



APPLICATION ACCEPTED: March 4, 2009  
BOARD OF ZONING APPEALS: July 7, 2009  
ADMINISTRATIVELY MOVED AT APPLICANT'S REQUEST  
TIME: 9:00 a.m.

# County of Fairfax, Virginia

June 30, 2009

## STAFF REPORT

### VARIANCE AMENDMENT APPLICATION NO. VCA 2002-DR-139

#### DRANESVILLE DISTRICT

**APPLICANTS/OWNERS:** Mark J. Stadskev  
Susan M. K. Stadskev

**STREET ADDRESS:** 2310 Westmoreland Street

**TAX MAP REFERENCE:** 40-4 ((1)) 44A

**LOT SIZE:** 1.63 acres

**ZONING DISTRICT:** R-4

**ZONING ORDINANCE PROVISIONS:** 18-401

**VARIANCE AMENDMENT PROPOSAL:** To amend VC 2002-DR-139 to permit modification of development conditions.

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.

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.**

O:\dhedr\Variances\5-12\ VCA 2002-DR-139 Stadskev\VCA 2002-DR-139 Stadskev staff report.doc Deborah Hedrick



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 Amendment

VCA 2002-DR-139



Applicant:

MARK J. STADSKLEV AND SUSAN M. K. STADSKLEV

Accepted:

03/04/2009

Proposed:

AMEND VC 2002-DR-139 PREVIOUSLY APPROVED FOR WAIVER OF THE MINIMUM LOT WIDTH TO PERMIT MODIFICATION OF DEVELOPMENT CONDITIONS

Area:

1.63 AC OF LAND; DISTRICT - DRANESVILLE

Zoning Dist Sect: 18-0401 03-0407

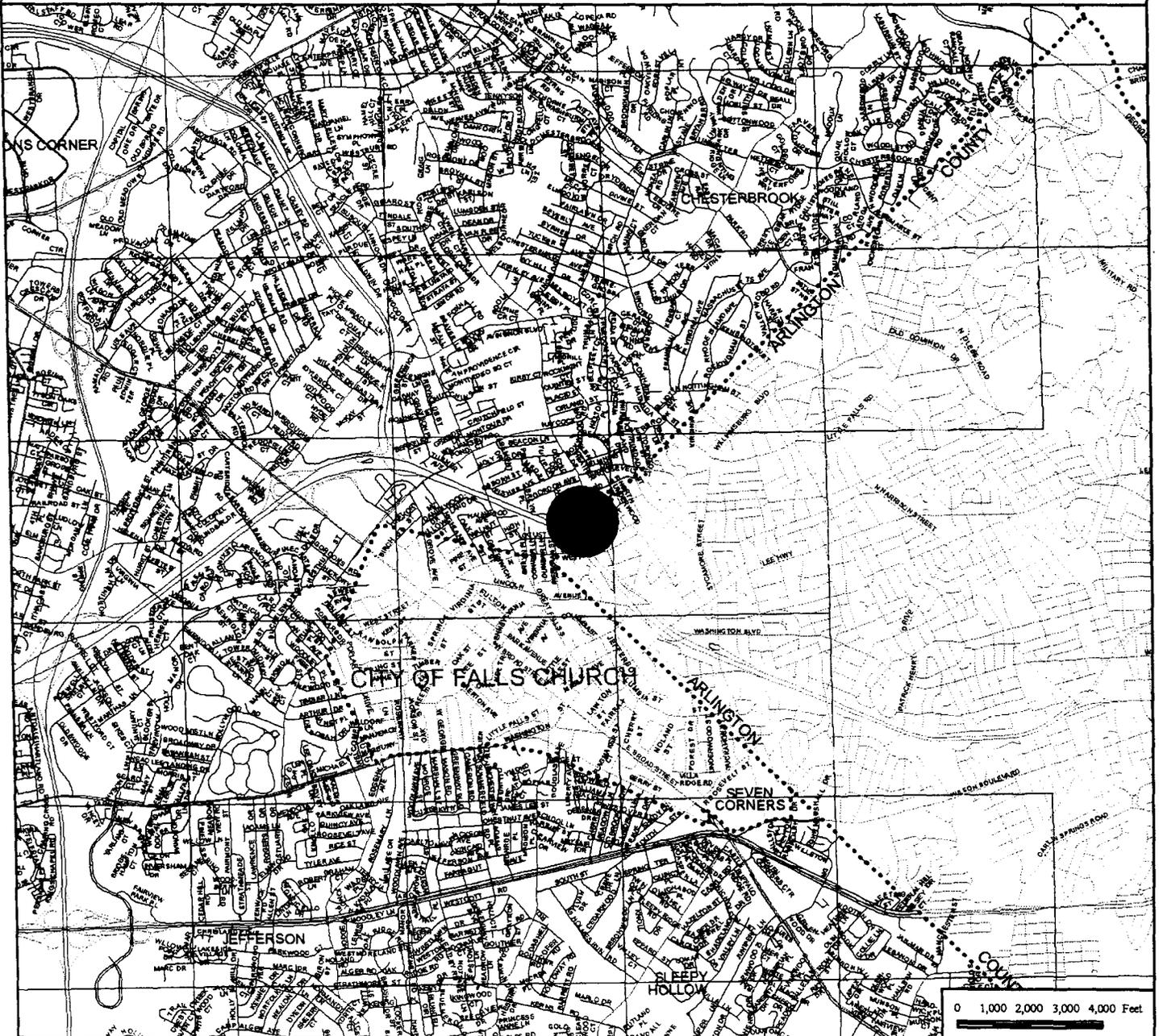
Paragraph: 1 A1

Located: 2310 WESTMORELAND STREET

Zoning: R- 4

Overlay Dist:

Map Ref Num: 040-4 /01/ /0044A



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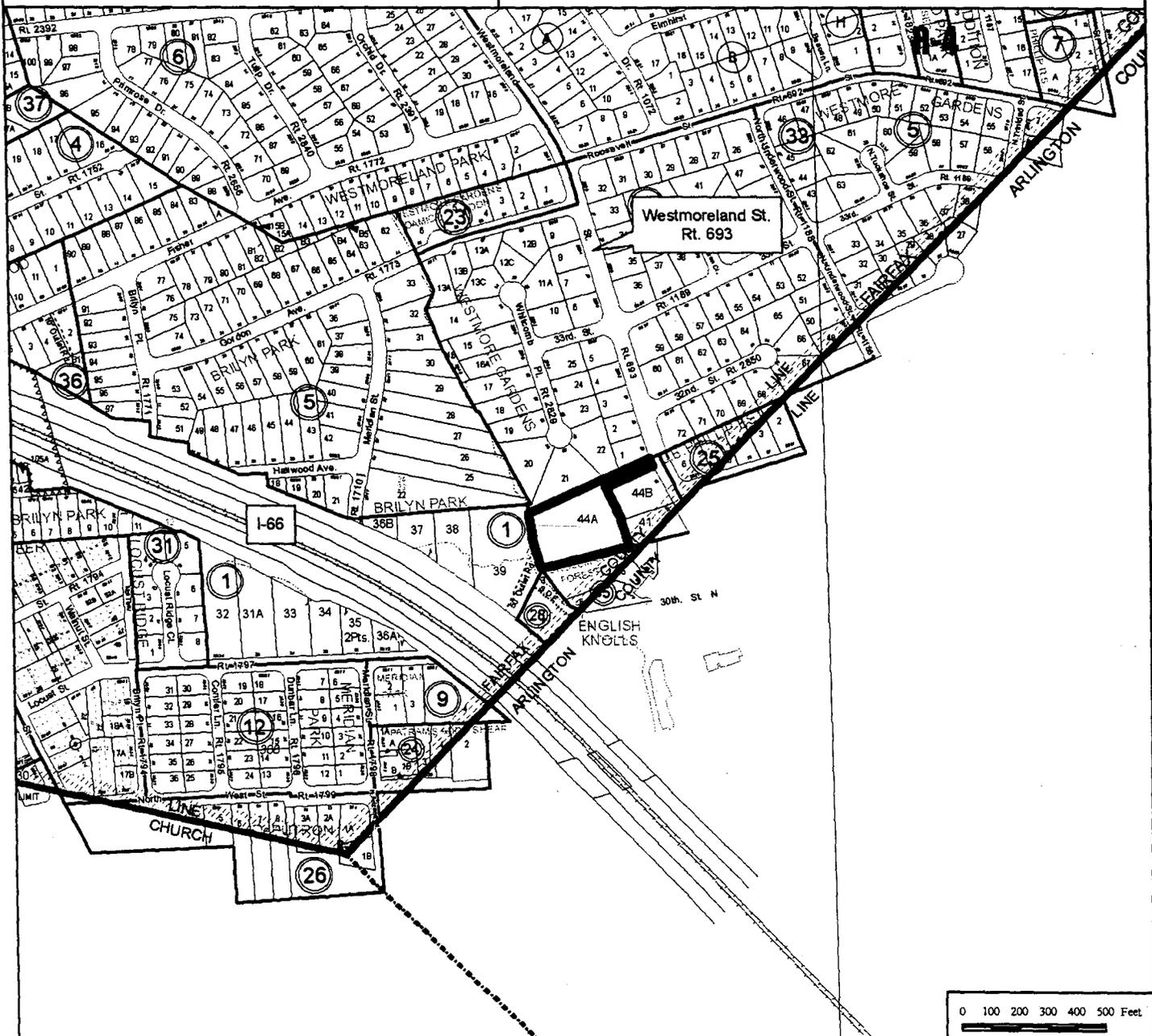
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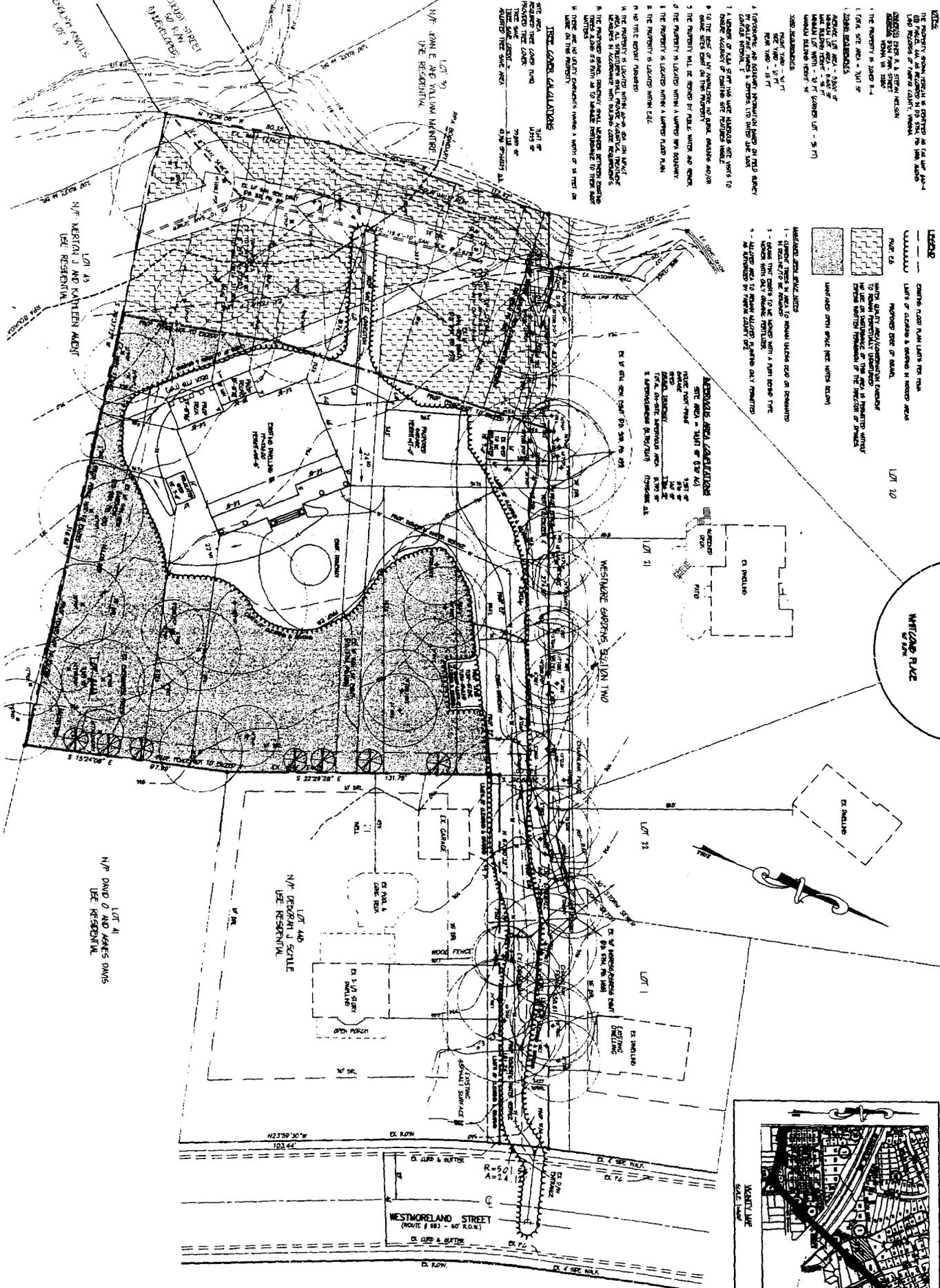
Overlay Dist:

Map Ref Num: 040-4 /01/ /0044A



JUN 15 2009

Zoning Evaluation Division



**LEGEND**

- OPEN PLOT PLAN LOTS FOR TRAIL
- LOTS OF CLASSES & GRADING & SLOPED AREAS
- ..... IMPROVED SIDE OF ROAD
- ..... WITHIN CITY OF ARCHITECTURAL SURVEY
- ..... TO BE EXCLUDED FROM THE AREA AS PROTECTED WATERSHED
- ..... UNIMPROVED OPEN SWALE (SEE NOTES BELOW)

**NOTES**

- 1 - EXISTING AREAS TO BE REMOVED UNDER ZONE OF PROTECTION
- 2 - GRADING SHALL BE TO BE ACCORD WITH A FIRM GRADING PLAN
- 3 - EXISTING AREAS TO BE REMOVED UNDER ZONE OF PROTECTION SHALL BE DETERMINED BY FIRM SURVEY DATA

**MINIMUM AREA CALCULATIONS**

SITE AREA = 10.11 AC (10.11 AC)

MINIMUM AREA = 10.11 AC (10.11 AC)

MINIMUM AREA = 10.11 AC (10.11 AC)

MINIMUM AREA = 10.11 AC (10.11 AC)

**DEVELOPER CALCULATIONS**

LOT 1: 1.11 AC

LOT 2: 1.11 AC

LOT 3: 1.11 AC

LOT 4: 1.11 AC

LOT 5: 1.11 AC

LOT 6: 1.11 AC

LOT 7: 1.11 AC

LOT 8: 1.11 AC

LOT 9: 1.11 AC

LOT 10: 1.11 AC

AMENDED VARIANCE PLAT		PROJECT: NIELSON/STADSKLEV PROPERTY		DRANESVILLE DISTRICT FAIRFAX COUNTY, VIRGINIA	
DATE: 06/15/09	SCALE: 1" = 20'	KJ & ASSOCIATES CIVIL AND LAND DEVELOPMENT ENGINEERING		SHEET: 1 OF 1	
PROJECT: NIELSON/STADSKLEV PROPERTY	DATE: 06/15/09	SCALE: 1" = 20'	KJ & ASSOCIATES CIVIL AND LAND DEVELOPMENT ENGINEERING		DATE: 06/15/09
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**NOTES:**

1. THE PROPERTY SHOWN HEREON IS IDENTIFIED AS TAX MAP 840-1 (10) PARCEL 444, AS RECORDED IN DD 574, PG 1460, ANCHOR LAND RECORDS OF FAIRFAX COUNTY, VIRGINIA.
2. CHARLES EBER R. & STEPHAN NELSON ADDRESS: 9124 PARK STREET, VENNA, VA 22180
3. THE PROPERTY IS ZONED R-4
4. TOTAL SITE AREA = 7447 SF
5. ZONING REQUIREMENTS:  
 AVERAGE LOT AREA - 8400 SF  
 MINIMUM LOT AREA - 8400 SF  
 MAX. BUILDING HEIGHT - 35 FT  
 MINIMUM LOT WIDTH - 30 FT (CORNER LOT - 35 FT)  
 MINIMUM BUILDING HEIGHT: 95
6. YARD REQUIREMENTS:  
 FRONT YARD - 30 FT  
 SIDE YARD - 10 FT  
 REAR YARD - 35 FT
7. TOPOGRAPHIC AND BOUNDARY INFORMATION BASED ON FIELD SURVEY BY GALLFAX, HAINES & JEFFERS, LTD DATED JUNE 1991. CONTOUR INTERVAL: 2'
8. A MEMBER OF THIS FIRM START THIS MAKE NUMEROUS SITE VISITS TO ENSURE ACCURACY OF EXISTING SITE FEATURES VISIBLE.
9. TO THE BEST OF MY KNOWLEDGE NO BURIAL GROUNDS AND/OR GRAVE SITES EXIST ON THIS PROPERTY.
10. THE PROPERTY WILL BE SERVED BY PUBLIC WATER AND SEWER.
11. THE PROPERTY IS LOCATED WITHIN A MAPPED RPA BOUNDARY.
12. THE PROPERTY IS LOCATED WITHIN A MAPPED FLOOD PLAN.
13. THE PROPERTY IS LOCATED WITHIN E.L.C.
14. NO TITLE REPORT FURNISHED.
15. THE PROPERTY IS LOCATED WITHIN 40-45 DBA 10M IMPACT AREA. ALL STRUCTURES SHALL PROVIDE ACOUSTICAL TREATMENT MEASURES IN ACCORDANCE WITH BUILDING CODE REQUIREMENTS.
16. THE PROPOSED GRADING, DRAINAGE SHALL MAINTAIN EXISTING TREES ALONG ITS PATH AS TO MINIMIZE DISTURBANCE TO THEIR ROOT MATTERS.
17. THERE ARE NO UTILITY EASEMENTS HAVING A WIDTH OF 35 FEET OR MORE ON THIS PROPERTY.

