, Harris, & Martin, PC
Mr. Matt Marshall, L.S., A.I.C.P., Land Design Consultants, Inc.
File



County of Fairfax, Virginia

Appendix 4

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

September 17, 2007

Kelly Atkinson
Land Design Consultants
9401 Centreville Rd, Suite 300
Manassas, Va 20110

RE: Nirvana Palace Subdivision, Lot 24

Dear Ms. Atkinson

This letter is in response for information from the Health Department regarding lot 24 in the Nirvana Palace Subdivision. According to Health Department records, I can offer you the following information.

The Health Department received an application from Park View Limited Partnership and Robinson Environmental Inc. as the owner's soil consultant on March 27, 2002. The lot was evaluated by Health Department staff to determine the suitability for an onsite sewage disposal system on September 13, 2002. It was determined by that evaluation that although the proposed area was limited because of topographical features the soils met the requirements for testing and that the site was ok to run a percolation test on it as required by Fairfax County. A percolation test was performed by REI on October 23, 2002 and received a passing rate 47mpi @ 60". A four bedroom alternative septic system footprint was approved by the Health Department.

Prior to issuing the construction permit to install the onsite sewage disposal system it was witnessed by the Health Department staff that the lot was holding a lot of drainage water directly below the lower corners of the proposed drainfield portion of the onsite system. Upon further evaluation by REI and the Health Department it was determined that a perched water table had developed at the depth that the system was designed to be installed. It was determined that as a result of subsurface drainage that was present at the designed installation depth, a Lateral Groundwater Movement Interceptor Drainage system would be installed upslope of the proposed drainfield site to help alleviate the problem and hopefully draw down the water table so that an onsite system could be installed. The LGMI did help reduce the depth of the groundwater table but not sufficient enough to meet the stand off requirements for installing an onsite sewage disposal above a water table at the current proposed installation depth.

Fairfax County Health Department
Division of Environmental Health
Technical Review and Information Resources
10777 Main Street, Suite 102, Fairfax, VA 22030
Phone: 703-246-2510 TTY: 711 Fax: 703-278-8157
www.fairfaxcounty.gov/hd



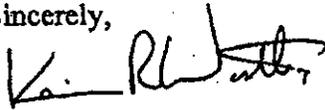
It was then proposed that a re-evaluation of the soils be conducted at a more shallow depth that would meet all the standoff requirements. After evaluation of the soils and the monitoring of the water table being reduced over the site, a new percolation test was run at a depth of 36". The results received from that test were a 75mpi @ 36". The test results provided a much higher test result than previously tested at a deeper depth. These test results and the very limited area to work prevented the Health Department from approving any type of system that is currently approved in Fairfax County to comply with the needs of the client for a 4 bedroom septic system with a 100% reserve area as required by Fairfax County Code Chapter 68.1.

Once it was determined that this site would no longer support and onsite sewage disposal system that met the requirements under Chapter 68.1, the clients proposed an alternative site to serve this lot. Soil evaluations and testing were conducted on additional lots. A site was located across Marovelli Forest Drive on one of the neighboring vacant lots that would meet the requirements for an approved onsite sewage disposal for lot 24.

It is the determination of the Health Department that this is the best solution to provide an onsite sewage disposal to serve the house on lot 24.

If you should need any further information regarding this matter please feel free to contact me Monday through Friday between the hours of 8:00 a.m. and 4:30 p.m.

Sincerely,



Kevin R. Wastler
Environmental Health Supervisor



County of Fairfax, Virginia

MEMORANDUM

TO: Regina Coyle, Director
Zoning Evaluation Division
Department of Planning and Zoning

FROM: Angela Kadar Rodeheaver, Chief
Site Analysis Section
Department of Transportation

FILE: 3 – 6 (VC 2007 –MV – 002)

REFERENCE: VC 2007 – MV – 002; NV Homes, Inc. (Revised)
Land Identification Map: 106 – 4 ((7)) pt. E & 24

DATE: August 7, 2007

Transmitted herewith are the comments of the Department of Transportation with respects of the referenced application. These comments are based on plats made available to this department dated May 2, 2007

The proposed application to permit and individual sewage disposal system to be located on a separate lot from the principal use would not create and significant additional impacts on the surrounding public street system. However, the applicant should contact VDOT (Fairfax Permit Section) to ensure that they have no issue with a pipe for a "Private" system in their right-of-way.

AKR/kb



COMMONWEALTH of VIRGINIA

DEPARTMENT OF TRANSPORTATION

14685 Avion Parkway
Chantilly, VA 20151
(703) 383-VDOT (8368)

DAVID S. EKERN, P.E.
COMMISSIONER

15 October 2007

Land Design Consultants
Attn: Ms. Kelly M. Atkinson
9401 Centreville Road, Suite 300
Manassas, VA 20110

**RE: Nirvana Palace Subdivision, Parcel 24 & Outlot E
Private Forcemain for Sanitary Sewer**

Dear Ms. Atkinson,

The VDOT Permits Section for Fairfax County has reviewed all documentation submitted on behalf of the owner and developer of Nirvana Palace Subdivision and dealing with the request to place a private forcemain sewer under a roadway designed for acceptance by VDOT for maintenance. This installation will be allowed under the following terms:

- The owner/developer must submit a Land Use Permit for the installation accompanied by a continuous cash bond in the amount of \$15,000.00
- The owner must submit a Covenant of Perpetual Maintenance outlining the required maintenance schedule for the system, and agreeing to conduct that maintenance as required. This agreement must protect the Commonwealth of Virginia from any and all liability associated with the installation, use, or maintenance of this installation. All maintenance to be monitored and reports submitted to the appropriate Fairfax County agency and made available to VDOT upon request. The Covenant of Perpetual Maintenance must be signed by the property owners, notarized, and recorded in the Land Records of Fairfax County in such a manner that all subsequent property owners are bound by this agreement.
- The installation of the casing under Marovelli Forest Drive should be by "jack & bore" with no open cut within the proposed right of way. The casing should extend a minimum of 10 feet outside of the right of way on both ends and be a minimum of 5 feet deep as it passes under the right of way.
- The installation must meet all specifications and standards of Fairfax County and the Commonwealth of Virginia.

Please feel free to contact me with questions or comments.

Sincerely,

A handwritten signature in cursive script that reads 'William H. Dunlap'.

William H. Dunlap
Assistant Permits Manager – Street Acceptance

cc: D.A. Purvis
D.P. Shields

18-404 Required Standards for Variances

To grant a variance the BZA shall make specific findings based on the evidence before it that the application satisfies all of the following enumerated requirements:

1. That the subject property was acquired in good faith.
 2. That the subject property has at least one of the following characteristics:
 - A. Exceptional narrowness at the time of the effective date of the Ordinance;
 - B. Exceptional shallowness at the time of the effective date of the Ordinance;
 - C. Exceptional size at the time of the effective date of the Ordinance;
 - D. Exceptional shape at the time of the effective date of the Ordinance;
 - E. Exceptional topographic conditions;
 - F. An extraordinary situation or condition of the subject property; or
 - G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
 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.
 4. That the strict application of this Ordinance would produce undue hardship.
 5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
 6. That:
 - A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
 - B. 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.
- ADMINISTRATION, AMENDMENTS,
VIOLATIONS AND PENALTIES 18-37
7. That authorization of the variance 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.
 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.