**LEGEND:**

- EXISTING FLOOD PLAN LIMITS PER FEMA
- ~~~~~ LIMITS OF CLEARING & GRADING IN MOORED AREAS
- PROP. E.G. PROPOSED EDGE OF GRAVEL
- [Hatched Box] WATER QUALITY AREA/CONSERVATION EASEMENT TO REMAIN PERFECTLY UNDISTURBED. NO USE OR DISTURBANCE OF THIS AREA IS PERMITTED WITHOUT EXPRESS WRITTEN PERMISSION OF THE DIRECTOR OF DPWCS.
- [Empty Box] MAINTAINED OPEN SPACE (SEE NOTES BELOW)

**MAINTAINED OPEN SPACE NOTES:**

- 1 - CURRENT TREES IN AREA TO REMAIN UNLESS DEAD OR DESIGNATED IN DECLINE/TO BE REMOVED
- 2 - GRASS THAT EXISTS TO BE MAINTAINED WITH A PUSH BROOM TYPE MOWER WITH ONLY ORGANIC FERTILIZER.
- 3 - MALLEED AREA TO REMAIN MALLEED. PLANTING ONLY PERMITTED AS AUTHORIZED BY FAIRFAX COUNTY DPZ.

**INTERVIEWS AREA CALCULATIONS**

SITE AREA = 7447 SF (0.17 AC)	
HOUSE FOOT-PRINT	2,257 SF
GARAGE	874 SF
DECK	140 SF
GRAND DRIVENWAY	1,704 SF
TOTAL ON-SITE INTERVIEWS AREA	5,775 SF
% INTERVIEWSNESS (5,775/7447)	77.55% (28% S.L.)

**TREE COVER CALCULATIONS**

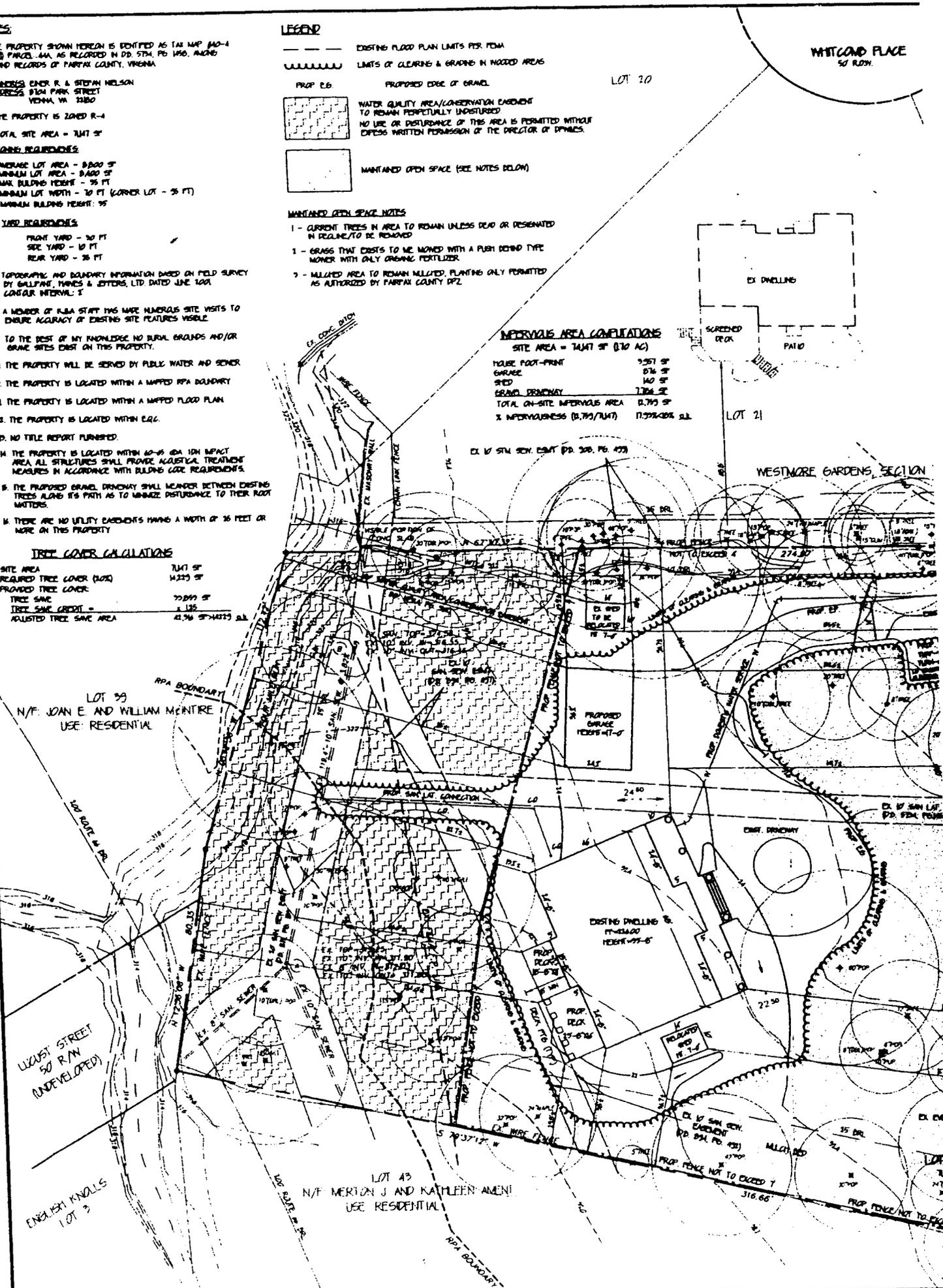
SITE AREA	7447 SF
REQUIRED TREE COVER (20%)	1489 SF
PROVIDED TREE COVER:	
TREE SAVC	72,899 SF
TREE SAVC CREDIT =	x 1.85
ADJUSTED TREE SAVC AREA	134,862 SF (18.12% S.L.)

LOT 39  
N/F JOAN E AND WILLIAM MENTRE  
USE: RESIDENTIAL

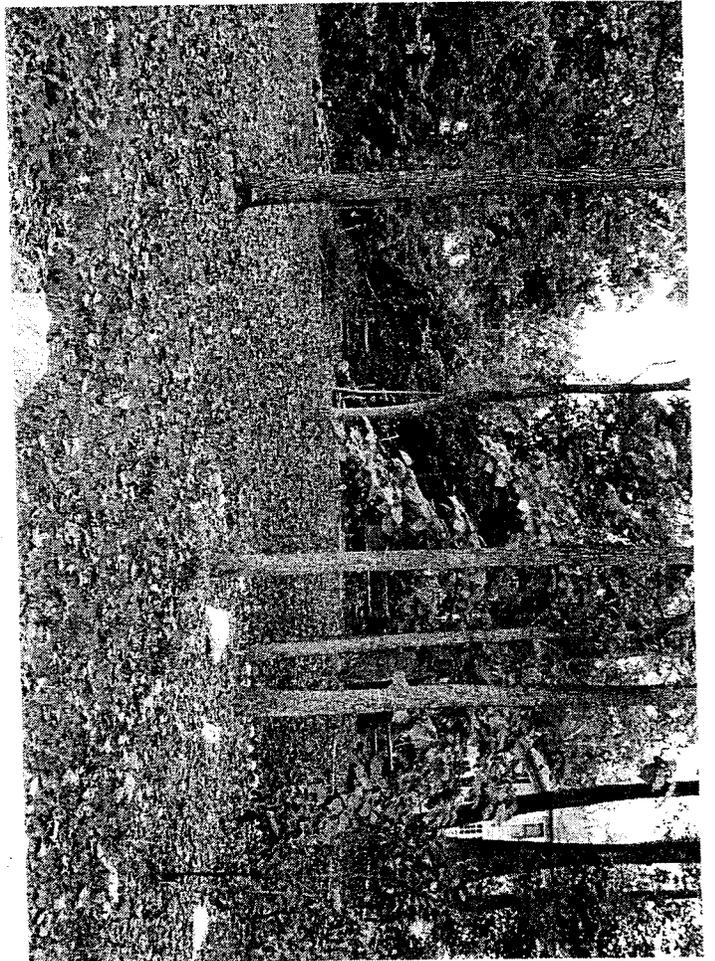
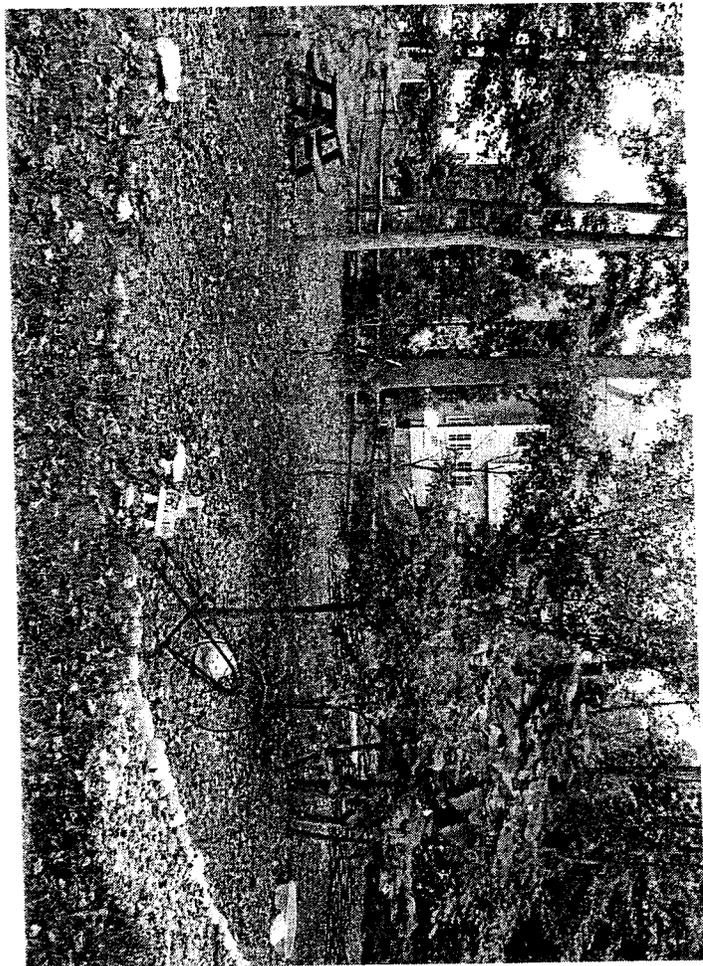
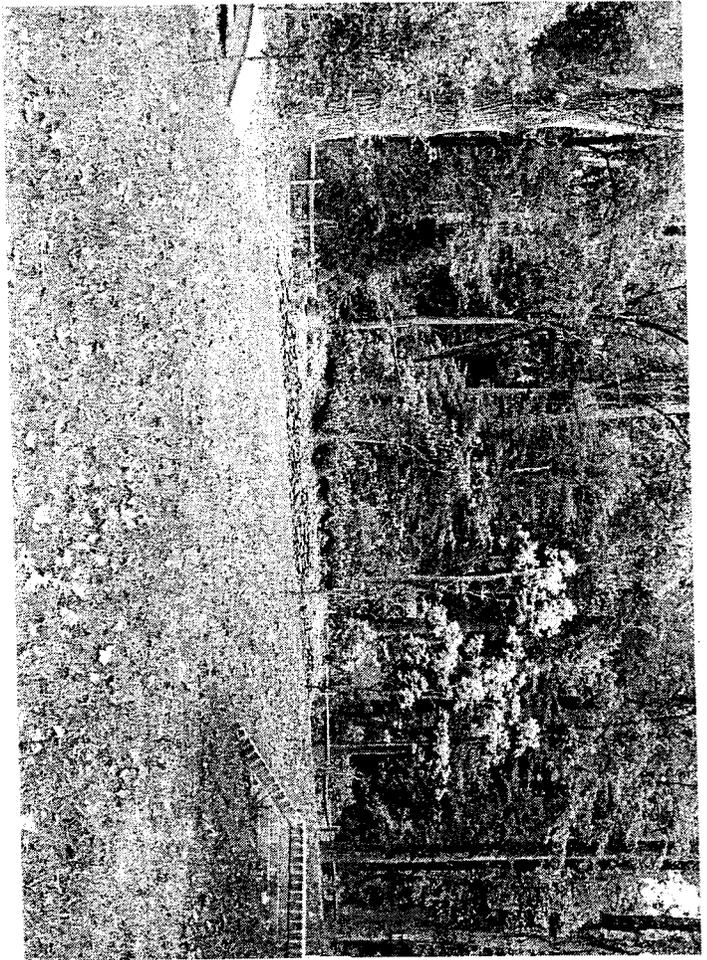
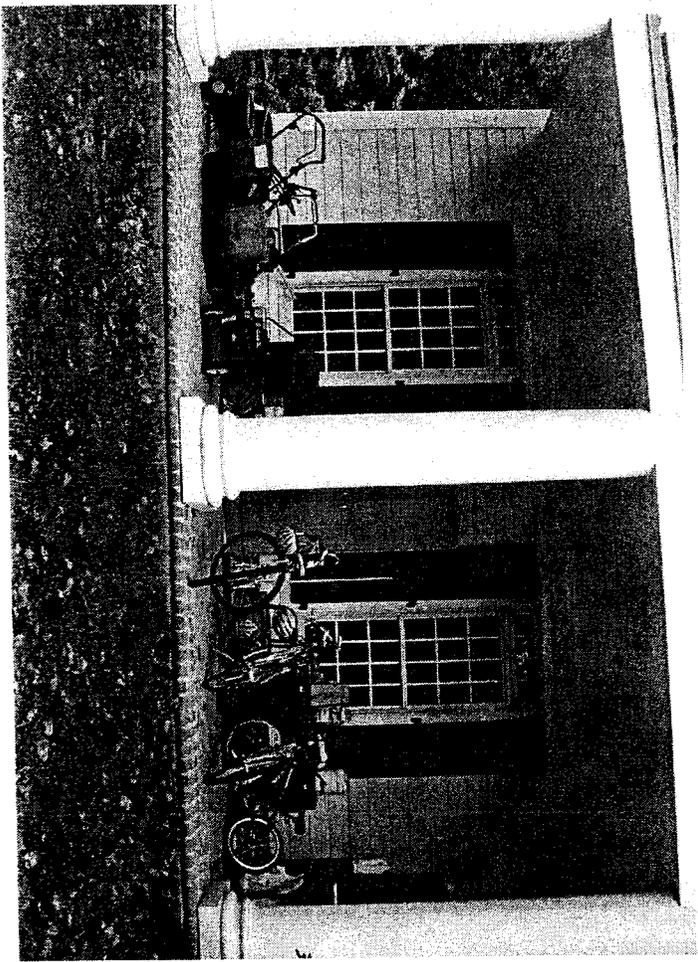
LOT 43  
N/F MERTON J AND KATHLEEN AMEN  
USE: RESIDENTIAL

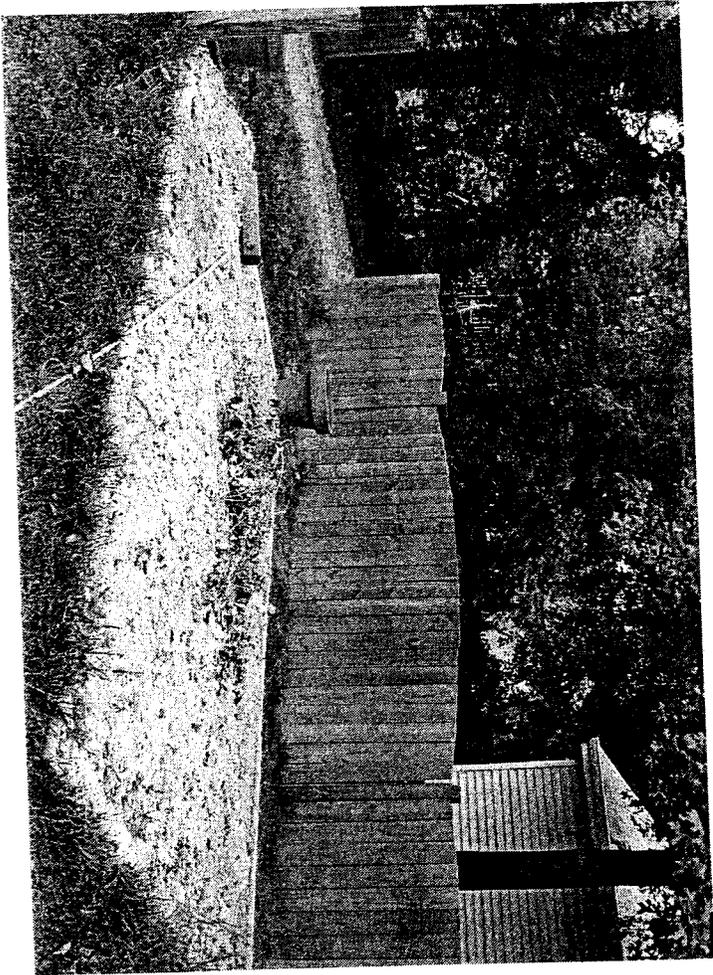
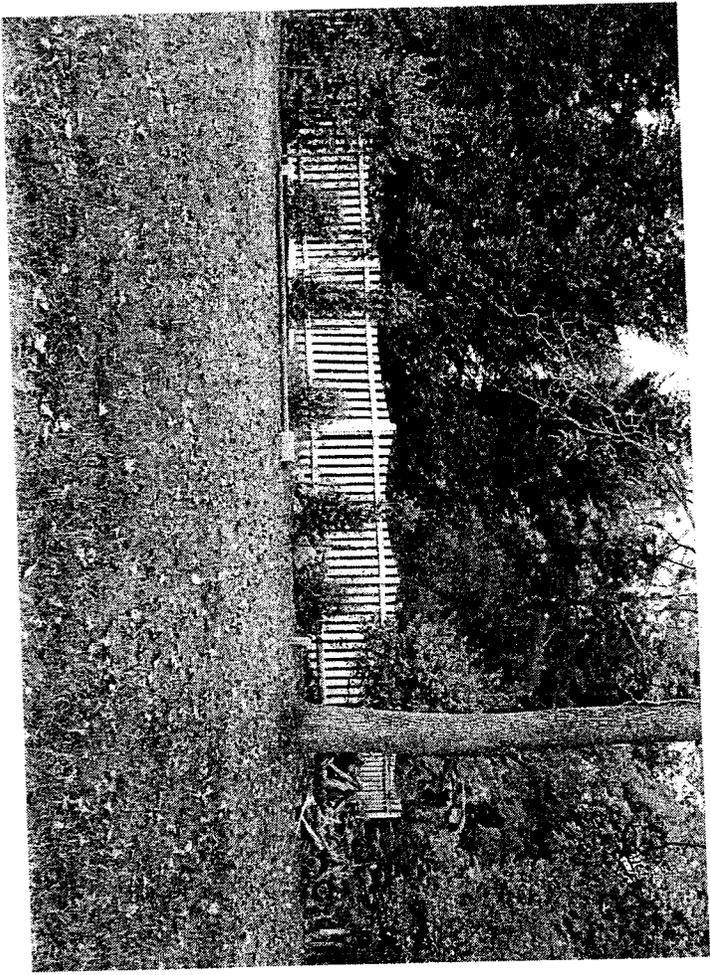
WHITCOMB PLACE  
50' ROW

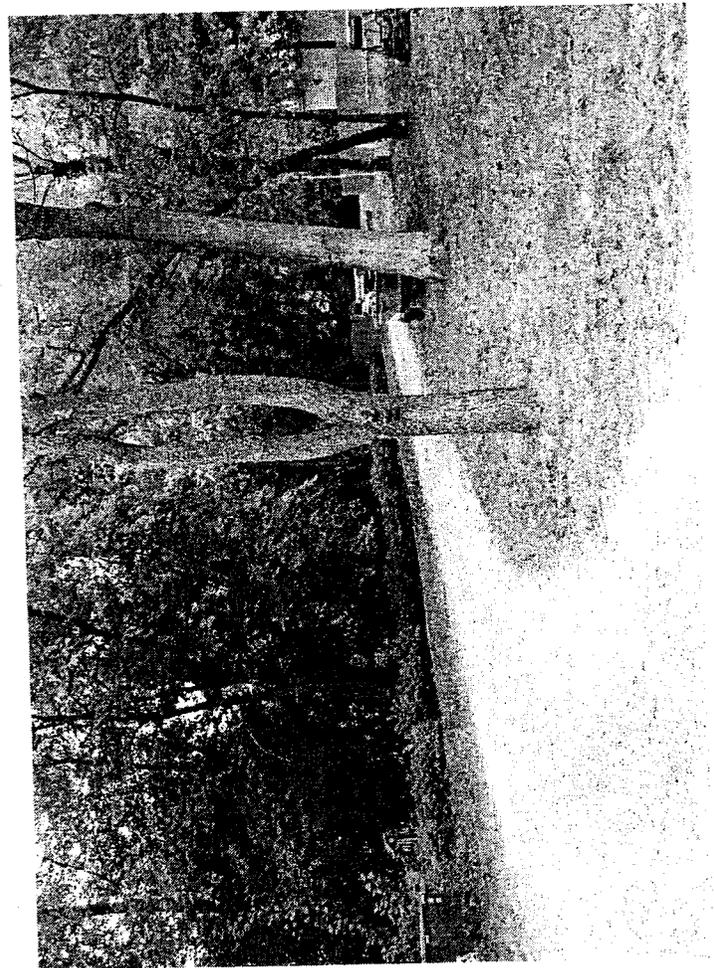
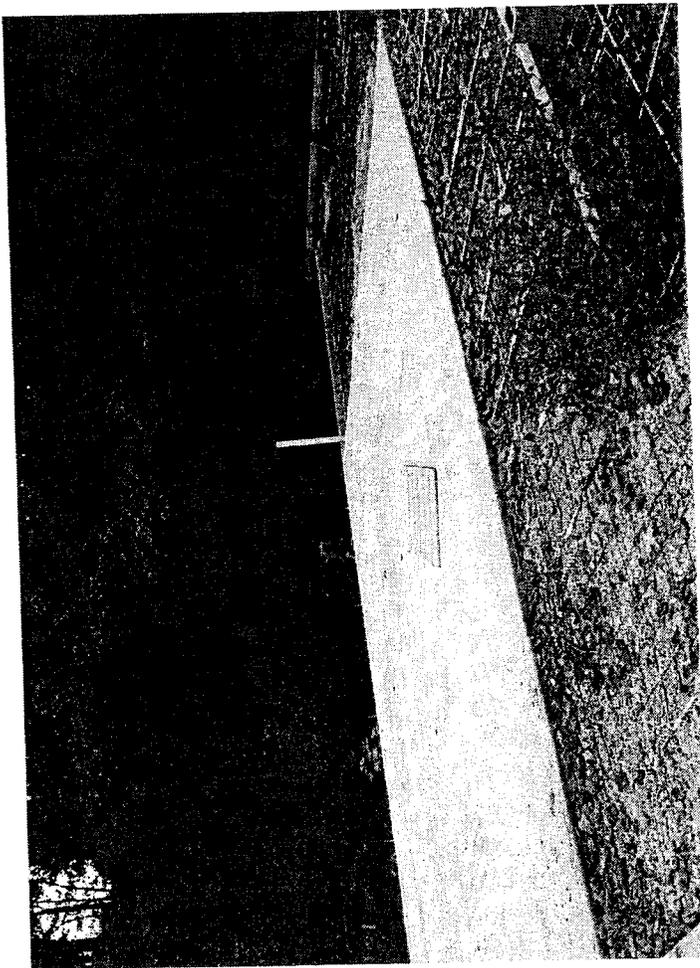
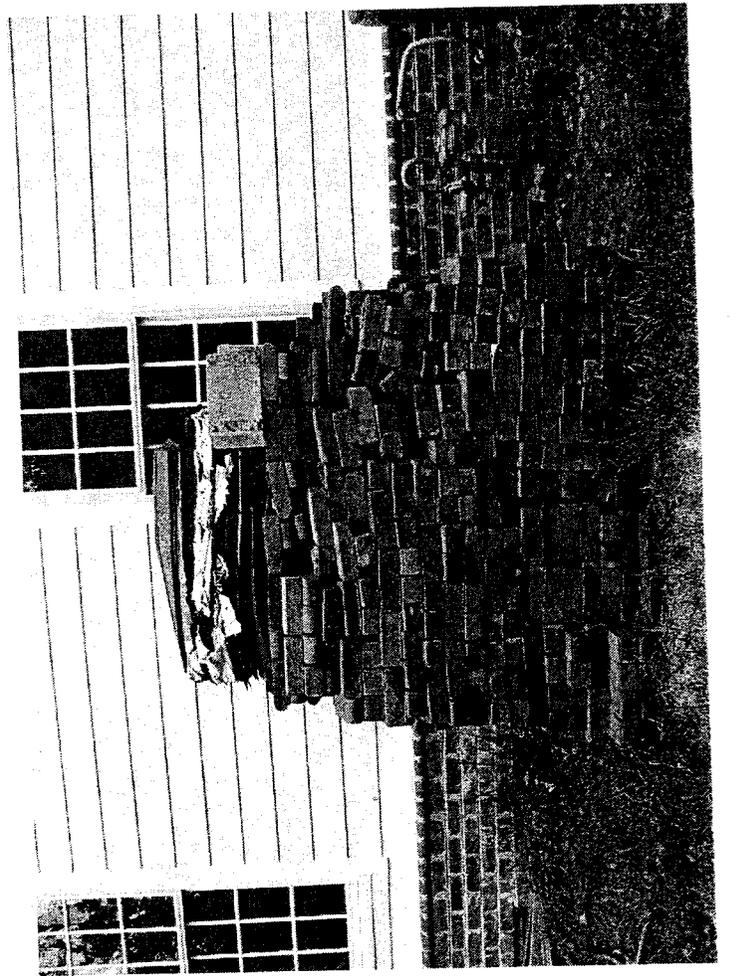
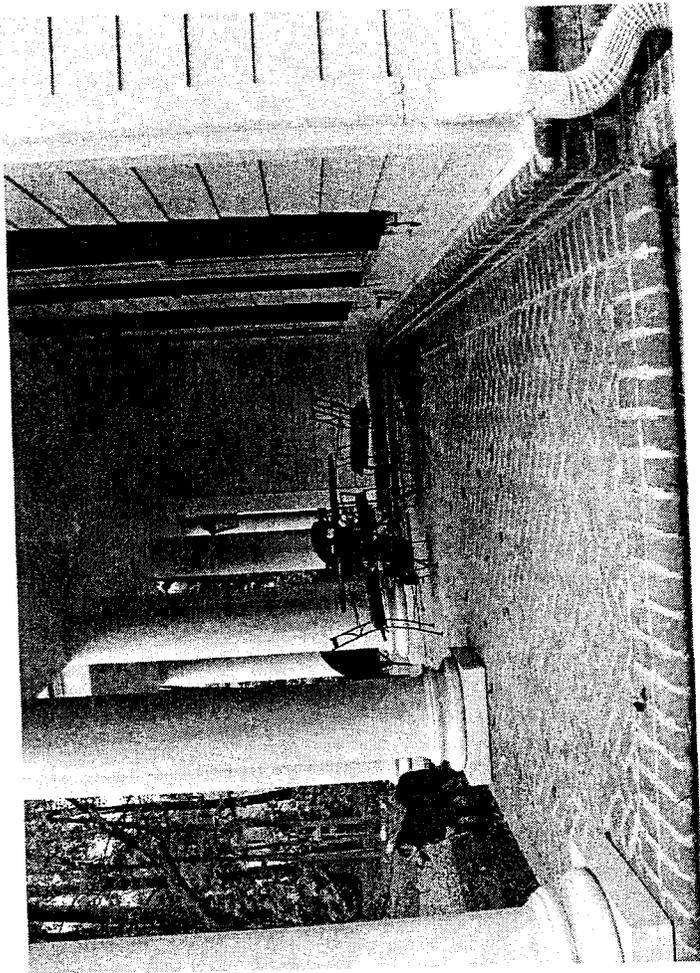
WESTMORE GARDENS SECTION

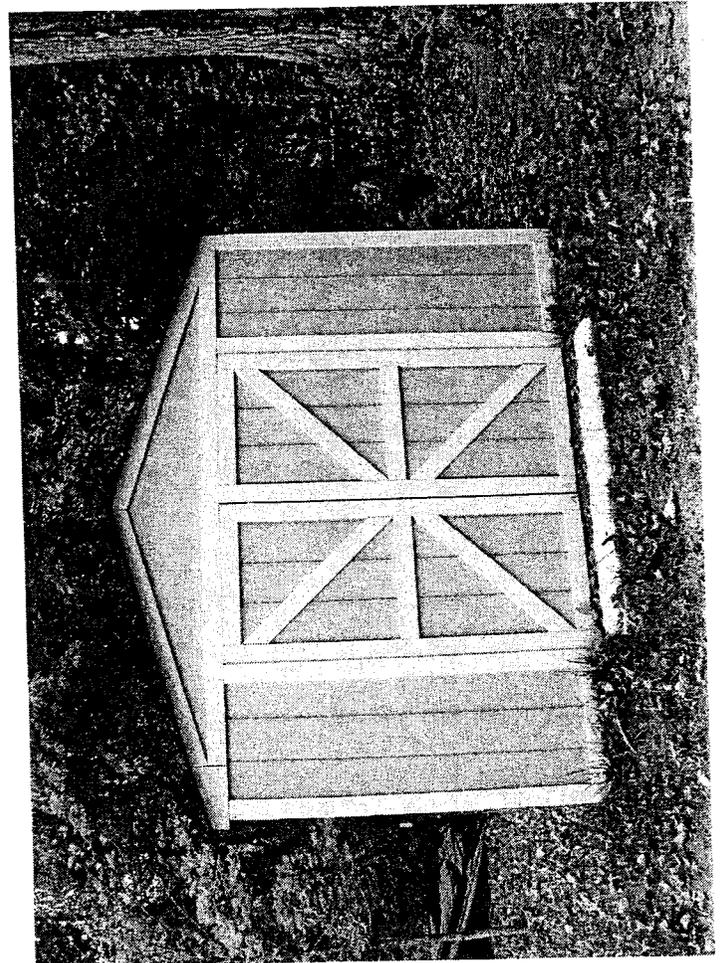
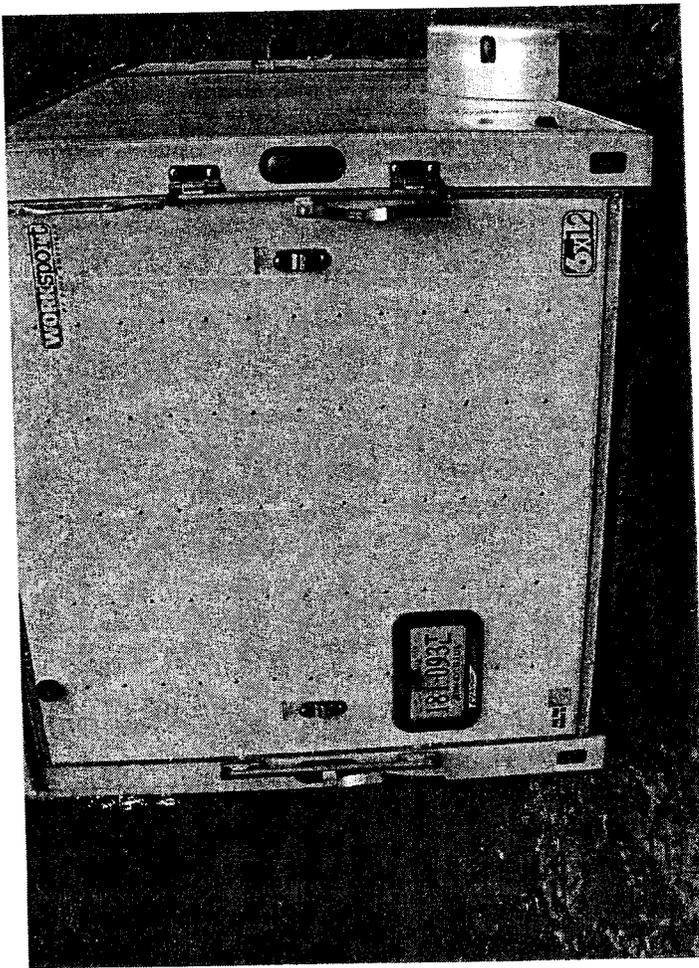
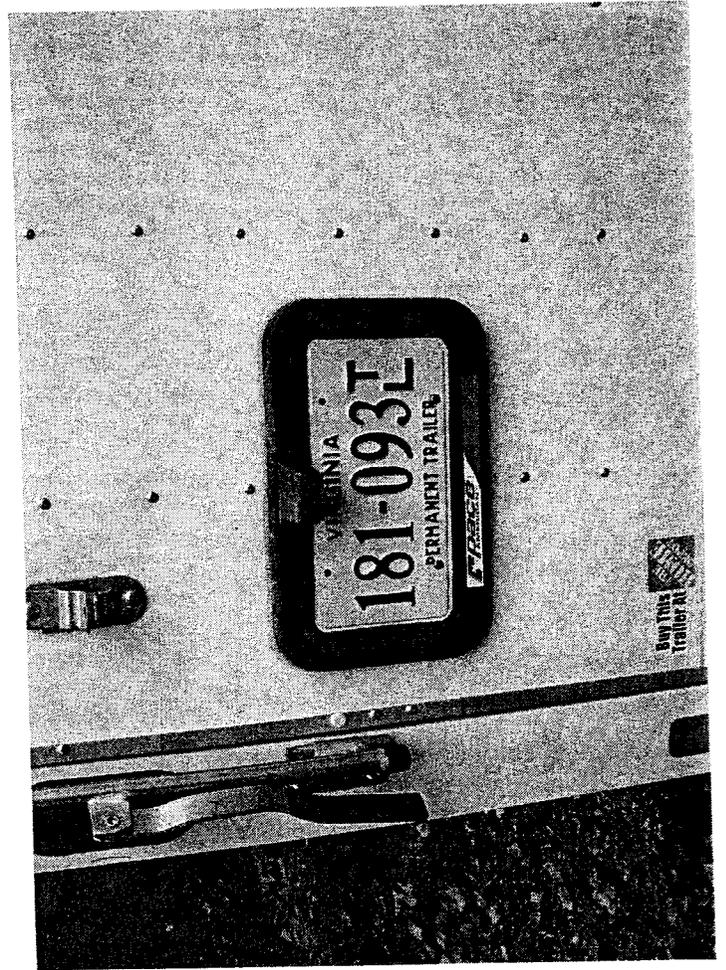
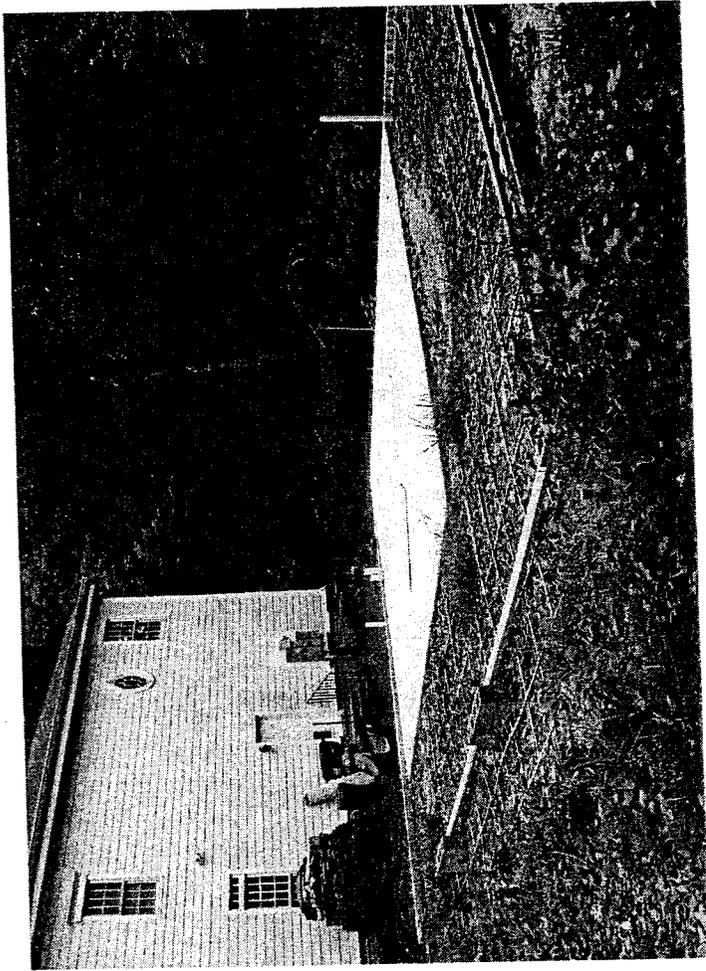


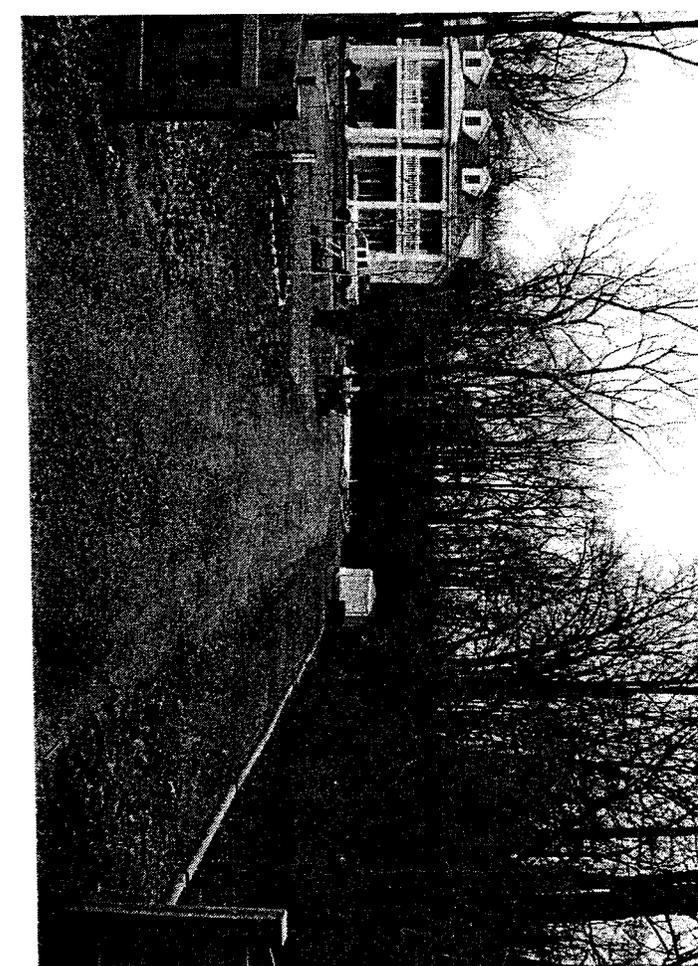
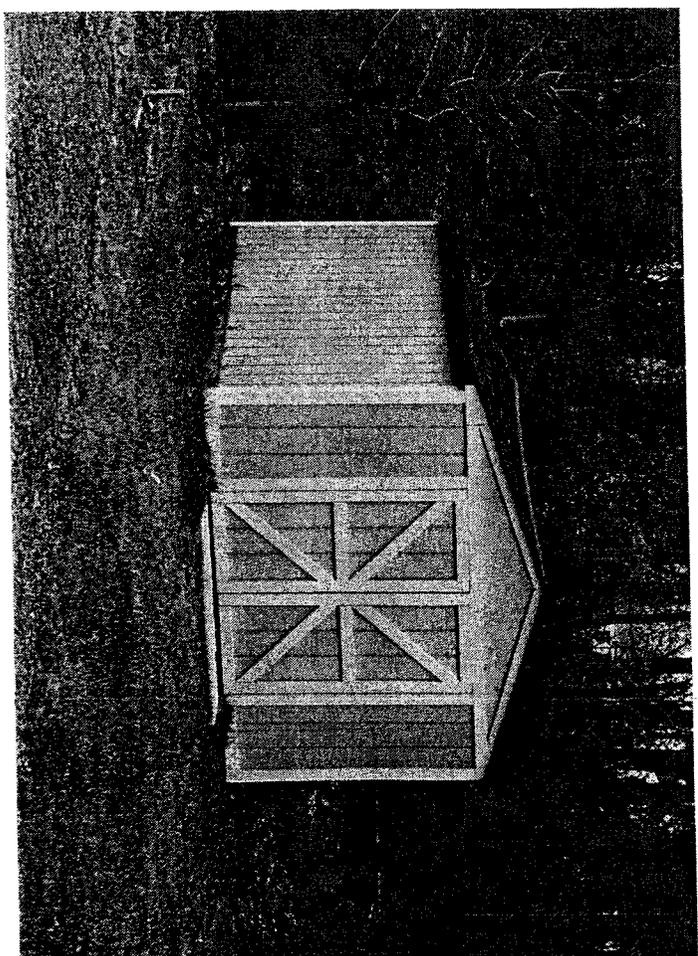
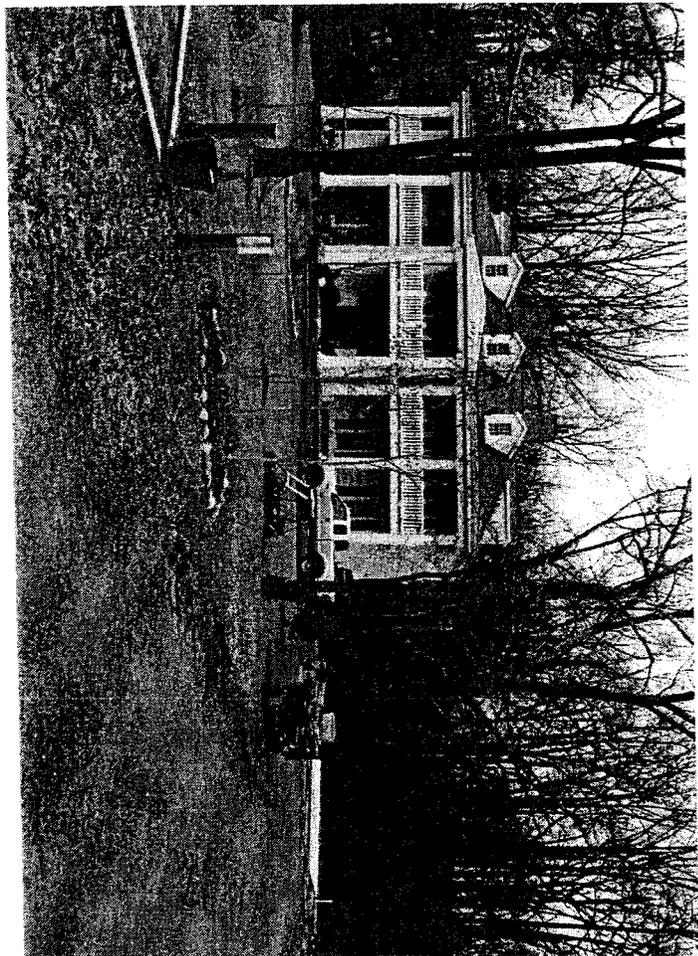


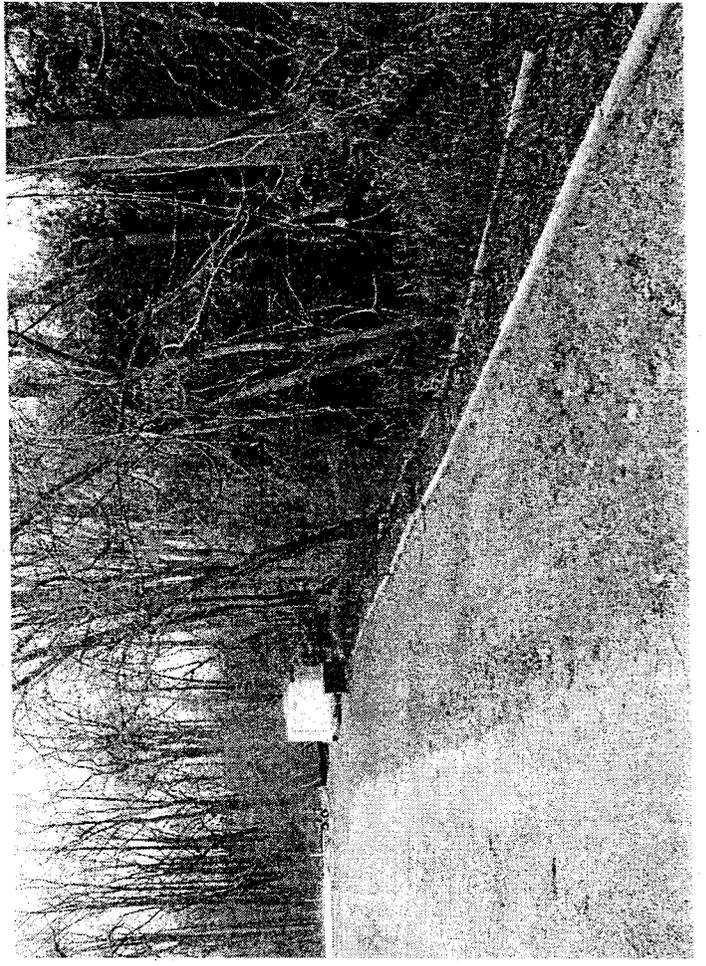
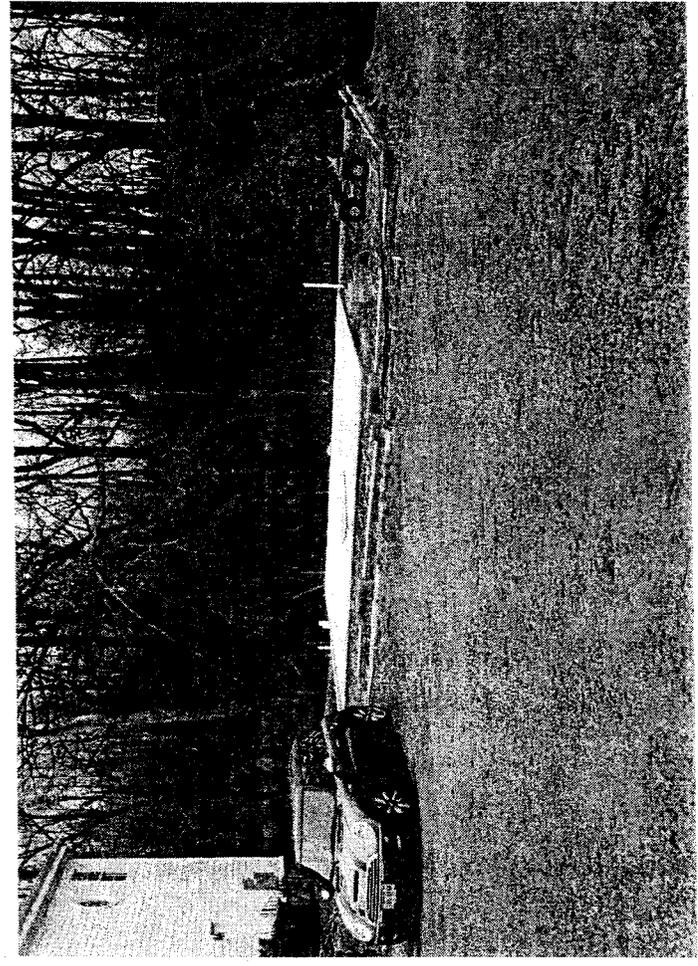
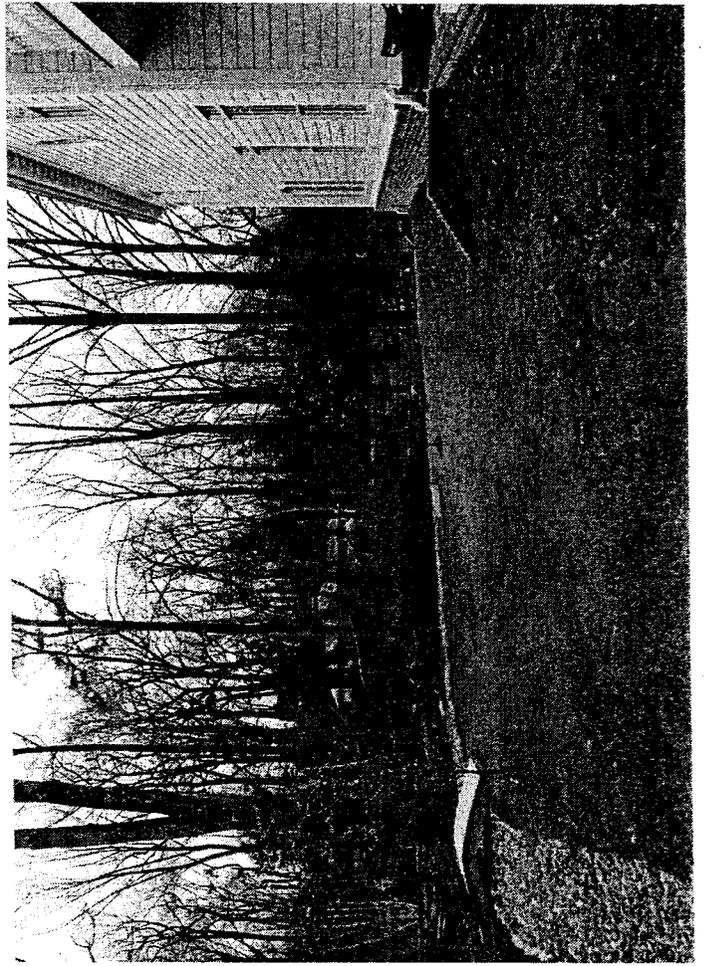
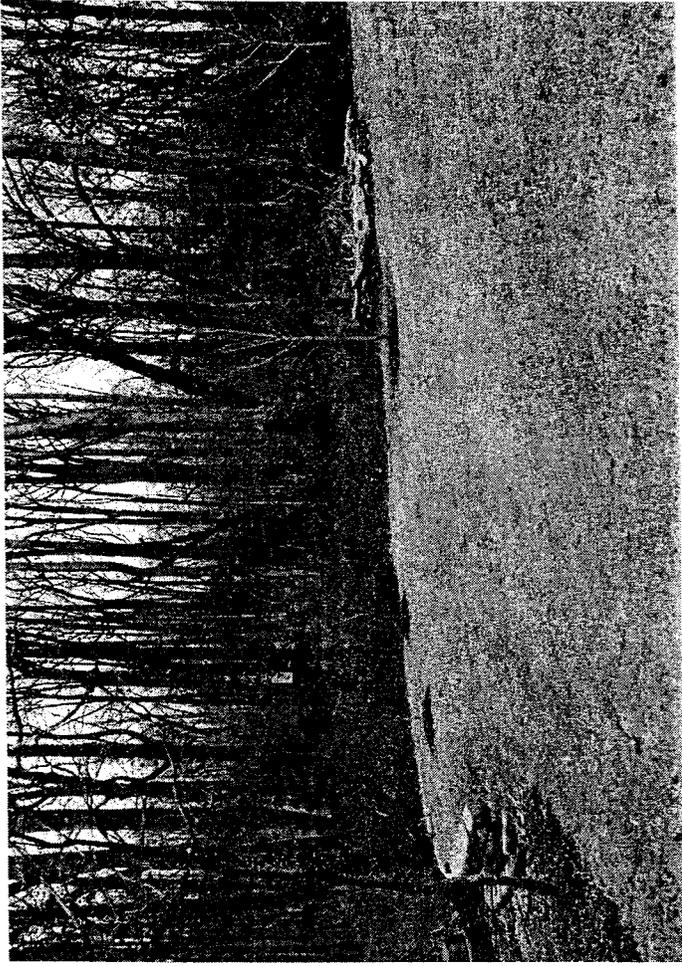


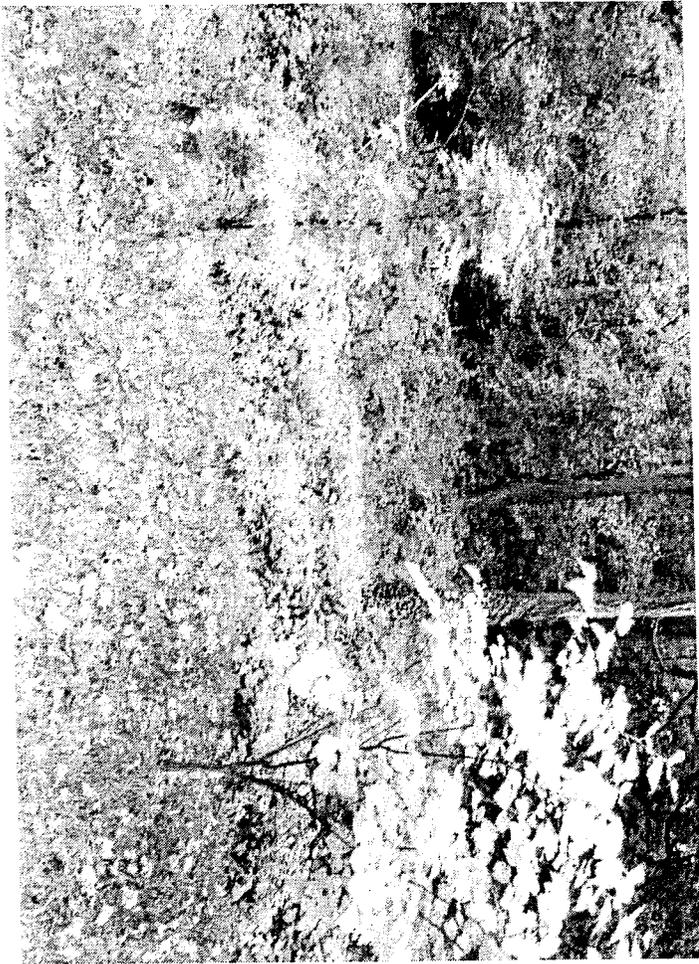
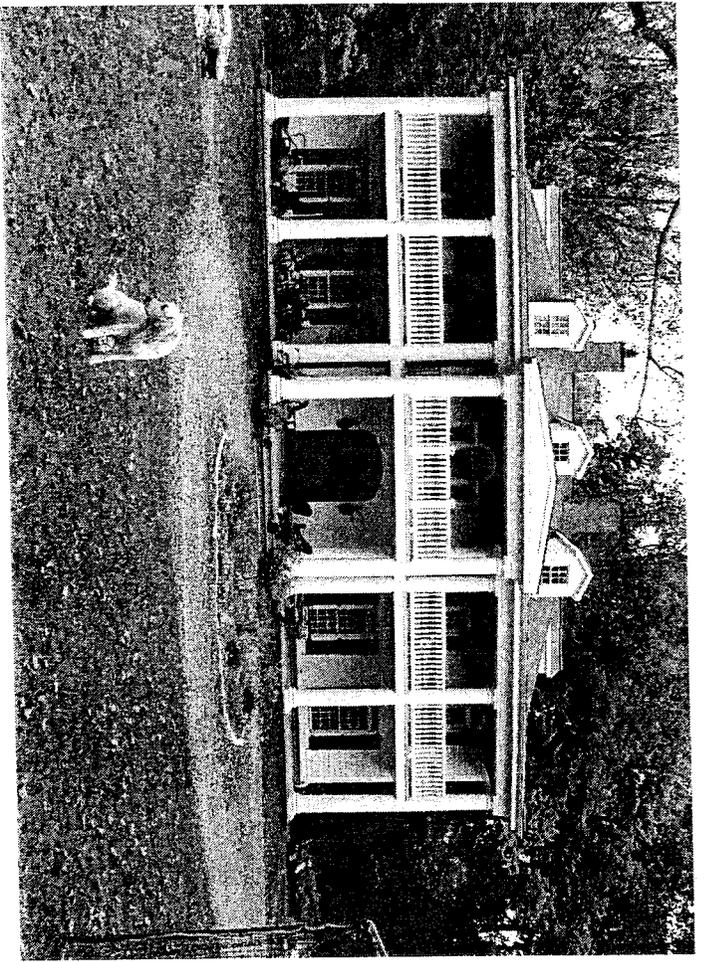


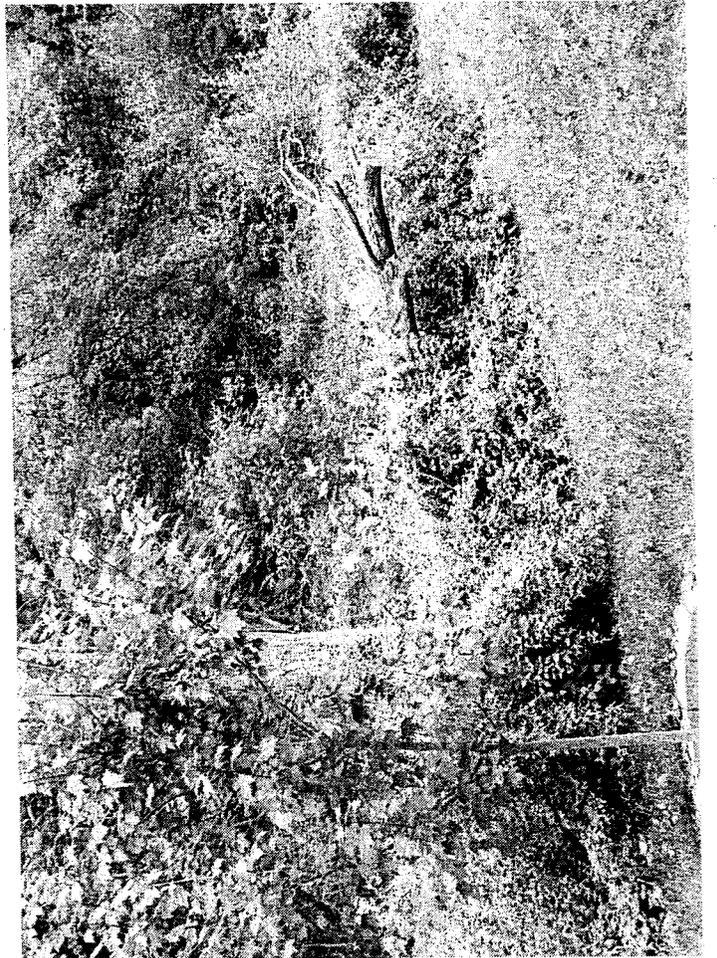
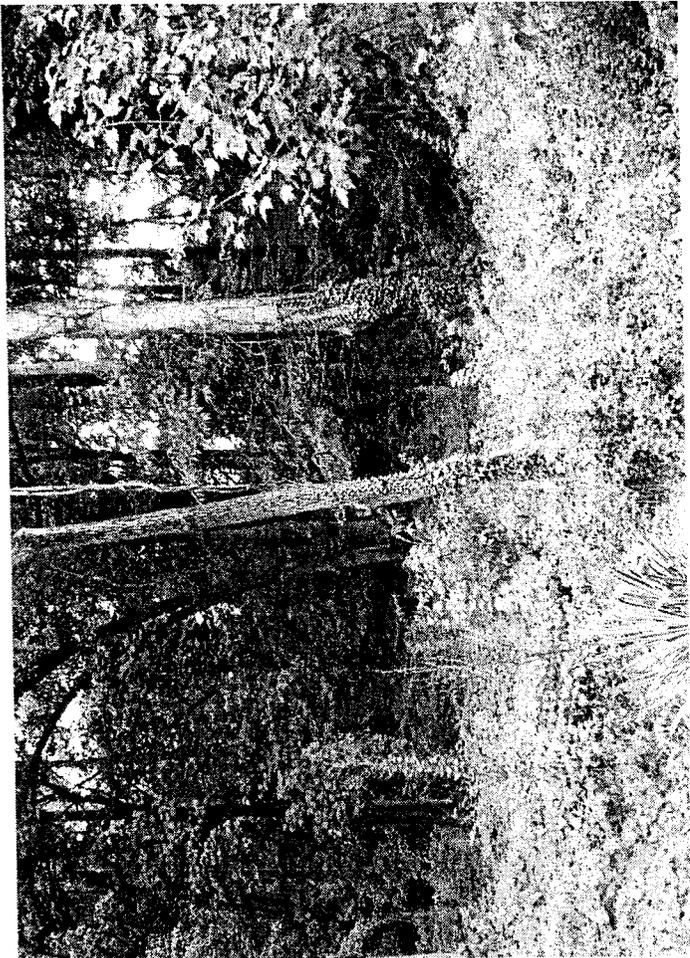














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## Variance Amendment Request

The applicants are requesting a variance amendment to modify the development conditions approved in conjunction with VC 2002-DR-139. Specifically, the applicants request modification of development conditions 1 and 2. The applicants propose several changes to the site, which were not reflected in the original variance request, which include a detached garage, a shed, fencing, a small parking pad and an area to be used by the applicants as a usable yard.

## Site Description

The 1.63 acre subject property consists of a single lot (44A) developed with a single family detached dwelling pursuant to the approval of VC 2002-DR-139. This lot accesses Westmoreland Street via a 24.33-foot wide pipestem. The pipestem and the remainder of Lot 44A extend from Westmoreland Street to the west and bound the adjacent Lot 44B to the north and east. Lot 44B also accesses Westmoreland Street from the pipestem via an access easement. The previous owner subdivided a 2.22 acre lot to create what are now Lots 44A and 44B.

The subject parcel slopes gently from Westmoreland Street to a stream located along the southwestern boundary. The stream is a tributary to Four Mile Run. The area adjacent to the stream is a Resource Protection Area (RPA). A conservation easement has been recorded over the western portion of the lot as required in conjunction with the approval of VC 2002-DR-139. The majority of the site was cleared for the construction of the 2-story single family dwelling. Vegetation remains in the conservation easement and a few trees remain along the eastern lot line and the pipestem. A concrete pad and a gravel driveway have also been constructed on the site.

## CHARACTER OF THE AREA

	<b>Zoning</b>	<b>Use</b>
<b>North</b>	R-4	Single family detached dwelling
<b>South</b>	R-4	Single family detached dwelling
<b>East</b>	R-4	Single family detached dwelling
<b>West</b>	R-4	Single family detached dwelling

## **BACKGROUND**

The applicants currently have two (2) appeal applications pending before the Board. Appeal A 2008-DR-009 is to appeal a determination that a detached garage is not in substantial conformance with the development conditions of variance VC 2002-DR-139 and Appeal A 2008-DR-026 is to appeal a determination that appellants have engaged in development and tree removal that is not in conformance with the conditions of variance VC 2002-DR-139 and without a valid Building Permit, have established a storage yard, and have outdoor storage that is not properly located. These cases were heard by the Board on September 9, 2008, and subsequently deferred for decision to October 28, 2008, March 31, 2009 and are now pending the Board's decision deferral request on June 30, 2009. The appeal staff report, which includes relevant detailed history to the site, is attached as Appendix 5.

During public hearings on the above noted appeals, several Board members suggested that the applicant's apply for a variance amendment in an attempt to resolve the issues under appeal. Pending the outcome of this application, the appeals could be considered moot and could then be withdrawn by the appellants. A copy of the approved Resolution and plat for VC 2002-DR-139 is attached as Appendix 4.

## **Proposal**

The applicants are requesting approval of an amendment to the approved variance to permit the modification of development conditions 1 and 2 to permit a change in the delineation of the previously approved limits of clearing and grading along with several additional changes to the site, which were not reflected in the original variance request, which include a detached garage, a shed, fencing, a small parking pad and an area to be used by the applicants as a usable yard.

The applicant proposes the modification of the development conditions to permit an area to be utilized as a usable yard located in front of the existing dwelling; to permit installation of a fence, ranging in height from 4 to 7 feet, to be installed along the boundary of the property; to permit an existing shed, which is currently located within the existing area designated to be undisturbed, the applicants propose to relocate the shed to an area outside of the limits of clearing and grading; to permit construction of a detached garage adjacent to the existing dwelling and to permit a parking pad, consisting of turf/stone pavers, to be permitted alongside the existing gravel driveway. The previously approved variance indicated specific limits of clearing and grading which would not permit any of these requests to be accommodated.

The applicants' state that upon completion of the construction of the single family detached dwelling, they had assumed they would then be permitted to have a usable yard. The applicants stated that they removed several dead and/or dying trees within the front yard of the property, along with the underbrush that included invasive vegetation. This vegetation was within the area designated as a tree save area on the approved variance plat. Upon the removal of these items, the applicants began maintaining the front yard with a mower as well as mulching certain areas on the southern side of the lot. Therefore, the VCA plat provided by the applicant shows a much larger area cleared than what was originally proposed with the approval of VC 2002-DR-139.

### **Urban Forest Management Division (UFMD) Analysis (Appendix 6)**

Staff requested Urban Forest Management review of the variance amendment application due to the considerable amount of vegetation removed on the property.

In a memorandum from the Forest Conservation Branch, dated June 9, 2009, several concerns were noted as addressed below.

#### **Issue:**

The foundation for a proposed garage has been installed partially within a tree save area north of the house. The applicant proposed to remove the foundation and construct the garage closer to the house. Staff believes that removing the portion of the existing foundation would cause additional damage to existing vegetation and therefore it would be more beneficial to leave the foundation/garage in its present location and adjust the limits of clearing and grading. During construction of the proposed garage, tree protection fencing needs to be installed directly adjacent to the garage to protect remaining vegetation.

#### **Resolution:**

The applicant has adjusted the limits of clearing shown on the plat to allow the garage to be constructed where the foundation exists. A condition requiring tree protection fencing to be installed has been included in the proposed development conditions.

#### **Issue:**

The applicant has requested modification to the limits of clearing and grading previously approved to allow installation of a turf/stone turn-around adjacent to the existing gravel driveway. To avoid damage to the critical root zones of adjoining existing trees, the proposed turf/stone turn-around be moved 8 to 10 feet to the east and, again tree protection fencing should be installed to protect existing vegetation.

**Resolution:**

Staff has informed the applicant of this request and the applicant has agreed to relocate the existing turn-around to accommodate the preservation of existing trees in the area. Staff has included a development condition to address this issue.

**Issue:**

There is an existing pre-fabricated shed north of the existing garage foundation that is proposed to be relocated. The shed should be removed from outside the limits of clearing and grading without the use of motorized equipment, to avoid damage to vegetation. No large motorized equipment, including bobcats, should be allowed within tree save areas. The shed should be dismantled by hand and reassembled at the proposed new location. Care should be taken when reassembling the shed at the new location to avoid damage to the oak trees that have been planted in that area.

**Resolution:**

Staff has included a development condition that requires the applicant to use the above referenced procedures to re-locate the shed.

**Issue:**

VC 2002-DR-139 was approved for the majority of the site to be undisturbed and all trees retained except for an envelope for the house and driveway. This was in recognition of the high-quality vegetation on the property. Some of the trees were removed by the applicant and the undergrowth was removed and grass planted or the area mulched. The applicant has requested that the shaded area shown on the VCA plat now be considered "Maintained Open Space" with three conditions listed as notes:

- Current trees in area to remain unless dead or designated as in decline or to be removed;
- Grass that exists to be mowed with a push behind type mower with only organic fertilizer used in the area; and,
- Mulched area to remain mulched, planting only permitted as authorized by Fairfax County DPZ.

**Resolution:**

Based on a site visit and review of an Existing Vegetation Map (EVM) dated June 18, 2002, as approved with the original variance, staff from UFMD believes that the area shaded to depict the maintained open space previously contained many of the same non-native, invasive species as those found in the undisturbed water quality/conservation easement. In addition, the EVM described the site as "mostly covered by unmaintained grass fields and undesirable undergrowth of greenbriar and invasive vines." This vegetation is not considered "desirable vegetation" required to be

preserved in development condition #2. Therefore, UFMD suggests that the area described as maintained open space be permitted. Vegetation in this area should include existing native trees, native and desirable landscape trees, shrubs and groundcovers, organic mulch and maintained turf grass. UFMD staff suggests revisions to the three proposed notes depicted on the plat. Staff has included the suggested language as development conditions contained in Appendix 1.

### **ZONING ORDINANCE REQUIREMENTS (Appendix 7)**

Applicable bulk regulation(s) and additional location regulations are set forth on above.

This variance application must satisfy all of the nine (9) enumerated requirements contained in Sect. 18-404, Required Standards for Variances. If the BZA determines that a variance can be justified, it must then decide the minimum variance that would afford relief as set forth in Sect. 18-405. A copy of these provisions is included as Appendix 7.

### **CONCLUSION**

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

### **APPENDICES**

1. Proposed Development Conditions
2. Applicant's Affidavit
3. Applicant's Statement of Justification
4. Approved Resolution and Plat for VC 2002-DR-139
5. Staff Report for Appeals A 2009-DR-009 and A 2009-DR-026
6. Urban Forest Management Division Memo dated June 9, 2009
7. Zoning Ordinance Provisions

**PROPOSED DEVELOPMENT CONDITIONS****VCA 2002-DR-139****June 30, 2009**

If it is the intent of the Board of Zoning Appeals to approve VCA 2002-DR-139 located at Tax Map 40-4 ((1)) 44A to amend VC 2002-DR-139 pursuant to Section 18-401 of the Fairfax County Zoning Ordinance, staff recommends that the Board condition the approval by requiring conformance with the following development conditions. Those conditions carried forward from the previous special permit are marked with an asterisk (\*). Edits have been made to these conditions to conform to current terminology and have been underlined.

1. This variance is approved for the minimum lot width of 24.23 feet, as shown on the plat prepared by KJ & Associates, dated October 21, 2008 as signed by Kayvan Jaboori on May 27, 2009, submitted with this application and is not transferable to other land. All development shall be in conformance with this plat as qualified by these development conditions. These conditions shall be recorded by the applicants among the land records of Fairfax County.\* A certified copy of the recorded conditions shall be provided to the Zoning Permit Review Branch, Department of Planning and Zoning (DPZ) and the Department of Public Works and Environmental Services (DPWES) prior to the approval of any permits and grading plans for this lot.
2. ~~The limits of clearing and grading shall be no greater than shown on the variance plat.~~ The limits of clearing and grading shall be the minimum amount feasible to provide for the development as depicted and shall preserve the maximum amount of desirable vegetation possible, as determined by the Urban Forestry Division of DPWES and as outlined in conditions 8 through 11 as noted below.\*
3. The applicant shall install supplemental plantings, species, size and number as determined in consultation with the Urban Forestry Division, DPWES, along the eastern lot line of the property to serve as a visual screen between the subject property and the adjacent properties. In addition, every effort will be made to preserve trees located along the pipestem driveway, as determined feasible by the Urban Forestry Division. Replacement trees shall be provided on a one to one ratio for trees removed during construction. Size and species of the replacement trees shall be determined in consultation with the Urban Forestry Division.\*

4. A conservation easement shall be recorded among the land records of Fairfax County over the western portion of the site as shown on the variance plat. The applicant shall record a conservation easement to the benefit of Fairfax County, in a form approved by the Office of the County Attorney, over the area outside the limits of clearing and grading, as shown on the variance plat. The easement shall specify that undisturbed open space shall be maintained by hand, as needed, only, to remove dead and dying vegetation, and there shall be no fertilizing or mowing of weeds or grass. Prospective purchasers of the subject property shall be advised of these requirements in writing prior to contract execution. Said purchasers shall be required to acknowledge receipt of this information in writing. Every deed of conveyance for Lot 44A shall expressly contain these disclosures.\*
5. The applicant shall grant an ingress/egress easement for the benefit of proposed Lots 44A and 44B over the common driveway shown on the variance plat. Said easement shall be the subject of a private maintenance agreement among the property owners of Lots 44A and 44B and shall be recorded in the land records of Fairfax County. Purchasers shall execute a disclosure memorandum at time of contract acknowledging the ingress/egress easement.\*
6. Replacement of the existing structure, and/or construction of additions or accessory structures that conform to the applicable Zoning Ordinance provisions and these development conditions, as determined by the Zoning Administrator, may be permitted without an amendment to this variance.
7. Placement of fences should avoid forested areas; however, they may be constructed within the tree save areas as long as good horticultural practices are observed and there is minimal disturbance to the vegetation.
8. During construction of the proposed garage, 14-gauge welded wire tree protection fence should be installed adjacent to any vegetation to be preserved within the area of the garage construction envelope.
9. Notwithstanding what has been depicted on the variance amendment plat, the turf/stone turn-around shall be moved approximately 10 feet to the east to avoid damage to critical root zones of existing trees. Tree protection fencing, in the form of 14-gauge welded wire should be installed at the limits of clearing and grading to protect existing vegetation shown to be preserved.
10. As depicted on the plat, the shed should be removed from outside the limits of clearing and grading. The removal shall occur without the use of motorized equipment, including bobcats, to avoid damage to vegetation. The shed shall be dismantled by hand and reassembled at the proposed new location and care shall be taken when reassembling the shed at the new location to avoid damage to the oak trees that have been planted in that area.

11. Notwithstanding the notes depicted on the plat under "Maintained Open Space", the trees located in this area shall be maintained as follows:
- Trees shall remain unless they are in advanced decline, at high risk of failure, or dead as determined by an ISA Certified Arborist or Registered Consulting Arborist. Documentation of the tree removal based on dead / dying condition shall be retained by the applicant and provided to the County upon request.
  - Existing turf grass shall be maintained with a motorized push-mower and if fertilization is necessary, it shall be organic and applied in the prescribed amounts as determined by the manufacturer.
  - The mulched area shall remain mulched using organic mulch such as woodchips or shredded hardwood. Planting of additional trees, shrubs and ground covers shall be species that are considered native and desirable as may be found in the Virginia Department of Conservation and Recreation (DCR) handbook.

These conditions shall incorporate and supersede all previous conditions. This approval, contingent on the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations, or adopted standards.

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

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

**SPECIAL PERMIT/VARIANCE AFFIDAVIT**

DATE: 11/12/08  
 (enter date affidavit is notarized)

I, Susan F. Earman, 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      102268 ~

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

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

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

NAME (enter first name, middle initial, and last name)	ADDRESS (enter number, street, city, state, and zip code)	RELATIONSHIP(S) (enter applicable relationships listed in <b>BOLD</b> above)
Mark J. Stadsklev	2310 Westmorland Street, Falls Church, VA 22046	Applicant/Title Owner
<i>SME</i> Susan M. K. <del>Stadsklev</del> <b>STADSKLEV</b>	2310 Westmorland Street, Falls Church, VA 22046	Applicant/Title Owner
Friedlander, Friedlander, & Earman PC	1364 Beverly Road #201, McLean, VA 22101	Attorney/Agent
Susan F. Earman	1364 Beverly Road #201, McLean, VA 22101	Attorney/Agent
Mark P. Friedlander, Jr.	1364 Beverly Road #201, McLean, VA 22101	Attorney/Agent
Jerome P. Friedlander III	1364 Beverly Road #201, McLean, VA 22101	Attorney/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: 11/12/08 102268a  
(enter date affidavit is notarized)

1(b). The following constitutes a listing\*\*\* of the **SHAREHOLDERS** of all corporations disclosed in this affidavit who own 10% or more of any class of stock issued by said corporation, and where such corporation has 10 or less shareholders, a listing of all of the shareholders:

**(NOTE:** Include **SOLE PROPRIETORSHIPS, LIMITED LIABILITY COMPANIES, and REAL ESTATE INVESTMENT TRUSTS** herein.)

**CORPORATION INFORMATION**

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

Friedlander, Friedlander, & Earman PC  
1364 Beverly Road, Suite 201  
McLean, VA 22101

**DESCRIPTION OF CORPORATION:** (check one statement)

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

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

Mark P. Friedlander, Jr.  
Jerome P. Friedlander III

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

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

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

Page Three

**SPECIAL PERMIT/VARIANCE AFFIDAVIT**

DATE: 11/12/08  
(enter date affidavit is notarized)

102268 a

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

**PARTNERSHIP INFORMATION**

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

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

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

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

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

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

**SPECIAL PERMIT/VARIANCE AFFIDAVIT**

DATE: 11/12/08  
(enter date affidavit is notarized)

102268a

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: \_\_\_\_\_  
(enter date affidavit is notarized)

102268a

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

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

NONE

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

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

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

WITNESS the following signature:

(check one)

[ ] Applicant

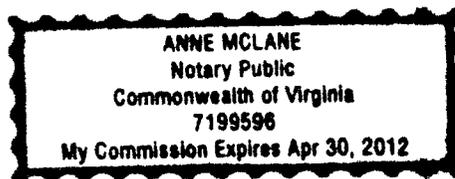
[X] Applicant's Authorized Agent

SUSAN F. EARMAN Esquire Agent For Owners.  
(type or print first name, middle initial, last name, and title of signee)

Subscribed and sworn to before me this 12 day of November, 2008, in the State/Comm. of Virginia, County/City of Fairfax.

\_\_\_\_\_  
Notary Public

My commission expires: 4/30/12



RECEIVED  
Department of Planning & Zoning

OCT 23 2008

Zoning Evaluation Division

LAW OFFICES OF  
**Friedlander, Friedlander & Earman, P.C.**(Founded in 1925)  
1364 Beverly Road, Suite 201  
McLean, VA 22101-3645Mark P. Friedlander, Sr. (1925-1978)  
Mark P. Friedlander, Jr. +\*  
Jerome P. Friedlander, II +\*  
Susan Friedlander Earman \*703-893-9600  
Fax 703-893-9650Email: [Friedlander@Friedlander.com](mailto:Friedlander@Friedlander.com)  
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COTCHETT, PITRE & SIMON  
San Francisco Airport Office Center  
840 Malcolm Road, Suite 200  
Burlingame, CA 94010

(650) 697-6000

Members of  
Virginia Bar \*  
DC Bar +**Statement in Support of a Variance Amendment**

Mark and Susan Stadskev are the owners of Westmoreland Street, in Fairfax County. They purchased the parcel in 2004 which was subject to Variance - VC2002-DR-139, Tax Map 40-4((1))44A for which they now request to amend.

The original variance found the following:

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

1. The applicants are owners of the land.
2. The applicants have presented testimony showing compliance with the required standards for a variance.
3. The parcel is an off shape that poses significant constraints to development.
4. The required hardship criterion for a variance is particularly met as no improvement is possible without a variance.
5. The property has limited access by being inaccessible from Locust Street, and therefore mandates extension of the existing pipestem driveway.

This application meets all the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

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 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 so general or recurring a nature as to make reasonably practicable the formation 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 responsible 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.
7. That authorization of the variances will not be substantial detriment to the adjacent property.
8. That the character of the zoning district will not be changed by the granting of the variances.
9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to public interest.

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

THAT the applicant has satisfied the Board that physical conditions as listed about exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the use of all reasonable use of the land and/or buildings involved.

The conditions that applied at the time of the variance are as follows:

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

1. This variance is approved for a minimum lot width of 24.23 feet, as shown on the plat prepared by Kayvan Jaboori, dated June 18, 2002. 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 each of these lots.
2. The limits of clearing and grading shall be no greater than shown on the variance plat. The limits of clearing and grading shall be the minimum amount feasible to provide for the development as depicted and shall preserve the

maximum amount of desirable vegetation possible, as determined by the Urban Forestry Division of DPWES.

3. The application shall install supplemental plantings, species, size and number as determined in consultation with the Urban Forestry Division, DPWES, along with eastern lot line of the property to serve as a visual screen between the subject property and the adjacent properties. In addition, every effort will be made to preserve trees located along the pipestem driveway, as determined feasible by the Urban Forestry Division. Replacement trees shall be provided on a one to one ratio for trees removed during construction. Size and species of the replacement trees shall be determined in consultation with the Urban Forestry Division.
4. A conservation easement shall be recorded among the land records of Fairfax County over the western portion of the site as shown on the variance plat. The applicant shall record a conservation easement to the benefit of Fairfax County. In a form approved by the Office of the County Attorney, over the area outside the limits of clearing and grading, as shown on the variance plat. The easement shall specify that the undisturbed open space shall be maintained by hand, as needed, only, to remove dead and dying vegetation, and there shall be no fertilizing or mowing of weeds or grass. Prospective purchasers of the subject property shall be advised of these requirements in writing prior to contact execution. Said purchases shall be required to acknowledge receipt of this information in writing. Every deed of conveyance for Lot 44A shall expressly contain these disclosures.
5. The applicant shall grant an ingress/egress easement for the benefit of proposed Lots 44A and 44B over the common driveway shown on the variance plat. Said easement shall be the subject of a private maintenance agreement among the property owners of Lot 44A and 44B and shall be recorded in the land records of Fairfax County. Purchasers shall execute a disclosure memorandum at time of contract acknowledging the ingress/egress easement.

Mark and Susan Stadsklev come before the Board of Zoning Appeals to request minor modifications to this variance that are in harmony with the development.

Attached is a revised plat submitted to amend the variance to incorporate the following:

- Detached garage with dimensions of 24.2' x 36.2'
- Fence located on border with front yard neighbor made of wood
- Fencing just inside front and side borders
- Fencing in back of home not encroaching on preservation area

- Garden area located in front yard next to fence
- rear deck, permeable surface above grade (footers outside of easement)
- shed
- turf and stone parking area 22'x16'

This parcel is located in an R-4 district. The proposed amendments to the 2002 variance do not violate the conditions of the variance and reflect all prospective development that would flow from a single family use of the parcel. The uses proposed do not over develop this area for it is a large parcel nestled between smaller lots with homes.

The 2002 variance included a plat and tree survey. After the land was purchased an agent for the Stadsklevs' submitted a minor modification which requested a garage and front porch on the structure. The garage was not formally addressed in any writings from staff but the front porch was administratively approved as a minor modification.

At the time of grading plan submission, Urban Forestry noted that the trees on the variance plat did not conform specifically to what was on the site. After a four months Urban Forestry felt that there was substantial compliance and approved the plan and verbally apologized to the Owners. Once the Residential Use Permit was issued no formal inventory was performed by staff at the time of occupancy. After the RUP was approved, 6 trees on the site died - 4 due to high winds, and an additional 2 from other natural causes. The owners have planted additional plantings to replace these trees. The owners firmly believe that they have abided by the development conditions of the variance.

It has been the intent of the owners to build detached garage, to keep their vehicles and to store outdoor equipment, there is no basement in the home. The owners submitted development plans with power and sewer placed for an out area next to the home. Exhibit 1.

Mr. Stadskev also recalls conversations at the site where Fairfax agents agreed that a garage would be permissible at a later date. This is also supported by the house development plat containing power and water to an outlying area next to the residential structure.

In 2007 the owner submitted plans for a detached garage and received a building permit. A stop work order was issued followed by violations letters. The violations were then appealed to this Board.

In efforts to resolve the violations prior to a hearing on the appeals, an agreement with the County to construct an attached garage on the site moving the current pad location 10 feet was reached. The agreement was later rescinded via a letter sent after 60 days from the initial date of the agreement. This issue is still pending.

During the public hearing many items were discussed concerning this parcel. Also at the hearing Zoning Board members suggested that the remedy of amending the variance was an appropriate avenue to investigate.

Exhibit 2 is the amended plat showing additional fencing, detached garage, a garden, deck, shed and parking area. Again, it is the position of the owners to request all possible future uses on this parcel in order to keep it in compliance regardless of ownership.

Therefore the owners are depicting any item that may be needed on sight to submit for formal approval of an amended variance.

The garage pad site will be moved to be contained within the limits of clearing and grading lines of the 2002 variance plat. The fencing is such as to protect children and pets, as a needed and desired buffer to adjacent property owners. The shed is a storage facility and is proposed to relocate to the side of the home, and the garden is pervious and pursuant to Fairfax Code is *not* a land-disturbing activity and exempt; therefore should not be an area of concern for this Board, Section 104-1-7 Definitions of Soil Conservation section. The turf-stone pavers for additional parking are also requested in this amendment.

The Stadslevs request these minor modifications of the variance to include a garage, fencing, a shed, garden, pavers and rear deck. They believe that these slight modifications make this development complete. All requests are in keeping with the surrounding development and are made in good faith.

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

EINER R. & STEFANIA S. NIELSON, VC 2002-DR-139 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit a minimum lot width of 24.23 ft. Located on the W. side of Westmoreland St., approx. 400 ft. S. of its intersection with 33rd St. on approx. 1.63 ac. of land zoned R-4. Dranesville District. Tax Map 40-4 ((1)) 44A. Mr. Hart moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on November 19, 2002; and

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

1. The applicants are the owners of the land.
2. The applicants have presented testimony showing compliance with the required standards for a variance.
3. The parcel is an odd shape that poses significant constraints to development.
4. The required hardship criterion for a variance is particularly met as no improvement is possible without a variance.
5. The property has limited access by being inaccessible from Locust Street, and therefore mandates extension of the existing pipestem driveway.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

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.
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 purpose of this Ordinance and will not be contrary to the public interest.

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

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

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

1. This variance is approved for a minimum lot width of 24.23 feet, as shown on the plat prepared by Kayvan Jaboori, dated June 18, 2002. 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 each of these lots.

2. The limits of clearing and grading shall be no greater than shown on the variance plat. The limits of clearing and grading shall be the minimum amount feasible to provide for the development as depicted and shall preserve the maximum amount of desirable vegetation possible, as determined by the Urban Forestry Division of DPWES.
3. The applicant shall install supplemental plantings, species, size and number as determined in consultation with the Urban Forestry Division, DPWES, along the eastern lot line of the property to serve as a visual screen between the subject property and the adjacent properties. In addition, every effort will be made to preserve trees located along the pipestem driveway, as determined feasible by the Urban Forestry Division. Replacement trees shall be provided on a one to one ratio for trees removed during construction. Size and species of the replacement trees shall be determined in consultation with the Urban Forestry Division.
4. A conservation easement shall be recorded among the land records of Fairfax County over the western portion of the site as shown on the variance plat. The applicant shall record a conservation easement to the benefit of Fairfax County, in a form approved by the Office of the County Attorney, over the area outside the limits of clearing and grading, as shown on the variance plat. The easement shall specify that undisturbed open space shall be maintained by hand, as needed, only, to remove dead and dying vegetation, and there shall be no fertilizing or mowing of weeds or grass. Prospective purchasers of the subject property shall be advised of these requirements in writing prior to contract execution. Said purchasers shall be required to acknowledge receipt of this information in writing. Every deed of conveyance for Lot 44A shall expressly contain these disclosures.
5. The applicant shall grant an ingress/egress easement for the benefit of proposed Lots 44A and 44B over the common driveway shown on the variance plat. Said easement shall be the subject of a private maintenance agreement among the property owners of Lots 44A and 44B and shall be recorded in the land records of Fairfax County. Purchasers shall execute a disclosure memorandum at time of contract acknowledging the ingress/egress easement.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval unless the subdivision has been recorded among the land records of Fairfax County. The Board of Zoning Appeals may grant additional time to record the subdivision 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.

Mr. Hammack seconded the motion which carried by a vote of 6-0-1. Mr. Pammel abstained from the vote.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on November 27, 2002. This date shall be deemed to be the final approval date of this variance.

//

THE PROPERTY IS SUBJECT TO THE FOLLOWING EASEMENTS AND ENCUMBRANCES:

1. EASEMENT OF WAY AND UTILITIES
2. EASEMENT OF WAY AND UTILITIES
3. EASEMENT OF WAY AND UTILITIES
4. EASEMENT OF WAY AND UTILITIES
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**EXISTING AREA CALCULATIONS**

AREA OF LOT 1: 10,000 SQ. FT.

AREA OF LOT 2: 10,000 SQ. FT.

AREA OF LOT 3: 10,000 SQ. FT.

AREA OF LOT 4: 10,000 SQ. FT.

AREA OF LOT 5: 10,000 SQ. FT.

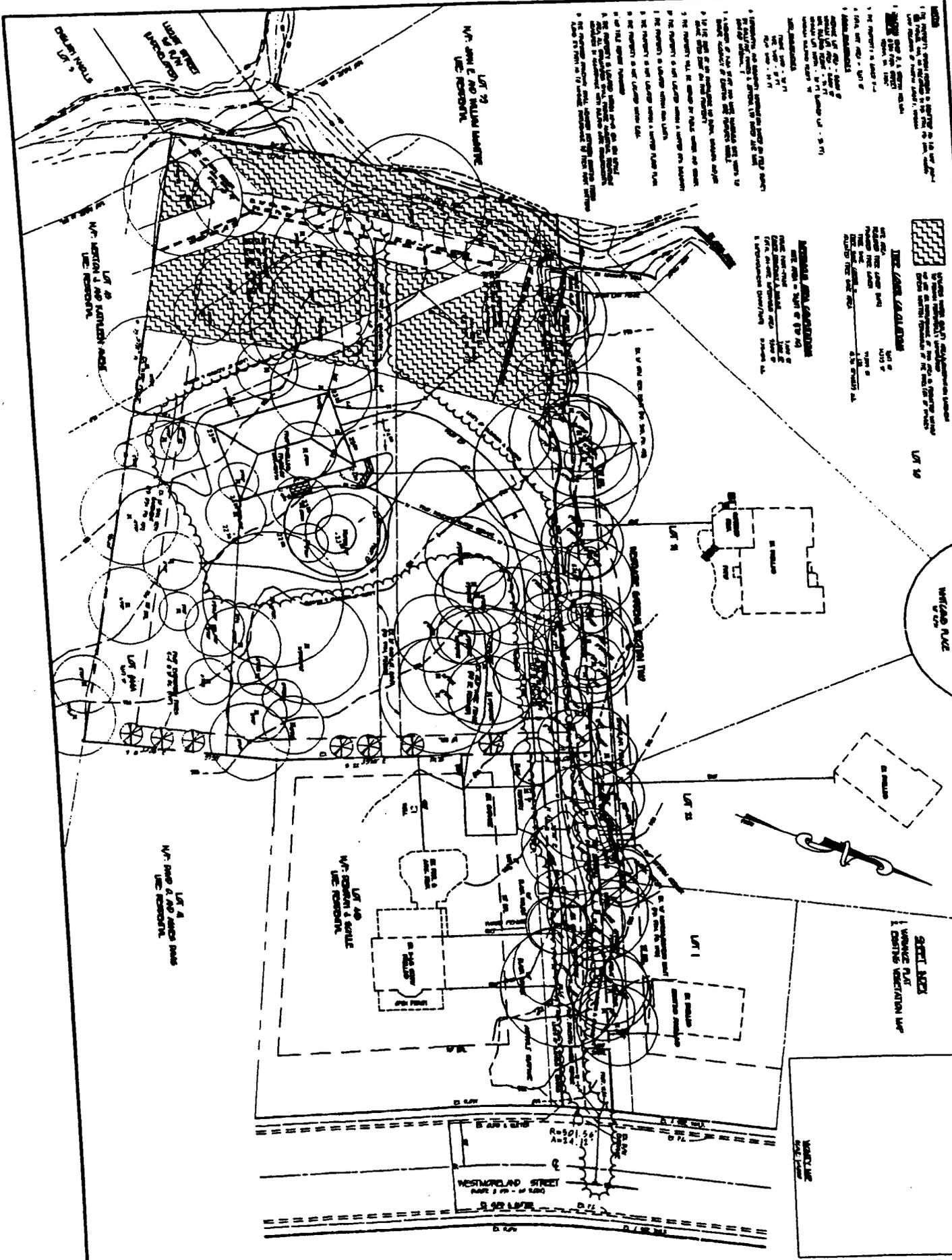
AREA OF LOT 6: 10,000 SQ. FT.

AREA OF LOT 7: 10,000 SQ. FT.

AREA OF LOT 8: 10,000 SQ. FT.

AREA OF LOT 9: 10,000 SQ. FT.

AREA OF LOT 10: 10,000 SQ. FT.

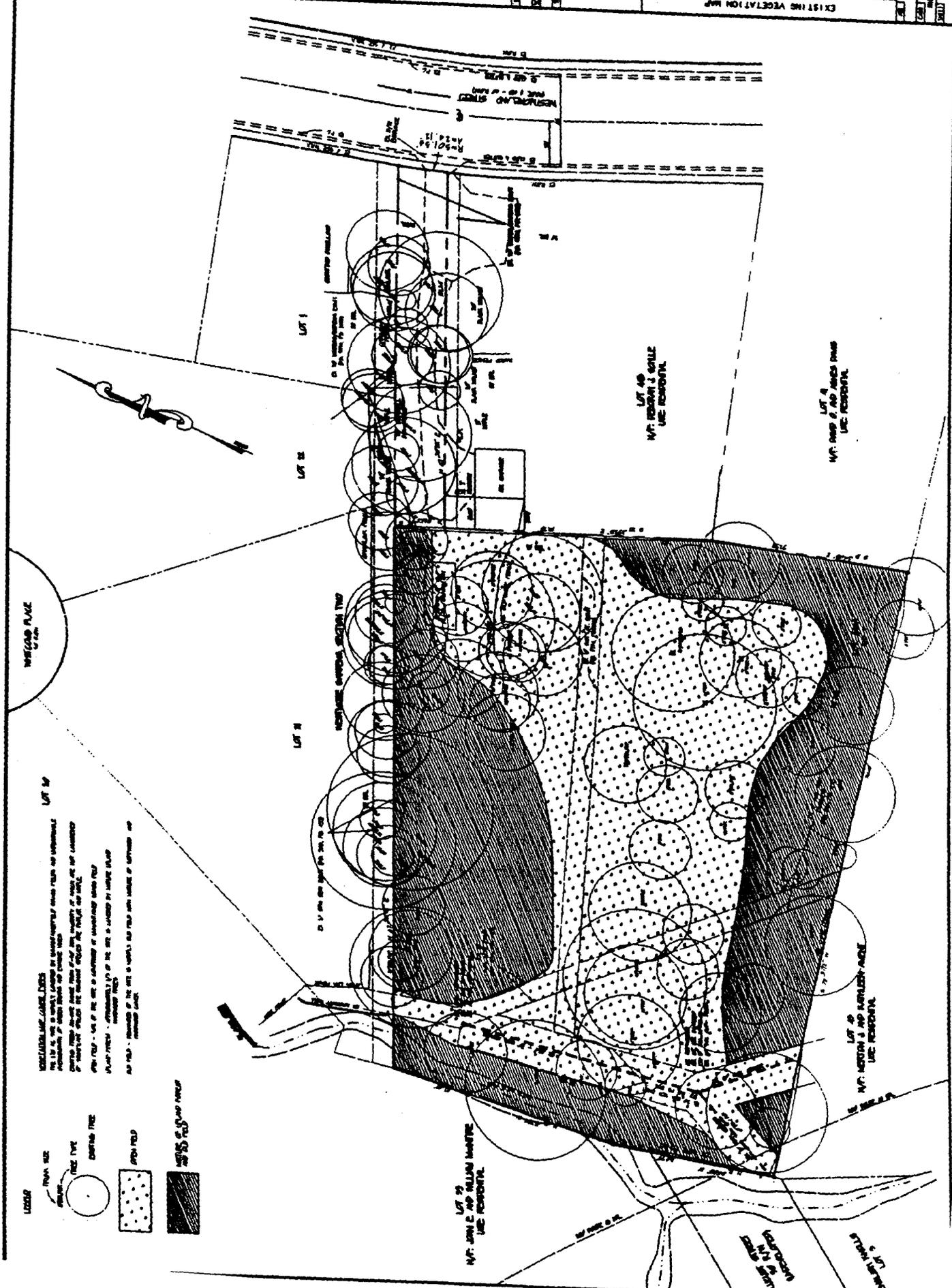


<p>VAR IANCE PLAT</p> <p><b>NIELSON PROPERTY</b></p> <p>DRANESVILLE DISTRICT FAIRFAX COUNTY, VIRGINIA</p>			<p><b>KJ &amp; ASSOCIATES</b></p> <p>1000 ...</p>	<p>DATE: ...</p> <p>SCALE: 1" = 20'</p> <p>SHEET: 1 OF 2</p>
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NO.	1
DATE	1/1/1981
BY	J. J. JONES
SCALE	AS SHOWN
PROJECT	EXISTING VEGETATION MAP

**KJ & ASSOCIATES**  
 1000 ...  
 ...

**NIELSON PROPERTY**  
 ...  
 ...



**LEGEND**

FROM THE ...  
 TREE TYPE ...  
 SHRUB TYPE ...  
 OTHER TYPE ...

2. 10 ...  
 7. 10 ...  
 ...



# FAIRFAX COUNTY

## BOARD OF ZONING APPEALS

PUBLIC HEARING DATE: September 9, 2008  
TIME: 9:30 A. M.

V I R G I N I A

September 4, 2008

### STAFF REPORT

APPEAL APPLICATIONS A 2008-DR-009 and A 2008-DR-026

### DRANESVILLE DISTRICT

**APPELLANTS:** Mark and Susan Stadsklev

**LOCATION:** 2310 Westmoreland Street

**TAX MAP REF:** 40-4 ((1)) 44A

**ZONING DISTRICT:** R-4

**SITE AREA:** 1.63 acres

**NATURE OF APPEALS:** **A 2008-DR-009** - Appeal of determinations that a detached garage is not in substantial conformance with the development conditions of Variance VC 2002-DR-139

**A-2008-DR-026** - Appeal of a determination that appellants have engaged in development and tree removal that is not in conformance with the conditions of Variance VC 2002-DR-139; and, have established a storage yard and have outdoor storage that is not properly located.

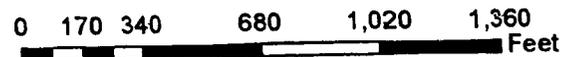
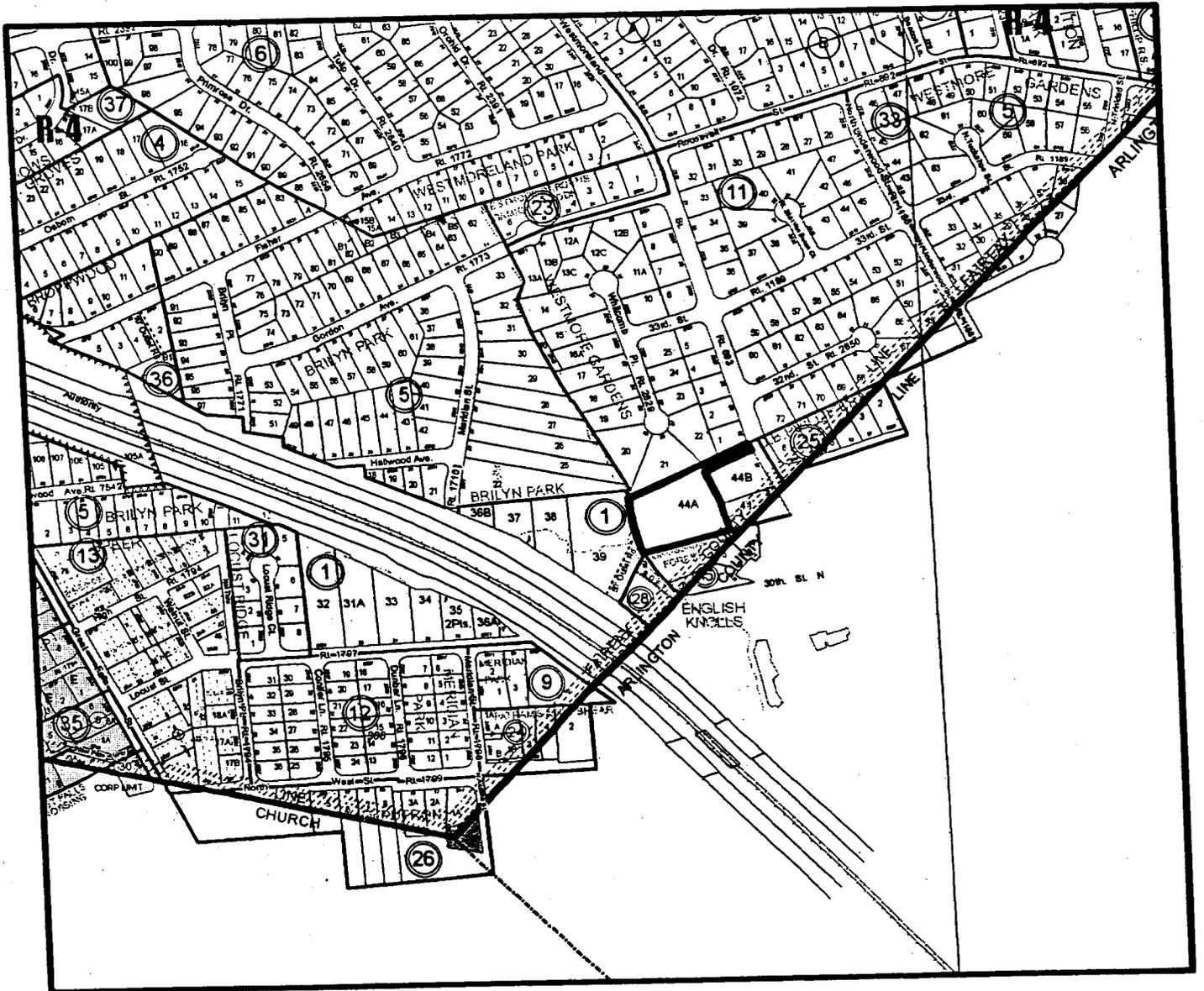
SCL

For information, contact the Zoning Administration Division, Department of Planning and Zoning, 12055 Government Center Parkway, Suite 807, Fairfax, Virginia 22035-5505, 703-324-1314.

# APPEAL APPLICATION

A 2008-DR-009

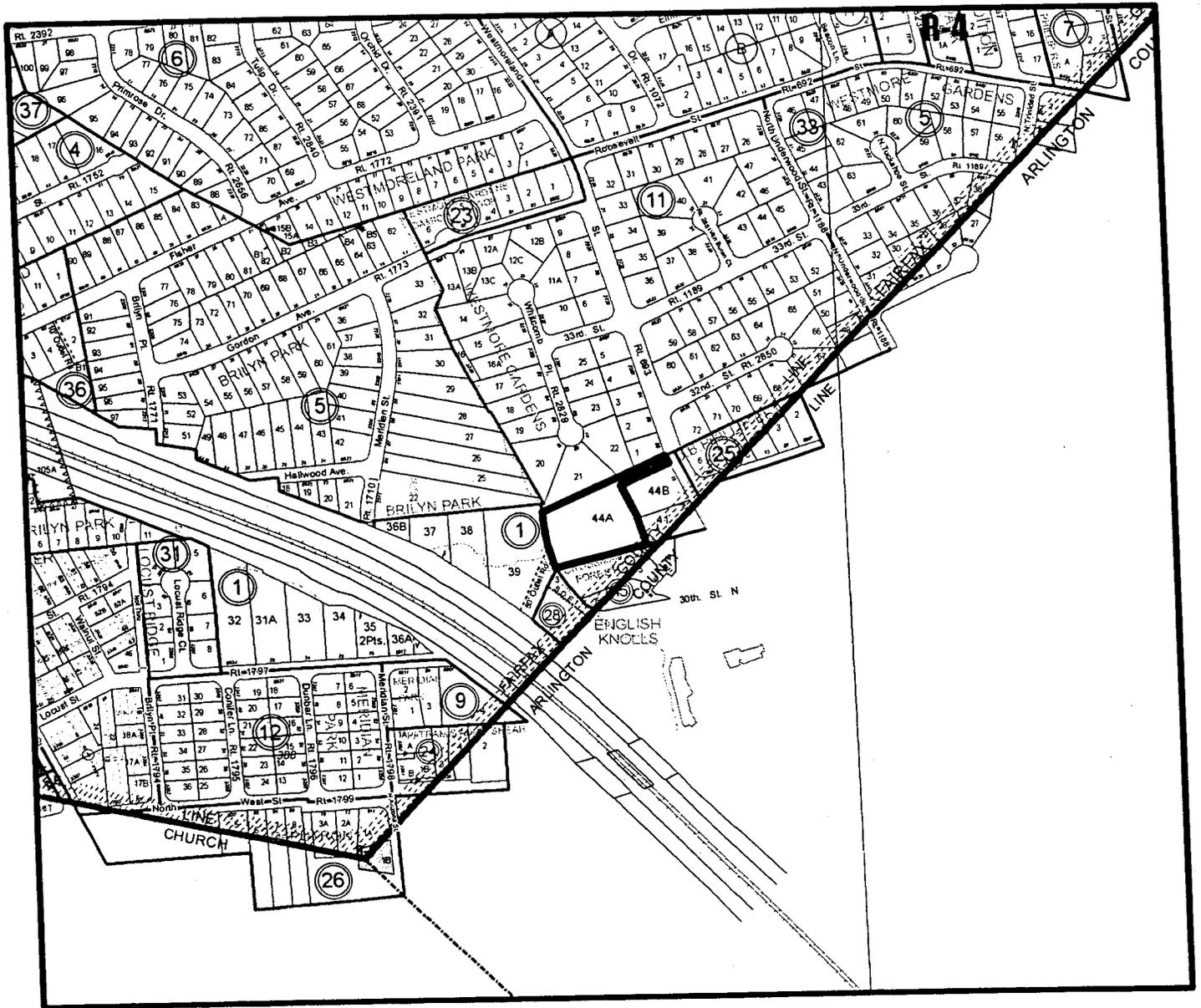
MARK AND SUSAN STADSKLEV, A 2008-DR-009 Appl. under sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that a detached garage is not in substantial conformance with the development conditions of Variance VC 2002-DR-139. Located at 2310 Westmoreland St. on approx. 1.63 ac. of land zoned R-4. Dranesville District. Tax Map 40-4 ((1)) 44A.



# APPEAL APPLICATION

A 2008-DR-026

MARK AND SUSAN STADSKLEV, A 2008-DR-026 Appl. under sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellants have engaged in development and tree removal that is not in conformance with the conditions of Variance VC 2002-DR-139 and without a valid Building Permit, have established a storage yard, and have outdoor storage that is not properly located, all on property in the R-4 District in violation of Zoning Ordinance provisions. Located at 2310 Westmoreland St. on approx. 1.63 ac. of land zoned R-4. Dranesville District. Tax Map 40-4 ((1)) 44A.



0 145 290 580 870 1,160 Feet

**DESCRIPTION OF APPEAL****Appellants:**

Mark and Susan Stadskev

**Issue:**

Appeal of determinations that a detached garage is not in substantial conformance with the development conditions of Variance VC 2002-DR-139, that appellants have engaged in development and tree removal that is not in conformance with the conditions of Variance VC2002-DR-139, and have established a storage yard and have outdoor storage that is not properly located.

**Property Description:**

The 1.63 acre subject property consists of a single lot (44A) developed with a single family detached dwelling pursuant to the approval of VC 2002-DR-139. This lot accesses Westmoreland Street via a 24.33 foot wide pipestem. The pipestem and the remainder of Lot 44A extend from Westmoreland Street to the west and bound the adjacent Lot 44B to the north and east. Lot 44B also access Westmoreland Street from the pipestem via an access easement. The previous owner subdivided a 2.22 acre lot to create what are now Lots 44B and 44A.

The subject parcel slopes gently from Westmoreland Street to a stream located along the southwestern boundary. The stream is a tributary to Four Mile Run. The area adjacent to the stream is a Resource Protection Area (RPA). A conservation easement has been recorded over the western portion of the lot as required in conjunction with the approval of VC 2002-DR-139. The majority of the site was cleared for the construction of a 2-story single family dwelling. Vegetation remains in the conservation easement and a few trees remain along the eastern lot line and the pipestem. A concrete pad and a gravel driveway have also been constructed on the site. The site is surrounded to the north, south and east by lots developed with single family dwellings. Lots located to the west are undeveloped and are adjacent to Route 66.

**Appellant's Position:**

The appellant's applications and basis for appeal are set forth in Attachment 1.

## ZONING ORDINANCE PROVISIONS

The provisions of the Zoning Ordinance which are germane to this appeal are listed below. The complete text of these provisions is enclosed as Attachment 2.

- Sect. 18-405, Conditions (Variance)
- Par. 1 of Sect. 18-901, General Provisions
- Par. 4, 5, and 6 of Sect. 2-302, Permitted Uses
- Par. 24 of Sect. 10-102, Permitted Accessory Uses (Storage structures)
- Definition of STORAGE YARD as set forth in Article 20 of the Zoning Ordinance.

## BACKGROUND

- The application property was created by a subdivision entitled “Nielson’s Addition to the James B. Phillips Estate”, which was approved by the Site Review Branch of the Department of Public Works and Environmental Services (DPWES) on February 22, 1982. The subdivision plan contained a notation stating that the subject property denoted as ‘Outlot A’ (now Lot 44A), did not meet the requirements of the Fairfax County Ordinances for the issuance of a building permit. The notation referenced inadequate lot width. Prior to subdivision, the parent property consisted of 2.22 acres developed with one dwelling. The property owner divided the property which became Lots 44A and 44B, and resided in the dwelling which is now located on Lot 44B. An ingress/egress easement was established at the time of subdivision to provide access to both Lots 44A and 44B.
- On April 24, 2000, the Board of Zoning Appeals denied Variance VC 00-D-148 for the subject property to permit the subdivision of Lot 44A into three lots and one outlot, with two lots having a lot width of 8.08 feet and one lot having a lot width of 8.07 feet.
- On November 19, 2002, the Board of Zoning Appeals (BZA) approved VC 2002-DR-139 in the name of Einer R. and Stefania S. Nielson, to permit a minimum lot width of 24.23 feet for the subject property (Lot 44A) rather than the 70 feet required in the R-4 District. A copy of the Resolution and plat approved in conjunction with VC 2002-DR-139 is provided as Attachment 3.
- On August 8, 2003, a conservation easement was recorded among the Fairfax County land records at Deed Book 14924, Page 0362. The conservation easement was established pursuant to Development Condition 4 of VC 2002-DR-139, to protect the tributary to Four Mile Run. A copy of the easement is provided as Attachment 4.
- The subject property was conveyed to Mark J. Stadskev by a deed recorded among the Fairfax County land records at Deed Book 18814, Page 1299 on September 9, 2003.
- On December 30, 2004, Kayvan Jaboori, P.C., agent for the owner, wrote to Mavis Stanfield, staff in the Department of Planning and Zoning, requesting an interpretation of the approved

variance. The agent asked for approval of a dwelling unit with a crawl space and a detached garage rather than a dwelling unit with a basement and internal garage as shown on the variance plat approved in conjunction with VC 2002-DR-139. There were several discussions between Ms. Stanfield and the agent concerning the requests during which Ms. Stanfield indicated that the detached garage could not be approved because it was not in conformance with the conditions and plat approved in conjunction with the variance. The agent then submitted a plat depicting an enlarged house foot print and modified driveway.

By letter dated March 11, 2005, Barbara Byron, Director, Zoning Evaluation Division (ZED) issued an interpretation that the larger dwelling and paved parking area to the north of the dwelling as depicted on the interpretation plat dated February 18, 2005, prepared by the agent's firm was in substantial conformance with VC 2002-DR-139. A detached garage was not depicted on the interpretation plat. Further, an appeal of this determination was not filed. A copy of the letters and plat are provided as Attachment 5.

- On July 3, 2005, Building Permit #05047B0380 was issued for the construction of a house on the subject property. A copy of the Building Permit is provided as Attachment 6.
- Only July 18, 2005, Ruth Soulier, Assistant County Attorney, issued a letter to Mark Stadskev, informing him that he was in violation of the conservation easement situated on the property located at 2310 Westmoreland Street. Ms. Soulier outlined the violation activities and mitigation steps needed to rectify the violations. On July 28, 2005, Mr. Stadskev responded on the status of the mitigation steps that had been taken. A copy of Ms. Soulier's letter and response from Mr. Stadskev is provided as Attachment 7.
- On June 22, 2007, Mark Stadskev, applied for a building permit to construct a detached 2-story garage, 24 X 36 feet in size and 18 feet high. On June 25, 2007, Building Permit #71730162 was approved by DPWES and the Zoning Administration Division. A copy of the building permit and plat at provided as Attachment 8.
- On August 16, 2007, Diane Johnson-Quinn, Deputy Zoning Administrator, sent a letter to Mark Stadskev stating that the Building Permit application for construction of the detached garage did not specify that the property was subject to an approved variance nor did the House Location Plat prepared by the surveyor reflect the location or existence of the conservation easement. Ms. Johnson-Quinn informed Mr. Stadskev that the Building Permit had been erroneously approved based on incomplete information and that the construction of the detached garage could be in violation of the variance conditions. She further stated that on August 15, 2007, she had recommended that the Building Official, Ray Pylant, revoke the Building Permit and issue a stop work order. A Stop Work Order was issued on August 15, 2007. A copy of the August 16, 2007 letter and the Stop Work Order is provided as Attachment 9.
- On October 5, 2007, Susan Earman, Esquire, wrote to Diane Johnson-Quinn, staff in DPZ, concerning the Stop Work Order and requesting that the detached garage be approved, stating that Mr. Stadskev's position was that the variance language only applied to the building of the single family detached home and does not address any out buildings and that the limits of

clearing no longer applied once the main structure was built.

In a letter dated February 5, 2008, Regina Coyle, Director, ZED, issued an interpretation which stated that the detached garage structure was not shown on the variance plat and its location encroached into the limits of clearing and grading, and therefore, the detached garage was not in substantial conformance with VC 2002-DR-139. A copy of the letters is provided as Attachment 10.

- On March 5, 2008, Susan Earman, Agent for the appellant, filed Appeal A 2008-DR-009 appealing the determination made by Regina Coyle set forth in her letter dated February 5, 2008. The appeal public hearing was moved several times at the agent's request in order for Ms. Earman and Ms. Stadskev to meet with staff to revise the request for the detached garage in an attempt to try to bring it into conformance with the conditions approved in conjunction with the variance. On June 10, 2008, Ms. Earman submitted a revised interpretation request which depicted an attached garage which extended beyond the footprint of the structure depicted on the approved variance plat.

In a letter dated July 17, 2008, Regina Coyle, Director, ZED, stated that the approval of an amendment to an approved lot width variance is the legally proffered process to construct an addition or establish any accessory structure not otherwise depicted on an approved Variance Plat or otherwise permitted by the development conditions since the principal use (a single family dwelling) would not otherwise have been permitted on the lot. A copy of these letters is provided as Attachment 11.

- On April 21, 2008, a Notice of Violation (NOV) was issued to Mark and Susan Stadskev indicating that several violations existed on the property including: footing and foundation for a detached garage which was not in conformance with the approved variance plat; a free-standing accessory storage structure (shed); a parking pad, sandbox or planter box and a fence exceeding 4 feet in height, all located within the limits of clearing and grading and not shown on the variance plat; the removal of trees shown on the variance plat to be preserved; storage of construction equipment which constituted a storage yard; and, outdoor storage in excess of 100 square feet in the front yard. A copy of the NOV is provided as Attachment 12.
- Based on a request from the agent for the appellant, staff from the Forest Conservation Branch, DPWES conducted a site visit to determine the status of the vegetation on site and preservation or lack thereof of trees shown to be preserved on the variance plat. A copy of the report is provided as Attachment 13.
- On May 20, 2008, Susan Earman, agent for the appellant, filed Appeal A 2008-DR-026 appealing the NOV written by Bruce Miller dated April 21, 2008. The appeal public hearing was administratively moved at the agent's request to allow it to be scheduled concurrent with A 2008-DR-009.

## **DIRECTOR OF ZONING EVALUATION DIVISION AND ZONING ADMINISTRATOR'S POSITIONS**

These are appeals of determinations that a detached garage is not in substantial conformance with the development conditions of Variance VC 2002-DR-139 and that the appellants have engaged in development and tree removal that is not in conformance with the conditions of Variance VC2002-DR-139, have established a storage yard and have outdoor storage that is not properly located.

The subject property is located on the west side of Westmoreland Street, just northeast of I-66. The southeastern corner of the property abuts the Arlington County line. The property was originally developed as an outlot and by virtue of the approval of VC 2002-DR-139, was approved as a building lot with a lot width of 24.23 feet where 70 feet is required. The BZA granted VC 2002-DR-139 on November 19, 2002, subject to development conditions and conformance with the submitted variance plat. Conditions 1, 2 and 4 approved in conjunction with VC 2002-DR-139 state,

“1. This variance is approved for a minimum lot width of 24.23 feet, as shown on the plat prepared by Kayvan Jaboori, dated June 18, 2002. 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 each of these lots.

2. The limits of clearing and grading shall be no greater than shown on the variance plat. The limits of clearing and grading shall be the minimum amount feasible to provide for the development as depicted and shall preserve the maximum amount of desirable vegetation possible, as determined by the Urban Forestry Division of DPWES.

4. A conservation easement shall be recorded among the land records of Fairfax County over the western portion of the site as shown on the variance plat. The applicant shall record a conservation easement to the benefit of Fairfax County, in a form approved by the Office of the County Attorney, over the area outside the limits of clearing and grading, as shown on the variance plat. The easement shall specify that undisturbed open space shall be maintained by hand, as needed, only, to remove dead and dying vegetation, and there shall be no fertilizing or mowing of weeds or grass. Prospective purchasers of the subject property shall be advised of these requirements in writing prior to contract execution. Said purchasers shall be required to acknowledge receipt of this information in writing. Every deed of conveyance for Lot 44A shall expressly contain these disclosures.”

On December 4, 2004, Kayvan Jaboori, agent for the appellant submitted an interpretation letter requesting approval from DPZ to permit construction of the dwelling on site with a crawl space and a detached garage rather than a single structure, the dwelling with an attached garage as depicted on the approved variance plat. This was pursued as a result of DPWES rejecting a grading plan because the plan was not in conformance with the approved variance. Discussions ensued between staff and Mr. Jaboori in which staff indicated that a detached structure would not be approved because Condition 1 of VC 2002-DR-139 specifically stated, in part, “. . . All development shall be in conformance with this plat as qualified by these development conditions.” No accessory structures were depicted on the variance plat. Based on these

discussions, Mr. Jaboori submitted a plat entitled "Grading Plan, Nielson's Addition to James B. Phillips Estate" signed February 18, 2005, which is provided in Attachment 5 as noted previously. This plat depicts a slightly larger footprint for the house than shown on the approved variance plat and a reconfigured driveway. The plat shows no other structures on the site. This configuration was approved as per the interpretation issued by Barbara Byron, Director, ZED, dated March 11, 2005.

On June 22, 2007, Mark Stadskev submitted a building permit application for a detached garage. The application from Mr. Stadskev did not indicate that the application property was subject to an approved variance or include a copy of the interpretation letter from Barbara Byron. The application was subsequently approved by the Zoning Permit Review Branch, DPZ, and the Building Permit issued by DPWES, Land Design Services, on June 25, 2007, for the construction of a detached garage (Attachment 8).

On August 15, 2007, Diane Johnson-Quinn, Deputy Zoning Administrator, contacted Mr. Stadskev and followed up with a written notice on August 16, 2007, notifying him that the building permit had been issued in error based on incomplete information provided by him. Ms. Johnson-Quinn noted that the building permits issued for both the house (in July, 2005) and the building permit issued for the detached garage on July 25, 2007, did not specify that the property was subject to variance approval. Additionally, the building permit plats prepared by the surveyor did not reflect the location or existence of the conservation easement. Ms. Johnson-Quinn stated that the building permit would be revoked and outlined the steps Mr. Stadskev needed to take before the permit could be re-issued. A Revocation of Permit/Stop Work Order was issued by Ray Pylant, Building Official, on August 15, 2007. Fifty-one days passed between the issuance of the building permit for the detached garage and the revocation of that permit.

In response to the revocation of the Building Permit and the Stop Work Order, by letter dated October 5, 2007, the agent for the applicant again requested an interpretation based on VC 2002-DR-139 to permit approval of a detached garage. Regina Coyle, Director, Zoning Evaluation Division, issued an interpretation dated February 5, 2008, stating that the detached garage was not in substantial conformance with the variance (Appendix 10). This is the basis for the appellant's appeal of A 2008-DR-009.

The application property, Lot 44A, was created by the subdivision of a larger parcel in 1982. The subdivision plat noted the parcel as "Outlot A", (now lot 44A) which did not meet the requirements of the Fairfax County Ordinances for the issuance of a building permit because of inadequate lot width. VC 2002-DR-139 was approved by the BZA on November 19, 2002, to permit a minimum lot width of 24.33 feet where 70 feet is required. Absence the approval of the lot width variance, a dwelling could not be constructed on this lot. Virginia Code, Sect. 15.2-2309(2)(c) provides, in relevant part, that "the use or the structure permitted by 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." In *Horner v. BZA*, Case No. CL-2006-0007696, Fairfax County Circuit Court Judge Bellows ruled that a new variance is not required for additions to structures that are permitted by variances where the additions themselves comply with the Zoning Ordinance. In that case, a garage was permitted by a variance because the garage extended into

the minimum required side yard, but the addition to the garage did not require a variance because it did not extend into the minimum required side yard, and it otherwise complied with the Zoning Ordinance. If the addition had extended into the required side yard, it is clear that Judge Bellows would have ruled that a variance for the addition was required. In this case, a detached garage is not permitted without an amendment to the variance because nothing can be built on the site without a new variance except what was approved by the original variance. Anything built on the property that was not approved as part of the original variance would be precluded by VA. Coe Set. 15.2-2309(2)(c) unless a new variance for such construction is obtained because such new construction would constitute an expansion within an area of the site for which the original variance was required, namely, the whole property. Additionally, Sect. 18-405 of the Zoning Ordinance states, in part, “. . . In authorizing such variance the BZA may impose such conditions regarding the location, character and other features of the proposed structure . . .” It is staff’s position that based State Code and the Zoning Ordinance provisions, any additional structures on the site require approval of an Amendment to VC 2002-DR-139 or alternatively, approval of a Special Exception for lot width by the Board of Supervisors.

Subsequent zoning inspections conducted between February 12, 2008 and March 27, 2008 revealed that the appellants had installed the footing and foundation for the detached garage despite the fact that the Building Permit had been revoked and that they were storing on the subject property construction equipment, including ladders, scaffolding, tools, buckets, rebar, contractors boxes, two unlicensed trailers, a boat, construction materials, including but not limited to doors, windows, siding, bricks, lumber, pipe and miscellaneous other items. The keeping of these items on this property constitutes a storage yard. The inspection also revealed that a freestanding accessory storage structure (shed) had been constructed in the side yard, and that a parking pad, sandbox or planter box, and a fence exceeding 4 feet in height all were located in the front and/or side yards, many within the limits of clearing and grading and not in conformance with the approved variance conditions or plat. In addition, trees shown on the approved Variance Plat to be saved and within the limits of clearing and grading (save areas) had been removed and the clearing had exceeded what was permitted by VC 2002-DR-139.

A storage yard is defined in Article 20 of the Zoning Ordinance as “the use of any space, whether inside or outside a building, for the storage or keeping of construction equipment, machinery, vehicles or parts thereof, boats and/or farm machinery.” As noted above, inspections of the subject property revealed that the appellants were storing, among other things, construction equipment. Storage of such items meets the Zoning Ordinance definition of a storage yard and, as such, the appellants are in violation of Par. 5 of Sect. 302 of the Zoning Ordinance, which states that “no use shall be allowed in any district which is not permitted by the regulations for that district.” A storage yard is not a use permitted by right, by special exception, or special permit in the R-4 District.

The inspections also revealed that the appellants have outdoor storage located in the front and side yards of the subject property. Such storage includes, but is not limited to, tools, tool boxes, cabinets, lawn equipment and lawn tools, boxes, buckets, barrels, and building materials and scrap materials on the front porch and in the front and side yards. This outdoor storage is in violation of Par. 24 of Sect. 10-104 of the Zoning Ordinance, which states that outdoor storage in residential districts is permitted only if such storage does not exceed 100 square feet in area, is located on the rear half of the lot, and is screened from view from the first story window of any

neighboring dwelling. Further, because the outdoor storage does not conform to Par. 24 of Sect. 10-104 of the Zoning Ordinance, the appellants are in violation of Par. 6 of Sect. 2-302 which states that "No accessory structure or use, as defined in Article 20, shall hereafter be built, moved, remodeled, established, altered, or enlarged unless such accessory structure or use complies with the provisions of Part 1 of Article 10."

Ms. Stadslev has indicated that the storage is associated with the construction; however, it is not permitted unless there is an active building permit associated with the property, and in this case, there is a revoked permit but no active valid building permit, so the storage is not permitted.

Compliance with Zoning Ordinance provisions related to the storage yard and outdoor storage can be achieved by removing the storage yard use and all outdoor storage from the property in its entirety to a lawful site or by relocating the outdoor storage to the rear half of the lot in an area that does not exceed 100 square feet and does not require the clearing of existing vegetation. However, this storage in the rear yard must be located outside the limits of the conservation easement recorded in the land records [of Fairfax County Virginia, Deed Book 14924 at Pages 362 through 369] and any such outdoor storage must further be screened from the view from the first story window of any neighboring dwelling.

The agent for the appellant requested that staff from the County evaluate the site to determine the extent of the removal of vegetation as indicated in the NOV. On August 14, 2008, staff from the Forest Conservation Branch, DPZ, visited the property. A copy of the Urban Forester's report is included as Attachment 13. The Urban Forester states that approximately nine trees shown on the variance plat to be preserved have been removed from the site. According to the variance plat, these trees range in size from 8" in diameter to 36" in diameter. Additionally, the understory vegetation has been removed within the tree save areas and grass planted. This is in violation of Development Conditions 1 and 2 of VC 2002-DR-139 which state in part". . . All development shall be in conformance with this plat as qualified by these development conditions. . . .The limits of clearing and grading shall be no greater than shown on the variance plat. The limits of clearing and grading shall be the minimum amount feasible to provide for the development as depicted . . . " In order to rectify this violation, UFMD makes recommendations in their report for replacement vegetation and the provision of a restoration plan to be provided for their review and approval.

#### **ATTACHMENTS:**

1. Appellant's Applications and Basis for Appeal
2. Applicable Zoning Ordinance Provisions
3. Resolution and plat approved in Conjunction with VC 2002-DR-139
4. Conservation Easement
5. March 11, 2005, Interpretation Letter from Barbara Byron
6. Building Permit #05047B0380
7. July 18, 2005, Letter From Ruth Soulier
8. Building Permit # 71730163
9. August 17 2007, Letter from Diane Johnson-Quinn
10. February 5, 2008, Interpretation Letter From Regina Coyle

11. July 17, 2008, Interpretation Letter from Regina Coyle
12. April 21, 200 Notice of Violation
13. August 12, 2008, Memorandum from the Urban Conservation Branch, DPWES



# County of Fairfax, Virginia

## MEMORANDUM

**DATE:** March 10, 2008

**TO:** John F. Ribble, III, Chairman  
Members, Board of Zoning Appeals

**FROM:** Mavis E. Stanfield *MES*  
Deputy Zoning Administrator for Appeals

**SUBJECT:** Appeal Application A 2008-DR-009  
Mark and Susan Stadslev  
2310 Westmoreland Street  
Phillips Estate Additions to Nielsons Outlot A  
Tax Map Reference: 40-4 ((1)) 44A

Attached for your information is a copy of appeal application A 2008-DR-009, which was recently filed and accepted.

MES/sjg

Attachment: A/S

cc: John W. Foust, Supervisor, Dranesville District  
Jay Donahue, Planning Commissioner, Dranesville District  
James P. Zook, Director, Department of Planning and Zoning  
Eileen M. McLane, Zoning Administrator  
Regina C. Coyle, Director, Zoning Evaluation Division  
Leslie Johnson, Senior Deputy Zoning Administrator  
Diane Johnson-Quinn, Deputy Zoning Administrator  
for Zoning Permit Review Branch  
Michael R. Congleton, Senior Deputy Zoning Administrator  
for Zoning Enforcement/Property Maintenance  
Kathleen Knoth, Clerk, Board of Zoning Appeals

LAW OFFICES OF  
FRIEDLANDER, FRIEDLANDER & EARMAN, P.C.  
(FOUNDED IN 1925)  
1364 BEVERLY ROAD

MARK P. FRIEDLANDER (1903-1978)  
MARK P. FRIEDLANDER, JR.+\*  
JEROME P. FRIEDLANDER, II+\*  
SUSAN FRIEDLANDER EARMAN+\*

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(650) 697-6000

MEMBERS OF  
VIRGINIA BAR\*  
D. C. BAR+

## NOTICE OF APPEAL

This is an appeal of a determination made by Regina C. Coyle, Director of Zoning Evaluation Division, DPZ of Fairfax set forth in letter dated February 5, 2008 with attachments. Copy of Letter is attached as Exhibit 1.

Any aggrieved party of a determination made by the Zoning Administrator may appeal the determination to the Board of Zoning Appeals pursuant to 18-300 et. seq. of the Fairfax Zoning Ordinance.

Mark and Susan Stadskev acquired 2310 Westmoreland Street in 2003. The previous owner of the parcel applied and received Variance VC 2002-DR-139, November 27, 2002.

During the development phase of the construction of the Stadskev home, soils studies indicated existing conditions required a revision of the house placement and revisions in construction plans. Due to those discoveries KJ & Associates requested in a letter dated December 30, 2004 an interpretation of the approved variance. The letter detailed the proposed construction of the home and detached garage. December 30, 2004 letter from KJ& Associates attached as Exhibit 2.

The County responded to the interpretation request on March 11, 2005. The County indicated that the dwelling and driveway were in substantial conformance with the approved variance conditions and plat. March 11, 2005 letter Exhibit 3.

This letter did not indicate that the garage was not permitted, although that was part of the December 30, 2004 request. The absence of any objection to the construction of the garage followed by the subsequent approval of the home and driveway allowed the owners to conclude that they were in complete compliance with the variance.

Throughout the development of this parcel all plans showed utilities planned for an accessory structure. Said plans were submitted and approved by the County.

On June 25, 2007 building permit # 71730162 was issued and approved for the accessory garage structure and construction of the pad was initiated.

On August 15, 2007 a stop work order was issued to stop the Stadsklevs' garage construction. Stop Work Order letter Exhibit 4.

Throughout the development process the County through its agents understood and was aware of the proposed construction of a detached garage by the owners of the parcel. Conversations at the site with local officials and the owners occurred in March of 2005 prior to the approval of the Grading site plan. Water and sewer utilities to the area of the accessory structure were contained in the approved plans.

The Stadsklevs acted in good faith and relied upon the submissions to the County and the County's subsequent approval actions thereafter to construct the garage.

After failed attempts to resolve the stop work order through their own means, the Stadsklevs retained counsel to make inquiry and set forth their position on the stop work order. The letter was sent in October of 2007 and is included as part of the Exhibit 1.

It took the County four months to respond, admitting that it did not have time to address this issue.

The Owners requested and received an approval of substantial compliance in March of 2005 for their plans of a different size home with driveway with no denial of a detached garage. They constructed the home and then applied for the detached garage. The County's never indicated that the detached structure was not permitted.

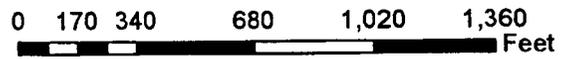
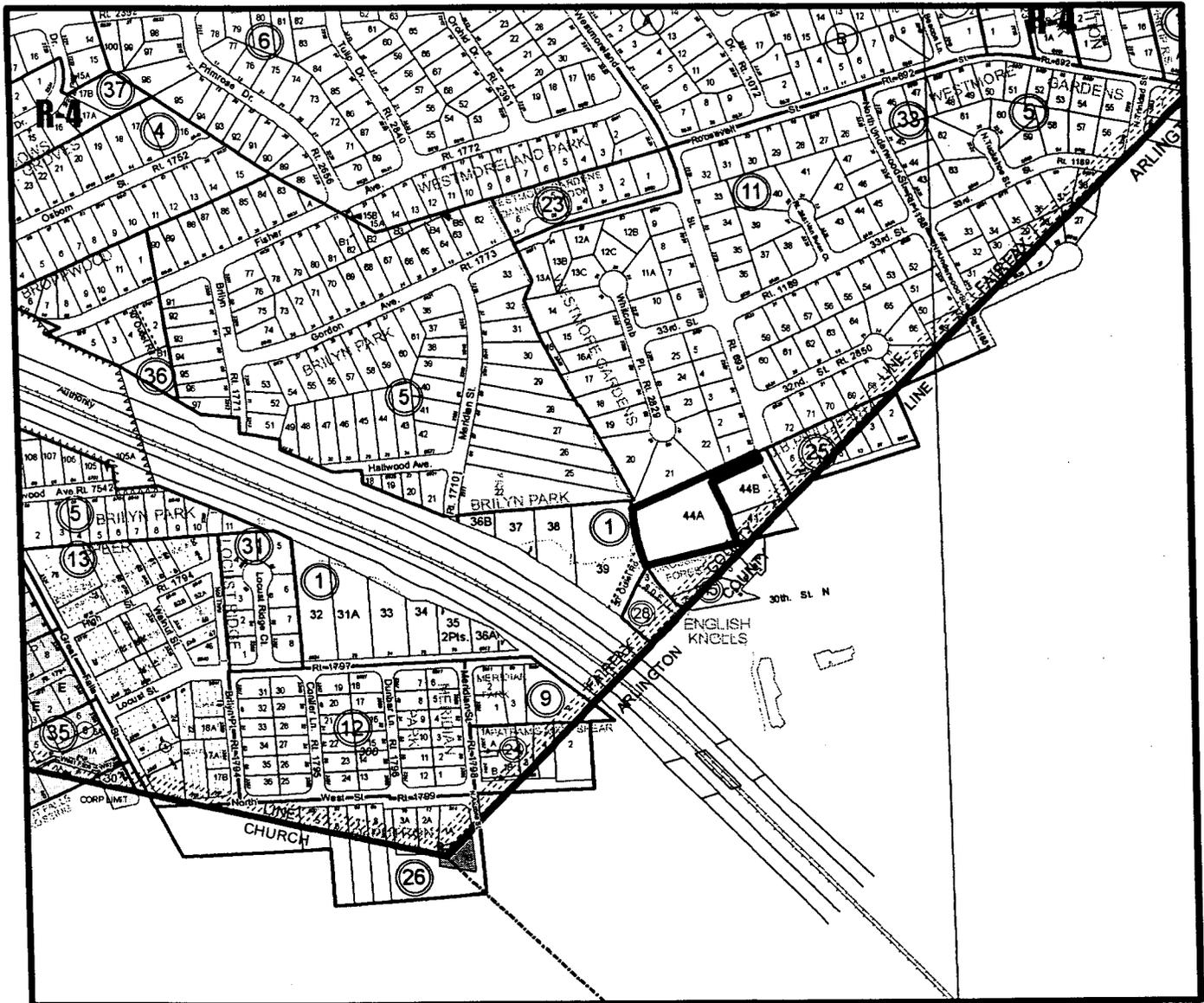
This appeal is made to request that the determination that the garage structure was not in substantial conformance with VS 2002-DR-139 was made in error and to permit the completion of the structure pursuant to the plans submitted.

Sincerely,



Susan F. Earman, Esquire  
Agent for Mark and Susan Stadsklev

SFE/ltt  
cc. Stadsklev





COMMONWEALTH OF VIRGINIA  
COUNTY OF FAIRFAX  
APPLICATION FOR APPEAL

Please type or  
Print in Black Ink

RECEIVED  
Dept. of Planning & Zoning

MAR 05 2008

APPLICATION NO. A 2008-DR-009  
(Assigned by Staff)

Zoning Administration Div.

NAME OF APPELLANT: MARK AND SUSAN STADSKLEV

NATURE OF THE APPEAL:

Appeal of a determination made by Zoning Administrator Regina Coyle written February 5, 2008. Letter determined that "...detached garage structure is not in substantial conformance with VC 2002-DR-139".

DATE OF ORDER, REQUIREMENT, DECISION, DETERMINATION OR NOTICE OF VIOLATION WHICH IS SUBJECT TO THE APPEAL letter dated February 5, 2008

HOW IS THE APPELLANT AN AGGRIEVED PERSON?:

Appellants are the real property owners who applied for a building permit and received said permit to construct accessory structure on their property.

IF APPEAL RELATES TO A SPECIFIC PROPERTY, PROVIDE THE FOLLOWING INFORMATION:

POSTAL ADDRESS OF PROPERTY: 2310 Westmoreland Street Falls Church VA 22046

TAX MAP DESCRIPTION: 40-4((1))44A

The undersigned has or has not (circle one) the authority to allow and does or does not (circle one) authorize Fairfax County staff representatives on official business to enter on the subject property as necessary to process the application.

SUSAN F. EARMAN, ESQUIRE, Agent  
Type or Print Name of Appellant or Agent

Susan Earman  
Signature of Appellant or Agent

1364 Beverly Road, Ste 201, McLean, VA 22101  
Address

703 893-9600 (W) 703-893-9650 (F)  
Telephone No. Home Work

Please provide name and phone number of contact person if different from above.

DO NOT WRITE IN THIS SPACE

Subdivision Name: Phillips Estate Additions to Nielson's Outlot A

Total Area (Acres/Square Feet): 1.1033 acres

Present Zoning: R-4

Supervisor District: Dranesville

Date application received: 3/5/08 Application Fee Paid: \$ 375.00

Date application accepted: 3/10/08



# County of Fairfax, Virginia

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

February 5, 2008

Susan F. Earman, Esquire  
Friedlander, Friedlander & Earman, P.C.  
1364 Beverly Road, Suite 201  
McLean, Virginia 22101

Re: Interpretation for VC 2002-DR-139, Tax Map 40-4((1))44A

Dear Ms. Earman:

This is in response to your letter received October 10, 2007, (Attachment 1), requesting an interpretation of the variance plat and development conditions imposed by the Board of Zoning Appeals in conjunction with the approval of VC 2002-DR-139. As I understand it, you contend that the limits of clearing depicted on the variance plat no longer apply once the main structure, the house, has been built and approved. In addition you state that a detached garage now under construction does not intrude into a Conservation area on site and is in substantial compliance with the limits of clearing and grading and, therefore, can be constructed. This determination is based on the plat attached to your letter, entitled "Plat Showing Garage Foundation, Outlot 'A' Nielson's Addition to the James B. Phillips Estate," prepared by Thomas W. Kendall, and dated September 7, 2006.

The development conditions approved in conjunction with VC 2002-DR-139 run with the land and do continue to apply to the application property. Development Condition 1 states in part, "... All development shall be in conformance with this plat as qualified by these development conditions. ..." Development Condition 2 speaks specifically to limits of clearing and grading and states, "The limits of clearing and grading shall be no greater than shown on the variance plat. The limits of clearing and grading shall be the minimum amount feasible to provide for the development as depicted and shall preserve the maximum amount of desirable vegetation possible, as determined by the Urban Forestry Division of DPWES." A copy of the Development Conditions and approved plat is included as Attachment 2. The plat/exhibit attached to your letter depicts a detached garage structure that was not shown on the variance plat and that encroaches into the limits of clearing and grading. Therefore, it is my determination that the detached garage structure is not in substantial conformance with VC 2002-DR-139. This determination has been made in my capacity as the duly authorized agent of the Zoning Administrator.



Susan R. Earman, Esquire  
Page 2

If you have any questions regarding these requirements, please feel free to contact Susan Langdon at (703) 324-1280.

Sincerely,



Regina C. Coyle, Director  
Zoning Evaluation Division, DPZ

Attachments: A/S

cc: Members, Board of Zoning Appeals  
Michael R. Congleton, Assistant Zoning Administrator, ZEB, DPZ  
Diane Johnson-Quinn, Deputy Zoning Administrator, Permit Review Branch, ZAD, DPZ  
Ken Williams, Plan Control, Land Development Services, DPWES  
Craig Carinci, Director, Environmental and Facilities Inspection Division, DPWES  
Kevin Guinaw, Chief, Special Projects/Applications Management Branch, ZED, DPZ  
File: VC 2002-DR-139, Imaging, Reading File

LAW OFFICES OF  
**FRIEDLANDER, FRIEDLANDER & EARMAN, P.C.**  
 (FOUNDED IN 1925)  
 1364 BEVERLY ROAD

MARK P. FRIEDLANDER (1903-1978)  
 MARK P. FRIEDLANDER, JR.+\*  
 JEROME P. FRIEDLANDER, II.+\*  
 SUSAN FRIEDLANDER EARMAN\*

MEMBERS OF  
 VIRGINIA BAR\*  
 D. C. BAR\*

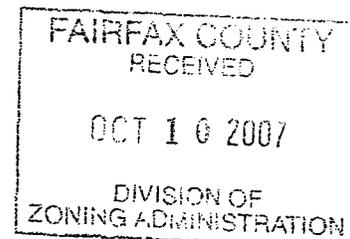
SUITE 201  
 MCLEAN, VIRGINIA 22101  
 (703) 893-9600  
 FAX (703) 893-9650

October 5, 2007

OF COUNSEL  
 COTCHETT, PITRE, SIMON & MCCARTHY  
 SAN FRANCISCO AIRPORT OFFICE CENTER  
 840 MALCOLM ROAD, SUITE 200  
 BURLINGAME, CA 94010  
 (650) 697-6000

Diane Johnson-Quinn  
 Deputy Zoning Administrator for  
 Zoning Permit Review Branch

Re: Building Permit 71730162



Dear Ms. Johnson-Quinn:

I, along with my firm of Friedlander, Friedlander & Earman, P.C., have been retained by Mark Stadskev concerning the stop work order on the above referenced building permit.

As you are aware, Mr. Stadskev purchased this property from Kayvab Jaboori. Mr. Jaboori obtained a variance known as VC-2002-DR-139 which set forth the building foot print for a home. I have reviewed the variance language and believe that its language only applies to the building of the single family detached home and does not address any out buildings that may be permitted.

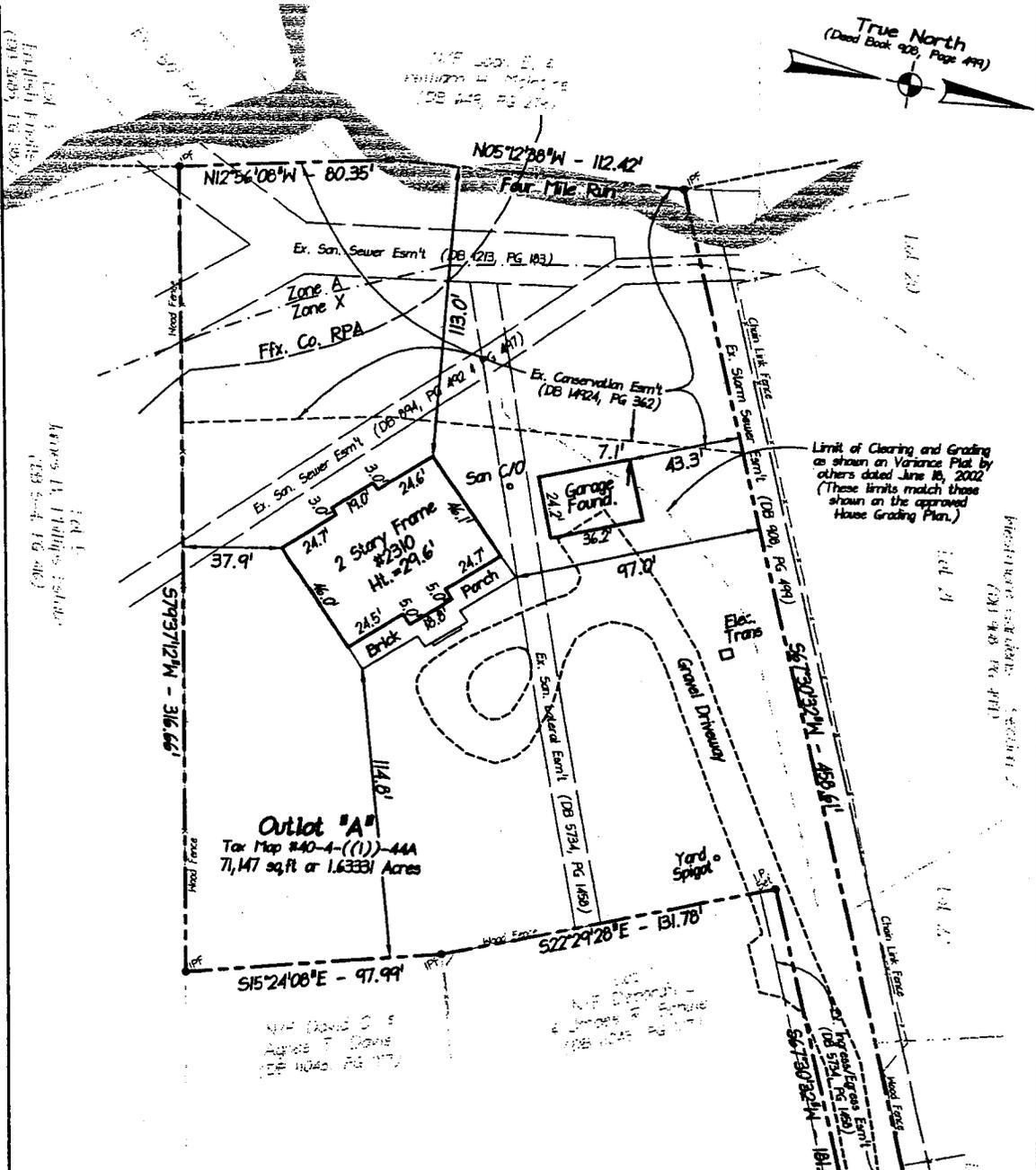
Pursuant to your request, I have attached a revised plat which can be formally submitted for your review. I can also email the PDF file for your internal records as well. This plat depicts that the garage is completely outside of the conservation easement and does not violate any part of the protected area. In addition, it is in substantial compliance with the limits of clearing and grading. It is Mr. Stadskev's position that the limits of clearing no longer apply once the main structure has been built and approved. That concept coupled with the fact that the garage does not intrude into the Conservation area should support the construction of this garage.

Please review the material and lift the stay that is currently inhibiting his construction.

Sincerely,

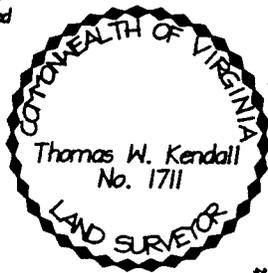
  
 Susan F. Earman, Esquire

SFE/ltt  
 Enclosures  
 Cc: Stadskev



**Notes:**

- 1) The property delineated hereon is located on Fairfax County Tax Assessment Map #40-4((1)) parcel #44-A and is zoned R-4.
- 2) The property delineated hereon falls within zone "X" and zone "A" on FEMA-FIA Flood Insurance Rate Map #545525-0083-D, revised March 5, 1990. Zone "A" indicates areas inundated by 100-year floods. Zone "X" indicates areas outside of established 500-year flood plains.
- 3) NO TITLE REPORT FURNISHED.
- 4) The improvements shown hereon have been carefully established by modern survey methods and, unless otherwise shown, there are no encroachments.



\*\* Conservation Esm't added 9-18-07 \*\*

<b>Kendall Consulting, Inc.</b> Land Surveying - Land Planning P. O. Box 1569 - Fairfax, Virginia Phone: (703) 591-1157 -- Fax: (703) 591-1518	Plot Showing Garage Foundation Outlot "A" Nielson's Addition to the <b>James B Phillips Estate</b> T.M. #40-4((1))-44A -- (DB 5734, PG 1458) Dranesville District Fairfax County, Virginia	Scale: 1"=50' Date: 9-7-06 Job: 05-019
---	--	---

## COUNTY OF FAIRFAX, VIRGINIA

## VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

EINER R. & STEFANIA S. NIELSON, VC 2002-DR-139 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit a minimum lot width of 24.23 ft. Located on the W. side of Westmoreland St., approx. 400 ft. S. of its intersection with 33rd St. on approx. 1.63 ac. of land zoned R-4. Dranesville District. Tax Map 40-4 ((1)) 44A. Mr. Hart moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on November 19, 2002; and

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

1. The applicants are the owners of the land.
2. The applicants have presented testimony showing compliance with the required standards for a variance.
3. The parcel is an odd shape that poses significant constraints to development.
4. The required hardship criterion for a variance is particularly met as no improvement is possible without a variance.
5. The property has limited access by being inaccessible from Locust Street, and therefore mandates extension of the existing pipestem driveway.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

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.
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 purpose of this Ordinance and will not be contrary to the public interest.

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

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

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

1. This variance is approved for a minimum lot width of 24.23 feet, as shown on the plat prepared by Kayvan Jaboori, dated June 18, 2002. 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 each of these lots.

2. The limits of clearing and grading shall be no greater than shown on the variance plat. The limits of clearing and grading shall be the minimum amount feasible to provide for the development as depicted and shall preserve the maximum amount of desirable vegetation possible, as determined by the Urban Forestry Division of DPWES.
3. The applicant shall install supplemental plantings, species, size and number as determined in consultation with the Urban Forestry Division, DPWES, along the eastern lot line of the property to serve as a visual screen between the subject property and the adjacent properties. In addition, every effort will be made to preserve trees located along the pipestem driveway, as determined feasible by the Urban Forestry Division. Replacement trees shall be provided on a one to one ratio for trees removed during construction. Size and species of the replacement trees shall be determined in consultation with the Urban Forestry Division.
4. A conservation easement shall be recorded among the land records of Fairfax County over the western portion of the site as shown on the variance plat. The applicant shall record a conservation easement to the benefit of Fairfax County, in a form approved by the Office of the County Attorney, over the area outside the limits of clearing and grading, as shown on the variance plat. The easement shall specify that undisturbed open space shall be maintained by hand, as needed, only, to remove dead and dying vegetation, and there shall be no fertilizing or mowing of weeds or grass. Prospective purchasers of the subject property shall be advised of these requirements in writing prior to contract execution. Said purchasers shall be required to acknowledge receipt of this information in writing. Every deed of conveyance for Lot 44A shall expressly contain these disclosures.
5. The applicant shall grant an ingress/egress easement for the benefit of proposed Lots 44A and 44B over the common driveway shown on the variance plat. Said easement shall be the subject of a private maintenance agreement among the property owners of Lots 44A and 44B and shall be recorded in the land records of Fairfax County. Purchasers shall execute a disclosure memorandum at time of contract acknowledging the ingress/egress easement.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval unless the subdivision has been recorded among the land records of Fairfax County. The Board of Zoning Appeals may grant additional time to record the subdivision 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.

Mr. Hammack seconded the motion which carried by a vote of 6-0-1. Mr. Pammel abstained from the vote.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on November 27, 2002. This date shall be deemed to be the final approval date of this variance.

//





**KJ & ASSOCIATES**

(703) 449-1600

CIVIL AND LAND DEVELOPMENT ENGINEERING  
10650 Main Street, Suite 302, Fairfax, VA 22030-3814FAX (703) 449-1601  
e-mail: kjanda@erols.com

December 30, 2004

Ms. Mavis Stanfield  
Fairfax County Department of Planning & Zoning  
Zoning Evaluation Division  
12055 Government Center Parkway  
8<sup>th</sup> floor  
Fairfax, VA 22035-5503**Re: Variance Application VC 2002-DR-139, and  
Fairfax County Plan #5211-INF-001-1****Sub: Interpretation of approved Variance Agreement**

Dear Ms. Stanfield:

On behalf of the subject property owner, Mr. Mark Stadskev, I am writing you to request an interpretation of the approved variance agreement on the referenced application.

Due to existing site soil and high groundwater conditions, construction of a basement unit, or a slab on grade construction, or even construction of a dwelling unit with an attached garage is not advisable. Consequently, the property owner would like to pursue construction of a dwelling unit with a crawl space along with a detached garage to prevent jeopardizing structural integrity of the proposed house due to excess ground moisture and possible differential settlement between the garage and the house.

In turn, this has resulted in rejection of the submitted grading plan by the DPW&ES Facilities Review Division. The reviewing staff member, Mr. Denis Hannen, has requested a letter of interpretation from the Zoning Evaluation Division on the approved variance agreement for the referenced application (VC 2002-DR-139) and the submitted grading plan (File #5211-INF-001-1).

Our justifications for this interpretation request is as follows:

- The existing site sub-surface conditions are not suitable for construction of a dwelling unit with an attached garage.
- The proposed improvements, as shown on the attached grading plan, result in additional land disturbance of less than 110 square feet compared to the approved variance application.
- Additional land disturbance activities are not proposed within the recorded 100' Water Quality Area/Conservation Easement.
- The total impervious cover for the subject parcel is less than 18%.
- The proposed detached garage slab on grade construction would not require additional earthwork (cut/fill construction).

RECEIVED  
Department of Planning & Zoning

DEC 30 2004

Zoning Evaluation Division

Ms. Mavis Stanfield  
VC 2002-DR-139  
Page 2 of 2

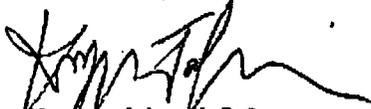
- The adjoining property owners (Parcel 44B), as well as Ms. Adrienne Whyte of the McLean Citizens Association have been consulted regarding this issue. To the best of our knowledge, neither party has expressed any opposition to the construction of a detached garage.
- All other imposed development conditions by the approved variance agreement have adhered to.
- The grading plan for the proposed improvements is in close conformance with the approved variance plat otherwise.

For your reference and use, we are forwarding a copy of the approved variance plat and a copy of the proposed grading plan for the subject parcel.

In advance, we thank you for your time and consideration in this matter. Should you have any question, please feel free to contact me at (703) 449-1600, or via e-mail at [kjanda@erols.com](mailto:kjanda@erols.com)

Very truly yours,

KJ & Associates



Kayvan Jaboori, P.E.



# FAIRFAX COUNTY

DEPARTMENT OF PLANNING AND ZONING  
Zoning Evaluation Division  
12055 Government Center Parkway, Suite 801  
Fairfax, Virginia 22035-5509

(703) 324-1290 TTY 711 (Virginia Relay Center) Fax (703) 324-3924

## VIRGINIA

March 11, 2005

Kayvan Jaboori  
KJ & Associates  
10650 Main Street, Suite 302  
Fairfax, Virginia 22030

Re: Interpretation for Variance VC 2002-DR-139, Tax Map 40-4 ((1)) 44A: Building Configuration

Dear Mr. Jaboori:

This is in response to your letter of December 30, 2004 (copy attached), requesting an interpretation of the variance plat and development conditions approved by the Board of Zoning Appeals (BZA) with Variance VC 2002-DR-139 on November 19, 2002. As I understand it, the question is whether the proposed larger house and driveway are in substantial conformance with the approved variance conditions and plat.

Variance VC 2002-DR-139 was approved subject to conformance with the plat prepared by your firm dated June 18, 2002. This plat depicts a dwelling located 42 feet from the southern lot line, 133 feet from the eastern lot line, approximately 111 feet from the western lot line and 107 feet from the northern lot line.

You have requested permission to construct a larger house, as depicted on the plat dated February 18, 2005, also prepared by your firm. This plat depicts a dwelling to be located 32 feet from the southern lot line, 123.9, with a covered porch, approximately 110 feet from the eastern lot line, 111 feet from the western lot line and 100.8 feet, with the covered porch approximately 91 feet, from the northern lot line. Additionally, you have added a paved parking area to the north of the dwelling.

It is my determination that the proposed dwelling and driveway are in substantial conformance with the approved variance conditions and plat. This determination has been made in my capacity as the duly authorized agent of the Zoning Administrator.

Should you have additional questions, please contact Mavis Stanfield at (703) 324-1222.

Sincerely,

Barbara A. Byron, Director  
Zoning Evaluation Division

Attachment: A/S

cc: Board of Zoning Appeals  
Leslie Johnson, Deputy Zoning Administrator, Permit Review Branch, ZAD, DPZ  
Michelle Brickner, Director, Office of Site Development Services, DPWES  
Kevin Guinaw, Chief, Special Projects/Applications Management, ZED, DPZ  
File: VCI 0501 001, VC 2002-DR-139, Imaging, Reading File





# County of Fairfax, Virginia

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

## LEGAL NOTICE REVOCAION OF PERMIT STOP WORK ORDER

**DATE OF ISSUANCE:** August 15, 2007 **PERMIT #:** 71730162  
**LEGAL NOTICE ISSUED TO:** Mark Stadskev **LIC #:** N/A  
**ADDRESS:** 2310 Westmoreland Street  
Falls Church, Virginia 22046  
**PROPERTY OWNER:** Mark Stadskev  
**LOCATION OF VIOLATION:** 2310 Westmoreland Street  
Falls Church, Virginia 22046  
**TAX MAP NUMBER:** 040-4/01/ /0044-A

Building Permit #71730162 was issued for construction of a 2-story detached garage. The Zoning Permit Review Branch (ZPRB) staff erroneously approved the application based upon incomplete information provided by the applicant. The plat submitted by the applicant with his building permit application did not depict either the limits of clearing or grading or the conservation easement which was a condition of the Variance approval. Therefore, the garage proposed to be constructed pursuant to the above-referenced building permit is improperly located in the restricted Conservation Easement. This permit was approved in error and pursuant to Sect. 18-114 of the Zoning Ordinance, the permit is null and void.

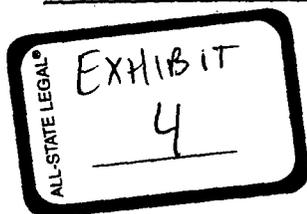
Section 110.7 of the 2003 Virginia Uniform Statewide Building Code (VUSBC), effective November 16, 2005, states:

The Building Official may revoke a permit or approval issued under this code in the case of any false statement, misrepresentation of fact or incorrect information supplied by the applicant in the application or construction documents on which the permit or approval was based.

**REVOCAION OF PERMIT:** Pursuant to the VUSBC, Section 110.7, *Revocation of a permit*, your permit is hereby revoked. You are directed to immediately cease all construction activity at this site. *Failure to follow the terms and conditions of this order will result in additional enforcement action under the applicable State and County Codes.*

Section 114.1 of the 2003 Virginia Uniform Statewide Building Code (VUSBC), effective November 16, 2005, states:

When the building official finds that work on any building or structure is being executed contrary to the provisions of this code or any pertinent laws and ordinances or in a manner endangering the general public, a written stop work order may be issued. The order shall identify the nature of the work to be stopped and given either to the owner of the property involved, to the owner's agent or to the person performing the work. Following the issuance of such an order, the affected work shall cease immediately. The order shall state the conditions under which such work may be resumed.



Department of Public Works and Environmental Services  
Land Development Services, Residential Inspections Division  
12055 Government Center Parkway, Suite 634  
Fairfax, VA 22035  
Phone: 703-631-5101 #4 TTY: 711, Fax: 703-324-3901  
[www.fairfaxcounty.gov/dpwes/lds](http://www.fairfaxcounty.gov/dpwes/lds)



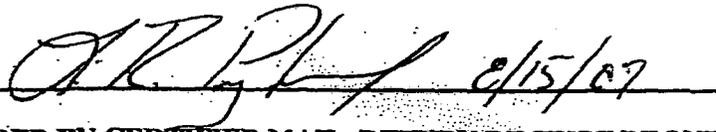
**STOP WORK ORDER:** Pursuant to the VUSBC, Section 114, *Stop Work Order*, you are directed to immediately cease all construction activity at this site. *Failure to follow the terms and conditions of this order will result in additional enforcement action under the applicable State and County Codes.*

1. Per VUSBC Section 120.1, cease all construction activity under the referenced building permit until such time as this violation has been successfully abated, this Stop Work Order has been rescinded, and a new permit has been issued.
2. Per VUSBC 121.1.2, inform me or Paul Lynch, Director of the Residential Inspections Division, at 703-324-1972, of your acceptance or rejection of the terms of this notice within 24 hours upon your receipt of same.

**LEGAL NOTICE ISSUED BY:**  
**TITLE:**

Ray Pylant  
Building Official

**SIGNATURE:**

 e/15/07

**NOTICE DELIVERED BY CERTIFIED MAIL, RETURN RECEIPT REQUESTED: 7005 3110 0004 7660 3639**

RP/flm

cc: File  
Dianne Johnson-Quinn, Deputy Zoning Administrator for Zoning Permit Review Branch,  
Department of Planning and Zoning  
Calvin Walker, Ombudsman, Permits Application Branch



# County of Fairfax, Virginia

## MEMORANDUM

**DATE:** May 29, 2008

**TO:** John F. Ribble, III, Chairman  
Members, Board of Zoning Appeals

**FROM:** Mavis E. Stanfield *MES*  
Deputy Zoning Administrator for Appeals

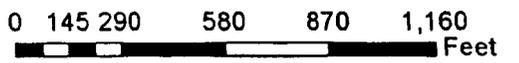
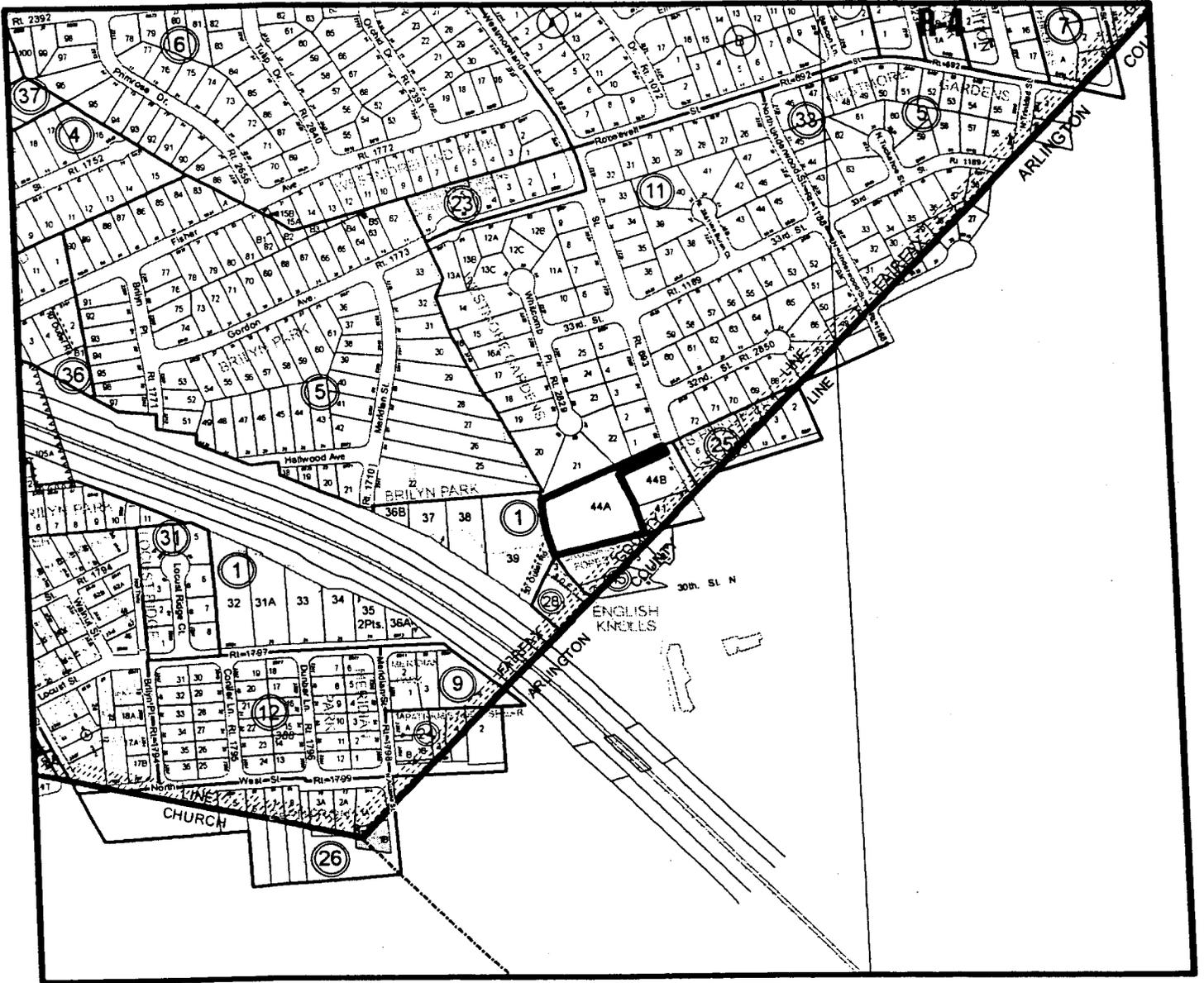
**SUBJECT:** Appeal Application A 2008-DR-026  
Mark and Susan Stadskev  
2310 Westmoreland Street  
Phillips Estate Addition to Nielsons Outlot A  
Tax Map Reference: 40-4 ((1)) 44A

Attached for your information is a copy of appeal application A 2008-DR-026, which was recently filed and accepted.

MES/sjg

Attachment: A/S

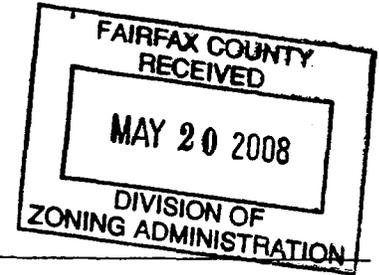
cc: John W. Foust, Supervisor, Dranesville District  
Jay Donahue, Planning Commissioner, Dranesville District  
James P. Zook, Director, Department of Planning and Zoning  
Eileen M. McLane, Zoning Administrator  
Leslie Johnson, Senior Deputy Zoning Administrator  
Diane Johnson-Quinn, Deputy Zoning Administrator  
for Zoning Permit Review Branch  
Michael R. Congleton, Senior Deputy Zoning Administrator  
for Zoning Enforcement/Property Maintenance  
Ed Tobin, Property Maintenance/Zoning Enforcement Supervisor  
Bruce Miller, Property Maintenance, Zoning Enforcement Inspector  
Kathleen Knoth, Clerk, Board of Zoning Appeals





Please type or Print in Black Ink

COMMONWEALTH OF VIRGINIA  
COUNTY OF FAIRFAX  
APPLICATION FOR APPEAL



APPLICATION NO. A 2008-DR-026  
(Assigned by Staff)

NAME OF APPELLANT: Mark and Susan Stadskev

NATURE OF THE APPEAL:

Appeal of Notice of Violation dated April 21, 2008

DATE OF ORDER, REQUIREMENT, DECISION, DETERMINATION OR NOTICE OF VIOLATION WHICH IS SUBJECT TO THE APPEAL 30 days from April 21, 2008

HOW IS THE APPELLANT AN AGGRIEVED PERSON?:

Appellant is the owner of the property subject to the Notice of Violation. Appellant currently has appeal pending that would resolve this notice.

IF APPEAL RELATES TO A SPECIFIC PROPERTY, PROVIDE THE FOLLOWING INFORMATION:

POSTAL ADDRESS OF PROPERTY: 2310 Westmoreland Street, Falls Church VA 22046

TAX MAP DESCRIPTION: 40-4((1))44A

The undersigned has or has not (circle one) the authority to allow and does or does not (circle one) authorize Fairfax County staff representatives on official business to enter on the subject property as necessary to process the application.

SUSAN E. ERLMAN  
Type or Print Name of Appellant or Agent

Susan Erlman  
Signature of Appellant or Agent

1364 Beverly Rd #201 McLean VA 22101  
Address

703 893-9600  
Telephone No.

Home

Work

Please provide name and phone number of contact person if different from above.

DO NOT WRITE IN THIS SPACE

Subdivision Name: Phillips Estate Addition to Wilson Falls VA

Total Area (Acres/Square Feet): 1.6333 acres

Present Zoning: R-4

Supervisor District: Dranesville

Date application received: 5/20/08

Application Fee Paid: \$ 375.00

Date application accepted: 5/20/08

LAW OFFICES OF  
**Friedlander, Friedlander & Earman, P.C.**

(Founded in 1925)  
1364 Beverly Road, Suite 201  
McLean, VA 22101-3645

Mark P. Friedlander, Sr. (1925-1978)  
Mark P. Friedlander, Jr. +\*  
Jerome P. Friedlander, II +\*  
Susan Friedlander Earman \*

703-893-9600  
Fax 703-893-9650

Email: [Friedlander@Friedlander.com](mailto:Friedlander@Friedlander.com)  
[www.friedlander.friedlander.com](http://www.friedlander.friedlander.com)

Of Counsel  
COTCHETT, PITRE & SIMON  
San Francisco Airport Office Center  
840 Malcolm Road, Suite 200  
Burlingame, CA 94010

(650) 697-6000

Members of  
Virginia Bar \*  
DC Bar +

## **NOTICE OF APPEAL**

### **May 20, 2008**

This is an appeal of a Notice of Violation written by Bruce Miller dated April 21, 2008. Copy of said notice is attached as Exhibit 1.

Any party issued a violation notice may appeal said notice pursuant to the code.

Mark and Susan Stadskev acquired 2310 Westmoreland Street in 2003. Since that time period there has been much correspondence with County officials. In October of 2007, the Stadskev's requested a determination by the County concerning the use of their property. They requested a determination the location of a detached garage which had previously been issued a building permit.

Four months after the request was sent to the County, the County replied with a determination in a letter dated February 5, 2008. This appeal was duly noted and is currently in the system for hearings in Fairfax County.

The resolution of the appeal already in place will resolve most, if not all, the issues set forth in this Notice of Violation. This notice is untimely and duplicative and issued in bad faith, for the Stadskev's have been striving to work with the County to make sure their development conforms to County requirements.

The Stadskev's will construct an attached garage that will house all of the materials cited as being improperly stored on the lot. In addition all vehicles that were in need of necessary licensing are in compliance or did not need licensing as alleged

The Stadskev's will address the height of the fence in the front yard. In addition, meetings with Urban Forestry will be scheduled to review the natural progression of the sites plant material and their expected life.

The Stadskev's believe they have been in compliance since they took ownership and the allegations of violation are unfounded based upon records existing at the time of purchase.

Sincerely,

  
Susan F. Earman, Esquire

SFE/lt  
cc: Stadslev

## ZONING ORDINANCE PROVISIONS

### 18-405      **Conditions**

Upon a determination by the BZA that the applicant has satisfied the requirements for a variance as set forth in Sect. 404 above, the BZA shall then determine the minimum variance that would afford relief. In authorizing such variance the BZA 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 insure that the conditions imposed are being and will continue to be met.

### 18-901      **General Provisions**

1. Any building erected or improvements constructed contrary to any of the provisions of this Ordinance and any use of any building or land which is conducted, operated or maintained contrary to any of the provisions of this Ordinance or contrary to any detailed statement or plan approved under the provisions of this Ordinance shall be and the same is hereby declared to be unlawful.

### 2-302      **Permitted Uses**

4. No structure shall hereafter be built or moved, and no structure or land shall hereafter be used or occupied, except for a use that is permitted in the zoning district in which the structure or land is located.
5. No use shall be allowed in any district which is not permitted by the regulations for the district.
6. No accessory structure or use, as defined in Article 20, shall hereafter be built, moved, remodeled, established, altered or enlarged unless such accessory structure or use complies with the provisions of Part 1 of Article 10.

### 10-102      **Permitted Accessory Uses**

24. Storage, outdoor, in R districts, provided such storage is located on the rear half of the lot, is screened from the view from the first story window of any neighboring dwelling, and the total area for such outdoor storage does not occupy more than 100 square feet. In C or I districts, where permitted by zoning district regulations and Sect. 2-504, outdoor storage, junk, scrap and refuse piles shall be limited to that area designated on an approved site plan, except that 250 square feet of accessory outdoor storage and display in accordance with Sect. 17-104 may be permitted without site plan approval.

## PART 3      20-300 DEFINITIONS

**STORAGE YARD:** The use of any space, whether inside or outside a building, for the storage or keeping of construction equipment, machinery, vehicles or parts thereof, boats and/or farm machinery.

## VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

EINER R. & STEFANIA S. NIELSON, VC 2002-DR-139 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit a minimum lot width of 24.23 ft. Located on the W. side of Westmoreland St., approx. 400 ft. S. of its intersection with 33rd St. on approx. 1.63 ac. of land zoned R-4. Dranesville District. Tax Map 40-4 ((1)) 44A. Mr. Hart moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on November 19, 2002; and

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

1. The applicants are the owners of the land.
2. The applicants have presented testimony showing compliance with the required standards for a variance.
3. The parcel is an odd shape that poses significant constraints to development.
4. The required hardship criterion for a variance is particularly met as no improvement is possible without a variance.
5. The property has limited access by being inaccessible from Locust Street, and therefore mandates extension of the existing pipestem driveway.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

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.

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 purpose of this Ordinance and will not be contrary to the public interest.

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

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

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

1. This variance is approved for a minimum lot width of 24.23 feet, as shown on the plat prepared by Kayvan Jaboori, dated June 18, 2002. 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 each of these lots.
2. The limits of clearing and grading shall be no greater than shown on the variance plat. The limits of clearing and grading shall be the minimum amount feasible to provide for the development as depicted and shall preserve the maximum amount of desirable vegetation possible, as determined by the Urban Forestry Division of DPWES.
3. The applicant shall install supplemental plantings, species, size and number as determined in consultation with the Urban Forestry Division, DPWES, along the eastern lot line of the property to serve as a visual screen between the subject property and the adjacent properties. In addition, every effort will be made to preserve trees located along the pipestem driveway, as determined feasible by the Urban Forestry Division. Replacement trees shall be provided on a one to one ratio for trees removed during construction. Size and species of the replacement trees shall be determined in consultation with the Urban Forestry Division.
4. A conservation easement shall be recorded among the land records of Fairfax County over the western portion of the site as shown on the variance plat. The applicant shall record a conservation easement to the benefit of Fairfax County, in a form approved by the Office of the County Attorney, over the area outside the limits of clearing and grading, as shown on the variance plat. The easement shall specify that undisturbed open space shall be maintained by hand, as needed, only, to remove dead and dying vegetation, and there shall be no fertilizing or mowing of weeds or grass. Prospective purchasers of the subject property shall be advised of these requirements in writing prior to contract execution. Said purchasers shall be required to acknowledge receipt of this information in writing. Every deed of conveyance for Lot 44A shall expressly contain these disclosures.

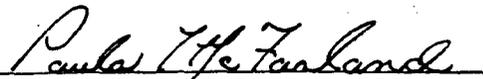
5. The applicant shall grant an ingress/egress easement for the benefit of proposed Lots 44A and 44B over the common driveway shown on the variance plat. Said easement shall be the subject of a private maintenance agreement among the property owners of Lots 44A and 44B and shall be recorded in the land records of Fairfax County. Purchasers shall execute a disclosure memorandum at time of contract acknowledging the ingress/egress easement.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval unless the subdivision has been recorded among the land records of Fairfax County. The Board of Zoning Appeals may grant additional time to record the subdivision 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.

Mr. Hammack seconded the motion which carried by a vote of 6-0-1. Mr. Pammel abstained from the vote.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on November 27, 2002. This date shall be deemed to be the final approval date of this variance.

A Copy Teste:

  
Paula McFarland, Substitute Clerk  
Board of Zoning Appeals

- 1. THE PROPERTY IS BOUND BY WESTMORELAND STREET TO THE NORTH, LOTS 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 252, 253, 254, 255, 256, 257, 258, 259, 260, 261, 262, 263, 264, 265, 266, 267, 268, 269, 270, 271, 272, 273, 274, 275, 276, 277, 278, 279, 280, 281, 282, 283, 284, 285, 286, 287, 288, 289, 290, 291, 292, 293, 294, 295, 296, 297, 298, 299, 300, 301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312, 313, 314, 315, 316, 317, 318, 319, 320, 321, 322, 323, 324, 325, 326, 327, 328, 329, 330, 331, 332, 333, 334, 335, 336, 337, 338, 339, 340, 341, 342, 343, 344, 345, 346, 347, 348, 349, 350, 351, 352, 353, 354, 355, 356, 357, 358, 359, 360, 361, 362, 363, 364, 365, 366, 367, 368, 369, 370, 371, 372, 373, 374, 375, 376, 377, 378, 379, 380, 381, 382, 383, 384, 385, 386, 387, 388, 389, 390, 391, 392, 393, 394, 395, 396, 397, 398, 399, 400, 401, 402, 403, 404, 405, 406, 407, 408, 409, 410, 411, 412, 413, 414, 415, 416, 417, 418, 419, 420, 421, 422, 423, 424, 425, 426, 427, 428, 429, 430, 431, 432, 433, 434, 435, 436, 437, 438, 439, 440, 441, 442, 443, 444, 445, 446, 447, 448, 449, 450, 451, 452, 453, 454, 455, 456, 457, 458, 459, 460, 461, 462, 463, 464, 465, 466, 467, 468, 469, 470, 471, 472, 473, 474, 475, 476, 477, 478, 479, 480, 481, 482, 483, 484, 485, 486, 487, 488, 489, 490, 491, 492, 493, 494, 495, 496, 497, 498, 499, 500, 501, 502, 503, 504, 505, 506, 507, 508, 509, 510, 511, 512, 513, 514, 515, 516, 517, 518, 519, 520, 521, 522, 523, 524, 525, 526, 527, 528, 529, 530, 531, 532, 533, 534, 535, 536, 537, 538, 539, 540, 541, 542, 543, 544, 545, 546, 547, 548, 549, 550, 551, 552, 553, 554, 555, 556, 557, 558, 559, 560, 561, 562, 563, 564, 565, 566, 567, 568, 569, 570, 571, 572, 573, 574, 575, 576, 577, 578, 579, 580, 581, 582, 583, 584, 585, 586, 587, 588, 589, 590, 591, 592, 593, 594, 595, 596, 597, 598, 599, 600, 601, 602, 603, 604, 605, 606, 607, 608, 609, 610, 611, 612, 613, 614, 615, 616, 617, 618, 619, 620, 621, 622, 623, 624, 625, 626, 627, 628, 629, 630, 631, 632, 633, 634, 635, 636, 637, 638, 639, 640, 641, 642, 643, 644, 645, 646, 647, 648, 649, 650, 651, 652, 653, 654, 655, 656, 657, 658, 659, 660, 661, 662, 663, 664, 665, 666, 667, 668, 669, 670, 671, 672, 673, 674, 675, 676, 677, 678, 679, 680, 681, 682, 683, 684, 685, 686, 687, 688, 689, 690, 691, 692, 693, 694, 695, 696, 697, 698, 699, 700, 701, 702, 703, 704, 705, 706, 707, 708, 709, 710, 711, 712, 713, 714, 715, 716, 717, 718, 719, 720, 721, 722, 723, 724, 725, 726, 727, 728, 729, 730, 731, 732, 733, 734, 735, 736, 737, 738, 739, 740, 741, 742, 743, 744, 745, 746, 747, 748, 749, 750, 751, 752, 753, 754, 755, 756, 757, 758, 759, 760, 761, 762, 763, 764, 765, 766, 767, 768, 769, 770, 771, 772, 773, 774, 775, 776, 777, 778, 779, 780, 781, 782, 783, 784, 785, 786, 787, 788, 789, 790, 791, 792, 793, 794, 795, 796, 797, 798, 799, 800, 801, 802, 803, 804, 805, 806, 807, 808, 809, 810, 811, 812, 813, 814, 815, 816, 817, 818, 819, 820, 821, 822, 823, 824, 825, 826, 827, 828, 829, 830, 831, 832, 833, 834, 835, 836, 837, 838, 839, 840, 841, 842, 843, 844, 845, 846, 847, 848, 849, 850, 851, 852, 853, 854, 855, 856, 857, 858, 859, 860, 861, 862, 863, 864, 865, 866, 867, 868, 869, 870, 871, 872, 873, 874, 875, 876, 877, 878, 879, 880, 881, 882, 883, 884, 885, 886, 887, 888, 889, 890, 891, 892, 893, 894, 895, 896, 897, 898, 899, 900, 901, 902, 903, 904, 905, 906, 907, 908, 909, 910, 911, 912, 913, 914, 915, 916, 917, 918, 919, 920, 921, 922, 923, 924, 925, 926, 927, 928, 929, 930, 931, 932, 933, 934, 935, 936, 937, 938, 939, 940, 941, 942, 943, 944, 945, 946, 947, 948, 949, 950, 951, 952, 953, 954, 955, 956, 957, 958, 959, 960, 961, 962, 963, 964, 965, 966, 967, 968, 969, 970, 971, 972, 973, 974, 975, 976, 977, 978, 979, 980, 981, 982, 983, 984, 985, 986, 987, 988, 989, 990, 991, 992, 993, 994, 995, 996, 997, 998, 999, 1000.

**THE GENERAL CONDITIONS**

1. THE LAND SHOWN ON THIS MAP IS THE PROPERTY OF THE DISTRICT OF COLUMBIA AND IS SUBJECT TO THE DISTRICT'S ZONING AND SUBDIVISION LAWS.

2. THE DISTRICT OF COLUMBIA DOES NOT WARRANT OR GUARANTEE THE ACCURACY OF THE INFORMATION SHOWN ON THIS MAP.

3. THE DISTRICT OF COLUMBIA DOES NOT ASSUME ANY LIABILITY FOR DAMAGES OF ANY KIND ARISING OUT OF THE USE OF THIS MAP.

4. THE DISTRICT OF COLUMBIA DOES NOT ASSUME ANY LIABILITY FOR THE CONSTRUCTION OF THE PROJECT SHOWN ON THIS MAP.

5. THE DISTRICT OF COLUMBIA DOES NOT ASSUME ANY LIABILITY FOR THE OPERATION OF THE PROJECT SHOWN ON THIS MAP.

6. THE DISTRICT OF COLUMBIA DOES NOT ASSUME ANY LIABILITY FOR THE MAINTENANCE OF THE PROJECT SHOWN ON THIS MAP.

7. THE DISTRICT OF COLUMBIA DOES NOT ASSUME ANY LIABILITY FOR THE REPAIR OF THE PROJECT SHOWN ON THIS MAP.

8. THE DISTRICT OF COLUMBIA DOES NOT ASSUME ANY LIABILITY FOR THE REPLACEMENT OF THE PROJECT SHOWN ON THIS MAP.

9. THE DISTRICT OF COLUMBIA DOES NOT ASSUME ANY LIABILITY FOR THE REMOVAL OF THE PROJECT SHOWN ON THIS MAP.

10. THE DISTRICT OF COLUMBIA DOES NOT ASSUME ANY LIABILITY FOR THE RECONSTRUCTION OF THE PROJECT SHOWN ON THIS MAP.

**REQUIREMENTS FOR CONSTRUCTION**

1. THE PROJECT SHALL BE CONSTRUCTED IN ACCORDANCE WITH THE DISTRICT'S ZONING AND SUBDIVISION LAWS.

2. THE PROJECT SHALL BE CONSTRUCTED IN ACCORDANCE WITH THE DISTRICT'S HEALTH AND SAFETY LAWS.

3. THE PROJECT SHALL BE CONSTRUCTED IN ACCORDANCE WITH THE DISTRICT'S ENVIRONMENTAL LAWS.

4. THE PROJECT SHALL BE CONSTRUCTED IN ACCORDANCE WITH THE DISTRICT'S HISTORIC PRESERVATION LAWS.

5. THE PROJECT SHALL BE CONSTRUCTED IN ACCORDANCE WITH THE DISTRICT'S CULTURAL HERITAGE LAWS.

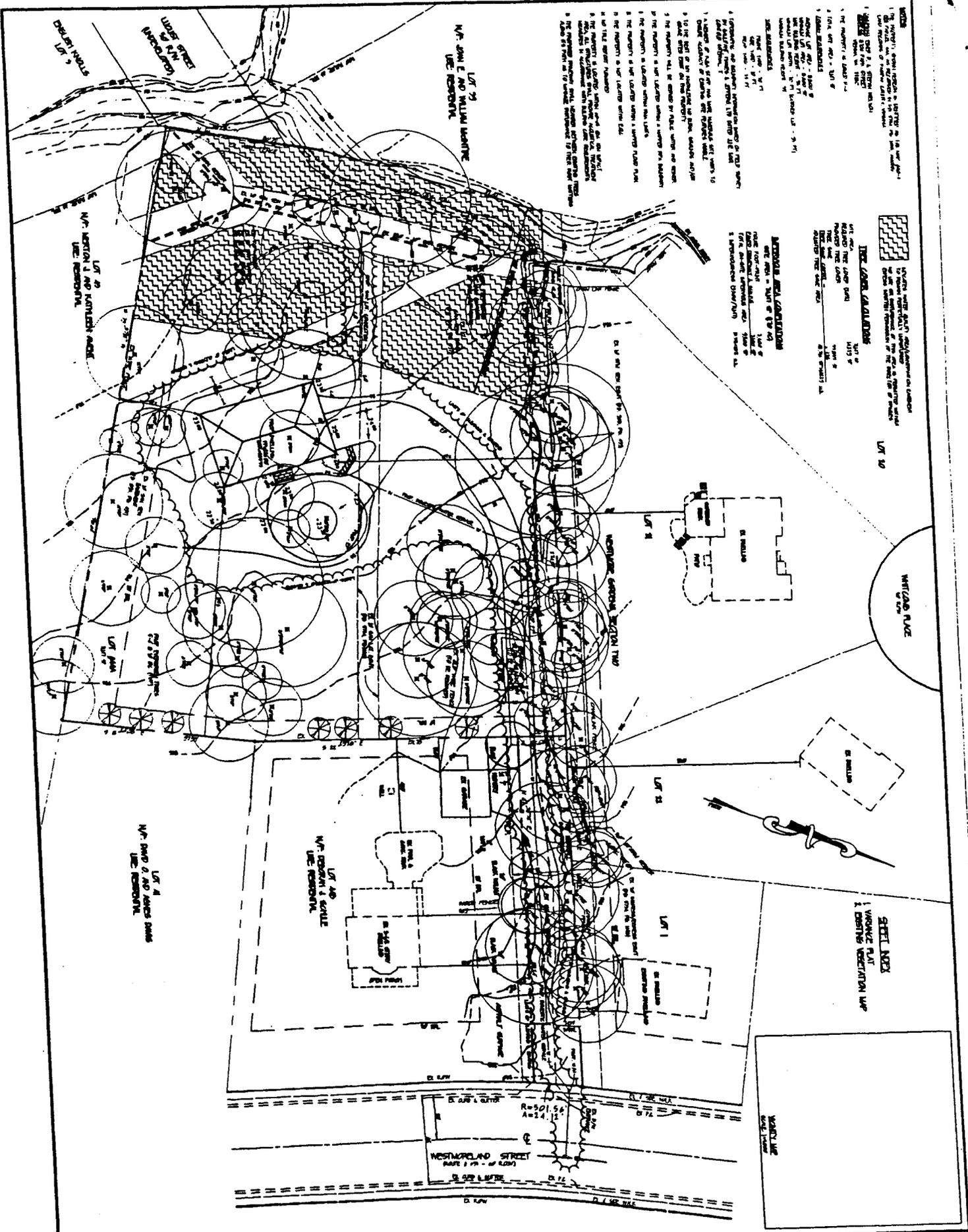
6. THE PROJECT SHALL BE CONSTRUCTED IN ACCORDANCE WITH THE DISTRICT'S ARCHITECTURAL LAWS.

7. THE PROJECT SHALL BE CONSTRUCTED IN ACCORDANCE WITH THE DISTRICT'S LANDSCAPE ARCHITECTURE LAWS.

8. THE PROJECT SHALL BE CONSTRUCTED IN ACCORDANCE WITH THE DISTRICT'S PUBLIC WORKS LAWS.

9. THE PROJECT SHALL BE CONSTRUCTED IN ACCORDANCE WITH THE DISTRICT'S UTILITIES LAWS.

10. THE PROJECT SHALL BE CONSTRUCTED IN ACCORDANCE WITH THE DISTRICT'S TRANSPORTATION LAWS.



<b>VARIANCE PLAT</b> <b>NIELSON PROPERTY</b> DRANESVILLE DISTRICT FAIRFAX COUNTY, VIRGINIA			<b>KJ &amp; ASSOCIATES</b> ARCHITECTS & PLANNERS
PROJECT: _____ DATE: _____ DRAWN BY: _____ CHECKED BY: _____ SCALE: _____ SHEET: 1 OF 2	TITLE: _____ DATE: _____ DRAWN BY: _____ CHECKED BY: _____ SCALE: _____ SHEET: 1 OF 2	PROJECT: _____ DATE: _____ DRAWN BY: _____ CHECKED BY: _____ SCALE: _____ SHEET: 1 OF 2	PROJECT: _____ DATE: _____ DRAWN BY: _____ CHECKED BY: _____ SCALE: _____ SHEET: 1 OF 2



Standalone Cover Sheet Version 1.2

Page 1 of 1

## Fairfax County Land Records Cover Sheet - CONSERVATION ESMT

**Instrument(s)**

EASEMENT

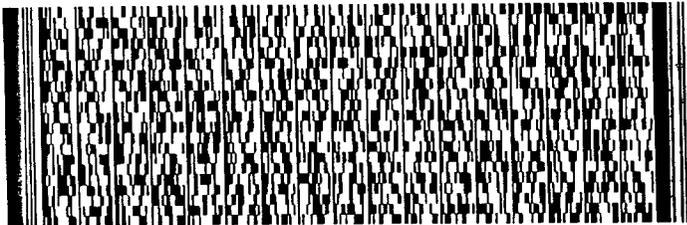
**Grantor(s)**

EINER R NIELSON AND STEFANIA S NIELSON \_I\_N

**Grantee(s)**

BOARD OF SUPERVISORS AND MCLEAN LAND CONSERVANCY INC \_F\_N

Consideration		Consideration %	100
Tax Exemption	NC	Amount Not Taxed	
DEM Number	5211-EP-01- -1	Tax Map Number	
Original Book		Original Page	
Title Company		Title Case	
Property Descr.	100' CONSERVATION EASEMENT ON PARCEL44A		
Certified	No	Copies	0
		Page Range	



Print

Next Page

**CONSERVATION EASEMENT**

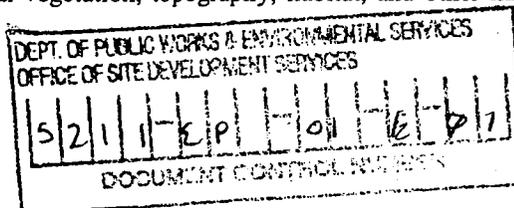
**THIS CONSERVATION EASEMENT** made and entered into this 6th day of August, 2003, by and between **EINER R. and STEFANIA S. NIELSON**, hereinafter "Owner," party of the first part (Grantor), the **BOARD OF SUPERVISORS OF FAIRFAX COUNTY, VIRGINIA**, hereinafter "Board," a body corporate and politic, party of the second part, also Easement Holder (Grantee), and **MCLEAN LAND CONSERVANCY, INC.**, hereinafter "Conservancy," party of the third part, also Easement Monitor (Grantee).

**WHEREAS**, the Owner is the owner of certain real property by virtue of deeds recorded in Deed Book 03708, at Page 0672, and Deed Book 05734, at Page 1458, among the land records of Fairfax County, Virginia (hereinafter the "Property"); and

**WHEREAS**, it is the desire and intent of the Owner to grant a certain easement to the Board as hereinafter set forth and as shown on the plat attached hereto and incorporated herein by this reference entitled "PLAT SHOWING 100' CONSERVATION EASEMENT ON PARCEL 44A NIELSON'S (sic) PROPERTY (D.B. 5734, PG. 1458) DRANESVILLE DISTRICT FAIRFAX COUNTY, VIRGINIA," made by KJ & Associates and dated April 28, 2003 (hereinafter the "Plat").

**WITNESSETH:**

**NOW, THEREFORE**, in consideration of the sum of Ten Dollars (\$10.00), the receipt and sufficiency of which is hereby acknowledged, the Owner does hereby grant unto the County, its successors and assigns, a Conservation Easement for the purpose of conserving and preserving undisturbed the natural vegetation, topography, habitat, and other natural features



now existing on and across the Property of Owner, said Property and easement being more particularly bounded and described on the Plat. The easement is subject to the following terms and conditions:

1. No use shall be made of, nor shall any improvements be made within, the conservation easement area without prior written authorization by the Director of the Fairfax County Department of Public Works and Environmental Services with the exception of the improvements cited in Paragraph 4.

2. All existing vegetation in the conservation easement area shall be preserved and protected, no clearing or grading shall be permitted, nor shall the easement area be denuded, defaced, or otherwise disturbed without the prior written approval of the Director of the Fairfax County Department of Public Works and Environmental Services with the exception of the improvements cited in Paragraph 4.

3. The Conservancy shall monitor, watch, and observe the easement area to ensure that said area remains at all times in its original condition and, further, shall report and relate to and inform the appropriate agency or department of Fairfax County of any violation(s) of the terms and conditions of this easement agreement. For purposes of performing the foregoing functions, the Board and the Conservancy and their respective agents shall have the right to enter the property from time to time as the Board and/or Conservancy may deem necessary or appropriate.

4. The Owner and/or the Conservancy and its agents shall have the right to reforest and/or rehabilitate the riparian buffer within the conservation easement in the areas where there are no other existing easements. Only native plants shall be used. If the Owner undertakes the reforestation or rehabilitation, written plans for such shall be submitted to the Board and the

Conservancy 30 days in advance of any land-disturbing activities, and the Conservancy, upon and after collaboration with, and agreement by, the appropriate agency or department of Fairfax County, shall approve those plans in writing.

5. If at any time there is to be construction or land-disturbing activity requiring a Fairfax County permit on any portion of the Property within 100 feet of the conservation easement, the Owner shall be responsible for clearly delineating the perimeter of said easement with a super-silt fence until the inspection process associated with the permit is completed and all items are resolved.

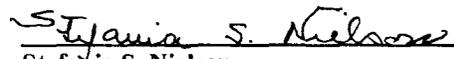
6. In the event of any violation of this conservation easement, the Owner shall be solely responsible for the restoration of the conservation easement area to its original condition as of the full execution of this easement agreement or its condition as of the completion of the reforestation provided for herein, whichever shall later occur. Further, the Board and its agents shall have the right, but not the obligation, to enter upon the property and restore the conservation easement area to the extent the Board may deem necessary. The cost of such restoration by the Board shall be reimbursed to the Board by the Owner, its successors and assigns, upon demand.

7. The Owner agrees that the agreements and covenants stated in this easement agreement are not covenants personal to the Owner but are covenants running with the land which are and shall be binding upon the Owner, its heirs, personal representatives, successors and assigns.

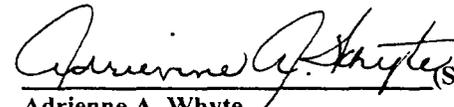
8. The Grantees agree that the agreements and covenants stated in this easement agreement are covenants running with the land which are and shall be binding upon the Grantees, their successors and assigns.

WITNESS the following signatures and seals:

  
\_\_\_\_\_  
(Seal)  
Einer R. Nielson  
Owner

  
\_\_\_\_\_  
(Seal)  
Stefania S. Nielson  
Owner

MCLEAN LAND CONSERVANCY, INC.  
Easement Monitor

By:   
\_\_\_\_\_  
(Seal)  
Adrienne A. Whyte  
President

REMAINDER OF PAGE INTENTIONALLY LEFT BLANK

Commonwealth of Virginia  
County of Fairfax, to wit:

The foregoing instrument was acknowledged before me by Eric R. Nielson  
this the 6 day of August, 2003.

Linda J. Sammesen  
Notary Public

My Commission Expires: 4-30-06

Commonwealth of Virginia  
County of Fairfax, to wit:

The foregoing instrument was acknowledged before me by Stephanie B. Nielson  
this the 6 day of August, 2003.

Linda J. Sammesen  
Notary Public

My Commission Expires: 4-30-06

Commonwealth of Virginia  
County of Fairfax, to wit:

The foregoing instrument was acknowledged before me by Adrienne A. Whyte  
this the 6 day of August, 2003.

Linda J. Sammesen  
Notary Public

My Commission Expires: 4-30-06

Executed on behalf of the Board of Supervisors of Fairfax County, Virginia, Easement Holder, by authority granted by said Board.

APPROVED AS TO FORM:  
COUNTY ATTORNEY

By: *Paul D. Soulier*  
Assistant County Attorney

By: *Michelle Brickner* (Seal)  
Michelle Brickner, Director  
Office of Site Development Services  
Department of Public Works and  
Environmental Services

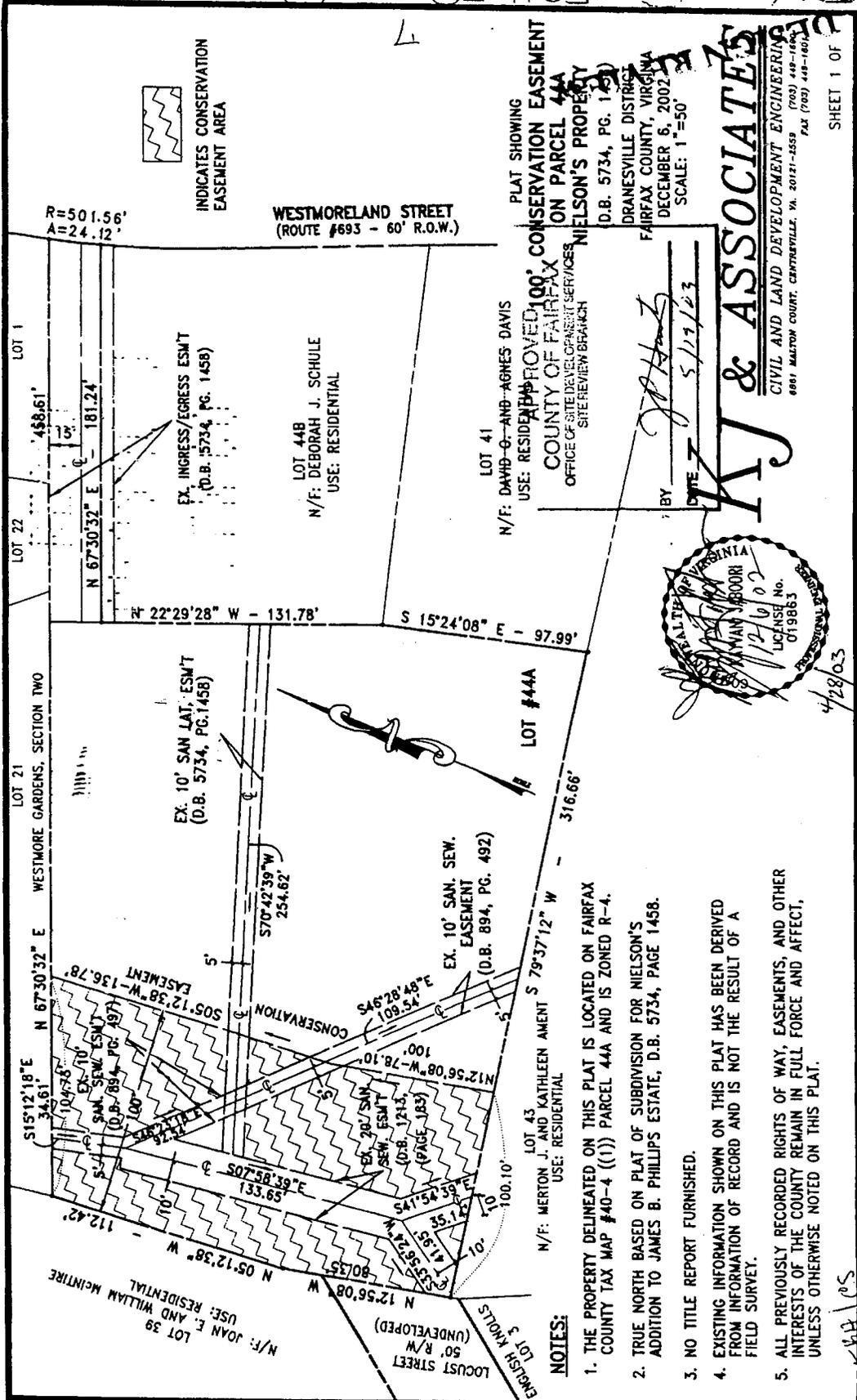
Commonwealth of Virginia  
County of Fairfax, to wit:

The foregoing instrument was acknowledged before me by Michelle Brickner, on this the 17<sup>th</sup> day of August, 2003.

*Ashley P. Lawrence*  
Notary Public

My Commission Expires: 06/30/04

S:\SOULIER\ConservationMonitoringEasement Final 2.doc



5011-EP-01-1(5) 7



# FAIRFAX COUNTY

## DEPARTMENT OF PLANNING

ATTACHMENT 5

Zoning Evaluation Division  
12055 Government Center Parkway, Suite 800  
Fairfax, Virginia 22035-5509

(703) 324-1290 TTY 711 (Virginia Relay Center) Fax (703) 324-3920

# VIRGINIA

March 11, 2005

Kayvan Jaboori  
KJ & Associates  
10650 Main Street, Suite 302  
Fairfax, Virginia 22030

Re: Interpretation for Variance VC 2002-DR-139, Tax Map 40-4 ((1)) 44A: Building Configuration

Dear Mr. Jaboori:

This is in response to your letter of December 30, 2004 (copy attached), requesting an interpretation of the variance plat and development conditions approved by the Board of Zoning Appeals (BZA) with Variance VC 2002-DR-139 on November 19, 2002. As I understand it, the question is whether the proposed larger house and driveway are in substantial conformance with the approved variance conditions and plat.

Variance VC 2002-DR-139 was approved subject to conformance with the plat prepared by your firm dated June 18, 2002. This plat depicts a dwelling located 42 feet from the southern lot line, 133 feet from the eastern lot line, approximately 111 feet from the western lot line and 107 feet from the northern lot line.

You have requested permission to construct a larger house, as depicted on the plat dated February 18, 2005, also prepared by your firm. This plat depicts a dwelling to be located 32 feet from the southern lot line, 123.9 feet, with a covered porch, approximately 110 feet from the eastern lot line, 111 feet from the western lot line and 100.8 feet, with the covered porch approximately 91 feet, from the northern lot line. Additionally, you have added a paved parking area to the north of the dwelling.

It is my determination that the proposed dwelling and driveway are in substantial conformance with the approved variance conditions and plat. This determination has been made in my capacity as the duly authorized agent of the Zoning Administrator.

Should you have additional questions, please contact Mavis Stanfield at (703) 324-1222.

Sincerely,

Barbara A. Byron, Director  
Zoning Evaluation Division

Attachment: A/S

cc: Board of Zoning Appeals

Leslie Johnson, Deputy Zoning Administrator, Permit Review Branch, ZAD, DPZ  
Michelle Brickner, Director, Office of Site Development Services, DPWES  
Kevin Guinaw, Chief, Special Projects/Applications Management, ZED, DPZ  
File: VCI 0501 001, VC 2002-DR-139, Imaging, Reading File

December 30, 2004

Ms. Mavis Stanfield  
Fairfax County Department of Planning & Zoning  
Zoning Evaluation Division  
12055 Government Center Parkway  
8<sup>th</sup> floor  
Fairfax, VA 22035-5503

**Re: Variance Application VC 2002-DR-139, and  
Fairfax County Plan #5211-INF-001-1**

**Sub: Interpretation of approved Variance Agreement**

Dear Ms. Stanfield:

On behalf of the subject property owner, Mr. Mark Stadskev, I am writing you to request an interpretation of the approved variance agreement on the referenced application.

Due to existing site soil and high groundwater conditions, construction of a basement unit, or a slab on grade construction, or even construction of a dwelling unit with an attached garage is not advisable. Consequently, the property owner would like to pursue construction of a dwelling unit with a crawl space along with a detached garage to prevent jeopardizing structural integrity of the proposed house due to excess ground moisture and possible differential settlement between the garage and the house.

In turn, this has resulted in rejection of the submitted grading plan by the DPW&ES Facilities Review Division. The reviewing staff member, Mr. Denis Hannen, has requested a letter of interpretation from the Zoning Evaluation Division on the approved variance agreement for the referenced application (VC 2002-DR-139) and the submitted grading plan (File #5211-INF-001-1).

Our justifications for this interpretation request is as follows:

- The existing site sub-surface conditions are not suitable for construction of a dwelling unit with an attached garage.
- The proposed improvements, as shown on the attached grading plan, result in additional land disturbance of less than 110 square feet compared to the approved variance application.
- Additional land disturbance activities are not proposed within the recorded 100' Water Quality Area/Conservation Easement.
- The total impervious cover for the subject parcel is less than 18%.
- The proposed detached garage slab on grade construction would not require additional earthwork (cut/fill construction).

**RECEIVED**  
Department of Planning & Zoning

DEC 30 2004

Zoning Evaluation Division

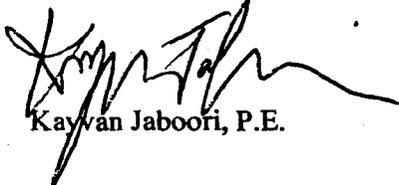
- The adjoining property owners (Parcel 44B), as well as Ms. Adrienne Whyte of the McLean Citizens Association have been consulted regarding this issue. To the best of our knowledge, neither party has expressed any opposition to the construction of a detached garage.
- All other imposed development conditions by the approved variance agreement have adhered to.
- The grading plan for the proposed improvements is in close conformance with the approved variance plat otherwise.

For your reference and use, we are forwarding a copy of the approved variance plat and a copy of the proposed grading plan for the subject parcel.

In advance, we thank you for your time and consideration in this matter. Should you have any question, please feel free to contact me at (703) 449-1600, or via e-mail at [kjanda@erols.com](mailto:kjanda@erols.com)

Very truly yours,

KJ & Associates



Kayvan Jaboori, P.E.



# BUILDING PERMIT APPLICATION

FAIRFAX COUNTY OFFICE OF BUILDING CODE SERVICES  
 PERMIT APPLICATION CENTER  
 12055 Government Center Parkway, 2nd Floor  
 Fairfax, Virginia 22035-5504 Telephone: 703-222-0901  
 Web site: www.fairfaxcounty.gov/dpwes

PERMIT # 05047 150380

FOR INSPECTIONS CALL ATTACHMENT 6

FILL IN ALL APPROPRIATE INFORMATION IN THIS COLUMN  
(PLEASE PRINT OR TYPE)

**JOB LOCATION**  
 ADDRESS 2310 Westmoreland St  
 LOT # 44-A BUILDING \_\_\_\_\_  
 FLOOR \_\_\_\_\_  
 SUBDIVISION Phillips Subdiv. Add'n to  
Nichols  
 TENANT'S NAME outlot # 1A

**OWNER INFORMATION** OWNER  TENANT   
 NAME MARK STADSKLEV  
 ADDRESS 504 GREENWICH ST  
 CITY Falls Church STATE VA ZIP 22046  
 TELEPHONE 571/259-6939

**CONTRACTOR INFORMATION** SAME AS OWNER   
 CONTRACTORS MUST PROVIDE THE FOLLOWING:  
 COMPANY NAME \_\_\_\_\_  
 ADDRESS \_\_\_\_\_  
 CITY \_\_\_\_\_ STATE \_\_\_\_\_ ZIP \_\_\_\_\_  
 TELEPHONE \_\_\_\_\_  
 STATE CONTRACTORS LICENSE # \_\_\_\_\_  
 COUNTY BPOL # \_\_\_\_\_

**APPLICANT** MARK STADSKLEV

**DESCRIPTION OF WORK**  
Construct of new  
single family dwelling

**HOUSE TYPE** single Fam  
 ESTIMATED COST OF CONSTRUCTION 350,000  
 BLDG AREA (SQ FT OF FOOTPRINT) \_\_\_\_\_  
 USE GROUP OF BUILDING B5  
 TYPE OF CONSTRUCTION 1300  
 SEWER SERVICE PUBLIC  SEPTIC  OTHER   
 WATER SERVICE PUBLIC  WELL  OTHER   
 OTHER PLEASE SPECIFY \_\_\_\_\_

**DESIGNATED MECHANICS' LIEN AGENT**  
 (Residential Construction Only)  
 NAME NONE  
 ADDRESS \_\_\_\_\_

NONE DESIGNATED  PHONE \_\_\_\_\_

**CHARACTERISTICS FOR NEW SFD, TH, APT & CONDOS**

# KITCHENS	<u>1</u>	EXTER. WALLS	_____
# BATHS	<u>4</u>	INTER. WALLS	_____
# HALF BATHS	<u>4</u>	ROOF MATERIAL	_____
# BEDROOMS	<u>4</u>	FLOOR MATERIAL	_____
# OF ROOMS	_____	FIN. BASEMENT	_____ %
# STORIES	<u>3</u>	HEATING FUEL	_____
BUILDING HEIGHT	<u>34'</u>	HEATING SYSTEM	_____
BUILDING AREA	_____	# FIREPLACES	_____
BASEMENT	<u>NO</u>		

DO NOT WRITE IN GRAY AREAS

PLAN # R-05-00185  
 TAX MAP # 04D-4-01-0044-A

ROUTING	DATE	APPROVED BY
LICENSING		
ZONING	<u>6/30/05</u>	<u>SHD</u>
SITE PERMITS	<u>6/3/05</u>	<u>JK</u>
HEALTH DEPT.		
BUILDING REVIEW	<u>6-22-05</u>	<u>JM</u>
SANITATION	<u>4/31/05</u>	<u>JK</u>
FIRE MARSHAL		
ASBESTOS		
PROFFERS		

FEE \$ \_\_\_\_\_  
 FILING FEE \$ \_\_\_\_\_  
 AMOUNT DUE = \$ \_\_\_\_\_

**BUILDING PLAN REVIEW**  
 REVIEWER \_\_\_\_\_ # OF HOURS \_\_\_\_\_  
 REVISION FEES \$ \_\_\_\_\_  
 FIRE MARSHAL FEES \$ \_\_\_\_\_  
 FIXTURE UNITS \_\_\_\_\_ PLAN LOC: J  R

APPROVED FOR ISSUANCE OF BUILDING PERMIT  
 (LOG OUT)  BY \_\_\_\_\_ DATE 6/24/05

**ZONING REVIEW**  
 USE SFD  
 ZONING DISTRICT R-4 HISTORICAL DISTRICT \_\_\_\_\_  
 ZONING CASE # \_\_\_\_\_  
 GROSS FLOOR AREA OF TENANT SPACE

YARDS:	GARAGE	1 <input type="checkbox"/>	2 <input type="checkbox"/>	3 <input type="checkbox"/>
FRONT <u>30+</u>	OPTIONS	YES <input type="checkbox"/>	NO <input type="checkbox"/>	
FRONT _____	REMARKS	<u>Blk new SFD</u>		
L SIDE <u>30'</u>	<u>W/curb on front porch w/</u>			
R SIDE <u>17-2'</u>	<u>steps to slide rock</u>			
REAR <u>113.2'</u>	<u>patio on one level w/</u>			

**GRADING AND DRAINAGE REVIEW**  
 SOILS # A  B  C   
 AREA TO BE DISTURBED (TOTAL SQ FT THIS PERMIT) \_\_\_\_\_  
 IMPERVIOUS AREA (TOTAL SQ FT THIS PERMIT) \_\_\_\_\_  
 PLAN # 5211-INC APPR. DATE 6/24/05

**STAMPS**

**PROBLEM SOILS**  
 SEE APPROVED GRADING PLAN  
 SITE PLAN AND/OR SOILS REPORT  
 (See reverse side of application)

REMARKS No Second Kitchen or Wet Bar

**PROBLEM SOILS**  
 SEE APPROVED GRADING PLAN  
 SITE PLAN AND/OR SOILS REPORT

Any and all information and/or stamps on the reverse side of this form are a part of this application and must be complied with. I hereby certify that I have authority of the owner to make this application, that the information is complete and correct, and that the construction and/or use will conform to the building code, the zoning ordinance and other applicable laws and regulations which relate to the property.

Mark Stadsklev 6/3/05  
 Signature of Owner or Agent Date  
MARK STADSKLEV OWNER  
 Printed Name and Title  
 (Notarization of signature is required if owner is listed as the contractor and is not present at time of application)

**NOTARIZATION** (if required)  
 State (or territory or district) of \_\_\_\_\_  
 County (or city) of \_\_\_\_\_, to wit: I, \_\_\_\_\_ a \_\_\_\_\_  
 Notary Public in the State and County aforesaid, do certify that \_\_\_\_\_ whose name is signed to this application, appeared before me in the State and County aforesaid and executed this affidavit.  
 Given under my hand this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ My  
 commission expires the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.  
 (Notary Signature)





# FAIRFAX COUNTY

OFFICE OF THE COUNTY ATTORNEY  
12000 Government Center Parkway, Suite 549  
Fairfax, Virginia 22035-0064  
Telephone: (703) 324-2421  
Facsimile: (703) 324-2665 or 324-3938

---

VIRGINIA

July 18, 2005

Mark J. Stadskev  
504 Greenwich Street  
Falls Church, Virginia 22046

Re: Violation of Conservation Easement Upon, Over, and Across Tax Map  
040-4((1))Parcel 44A

Dear Mr. Stadskev:

You are, of course, aware of the conservation easement situated on your property located at 2310 Westmoreland Street in Fairfax County. That easement is owned by the Board of Supervisors of Fairfax County, which has the power of enforcement regarding any violation(s) of the easement provisions that may occur. On or about July 7, 2005, you and/or your agent(s), for whom you are responsible, violated certain of the terms and conditions of the easement while undertaking clearing activities onsite. Specific violations include the disturbance of the conservation easement area and failure to erect a protective super silt fence around the conservation easement area prior to commencing land-disturbing activities.

Adrienne Whyte, President, McLean Land Conservancy, acting in the capacity of easement monitor, as well as Nick Pizzola, Senior Engineering Inspector, Environmental and Facilities Inspections Division of Land Development Services, Department of Public Works and Environmental Services, observed the results of the violation activities as listed below. Photographs taken by the McLean Land Conservancy document the adverse outcomes.

1. A truck drove into and over the conservation easement area, intruding 15-20 feet into the protected area. As a result, the truck tore up/destroyed the natural ground cover and vegetation, leaving large ruts and tire tracks in the disturbed area.
2. You and/or your agent(s) dumped a large pile of wood chips beyond the limits of clearing and grading and onto the conservation easement area. Although you and/or your agent(s) subsequently removed the wood chips, mulch covered and destroyed a large area of vegetation.

Letter to Mark J. Stadslev -

Re: Violations of Conservation Easement Upon, Over, and Across Tax Map 040-4((1))  
Parcel 44A

Page 2

3. You and/or your agent(s) failed to erect a super silt fence around the conservation easement area before beginning land-disturbing activities.

The Environmental and Facilities Inspections Branch indicates that on July 13, 2005, it issued you formal notices of violations of two provisions of the Fairfax County Code, § 104-1-5 and § 118-3-3(f), as a result of the unlawful activities that occurred on the property.

Your compliance in a timely manner with all terms of the violation notices is mandatory. It is the understanding of this office that you are required to submit a restoration plan as prepared by a licensed professional engineer to the Department of Public Works and Environmental Services for review and approval within 30 days of the notices of violation. Please also submit a copy of the plan to the McLean Land Conservancy, P.O. Box 224, McLean, Virginia 22101, on the same day of submission to Fairfax County.

Any violation of a conservation easement placed on the land to protect the riparian buffer of Fairfax County waterway is serious. Your violations, however, go further and are particularly egregious in light of the fact that Adrienne Whyte and Nick Pizzola met with you during the same week you and/or your agent(s) committed the violations. One specific purpose of the meeting was to explain to you, and ensure your understanding of, the constraints and requirements involved in complying with the provisions of the conservation easement. Both Ms. Whyte and Mr. Pizzola indicate that you confirmed that understanding at the meeting.

The County can exercise an immediate remedy to the current violations of the conservation easement, as well as any that may occur in the near future, by seeking judicial injunctive relief preventing all further land-disturbing activity and construction work on the entire property until: a) compliance with the easement and violation requirements is met, and b) a Circuit Court decree ordering you to provide proof to the court that compliance has been accomplished subject to the approval of both the owner and monitor of the conservation easement is satisfied.

In lieu of seeking immediate injunctive relief, my office is making the following formal demands to mitigate the damage you and/or your agents caused and prevent further damage to the conservation easement area. Compliance with these demands, as listed directly below, will demonstrate your and your agents' cooperation and show of good faith.

1. Immediately comply with all violation requirements.
2. Within 10 days of the date of this letter, erect signage that clearly identifies the conservation easement area and instructs all persons that entry is prohibited.

Letter to Mark J. Stadslev

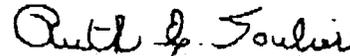
Re: Violations of Conservation Easement Upon, Over, and Across Tax Map 040-4((1))  
Parcel 44A

Page 3

- Place signage every 10 feet along and in front of the protective super silt fence.
  - Professionally print signage in capitalized, block lettering large enough to be read from a distance of 25 feet.
  - Print signage in both English and Spanish, specifically stating as follows: "CONSERVATION EASEMENT AREA - NO ENTRY PERMITTED." Note: Signage identifying the area only as a "tree protection area" is not sufficient.
  - Leave signage in place until the house is occupied and construction is complete.
3. Within 10 days of the date of this letter, submit to my attention a short-term mitigation plan specifying how you will fill the ruts by hand and provide appropriate fast-growing vegetative cover, to be approved by the easement monitor in consultation with the urban forester, until long-term mitigation measures have been approved by the Department of Public Works and Environmental Services, and the violations have been deemed closed by Fairfax County.
  4. Mitigation action, short- or long-term, shall not be taken until you receive written approval from me.
  5. Within 10 days of the date of this letter, submit to my attention executed contractual language for all agents, employees, contractors, and subcontractors working onsite, which demonstrates said parties have been notified in writing that no disturbance of or entry into, onto, or across the conservation easement area is permitted. Both the Senior Engineering Inspector and easement monitor may verify from time to time that parties working onsite are aware of their contractual obligations.
  6. Submission of said contractual language is to be original in form and signed by all parties indicated in the requirement directly above. Copies will be made of the contractual provisions and the original documents returned to you.

This office reserves the right to invoke injunctive and other judicial relief, as necessary, to protect the interests of Fairfax County regarding any further violation(s) of the conservation easement and/or the current violations should you decline to comply with the demands delineated in this letter.

Sincerely,



Ruth E. Soulier

Assistant County Attorney

Letter to Mark J. Stadslev

Re: Violations of Conservation Easement Upon, Over, and Across Tax Map 040-4((1))  
Parcel 44A

Page 4

cc: Adrienne Whyte, President, McLean Land Conservancy

Jeffrey Blackford, Director, Code Services, Land Development Services, Department of  
Public Works and Environmental Services

Bruce Nassimbeni, Director, Site Review - East, Environmental and Site Review  
Division, Land Development Services, Department of Public Works and Environmental  
Services

Nick Pizzola, Senior Engineering Inspector, Environmental and Facilities Inspections  
Division, Land Development Services, Department of Public Works and Environmental  
Services

504 Greenwich Street  
Falls Church, VA 22046  
July 28, 2005

VIA FACSIMILE AND CERTIFIED U.S. MAIL

Ms. Ruth E. Soulier  
Assistant County Attorney  
Office of the County Attorney  
Fairfax County  
12000 Government Center Parkway  
Suite 549  
Fairfax, Virginia 22035

RE: Response to Letter Dated July 18, 2005 Regarding  
Violation of Conservation Easement of 2310 Westmoreland Street  
Tax Map 040-4((1))Parcel 44A

Dear Ms. Soulier:

In response to your aforementioned letter dated July 18, 2005, and received by myself on July 21<sup>st</sup>, 2005, I am respectfully submitting to your office the status of your demands:

1. I have or are in process of complying with all violations (installed limits of clearing and grading, installed 475 feet of super silt fence, seeded and mulched 125 feet by 100 feet of denuded area, and I am in process of submitting a revegetation plan for County authorization).
2. I have erected signage that clearly identifies the conservation easement area (CEA).
3. I have placed the signage every 10 feet along the CEA
4. Signage is professionally printed in capitalized, large, block lettering and laminated.
5. Signage is printed in both Spanish and English.
6. I will leave the signage in place until the house is completed.
7. I have enclosed a short-term mitigation plan.
8. I will not take any short- or long-term mitigation action until I receive written approval from you.



- 9. I have drafted contractual language for all agents, employees, contractors, and subcontractors working onsite that demonstrates their acknowledgment in writing that disturbance of or entry into, onto, or across the CEA is not permitted.
- 10. I will include the 2 original contracts that I have obtained to date. I am in process of getting the other contracts signed and will forward originals to your office as they become executed. To date, there are only 2 contracts signed.

I am treating this matter very seriously. It was an unfortunate accident and I will take every precaution to ensure that there are no further breaches to the integrity of the CEA. Unfortunately, I can not undo what has occurred but do I want to apologize to your office and stress that no malice was intended nor advantaged gained by myself.

If you have any questions, please contact me on my cell at 571/259-6939 or in the office at 202/205-9160.

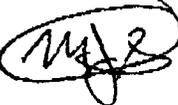
Regards,



Mark Stadslev

ATTACHMENT(S)

TO: Ruth E. Soulier  
Assistant County Attorney  
Fairfax County

FROM: Mark Stadslev 

DATE: Thursday, July 28, 2005

RE: 2310 Westmoreland Street, Falls Church, VA  
Short-term Mitigation Plan in Response to  
Violation of Conservation Easement Letter Dated July 18, 2005

I respectfully submit to your office the following short-term mitigation plan to address the damage my contractor created to a limited area of the Conservation Easement Area ("CEA") of the aforementioned address:

- 1) Add top soil obtained from the lot within the area of limits of clearing and grading into the ruts left behind in the CEA. Said placement of top soil will be performed by hand and in the amount to bring the ruts back to its normal grade. Appropriate care shall be given to ensure that no additional damage to the existing vegetation.
- 2) Spread over the entire area affected, but not limited to, the area where rut indentation(s) occurred as well as the area where wood chips crossed into the CEA a seed mixture designated as an indigenous woody seed mix. The coverage will be at a rate of 10 pounds of seed mix per 1,000 square feet of area. Spread hay over same area for protection and moisture retention.
- 3) During periods of prolonged heat and/or drought, apply water on the affected areas in order to ensure its continued growth.
- 4) Continuously and aggressively police and enforce the integrity of the CEA until the completion of the project.
- 5) Complete the short-term measure within ten (10) calendar days of acceptance by your office.

If you have any suggestions and/or questions, please call me at (571) 259-6939.

Regards,

  
Mark Stadslev

**CONSERVATION EASEMENT**

**AREA - NO ENTRY**

**PERMITTED**

**\*\*\***

**AREA DE PRESERVACION**

**BOTANICA**

**PROHIBIDA LA ENTRADA!**

**MANTENGANSE ALEJADO!**

**Marker Realty, LLC  
504 Greenwich Street  
Falls Church, VA 22046**

To: All vendors, Suppliers, Sub-Contractors, Employees and Agents

2310 Westmoreland Street, Falls Church, VA, is a very sensitive lot with a Conservation Easement Area that is dedicated to Fairfax County. Attached is a site plan with the area noted.

This area is not to be entered at any time by any of your employees. Results of damaging this area will cause the owner a Stop-Work Order and other ramifications such as fines and replanting. Negligence on behalf of your company can result in monetary loss, limited to the actual expense incurred as a result of the negligence. No disturbance of or entry into, onto or across the conservation easement area is permitted. Both the Senior Engineering Inspector and Easement Monitor may verify from time to time that your employees or agents working onsite are aware of their contractual obligations. Please adhere to our signage and sediment controls.

Sincerely,



Mark Stadskev  
Marker Realty, LLC

**AGREED AND ACCEPTED:**

\_\_\_\_\_  
Company

\_\_\_\_\_  
Date

- Sub-Contractor
- Supplier





# FAIRFAX COUNTY

OFFICE OF THE COUNTY ATTORNEY  
12000 Government Center Parkway, Suite 549  
Fairfax, Virginia 22035-0064  
Telephone: (703) 324-2421  
Facsimile: (703) 324-2665 or 324-3938

---

VIRGINIA

August 19, 2005

Mark J. Stadslev  
504 Greenwich Street  
Falls Church, Virginia 22046

Re: Violation of Conservation Easement Upon, Over, and Across Tax Map  
040-4((1))Parcel 44A

Dear Mr. Stadslev:

Thank you for your July 28, 2005, response to my letter dated July 18, 2005. I am writing to follow up on your response and the short-term mitigation plan you proposed.

I did receive your contract amendment language and two executed amendments, one of which accompanies the appropriate executed contract, and I find the amendment language to be acceptable. However, I do not have any way to evaluate whether you have provided all the requested amendments because I do not have a list of your current contractors and subcontractors. Please submit such a list and additional amendments, if any, as of the date of your response to this letter.

As I previously indicated, I have made copies of the originals you submitted, and the originals are included with this letter.

I cannot approve your proposed short-term mitigation plan. I know that you discussed it with Adrienne Whyte of the McLean Land Conservancy, and, based on conversations she had had with members of the Department of Public Works and Environmental Services staff, she had recommended a woody seed mix to you. Subsequent to those discussions, and as mentioned in my letter to you, Dr. Whyte consulted with the urban forester. The urban forester recommended that trees be planted in the disturbed areas, and with Dr. Whyte's agreement, I am requesting that you submit a restoration plan with the following components.

Letter to Mark J. Stadskev

Re: Violations of Conservation Easement Upon, Over, and Across Tax Map 040-4((1))  
Parcel 44A

Page 2

- Fill the rutted areas, as proposed, with soil taken from within the limits of clearing and grading.
- Plant one-inch caliper trees (or larger, if necessary) in the two distinct disturbed areas. A minimum of six trees shall be planted. They may be a mixture of any of the following species: river birch, red maple, red oak, white oak, or sycamore. The trees shall be mulched and watered and their survival guaranteed for a period of three years. Dead or dying trees shall be replaced within one month of their decline, if weather conditions permit.

Please submit the restoration plan within 10 days of the date of this letter.

I have verified that you have met the conservation easement signage requirements. I appreciate your new efforts to protect the conservation easement on your property, and I trust that you will continue to take all necessary steps to prevent future damage.

Sincerely,



Ruth E. Soulier  
Assistant County Attorney

Enclosures as stated.

cc: Adrienne Whyte, President, McLean Land Conservancy

Jeffrey Blackford, Director, Code Services, Land Development Services, Department of Public Works and Environmental Services

Bruce Nassimbeni, Director, Site Review - East, Environmental and Site Review Division, Land Development Services, Department of Public Works and Environmental Services

Nick Pizzola, Senior Engineering Inspector, Environmental and Facilities Inspections Division, Land Development Services, Department of Public Works and Environmental Services

*Handwritten mark*

**Marker Realty, LLC  
504 Greenwich Street  
Falls Church, VA 22046**

To: All vendors, Suppliers, Sub-Contractors, Employees and Agents

2310 Westmoreland Street, Falls Church, VA, is a very sensitive lot with a Conservation Easement Area that is dedicated to Fairfax County. Attached is a site plan with the area noted.

This area is not to be entered at any time by any of your employees. Results of damaging this area will cause the owner a Stop-Work Order and other ramifications such as fines and replanting. Negligence on behalf of your company can result in monetary loss, limited to the actual expense incurred as a result of the negligence. No disturbance of or entry into, onto or across the conservation easement area is permitted. Both the Senior Engineering Inspector and Easement Monitor may verify from time to time that your employees or agents working onsite are aware of their contractual obligations. Please adhere to our signage and sediment controls.

Sincerely,



Mark Stadskev  
Marker Realty, LLC

**AGREED AND ACCEPTED:**

*Jm White*      *Project MGR TO*  
Company              OWNER

*7/25/05*  
Date

- Sub-Contractor
- Supplier



201: 70101

**Marker Realty, LLC  
504 Greenwich Street  
Falls Church, VA 22046**

To: All vendors, Suppliers, Sub-Contractors, Employees and Agents

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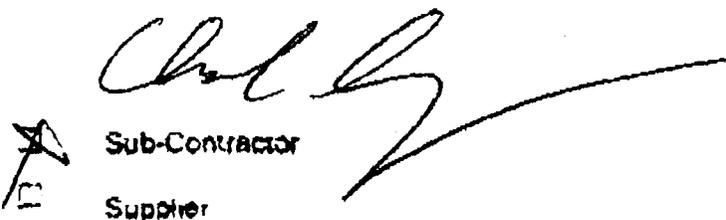
Sincerely,

  
Mark Sladskiev  
Marker Realty, LLC

**AGREED AND ACCEPTED:**

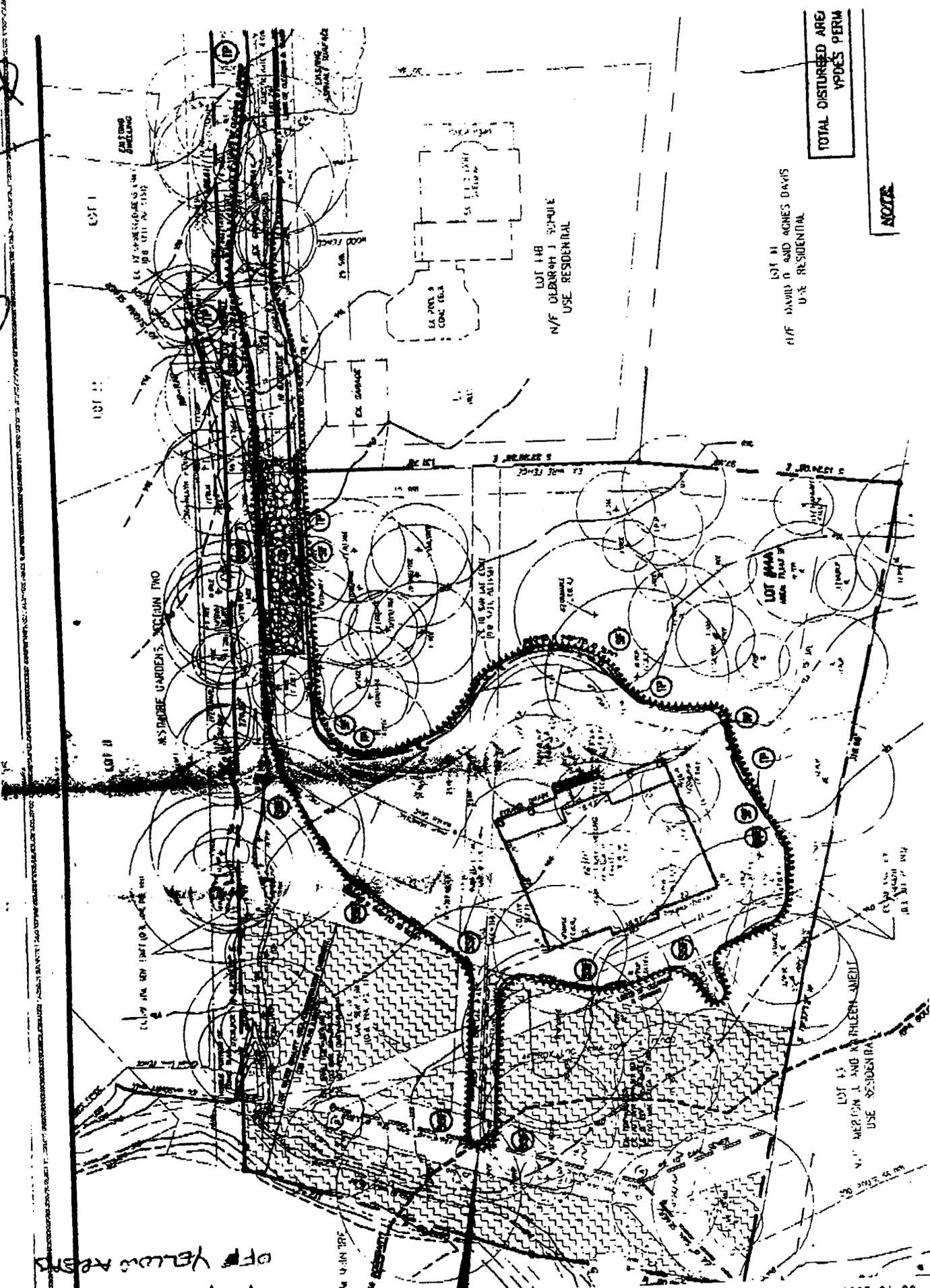
Rock Hard Excavating  
Company

7/25/05  
Date

  
Sub-Contractor  
Supplier

FAIRFAX COUNTY ATTORNEYS OFFICE

Handwritten notes and signatures at the top of the page, including a circled signature and the date "7/24".



TOTAL DISTURBED AREA  
YPDES PERM

LOT 11  
MAYOR D. AND AGNES DAVIS  
USE RESIDENTIAL

LOT 14B  
N/F DUBOIS J SCHUE  
USE RESIDENTIAL

LOT 16A  
MAYOR D. AND AGNES DAVIS  
USE RESIDENTIAL

LOT 15  
MAYOR D. AND AGNES DAVIS  
USE RESIDENTIAL

NOTE

Keep out of yellow areas

**SUBCONTRACT**

THIS SUBCONTRACT is entered into by and between ROCKWARD EXCAVATION, INC ("Subcontractor") and MARKER REMIT LLC ("Owner"), regarding the performance of the below referenced work on or about the Project known as: 2310 WESTINGHOUSE ST ("Project")  
BALLS BLVD, VA

WITNESSETH, that the Subcontractor and the Owner in consideration of the mutual covenants, considerations and agreements herein contained, covenant and agree, each with the other, as follows:

The Subcontractor agrees to furnish all labor, materials, scaffolding, tools, equipment, services, temporary protection and other requisites to complete in place the following work:

- |  |                          |                         |
|--|--------------------------|-------------------------|
| Septic Field _____                                 | Electrical _____         | Iron Railings _____     |
| Well _____   | Electric Fixtures _____  | Drywall _____           |
| Blasting _____                                     | HVAC _____               | Ceramic Tile _____      |
| House Clearing <input checked="" type="checkbox"/> | Garage Doors _____       | Resilient _____         |
| Excavation <input checked="" type="checkbox"/>     | Shower Doors _____       | Carpet _____            |
| Termite Proofing _____                             | Roofing _____            | Hardwood _____          |
| Concrete _____                                     | Gutters/Downspouts _____ | Painting _____          |
| Waterproofing _____                                | Siding _____             | Cleaning _____          |
| Drain Tile _____                                   | Stucco/EFIS _____        | Mail Boxes _____        |
| Retaining Walls _____                              | Stairs/Rails _____       | Driveways _____         |
| Frame Carpentry _____                              | Mirrors _____            | Hydroseed/Sod _____     |
| Trim Carpentry _____                               | Insulation _____         | Landscaping _____       |
| Welding _____                                      | Brick Veneer _____       | Cabinets/Vanities _____ |
| Plumbing _____                                     |                          | Countertops _____       |
|  |                          | Marble Tops _____       |
|  |                          | Other _____             |

for the construction of the Project in full and complete accordance with the specifications and drawings including any revisions and addenda thereto now in effect, prepared by \_\_\_\_\_ ("Architect") and utilized, in whole or in part, in obtaining Building Permits for the Project by \_\_\_\_\_ ("Contractor").

Owner agrees to pay Subcontractor for full performance of all work in current funds, subject to additions and deductions for changes and/or extras in the work as provided hereafter and subject to the terms and conditions set forth herein.

**ACTION I - Payment**

(a) Providing a payment schedule has been submitted and approved and that satisfactory progress is being made in the performance of the Subcontract, and unless otherwise stipulated herein, it is understood and agreed that ninety (90%) per cent of the requisitioned amount through the fifteenth day of the preceding month will be payable to the Subcontractor upon Owner's approval and receipt of funds from the lending agency on the 15th day of the following month.

(b) The final ten (10%) per cent retention shall be paid after completion and final acceptance of the work by Owner, appropriate agencies, and receipt of payment from the lending agency.

(c) Subcontractor will submit applications for payment to the Owner, by the fifteenth day of each month to facilitate application for payment in accordance with the terms of the Subcontract.

(d) The foregoing Subcontract price includes all Federal, state and local taxes, including sales and use taxes, now or hereafter in effect. Sales tax where applicable, shall be itemized separately on all invoices.

(e) Subcontractor shall furnish to the Owner, prior to the commencement of the work and/or delivery of materials to Project, the names of all suppliers and his own sub-subcontractors. Owner reserves the right to check with suppliers and subcontractors to determine the current status of indebtedness, and may at his discretion make checks payable jointly to Subcontractor and supplier or such other sub-subcontractor.

(f) As an expressed condition precedent to payment, Subcontractor must invoice for work performed no later than NINETY (90) days from the date the work is performed. Failure to invoice within the 90-day period shall constitute an absolute release and waiver of any rights Subcontractor has for payment for said work, pursuant to this Agreement, law, equity or statute.

(g) In order to obtain payments, the Subcontractor agrees to furnish evidence satisfactory to the Owner regarding payment of all of the Subcontractor's obligations under this Subcontract, including payments to his sub-subcontractors and suppliers, as well as all Federal, state and local taxes and fees.

(h) The Subcontractor will, before he shall be entitled to his final payment, make all tests of the work, material and equipment furnished by him, and shall furnish all certificates which may be required showing that the work has been duly inspected by the proper authorities and that it has been executed in compliance with all applicable laws and regulations. The entire expense of such tests and certificates shall be borne by the Subcontractor. Should the Subcontract Documents conflict with the law, Subcontractor shall perform the work required by the law at no additional cost. Should the Subcontract Documents require more than the law requires, the Subcontract Documents shall be followed.

#### SECTION II - Subcontract Documents

(a) It is understood that all applicable specifications, drawings, addenda, General Conditions and Special Conditions, including any revisions and/or addenda thereto now in effect, and where not in conflict with this Subcontract, signed or initialed by the respective parties hereto, or identified by the Architect, form a part of the Subcontract between the Owner and the Subcontractor, the whole being herein referred to as the "Subcontract Documents." and all are hereby made a part of this Subcontract. Failure on the part of either party to this Subcontract to sign said Subcontract Documents in no way relieves either party from responsibility covered by said Subcontract Documents, copies of which shall be kept on file in the office of the Owner for reference by the parties hereto.

(b) It is understood and agreed that the Subcontractor is an expert in the particular line or lines of work herein contracted to be done and that he is competent to know whether the materials, methods and apparatus specified for this work are sufficient and suitable to secure the results contemplated by the Subcontract Documents. The Subcontractor will be held responsible for fulfilling requirements of the Subcontract Documents by following them strictly unless, prior to the beginning of his work, Subcontractor formally objects to certain specific items, or apparent discrepancies as being inadequate or unsuitable to accomplish the desired results and Architect and Owner have formally, in writing, agreed to a remedial solution.

(c) The Subcontractor further agrees to be bound to the Owner by the Architect's interpretations of his drawings, specifications and addenda thereto.

(d) It is understood and agreed that anything mentioned in the specifications and not shown on the drawings, or shown on the drawings and not mentioned in the specifications, shall be of like effect as if shown or mentioned in both.

(e) Subcontractor expressly acknowledges that the terms and conditions of this Subcontract shall take precedence and priority over any term or condition in any addenda and/or schedule hereto which attempts, in any manner, to modify any of the terms of this Subcontract. The sole and exclusive manner any of the terms of this Subcontract can be modified is by placing the modification(s) directly upon this Subcontract and the Owner and Subcontractor initialing the modification. Any attempts to modify the terms of this Subcontract in any other manner shall be of no force and effect and be void *ab initio*.

#### SECTION III - Schedules

Subcontractor understands that he will be required to start and continue the job at the direction of the Owner and/or Owner's authorized representative. Subcontractor shall commence performance immediately after being notified by the Owner to do so, at such points as Owner may designate, and shall continue diligently in such performance in an expedient and rapid manner, including working a full crew on Saturdays if his work is behind schedule, with adequate workmen, tools, scaffolding, materials and supervision, until all work to be done hereunder is completed to the satisfaction of the Owner and appropriate agencies and lenders. Without limiting the generality of the foregoing, if Owner furnishes Subcontractor with a schedule of performance or a completion date, it is hereby agreed that the work shall be completed in accordance with said schedule and on or prior to said completion date. Whether or not such a performance schedule or completion date, or both, be furnished to Subcontractor, it is agreed that time is of the essence in this Subcontract.

#### SECTION IV - Workmanship

(a) All work shall be performed by Subcontractor in a neat, skillful and workmanlike manner and all materials furnished by Subcontractor shall be new and of the best description and

quality of their respective kinds, unless otherwise specified and ordered by Owner in writing. All work and/or materials shall be subject to the inspection and approval of Owner and Architect, as well as representatives of the appropriate agencies and lenders. Subcontractor shall furnish and install all things incidental to a complete, workmanlike job, even though not shown on the specifications or specifically mentioned in this Subcontract. Small items not usually mentioned in detail, but which are manifestly a part of the complete installation, shall be furnished and installed without extra cost.

(b) Subcontractor shall fully cooperate with Owner and/or other subcontractors and shall not commit nor permit any act which will interfere with the performance of work by Owner or any other subcontractor. Subcontractor shall afford other subcontractors reasonable opportunity for the introduction and storage of their materials and the execution of their work and shall properly connect and coordinate his work with theirs. If any part of the Subcontractor's work depends, for proper execution or results, upon the work of any other party, Subcontractor shall inspect and promptly report to the Owner in writing any defects in such work that render it unsuitable for such proper execution. Subcontractor's failure to so inspect and report shall constitute an acceptance of the other work as fit and proper for the reception of his work excepting only such defects, if any, which may develop in the other work after the execution of the Subcontractor's work.

(c) It is understood and agreed that the Subcontractor will, during the progress of the work and as directed by Owner, remove from the Project at his own expense, dirt and debris resulting from his operations on a daily basis. Upon completion of his work, he shall, within twenty-four (24) hours, remove from the Project all equipment and unused materials and leave the premises in a condition satisfactory to the Owner. Failure to do so will allow the Owner to do so and charge cost of removal or cleanup to Subcontractor.

(d) It is understood and agreed that all work performed under this Subcontract shall be in strict conformity with the law, which shall include all applicable laws, codes, ordinances, rules, regulations and requirements of Federal, state, county and municipal authorities, including OSHA, the Fair Labor Standards Act, and of the National Board of Fire Underwriters and any local fire insurance exchange now or hereinafter in effect. If the Subcontractor knowingly performs any work contrary to such laws, codes, ordinances, rules, regulations or requirements, he shall bear all costs arising there from.

(e) In addition to the requirements for insurance to be obtained by Subcontractor in this Subcontract, Subcontractor agrees in connection with his work hereunder to maintain and protect traffic; to maintain and protect all utilities, structures, foundations, completed and uncompleted portions of the work; to adequately and properly protect work by lights, barriers, supports and guards; and to carry on his work in such manner as to avoid injury or damages to persons or property, including his own work and the work of the Owner and other subcontractors, and be strictly responsible for damage to persons or property by failure to do so, or by Subcontractor's negligence. All work hereunder shall be solely at Subcontractor's risk until the work has been finally inspected and accepted by the Owner, appropriate agencies and lenders. Subcontractor shall hold Owner, Contractor and Architect harmless against any and all loss, expense or damage, including attorney's fees, which these entities may suffer or pay as a result of claims or suits due to or arising from Subcontractor's work. Subcontractor shall assume and defend at his own cost and expense any suit, action or other legal proceeding arising from his work.

(f) It is understood and agreed that when Owner and Subcontractor are obligated under the Subcontract to furnish, and the Subcontractor is obligated under the Subcontract to install items such as, but not limited to, hardware, disposals, kitchen cabinets, stoves, ovens, electrical fixtures, miscellaneous fixtures, lumber and trim work, it shall be the sole responsibility of Subcontractor to account for said item from time of delivery of said item to the Project until acceptance of the building.

(g) Subcontractor shall be represented on the Project during the course of his work by qualified supervisors acceptable to Owner, in Owner's sole and absolute discretion.

(h) Subcontractor is to employ men and mechanics on the work who will at all times work in harmony with the men employed by the Owner and other subcontractors on the Project, and should the Owner's or the Subcontractor's work for any reason be stopped or materially delayed in the judgment of the Owner due to the Subcontractor's not having proper men or mechanics to do the work on the Project then the Owner shall have the right, after twenty-four (24) hours' written notice, to employ such men or mechanics to complete the work who will work in harmony with the men and mechanics employed by the Owner and the other subcontractors on the Project, and the cost of completing the unfinished part of the Subcontractor's work, plus twenty percent (20%) representing Owner's administrative expenses, shall be a back charge to

the account of the Subcontractor.

(i) It is further understood that contracts will be awarded and labor employed upon the Project without discrimination as to whether the employees of any contractor or subcontractor are members or non-members of any labor organization. The Subcontractor agrees that in the event of a work stoppage resulting from a labor dispute directed at the Subcontractor, the Owner, or this Project, the Owner shall have the right to proceed as set forth in the preceding paragraph.

(j) Subcontractor shall enforce discipline and good order among its employees. Owner may require Subcontractor to remove from the Project any of Subcontractor's employees that Owner, in its sole discretion, may deem incompetent, improper, or a hindrance to progress of any work on the Project, whereupon any such employee shall be so removed from any work on the Project.

#### SECTION V - Changes in Work

(a) It is understood and agreed that Owner, without in any way invalidating this Subcontract, shall have the right to make changes, additions and/or omissions in the work upon written order to the Subcontractor. Subcontractor shall thereupon promptly submit an itemized estimate of the value of the work involved and shall, if so directed by the Owner, proceed diligently to prosecute the work so ordered. Upon determination by the Owner of the value of the work involved, Owner shall issue a change order to Subcontractor adjusting the Subcontract sum accordingly.

(b) No additions will be made, and no charge for extras shall be allowed, unless agreed upon in writing and authorized by an officer of the Owner.

#### SECTION VI - Correction of Unacceptable Work

It is understood and agreed that the Subcontractor will do no work in weather which, in the opinion of Owner is, or will become, unsuitable; that the work will be done under the direction of the Owner, and all matters shall be subject to inspection, examination and test at any and all times during the manufacture and/or construction and at any and all places where such manufacture and/or construction is carried on. Should Subcontractor furnish any work, materials or equipment which are not in strict conformity herewith, Owner shall either require such work to be taken down and removed from the premises, at Subcontractor's expense, or the Owner can allow the work, materials or equipment to remain, and charge the Subcontractor an amount which, in the sole and absolute discretion of the Owner, shall be equivalent to the difference in value between the work, materials or equipment specified and the work, materials or equipment furnished. Should Owner request the former and Subcontractor fails to proceed at once with replacement of rejected work, materials or equipment, Owner may proceed by adopting any method he may deem expedient to replace such work, materials or equipment, and charge the cost thereof, plus twenty percent (20%) representing Owner's administrative expenses, to Subcontractor. In the event Subcontractor is owed less than the total of such charges, Subcontractor will immediately reimburse Owner for this difference.

#### SECTION VII - Delays and Extension of Time

Subcontractor will not be entitled to any claim for damages on account of hindrance or delay from any cause whatsoever; but if hindrance or delay is occasioned by any act of God, or by an act or omission on the part of Owner or another subcontractor, Subcontractor will be entitled only to an extension of time to complete the work, however, no extension shall be made unless a claim is presented, in writing, to the Owner within three (3) days of the onset of the delay. Owner shall not be obligated to agree to any extension and failure to request the delay within the time specified will constitute a waiver by the Subcontractor for any claim for an extension of time.

#### SECTION VIII - Owner's Right to Stop Work and/or Terminate Subcontract

(a) It is expressly understood by the parties to this Subcontract that if, in the sole discretion of the Owner, there is a delay in the work caused by the Subcontractor, it is the express privilege of the Owner to terminate, after forty-eight (48) hours' prior written notice, this Subcontract and to proceed as he may deem appropriate to expedite the completion of this work and to charge the Subcontractor any and all cost thereby incurred, plus twenty percent (20%) representing Owner's administrative expenses. It is further expressly understood by the parties to this Subcontract that it shall be the sole opinion of the Owner as to whether a delay exists, and in the event of such termination of Subcontract the Subcontractor does hereby waive any rights for recovery of damages under this Subcontract.

(b) If Subcontractor fails in any way to perform the conditions hereof, or fails to pay, laborers, mechanics, material men and suppliers when due, or shall become insolvent, or shall make assignment for the benefit of creditors, or shall commence any proceedings in bankruptcy, or shall become involved in labor difficulties, or should Owner receive a tax lien against Subcontractor, Owner shall have the right, if he so elects and without prejudice to any other rights he may have, by giving written notice of his election to Subcontractor, to take over all work, or any part thereof, and all tools, equipment, material and supplies and finish the work by whatever method he deems expedient. In such event, Subcontractor shall not be entitled to receive any further payment until the work is finished. If the unpaid balance of the Subcontract price exceeds Owner's expense of finishing the work, such excess shall be paid to Subcontractor. If such expense exceeds the unpaid balance of this Subcontract then Subcontractor shall pay the difference to the Owner. The expense of completion shall be certified by the Owner's auditor and shall be binding on the parties. For this purpose, expense of completion is hereby established as the actual cost to the Owner plus twenty (20%) percent thereof.

(c) Subcontractor acknowledges that the duration and amount of work to be performed is unspecified and that Owner may terminate this Subcontract for any reason or for no reason, in which event Subcontractor shall be fully paid for all work satisfactorily completed less the appropriate retainage and less any back charges and/or credits pursuant to this Subcontract and/or the laws of the location of the Project. Subcontractor specifically agrees that it will make no claim nor shall Owner be liable for damages of any nature including but not limited to loss of profits, cost of materials ordered but not used, actual, consequential or incidental damages; Owner may purchase specially fabricated material from Subcontractor at the price Subcontractor paid for the subject material, to the extent the same is feasible, in Owner's sole discretion.

(d) In the event Owner terminates this Subcontract for cause and it is later determined that Owner's basis for termination was not justified, then Owner's termination shall be construed to be pursuant to subsection (c) above.

#### SECTION IX - Use of Owner's Facilities and Premises

(a) Subcontractor shall confine his apparatus, the storage of materials and the operations of his workmen to limits indicated by law, ordinances, permits or directions of the Owner, and shall not unreasonably encumber the premises with his materials.

(b) Subcontractor agrees to pay for utilities, equipment, transportation and other facilities used directly for the benefit of Subcontractor during the progress of construction. When heat is required to keep the job progressing, the Owner will provide necessary devices or heat at his option. Subcontractor shall supply fuel. If Subcontractor desires to use his own heating facilities he may do so at his own expense, provided the device meets with Owner's approval.

#### SECTION X - Insurance and Indemnification

(a) To the fullest extent permitted by law, Subcontractor hereby agrees to indemnify, defend and hold harmless Owner, Contractor, and its agents, accountants, personal and legal representatives, consultants, employees, officers, directors, stockholders, affiliates, partners, participants, successors, heirs, executors and administrators and assigns (collectively, the "Indemnified Parties"), from and against, and will reimburse each and every one of the Indemnified Parties on demand for any and all claims, actions, causes of action, suits, debts, liens, losses, sums of money, offsets, controversies, judgments, expenses, costs, fees (including without limitation court and reasonable accountant, auditor, appraiser, expert, investigator and attorney fees), damages, obligations, liabilities, responsibilities, demands or interest of any kind or nature whatsoever, direct or indirect, express or implied, known or unknown, tangible or intangible, asserted or assertable, choate or inchoate, whether at law or in equity, or both, made or incurred by or asserted against any of the Indemnified Parties in respect to, in connection with or relating to (i) any of Subcontractor's (or its agents, employees, representatives or subcontractors) acts or omissions concerning the Property or (ii) any breach or default by Subcontractor of any of its obligations, responsibilities, covenants and agreements pursuant to the Subcontract Documents (iii) a Subcontractor's employee or subcontractor who has been injured on property owned by Owner; (iv) a homeowner or association; and/or (v) a third party claiming patent, trademark or copyright infringement. The scope of the above-stated indemnity and hold harmless obligations shall not extend to losses caused entirely by the Owner's sole negligence.

(b) Subcontractor represents that it does carry and will continue to carry, with insurance companies acceptable to the Owner, the following insurance coverages continuously during the life of this Subcontract (and in the case of products and completed operations' coverage for two

years after final completion of the work of this Subcontract): workmen's compensation at statutory requirements; commercial general liability insurance, including Completed Operations liability insurance, with limits for bodily injury and property damage of not less than \$1,000,000.00 per occurrence \$2,000,000.00 in the aggregate; and insurance on the full replacement value of Subcontractor's materials and work at the Project, installed or not, under an installation floater or similar coverage.

(c) Subcontractor shall add the Owner and Contractor as Additional Insureds on the above policies by having the insurance carrier issue an ISO-2010 Endorsement, Owners, Lessees or Contractors - Form B, Edition date 11/85, or its equivalent, which will be provided to Owner prior to commencement of any work. Such endorsement must include completed operations coverage for the benefit of the Additional Insureds. This endorsement shall apply to the full extent of the actual limits of Subcontractor's coverages even if such actual limits exceed the minimum limits required by this Subcontract. The Owner's and Contractor's additional insured status under the policy(ies) must not be limited by amendatory language to the policy. To the extent umbrella or excess insurance is available above the minimum required limits stated in this Subcontract, the protection afforded the Owner and Contractor in the umbrella or excess liability insurance shall be as broad or broader than the coverages present in the underlying insurance and in accordance with this Subcontract. Each general liability, umbrella or excess policy shall specifically state that the insurance provided by the Subcontractor shall be considered primary, and that any separate insurance carried by the Owner and/or Contractor shall be considered excess for purposes of responding to claims.

(d) The Certificate shall accompany and become a part of this Subcontract. The Certificate of Insurance shall also contain an unqualified statement that the policy shall not be subject to cancellation, nonrenewal, adverse change, or reduction of amounts of coverage without thirty (30) days prior written notice to Owner, but in the event of non-payment of premium, ten (10) days notification will be provided and indicate that coverage applies in the state where operations are being performed.

(e) In the event that Subcontractor sublets any portion of this Subcontract, he shall then carry at his own expense, in addition to the foregoing policies, Owner's Protective Liability Insurance.

(f) Compliance by Subcontractor with the foregoing insurance requirements shall not relieve him from liability under any indemnity agreement set forth herein, nor shall anything in this Subcontract limit the liability of the Subcontractor.

(g) Subcontractor agrees to waive subrogation against Owner for any and all claims, and Subcontractor shall cause his carrier to appropriately endorse all policies required by this Subcontract to acknowledge this waiver.

#### SECTION XI - Licenses and Guarantees

(a) The Subcontractor agrees, if so requested in writing, that he will, upon execution of this Subcontract or any time during the pendency of the work pursuant to this Subcontract, provide the Owner with faithful performance and payment bonds each in the amount of the Subcontract price, duly executed with a surety company acceptable to the Owner, as surety, and in form and content acceptable to the Owner. Subcontractor hereby gives the Owner the right to negotiate and deal directly with the sureties under said bonds, and to make settlements or other financial arrangements with said sureties, in the event of breach or alleged breach of this Subcontract by the Subcontractor. If these bonds are requested upon execution of this Subcontract then the Subcontractor shall pay the cost of said bonds. Should Owner request that Contractor obtain one or both of said bonds after execution of this Subcontract then the cost of the bond(s) shall be paid by Owner through issuance of a change order to the Subcontractor.

(b) It is understood and agreed that no approval, certificate, receipt or payment made for work executed, materials or equipment furnished, shall constitute an acceptance of any such work, materials or equipment that may subsequently be found to be defective, nor relieve Subcontractor of responsibility for such faulty materials, equipment or workmanship and unless otherwise specified, he shall remedy any defects therein or due thereto and pay for any damage to other work and/or other real or personal property resulting therefrom which shall appear within a period of one (1) year from the later of completion and acceptance of the work by the Owner, conveyance to a third party of a given home, or such longer time as may be prescribed in the specifications.

(c) Subcontractor shall procure and pay for all licenses, permits and inspections now or hereafter required for any part of the work.

**SECTION XII - Damages**

Subcontractor agrees that no approval, certificate, receipt or payment made for work executed, materials or equipment furnished, shall impair or in any way prejudice any right of action the Owner may have against him should he fail in or omit the performance of any part of this Subcontract, and no waiver by Owner of any one or more of his rights or remedies under this Subcontract shall be nor shall it be construed to be, a waiver of any prior or subsequent right or remedy of the Owner.

**SECTION XIII - Assignment or Subletting**

Subcontractor shall not sublet or assign this Subcontract or the work, or any part thereof, or any sums due hereunder, without first obtaining written permission from Owner. Any attempt by Subcontractor to assign this Subcontract without such permission shall operate as an instant forfeiture and repudiation hereof by Subcontractor and the rights of the parties shall be determined in the same manner as though Subcontractor had at the time of such attempted assignment failed and refused to continue to perform the Subcontract. Owner reserves any or all rights to assign this Subcontract.

**SECTION XIV - Dispute Resolution**

(a) As an expressed condition precedent to litigation, any alleged claim by Subcontractor against Owner must be relayed in writing to Owner within thirty (30) days of the onset of the alleged claim.

(b) Any controversy, claim or dispute arising out of or relating to this Subcontract shall be litigated in the Circuit Court of Fairfax County.

(c) **BOTH PARTIES TO THIS CONTRACT EXPRESSLY WAIVE ANY AND ALL RIGHTS TO A TRIAL BY JURY OF ANY CLAIMS DIRECTLY OR INDIRECTLY ARISING OUT OF THIS SUBCONTRACT**

(d) In the event of litigation between the Parties should Owner be the prevailing party, meaning Owner is awarded fifty percent (50%) or more of the amount claimed and/or Subcontract is awarded fifty percent (50%) or less of its amount claimed, then Owner shall be entitled to recover its actual costs and attorney fees expended.

E. No action arising out of this Subcontract may be commenced by Subcontractor against Owner more than six (6) months after the cause of action has accrued.

**SECTION XV - Release of Lien Waivers**

Included with all payments for invoiced items under Subcontract, purchase orders or extra work orders will be a partial release of liens. The lien waiver will reference the specific lot(s), check number and amount to which it pertains. These liens must be duly executed, notarized and returned to Owner within five (5) working days of the receipt of payment. Failure to properly complete and return the release will stop payment for any future monies due.

**SECTION XVI - General Conditions**

The attached Schedule of General Conditions, including any revisions thereto, shall be made a part of this Subcontract.

**SECTION XVII - Subcontract**

Subcontractor and Owner contemplate that this Subcontract, along with all of the exhibits and addenda attached hereto or referenced herein, shall constitute the legally binding understanding and agreement of the parties.

**SECTION XIX - General**

(a) No verbal order, objection, claim or notice by either party to the other shall be effective or binding, both parties agreeing to execute and deliver in writing all communications from them by which the other party is to be charged, notified or affected, and when such are given verbally they shall be held as not material or binding.

(b) It is understood and agreed that the execution of this Subcontract by the Subcontractor shall be taken as prima facie evidence that he has fully acquainted himself with the provisions of this Subcontract and with all conditions relating to construction and that he fully understands the facilities, difficulties and restrictions attending the execution of the work hereunder.

(c) It is understood and agreed that the interests, rights, powers, duties and liabilities of the parties hereto shall descend upon and succeed and continue in their respective successors and

other legal representatives, and the said parties for themselves, their successors, heirs, executors, administrators and assigns do hereby agree to the full performance of the covenants herein contained.

(d) Subcontractor acknowledges and agrees that Subcontractor shall look solely to Owner to perform all of the obligations and responsibilities under the Subcontract and Subcontractor shall have no and expressly, explicitly and knowingly waives any rights or claims against the Contractor, Architect as well as any individual or entity affiliated with the Owner, Contractor or Architect.

(e) This Subcontract shall be construed and enforced in accordance with the laws of the Commonwealth of Virginia.

(f) Subcontractor further acknowledges that any breach by Subcontractor of any of the provisions of the Subcontract shall constitute a breach of any other Subcontract between the Subcontractor and any entity affiliated with the Owner. Owner may withhold amounts otherwise due under this Subcontract or any other subcontract between the Subcontractor and any entity affiliated with the Owner to cover Owner's reasonable estimate of any costs of liability Owner has incurred or may incur for which Subcontractor may be responsible under this Subcontract or any other subcontract between Subcontractor and any entity affiliated with the Owner. The term "any other Subcontract between Subcontractor and any entity affiliated with the Owner" shall be deemed to include any subcontract between Subcontractor and Owner or any joint venture or other entity in which Owner or any of its owners or affiliates, directly or indirectly, have an ownership interest. Appropriate adjustments to withholdings will be made when the exact amounts owed are determined.

DPAW SCHEDULE

	LOT CLEARING, BASEMENT EXCAVATED BACKFILL, CONSTRUCTION ENTRANCE 75'	
	W/ 2-3" SUBGE STONE W/ FILTER FABRIC	
	HAIL & DISPOSAL OF DEBRIS & WOOD.	
	ROUGH GRADE DISTURBED AREA	15,500

IN WITNESS THEREOF THE PARTIES EXECUTE THIS SUBCONTRACT THIS 25<sup>th</sup> DAY OF JULY 2005.

SUBCONTRACTOR: X Rich Hand Excavating OWNER: Mark Sadfleu

By: [Signature] By: MARK SADSFLEU

Name: Charles Sweeney Name: \_\_\_\_\_

Title: owner Title: \_\_\_\_\_

Date: 7/25/05 Date: 7/25/05

[Handwritten Signature]

### SCHEDULE OF GENERAL CONDITIONS

This Schedule of General Conditions is an integral part of the Subcontract between the Owner and the Subcontractor for the Project known as 2310 WESTMORELAND and is incorporated in the Subcontract as if set forth therein.  
PHILIPPA, VA

- A. The SUBCONTRACTOR and or SUPPLIER is aware of the Owner's concern for the ADJACENT PROPERTY OWNERS and therefore includes in the Subcontract the following ADDITIONAL SPECIFICATIONS and REQUIREMENTS.

No work shall start until 7:00 A.M.

SUBCONTRACTOR shall work a SIX (6) day week when required by the Owner's schedule at no extra cost to the Owner.

- B. When the SUBCONTRACTOR and or SUPPLIER brings personnel or materials on or off the site, he will make sure that no dirt or debris from tires or equipment of any kind will drop and remain on the Streets, the SUBCONTRACTOR and or SUPPLIER will assume all responsibility and expenses for the cleaning of said streets.
- C. Temporary heat is to be provided by the CONTRACTOR (if needed) and placed by the SUBCONTRACTOR.
- D. Straw to be provided (if needed) and placed by the SUBCONTRACTOR. Temporary power is to be supplied by SUBCONTRACTOR for his own use.
- E. SUBCONTRACTOR shall confer with other SUBCONTRACTORS engaged in the Construction of the Building whose work might affect his operation and shall arrange all parts of his work in proper relation to the work. All CARPENTERS and all MECHANICAL SUBCONTRACTORS will be supplied with an extra set of Architectural plans to be returned to the Owner upon completion of the Model. SUBCONTRACTORS shall indicate on these plans all REVISIONS, CORRECTIONS, CHANGE AND/OR CLARIFICATIONS made to the plans that apply to his particular trade. In addition SUBCONTRACTOR shall provide on those plans, or separate drawings of his own, complete layouts of his particular trade.
- F. CLEAN-UP: Subcontractor shall clean its work, AT THE END OF EACH DAY, resulting from its work and shall place its debris in the on-site container. Should Subcontractor fail to perform its clean up then Owner shall have the right to perform the clean-up and charge the Subcontractor the reasonable cost thereof. NO EATING, DRINKING, OR SMOKING SHALL BE PERMITTED IN HOUSES.
- G. EXTRAS: All invoices for extras must be accompanied by a SIGNED WORK ORDER and a necessary tickets to substantiate charges. As an express condition precedent to Subcontractor's right to receive payment for extras, invoices for extras must be submitted for payment within 30 DAYS from completion of the work constituting the extra. Failure to invoice in acceptable form, or within the time allowed, shall automatically constitute a forfeiture by the Subcontractor of any monies due with respect to such change.
- H. PRICE QUOTE: All prices listed herein include all taxes and permit fees applicable to the SUPPLIER or SUBCONTRACTOR.
- I. The SUBCONTRACTOR and or SUPPLIER shall be represented by a competent and responsible supervisor at job site meetings to be held on a monthly basis and scheduled by the Job Superintendent.
- J. Upon first commencement of work, the SUBCONTRACTOR agrees to man the site continuously and maintain a competent supervisor on the site as long as contract work can progress, and until all work is completed. It is the responsibility of the SUBCONTRACTOR to obtain all required inspections related to his work.
- K. BACK ORDERS: No SUPPLIER shall be paid for partial delivery until all back orders are filled per purchase agreements. All items are to be shipped according to the Job Superintendent's schedule and deliveries are to be made during normal working hours from 7:00 A.M. to 4:00 P.M. Monday through Friday.

- L. WARRANTY: All work performed or materials received under this contract will be guaranteed for period of ONE (1) year following the date of settlement on the particular home. SUBCONTRACTOR and/or SUPPLIER agrees to correct or replace, at his own expense, any defects or deficiencies therein occurring during the said year. This work is to be performed within FIVE (5) working days of notice from the Owner. Exceptions will be made when parts and/or materials are unavailable. This warrant will also apply to the Model Homes after they are being used as models.
- M. ~~MODEL HOME MAINTENANCE: As a condition of accepting this Contract, the SUBCONTRACTOR further agrees to assist the Owner in the maintenance of the model home. Maintenance includes both general maintenance and normal wear and tear maintenance on the Model including, but not limited to, painting, drywall repairs, repairing of scratches in cabinet, flooring and cracks in tiles.~~
- N. ~~MODEL HOME DISCOUNT: As a condition of accepting this Contract, the SUBCONTRACTOR and/or SUPPLIER further agrees to give the Owner a ten percent (10%) discount on labor and/or materials for both the base house and any options. (This does not include manufacturer's discounts.)~~
- O. HOMEOWNER INSPECTIONS: All customer service appointments made with a homeowner must be kept. In the event an appointment cannot be kept, the Subcontractor shall call the homeowner and the Customer Service Manager with the re-scheduled date. If an appointment is not kept and a new date has not been re-scheduled, a fine of \$100.00 may be imposed. It is the Owner's policy to complete deficiencies noted on homeowner inspection reports within (3) working days or a mutually agreed time set by SUBCONTRACTOR and/or SUPPLIER and Owner, following the date of inspection. Incomplete construction work tickets will be issued to SUBCONTRACTOR containing information of deficiencies and/or corrections to be completed in each home. It is the responsibility of the SUBCONTRACTOR to pick up these tickets on a daily basis from the Project Superintendent or the Customer Service Manager and to complete the work and return signed copies within the specified period of time.
- P. SAMPLES: SUBCONTRACTOR and/or SUPPLIER will furnish the Owner the necessary product and color samples of the size and type specified by the Owner. These samples will be furnished to the Owner at no cost and will be such as can be used for sales and architectural selection displays.
- Q. PROTECTION OF MATERIALS: SUBCONTRACTORS will be responsible for the care and protection of all materials necessary to the performance of the Master Contract which are delivered by or for him to the job site until installation is completed and the work is accepted by the Owner. Until such installation is completed, any loss of material shall be at the sole expense of the SUBCONTRACTOR. SUBCONTRACTOR is further responsible for any other materials delivered by or for him to said site until removed by him.
- R. Manufacturers' names, model numbers, grades, mechanical drawings and specifications of all materials will be supplied to the Owner by the SUBCONTRACTOR prior to work being started.
- S. If the SUBCONTRACTOR and/or SUPPLIER at any time shall refuse or neglect to supply a sufficient number of properly skilled workmen or materials, shall fail in any respect to prosecute the work including extras, with the utmost diligence and dispatch or fails to maintain the schedule established by the Owner, or if he shall otherwise fail to perform any of the terms and agreements herein contained then, and in any such event, the Owner, at his election, forthwith may terminate this agreement by giving twenty-four (24) hours written notice thereof, mailed or delivered to the SUBCONTRACTOR and/or SUPPLIER or one of his employees on the job, and upon so doing, for the purpose of completing the work herein provided for, may take possession of all materials, tools and appliance thereon or there which belong to the SUBCONTRACTOR and/or SUPPLIER and may employ, at the expense of the SUBCONTRACTOR and/or SUPPLIER, any party or parties to finish the work and to provide the materials at whatever cost that is necessary to maintain the Owner's schedule.
- T. It is the sole responsibility of the SUBCONTRACTOR to pay for all State Sales Taxes incurred on materials purchased for the Owner's project.
- U. CHECKLIST SYSTEM: In an effort to deliver a better product to our customers, the Owner has initiated a checklist system. It is the responsibility of the SUBCONTRACTOR to have this list signed off by the PROJECT SUPERINTENDENT when work is completed. As a condition precedent to payment, the invoice and checklist must be submitted together to the Owner's main office.

V. SERVICE PROCEDURES AND SCHEDULE:

Quality Control Inspection

1. Time - One week prior to customer walk-thru and two weeks prior to settlement.
2. Superintendent will call and request service. The Subcontractor will have two days after notification to complete work.

Home Owner Inspection

1. Time - One week prior to settlement.
2. Customer Service Department will call and request service. The Subcontractor will have two day after notification to complete work.

90-Day Inspection

1. Time - 90 days after settlement.
2. Customer Service Department will call and request service and schedule date to do work.

10-Month Inspection

1. Time - 10 months after settlement.
2. Customer Service Department will call and request service and schedule date to do work.

SUBCONTRACTOR:

OWNER:

X Rock Hard Exteriors

By: [Signature]  
 Name: Charles [Signature]  
 Title: Owner  
 Date: 7/15/06

By: \_\_\_\_\_  
 Name: \_\_\_\_\_  
 Title: \_\_\_\_\_  
 Date: \_\_\_\_\_



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**BUILDING PERMIT APPLICATION**  
**FAIRFAX COUNTY GOVERNMENT**  
**PERMIT APPLICATION CENTER**  
 12055 Government Center Parkway, 2nd Floor  
 Fairfax, Virginia 22035-5504  
 Telephone: 703-222-0801  
 Web site: <http://www.fairfaxcounty.gov/dpwes>

**PERMIT #** 7173016  
 FOR INSPECTIONS CALL 703-222-0455 (see back for more information)  
 OR VISIT US ON THE WEB AT  
[http://www.fairfaxcounty.gov/isisnet/inspection\\_sched.asp](http://www.fairfaxcounty.gov/isisnet/inspection_sched.asp)

FILL IN ALL APPROPRIATE INFORMATION IN THIS COLUMN  
(PLEASE PRINT OR TYPE)

**JOB LOCATION**  
 ADDRESS 2310 Westmoreland ST  
 LOT # 40-4-1-44A BUILDING \_\_\_\_\_  
 FLOOR \_\_\_\_\_ SUITE \_\_\_\_\_  
 SUBDIVISION \_\_\_\_\_  
 TENANT'S NAME M. STADSKLEV  
 EMAIL \_\_\_\_\_  
 CONTACT ID \_\_\_\_\_

**OWNER INFORMATION** OWNER  TENANT   
 NAME MARK STADSKLEV  
 ADDRESS 2310 Westmoreland ST  
 CITY Falls Church STATE VA ZIP 22046  
 TELEPHONE 571/259-6439  
 EMAIL \_\_\_\_\_  
 CONTACT ID \_\_\_\_\_

**CONTRACTOR INFORMATION** SAME AS OWNER   
 CONTRACTORS MUST PROVIDE THE FOLLOWING:  
 COMPANY NAME \_\_\_\_\_  
 ADDRESS \_\_\_\_\_  
 CITY \_\_\_\_\_ STATE \_\_\_\_\_ ZIP \_\_\_\_\_  
 TELEPHONE \_\_\_\_\_  
 EMAIL \_\_\_\_\_  
 STATE CONTRACTORS LICENSE # \_\_\_\_\_  
 COUNTY BPOL # \_\_\_\_\_  
 CONTACT ID \_\_\_\_\_

**APPLICANT**  
 NAME MARK STADSKLEV  
 ADDRESS 2310 Westmoreland ST  
 CITY Falls Church STATE VA ZIP 22046  
 TELEPHONE 571/259-6439  
 EMAIL \_\_\_\_\_  
 CONTACT ID \_\_\_\_\_

**DESCRIPTION OF WORK**  
construction of detached garage 24' x 36'

**HOUSE TYPE** \_\_\_\_\_  
**ESTIMATED COST OF CONSTRUCTION** \$25,000  
**USE GROUP OF BUILDING** \_\_\_\_\_  
**TYPE OF CONSTRUCTION** \_\_\_\_\_

**DESIGNATED MECHANICS' LIEN AGENT**  
 (Residential Construction Only)  
 NAME N/A  
 ADDRESS \_\_\_\_\_

NONE DESIGNATED  PHONE \_\_\_\_\_

PLANNING	APPROVED BY
ZONING	APPROVED BY
PERMITS	APPROVED BY
INSPECTION	APPROVED BY
ENVIRONMENTAL	APPROVED BY
ARCHITECTURE	APPROVED BY
ENGINEERING	APPROVED BY
PLUMBING	APPROVED BY
ELECTRICAL	APPROVED BY
Mechanical	APPROVED BY
Other	APPROVED BY

**ZONING REVIEW**  
 USE SFD  
 ZONING DISTRICT R-4 HISTORICAL DISTRICT \_\_\_\_\_  
 ZONING CASE # \_\_\_\_\_  
 GROSS FLOOR AREA OF TENANT SPACE \_\_\_\_\_

YARDS:	GARAGE	1 <input type="checkbox"/>	2 <input type="checkbox"/>	3 <input type="checkbox"/>
FRONT	OPTIONS	YES <input type="checkbox"/>	NO <input type="checkbox"/>	
FRONT <u>N/A</u>	REMARKS	<u>Bl'd 2 story detached garage</u>		
L SIDE		<u>24x36 18' ft high</u>		
R SIDE <u>40</u>				
REAR <u>80'</u>				

**REMARKS** No wet bar, no 2nd kitchen  
The 2 story detached garage (proposed)  
is not in the GFA  
500 PBD approved 6/25/07

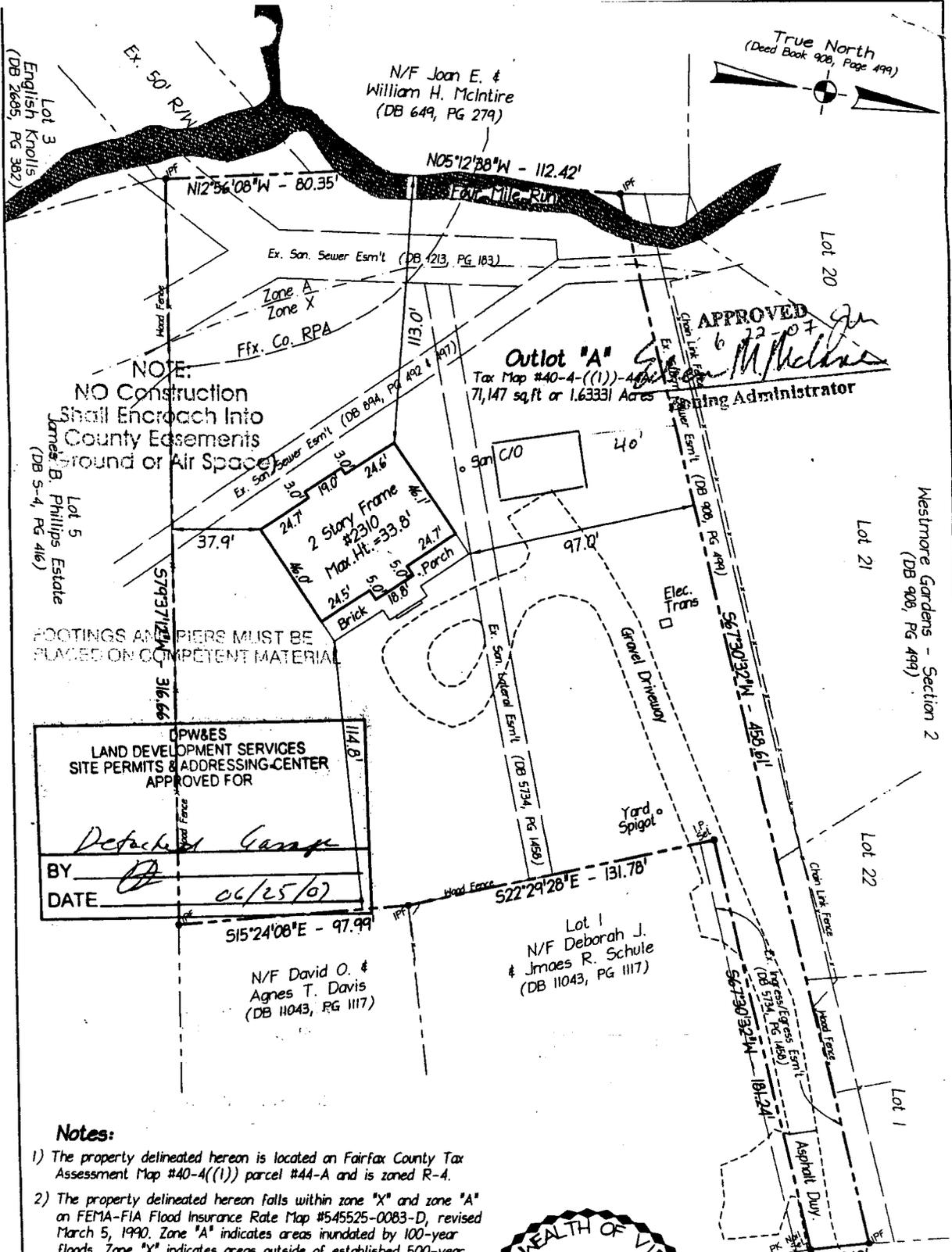
Any and all information and/or stamps on the reverse side of this form are a part of this application and must be complied with. I hereby certify that I have authority of the owner to make this application, that the information is complete and correct, and that the construction and/or use will conform to the building code, the zoning ordinance and other applicable laws and regulations which relate to the property.

Mark Stadsklev 6/27/07  
 Signature of Owner or Agent Date

MARK STADSKLEV  
 Printed Name and Title

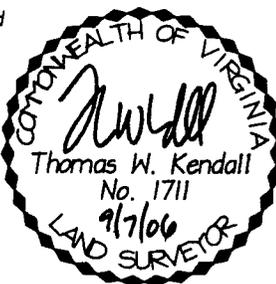
(Notarization of signature is required if owner is listed as the contractor and is not present at time of application)

**NOTARIZATION** (if required)  
 State (or territory or district) of \_\_\_\_\_  
 County (or city) of \_\_\_\_\_ to wit: \_\_\_\_\_  
 Notary Public in the State and County aforesaid, do certify that \_\_\_\_\_  
 whose name is signed to this application, appeared before me in the State and County aforesaid and executed this affidavit.  
 Given under my hand this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_  
 My commission expires the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_  
 \_\_\_\_\_  
 (Notary Signature)



**Notes:**

- 1) The property delineated hereon is located on Fairfax County Tax Assessment Map #40-4-((1)) parcel #44-A and is zoned R-4.
- 2) The property delineated hereon falls within zone "X" and zone "A" on FEMA-FIA Flood Insurance Rate Map #545525-0083-D, revised March 5, 1990. Zone "A" indicates areas inundated by 100-year floods. Zone "X" indicates areas outside of established 500-year flood plains.
- 3) NO TITLE REPORT FURNISHED.
- 4) The improvements shown hereon have been carefully established by modern survey methods and, unless otherwise shown, there are no encroachments.



**Kendall Consulting, Inc.**  
Land Surveying - Land Planning  
P. O. Box 1569 - Fairfax, Virginia  
Phone: (703) 591-1157 -- Fax: (703) 591-1518

Final House Location Survey  
Outlot "A"  
Nielson's Addition to the  
**James B Phillips Estate**  
T.M. #40-4-((1))-44A -- (DB 5734, PG 1458)  
Dranesville District  
Fairfax County, Virginia

Scale: 1"=50'  
Date: 9-7-06  
Job: 05-019



# County of Fairfax, Virginia

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

August 16, 2007

Mark Stadslev  
2310 Westmoreland St.  
Falls Church, VA 22046

Re: Building Permit #71730162  
2310 Westmoreland Street  
Tax Map Ref: 040-4 ((01)) 0044A  
Zoning District: R-4

Dear Mr. Stadslev:

According to our files, the above-referenced Building Permit was issued to allow construction of a 2-story detached garage, 24 feet by 36 feet, and 18 feet in height, with no second kitchen or wet bar. The plat accompanying the Building Permit depicts the garage, which was hand drawn onto the plat, as being located north of the existing house and being 40 feet from the northern property line. As you know, the property is subject to an approved Variance (VC 2002-DR-139) and an associated Variance Plat and development conditions that were approved by the Board of Zoning Appeals (BZA) on November 19, 2002. The BZA's approval conditions specify, in relevant part, that:

- 1) Development will be in conformance with the Variance Plat prepared by Kayvan Jaboori, P.E., dated June 18, 2002;
- 2) Limits of clearing and grading shall be no greater than that shown on the Variance Plat; and
- 3) A conservation easement, as shown on the Variance Plat (100 feet wide along the rear property line) shall be recorded among the land records of Fairfax County. Such easement shall be to the benefit of Fairfax County and in a form approved by the Office of the County Attorney. The conservation easement area is to remain undisturbed open space.

As I mentioned to you when I called you on the telephone yesterday afternoon, it has been brought to our attention that you are constructing the detached garage in a manner that may be in violation of the Variance approval conditions. I note that the Building Permits issued for both your house and for the detached garage did not specify that the property was subject to the approved Variance, nor did the House Location Plat, prepared by your surveyor Thomas Kendall, reflect the location or existence of the conservation easement. Upon further review of our records, it appears that the Zoning Permit Review Branch erroneously signed off on the Building Permit, and thus, the

Department of Planning and Zoning  
Zoning Administration Division  
Zoning Permit Review Branch  
12055 Government Center Parkway, Suite 250  
Fairfax, Virginia 22035-5508  
Phone 703-324-1359 FAX 703-324-2301  
[www.fairfaxcounty.gov/dpz/](http://www.fairfaxcounty.gov/dpz/)

Mark Stadslev  
August 16, 2007  
Page 2

Building Permit was issued in error, all based upon incomplete information provided by you, the applicant. Furthermore, upon contacting the staff in the Zoning Evaluation Division, who handled the Variance application and subsequent Interpretation, it was revealed that the garage may be encroaching into the limits of clearing and grading designated on the Variance Plat. Based on these findings, I have recommended that the Building Official, Ray Pylant, revoke the Building Permit. Mr. Pylant advised me yesterday that he concurred and would be issuing you a Notice of Revocation. As I advised you on the phone yesterday, that Notice would be delivered to you either yesterday afternoon or sometime today.

I also informed you that I would outline in this letter the steps you must take before re-issuance of the permit for the garage can be considered. These steps include:

- 1) Request an Interpretation from the Zoning Evaluation Division to determine whether the construction of the garage and its location are in substantial conformance with the approved Variance. This will require submission of a plat prepared by your engineer or surveyor, showing all easements, including the conservation easement, and the limits of clearing and grading, and to stake out the location of the garage on the plat; and
- 2) If it is determined that the garage is in substantial conformance with the approved Variance, you will have to provide a new House Location Plat with your Building Permit application, noting that the property is subject to the Variance and showing the conservation easement and limits of clearing and grading.

This level of information is required in order for staff to determine that you are complying with the approved Variance. Your cooperation in this matter is greatly appreciated. If you have any questions, please contact me at 703-324-1359.

Sincerely,



Diane Johnson-Quinn  
Deputy Zoning Administrator for  
Zoning Permit Review Branch

cc: Joan DuBois, Supervisor, Dranesville District  
Eileen M. McLane, Zoning Administrator  
Leslie B. Johnson, Senior Deputy Zoning Administrator  
Ray Pylant, Building Official  
Ruth E. Soulier, Assistant County Attorney  
Regina Coyle, Director, Zoning Evaluation Division



# County of Fairfax, Virginia

## MEMORANDUM

**DATE:** August 15, 2007

**TO:** Ray Pylant  
Building Official  
Land Development Services, DPWES

**FROM:** Diane Johnson-Quinn, Deputy Zoning Administrator for  
Zoning Permit Review Branch  
Department of Planning and Zoning

**SUBJECT:** Building Permit #71730162  
Mark Stadskev  
2310 Westmoreland Street  
Tax Map Ref: 040-4 ((01)) 0044A  
Zoning District: R-4

This is to respectfully request that you revoke the referenced Building Permit. This permit was to allow construction of a 2-story detached garage, 24 feet by 36 feet, and 18 feet high, with no second kitchen or wet bar. The plat accompanying the Building Permit depicts the garage hand drawn onto the plat and being located to the north of the existing house on the lot, with a sanitary sewer easement running between the house and garage, and being 40 feet from the northern property line. The applicant failed to note on his Building Permit application or on the plat, that the property is subject to an approved Variance (VC 2002-DR-139) and associated development conditions that were approved by the Board of Zoning Appeals (BZA) on November 19, 2002, in accordance with Sect. 18-401 of the Zoning Ordinance. The BZA's approval conditions specify, in relevant part, that:

- 1) Development will be in conformance with the plat (Variance Plat) prepared by Kayvan Jaboori, P.E., dated June 18, 2002;
- 2) Limits of clearing and grading shall be no greater than that shown on the Variance Plat;
- 3) A conservation easement, as shown on the Variance Plat (100 feet wide along the rear property line) shall be recorded among the land records of Fairfax County. Such easement shall be to the benefit of Fairfax County and in a form approved by the Office of the County Attorney. The conservation easement area (CEA) is to remain undisturbed open space.

I spoke with Ruth Soulier, Assistant County Attorney, and she advised that the Conservation Easement was recorded. I am requesting a copy for our records. However, upon further review of this Building Permit application, it appears that ZPRB staff erroneously approved the

Department of Planning and Zoning  
Zoning Administration Division  
Ordinance Administration Branch  
12055 Government Center Parkway, Suite 807  
Fairfax, Virginia 22035-5505  
Phone 703-324-1314 FAX 703-803-6372  
[www.fairfaxcounty.gov/dpz/](http://www.fairfaxcounty.gov/dpz/)

Ray Pylant  
August 15, 2007  
Page 2

application based upon incomplete information provided by the applicant. The plat submitted by the applicant with his Building Permit application did not depict either the limits of clearing or grading or the conservation easement which was a condition of the Variance approval. I will prepare a letter to the property owner/applicant advising him that he will need to request a new interpretation from the Zoning Evaluation Division (ZED) to determine whether the construction of the garage and its location are in substantial conformance with the approved Variance. Furthermore, if ZED determines that the proposed garage complies with the Variance, he will need to amend his permit application request to include a revised plat depicting the Conservation Easement, the limits of clearing and grading, and the garage to demonstrate that the garage is not encroaching into either restricted area. I will also be calling the property owner to advise him of these concerns and that I have requested that you revoke the Building Permit to prevent any possible further disturbance within the Conservation Easement.

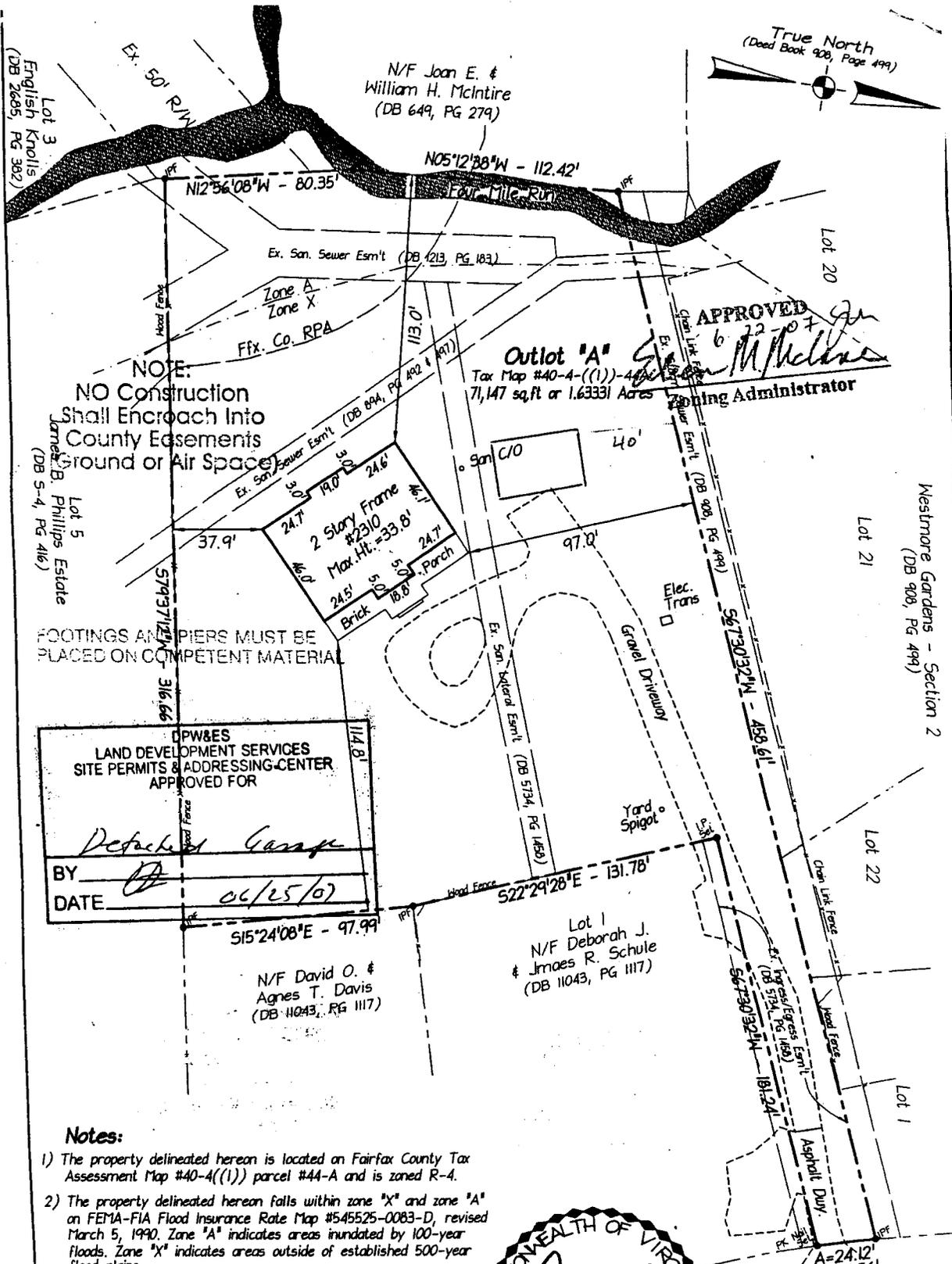
As such, I feel it would be prudent to revoke this Building Permit. Attached are copies of the Building Permit application and associated plat, the BZA's resolution, conditions and plat associated with the approval of the Variance, ZED's March 11, 2005 Interpretation letter and associated plat.

Your cooperation in this matter is greatly appreciated. If you have any questions, please call me at Ext. 4-1387.

Attachments: A/S

cc: Joan DuBois, Supervisor, Dranesville District  
Eileen M. McLane, Zoning Administrator  
Leslie B. Johnson, Senior Deputy Zoning Administrator  
Michael R. Congleton, Senior Deputy Zoning Administrator  
Ruth E. Soulier, Assistant County Attorney

True North  
(Deed Book 908, Page 499)



Lot 3  
English Knolls  
(DB 2685, PG 382)

N/F Joan E. &  
William H. McIntire  
(DB 649, PG 279)

Lot 5  
James B. Phillips Estate  
(DB S-4, PG 416)

Westmore Gardens - Section 2  
(DB 908, PG 499)

NOTE:  
NO Construction  
Shall Encroach Into  
County Easements  
Ground or Air Space

FOOTINGS AND PIERS MUST BE  
PLACED ON COMPETENT MATERIAL

CPW&S  
LAND DEVELOPMENT SERVICES  
SITE PERMITS & ADDRESSING-CENTER  
APPROVED FOR  
*Detached Garage*  
BY *[Signature]*  
DATE *06/25/07*

N/F David O. &  
Agnes T. Davis  
(DB 11043, PG 1117)

Lot 1  
N/F Deborah J.  
& James R. Schule  
(DB 11043, PG 1117)

**Notes:**

- 1) The property delineated hereon is located on Fairfax County Tax Assessment Map #40-4((1)) parcel #44-A and is zoned R-4.
- 2) The property delineated hereon falls within zone "X" and zone "A" on FEMA-FIA Flood Insurance Rate Map #545525-0083-D, revised March 5, 1990. Zone "A" indicates areas inundated by 100-year floods. Zone "X" indicates areas outside of established 500-year flood plains.
- 3) NO TITLE REPORT FURNISHED.
- 4) The improvements shown hereon have been carefully established by modern survey methods and, unless otherwise shown, there are no encroachments.

COMMONWEALTH OF VIRGINIA  
*[Signature]*  
Thomas W. Kendall  
No. 1711  
9/7/06  
LAND SURVEYOR

Westmoreland Street  
State Route #693  
(60' R/W)

**Kendall Consulting, Inc.**  
Land Surveying - Land Planning  
P. O. Box 1569 - Fairfax, Virginia  
Phone: (703) 591-1157 -- Fax: (703) 591-1518

Final House Location Survey  
Outlot "A"  
Nielson's Addition to the  
**James B Phillips Estate**  
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**BUILDING PERMIT APPLICATION**

FAIRFAX COUNTY GOVERNMENT  
 PERMIT APPLICATION CENTER  
 12055 Government Center Parkway, 2nd Floor  
 Fairfax, Virginia 22035-5504  
 Telephone: 703-222-0801  
 Web site: <http://www.fairfaxcounty.gov/dpwes>

PERMIT # 71730162  
 FOR INSPECTIONS CALL 703-222-0455 (see back for more information)  
 OR VISIT US ON THE WEB AT  
[http://www.fairfaxcounty.gov/isisnet/inspection\\_sched.asp](http://www.fairfaxcounty.gov/isisnet/inspection_sched.asp)

FILL IN ALL APPROPRIATE INFORMATION IN THIS COLUMN  
 (PLEASE PRINT OR TYPE)

**JOB LOCATION**  
 ADDRESS 2310 Westmoreland ST  
 LOT # 40-4-1-44A BUILDING \_\_\_\_\_  
 FLOOR \_\_\_\_\_ SUITE \_\_\_\_\_  
 SUBDIVISION Westmoreland  
 TENANT'S NAME M. STADSKLEV  
 EMAIL \_\_\_\_\_  
 CONTACT ID \_\_\_\_\_

**OWNER INFORMATION** OWNER  TENANT   
 NAME MARK STADSKLEV  
 ADDRESS 2310 Westmoreland ST  
 CITY Falls Church STATE VA ZIP 22046  
 TELEPHONE 571/259-6439  
 EMAIL \_\_\_\_\_  
 CONTACT ID \_\_\_\_\_

**CONTRACTOR INFORMATION** SAME AS OWNER   
 CONTRACTORS MUST PROVIDE THE FOLLOWING:  
 COMPANY NAME \_\_\_\_\_  
 ADDRESS \_\_\_\_\_  
 CITY \_\_\_\_\_ STATE \_\_\_\_\_ ZIP \_\_\_\_\_  
 TELEPHONE \_\_\_\_\_  
 EMAIL \_\_\_\_\_  
 STATE CONTRACTORS LICENSE # \_\_\_\_\_  
 COUNTY BPOL # \_\_\_\_\_  
 CONTACT ID \_\_\_\_\_

**APPLICANT**  
 NAME MARK STADSKLEV  
 ADDRESS 2310 Westmoreland ST  
 CITY Falls Church STATE VA ZIP 22046  
 TELEPHONE 571/259-6439  
 EMAIL \_\_\_\_\_  
 CONTACT ID \_\_\_\_\_

**DESCRIPTION OF WORK**  
construction of detached garage 24 x 36

**HOUSE TYPE** \_\_\_\_\_  
 ESTIMATED COST OF CONSTRUCTION \$25,000  
 USE GROUP OF BUILDING \_\_\_\_\_  
 TYPE OF CONSTRUCTION \_\_\_\_\_

**DESIGNATED MECHANICS' LIEN AGENT**  
 (Residential Construction Only)  
 NAME N/A  
 ADDRESS \_\_\_\_\_

NONE DESIGNATED  PHONE \_\_\_\_\_

**APPROVED FOR ISSUANCE OF BUILDING PERMIT**  
 DATE 6/25/07

**BUILDING PLANNING REVIEW**  
 REVIEWED BY \_\_\_\_\_  
 REVIEW DATE \_\_\_\_\_  
 FIN. MARSHALLS \_\_\_\_\_  
 DATE \_\_\_\_\_

**ZONING REVIEW**  
 USE SFD  
 ZONING DISTRICT R-4 HISTORICAL DISTRICT \_\_\_\_\_  
 ZONING CASE # \_\_\_\_\_  
 GROSS FLOOR AREA OF TENANT SPACE \_\_\_\_\_

<b>YARDS:</b>	<b>GARAGE</b> 1 <input type="checkbox"/> 2 <input type="checkbox"/> 3 <input type="checkbox"/>
FRONT <u>N/A</u>	OPTIONS YES <input type="checkbox"/> NO <input type="checkbox"/>
FRONT <u>N/A</u>	REMARKS <u>Bl'd 2 story detached garage</u>
L SIDE _____	<u>24 x 36 18 ft high</u>
R SIDE <u>40</u>	
REAR <u>80F</u>	

REMARKS No wet bar, No 2nd kitchen  
The 2 story detached garage (proposed) is not in the FFA  
SOC PBO does not apply  
Johna Maym  
6/25/07

Any and all information and/or stamps on the reverse side of this form are a part of this application and must be complied with. I hereby certify that I have authority of the owner to make this application, that the information is complete and correct, and that the construction and/or use will conform to the building code, the zoning ordinance and other applicable laws and regulations which relate to the property.

Mark Stadsklev 6/22/07  
 Signature of Owner or Agent Date  
MARK STADSKLEV  
 Printed Name and Title  
 (Notarization of signature is required if owner is listed as the contractor and is not present at time of application)

**NOTARIZATION** (if required)  
 State (or territory or district) of \_\_\_\_\_  
 County (or city) of \_\_\_\_\_, to wit: I, \_\_\_\_\_  
 Notary Public in the State and County aforesaid, do certify that  
 whose name is signed to this application, appeared before me in the State and County aforesaid and executed this affidavit.  
 Given under my hand this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.  
 My commission expires the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.  
 \_\_\_\_\_  
 (Notary Signature)



# County of Fairfax, Virginia

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

## LEGAL NOTICE REVOCATION OF PERMIT STOP WORK ORDER

**DATE OF ISSUANCE:** August 15, 2007      **PERMIT #:** 71730162  
**LEGAL NOTICE ISSUED TO:** Mark Stadskev      **LIC #:** N/A  
**ADDRESS:** 2310 Westmoreland Street  
Falls Church, Virginia 22046  
**PROPERTY OWNER:** Mark Stadskev  
**LOCATION OF VIOLATION:** 2310 Westmoreland Street  
Falls Church, Virginia 22046  
**TAX MAP NUMBER:** 040-4/01/ /0044-A

Building Permit #71730162 was issued for construction of a 2-story detached garage. The Zoning Permit Review Branch (ZPRB) staff erroneously approved the application based upon incomplete information provided by the applicant. The plat submitted by the applicant with his building permit application did not depict either the limits of clearing or grading or the conservation easement which was a condition of the Variance approval. Therefore, the garage proposed to be constructed pursuant to the above-referenced building permit is improperly located in the restricted Conservation Easement. This permit was approved in error and pursuant to Sect. 18-114 of the Zoning Ordinance, the permit is null and void.

Section 110.7 of the 2003 Virginia Uniform Statewide Building Code (VUSBC), effective November 16, 2005, states:

The Building Official may revoke a permit or approval issued under this code in the case of any false statement, misrepresentation of fact or incorrect information supplied by the applicant in the application or construction documents on which the permit or approval was based.

**REVOCATION OF PERMIT:** Pursuant to the VUSBC, Section 110.7, *Revocation of a permit*, your permit is hereby revoked. You are directed to immediately cease all construction activity at this site. *Failure to follow the terms and conditions of this order will result in additional enforcement action under the applicable State and County Codes.*

Section 114.1 of the 2003 Virginia Uniform Statewide Building Code (VUSBC), effective November 16, 2005, states:

When the building official finds that work on any building or structure is being executed contrary to the provisions of this code or any pertinent laws and ordinances or in a manner endangering the general public, a written stop work order may be issued. The order shall identify the nature of the work to be stopped and given either to the owner of the property involved, to the owner's agent or to the person performing the work. Following the issuance of such an order, the affected work shall cease immediately. The order shall state the conditions under which such work may be resumed.

Department of Public Works and Environmental Services  
Land Development Services, Residential Inspections Division  
12055 Government Center Parkway, Suite 634  
Fairfax, VA 22035  
Phone: 703-631-5101 #4 TTY: 711, Fax: 703-324-3901  
[www.fairfaxcounty.gov/dpwes/lds](http://www.fairfaxcounty.gov/dpwes/lds)



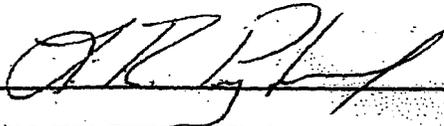
**STOP WORK ORDER:** Pursuant to the VUSBC, Section 114, *Stop Work Order*, you are directed to immediately cease all construction activity at this site. *Failure to follow the terms and conditions of this order will result in additional enforcement action under the applicable State and County Codes.*

1. Per VUSBC Section 120.1, cease all construction activity under the referenced building permit until such time as this violation has been successfully abated, this **Stop Work Order** has been rescinded, and a new permit has been issued.
2. Per VUSBC 121.1.2, inform me or Paul Lynch, Director of the Residential Inspections Division, at 703-324-1972, of your acceptance or rejection of the terms of this notice within 24 hours upon your receipt of same.

**LEGAL NOTICE ISSUED BY:**  
**TITLE:**

Ray Pylant  
Building Official

**SIGNATURE:**

 8/15/07

**NOTICE DELIVERED BY CERTIFIED MAIL, RETURN RECEIPT REQUESTED: 7005 3110 0004 7660 3639**

RP/jlm

cc: File  
Dianne Johnson-Quinn, Deputy Zoning Administrator for Zoning Permit Review Branch,  
Department of Planning and Zoning  
Calvin Walker, Ombudsman, Permits Application Branch



# County of Fairfax, Virginia

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

February 5, 2008

Susan F. Earman, Esquire  
 Friedlander, Friedlander & Earman, P.C.  
 1364 Beverly Road, Suite 201  
 McLean, Virginia 22101

Re: Interpretation for VC 2002-DR-139, Tax Map 40-4((1))44A

Dear Ms. Earman:

This is in response to your letter received October 10, 2007, (Attachment 1), requesting an interpretation of the variance plat and development conditions imposed by the Board of Zoning Appeals in conjunction with the approval of VC 2002-DR-139. As I understand it, you contend that the limits of clearing depicted on the variance plat no longer apply once the main structure, the house, has been built and approved. In addition you state that a detached garage now under construction does not intrude into a Conservation area on site and is in substantial compliance with the limits of clearing and grading and, therefore, can be constructed. This determination is based on the plat attached to your letter, entitled "Plat Showing Garage Foundation, Outlot 'A' Nielson's Addition to the James B. Phillips Estate," prepared by Thomas W. Kendall, and dated September 7, 2006.

The development conditions approved in conjunction with VC 2002-DR-139 run with the land and do continue to apply to the application property. Development Condition 1 states in part, "... All development shall be in conformance with this plat as qualified by these development conditions. . . ." Development Condition 2 speaks specifically to limits of clearing and grading and states, "The limits of clearing and grading shall be no greater than shown on the variance plat. The limits of clearing and grading shall be the minimum amount feasible to provide for the development as depicted and shall preserve the maximum amount of desirable vegetation possible, as determined by the Urban Forestry Division of DPWES." A copy of the Development Conditions and approved plat is included as Attachment 2. The plat/exhibit attached to your letter depicts a detached garage structure that was not shown on the variance plat and that encroaches into the limits of clearing and grading. Therefore, it is my determination that the detached garage structure is not in substantial conformance with VC 2002-DR-139. This determination has been made in my capacity as the duly authorized agent of the Zoning Administrator.

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/](http://www.fairfaxcounty.gov/dpz/)

Susan R. Earman, Esquire  
Page 2

If you have any questions regarding these requirements, please feel free to contact Susan Langdon at (703) 324-1280.

Sincerely,



Regina C. Coyle, Director  
Zoning Evaluation Division, DPZ

Attachments: A/S

cc: Members, Board of Zoning Appeals  
Michael R. Congleton, Assistant Zoning Administrator, ZEB, DPZ  
Diane Johnson-Quinn, Deputy Zoning Administrator, Permit Review Branch, ZAD, DPZ  
Ken Williams, Plan Control, Land Development Services, DPWES  
Craig Carinci, Director, Environmental and Facilities Inspection Division, DPWES  
Kevin Guinaw, Chief, Special Projects/Applications Management Branch, ZED, DPZ  
File: VC 2002-DR-139, Imaging, Reading File

LAW OFFICES OF  
**FRIEDLANDER, FRIEDLANDER & EARMAN, P.C.**  
 (FOUNDED IN 1925)  
 1364 BEVERLY ROAD

MARK P. FRIEDLANDER (1903-1978)  
 MARK P. FRIEDLANDER, JR.+\*  
 JEROME P. FRIEDLANDER, II.+\*  
 SUSAN FRIEDLANDER EARMAN.\*

SUITE 201  
 MCLEAN, VIRGINIA 22101  
 (703) 893-9600  
 FAX (703) 893-9650

October 5, 2007

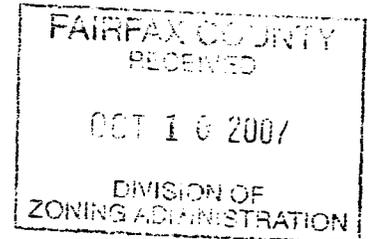
OF COUNSEL

COTCHETT, PITRE, SIMON & MCCARTHY  
 SAN FRANCISCO AIRPORT OFFICE CENTER  
 840 MALCOLM ROAD, SUITE 200  
 BURLINGAME, CA 94010  
 (650) 697-6000

MEMBERS OF  
 VIRGINIA BAR\*  
 D. C. BAR\*

Diane Johnson-Quinn  
 Deputy Zoning Administrator for  
 Zoning Permit Review Branch

Re: Building Permit 71730162



Dear Ms. Johnson-Quinn:

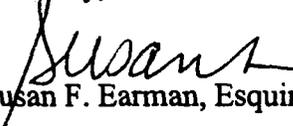
I, along with my firm of Friedlander, Friedlander & Earman, P.C., have been retained by Mark Stadskev concerning the stop work order on the above referenced building permit.

As you are aware, Mr. Stadskev purchased this property from Kayvab Jaboori. Mr. Jaboori obtained a variance known as VC-2002-DR-139 which set forth the building foot print for a home. I have reviewed the variance language and believe that its language only applies to the building of the single family detached home and does not address any out buildings that may be permitted.

Pursuant to your request, I have attached a revised plat which can be formally submitted for your review. I can also email the PDF file for your internal records as well. This plat depicts that the garage is completely outside of the conservation easement and does not violate any part of the protected area. In addition, it is in substantial compliance with the limits of clearing and grading. It is Mr. Stadskev's position that the limits of clearing no longer apply once the main structure has been built and approved. That concept coupled with the fact that the garage does not intrude into the Conservation area should support the construction of this garage.

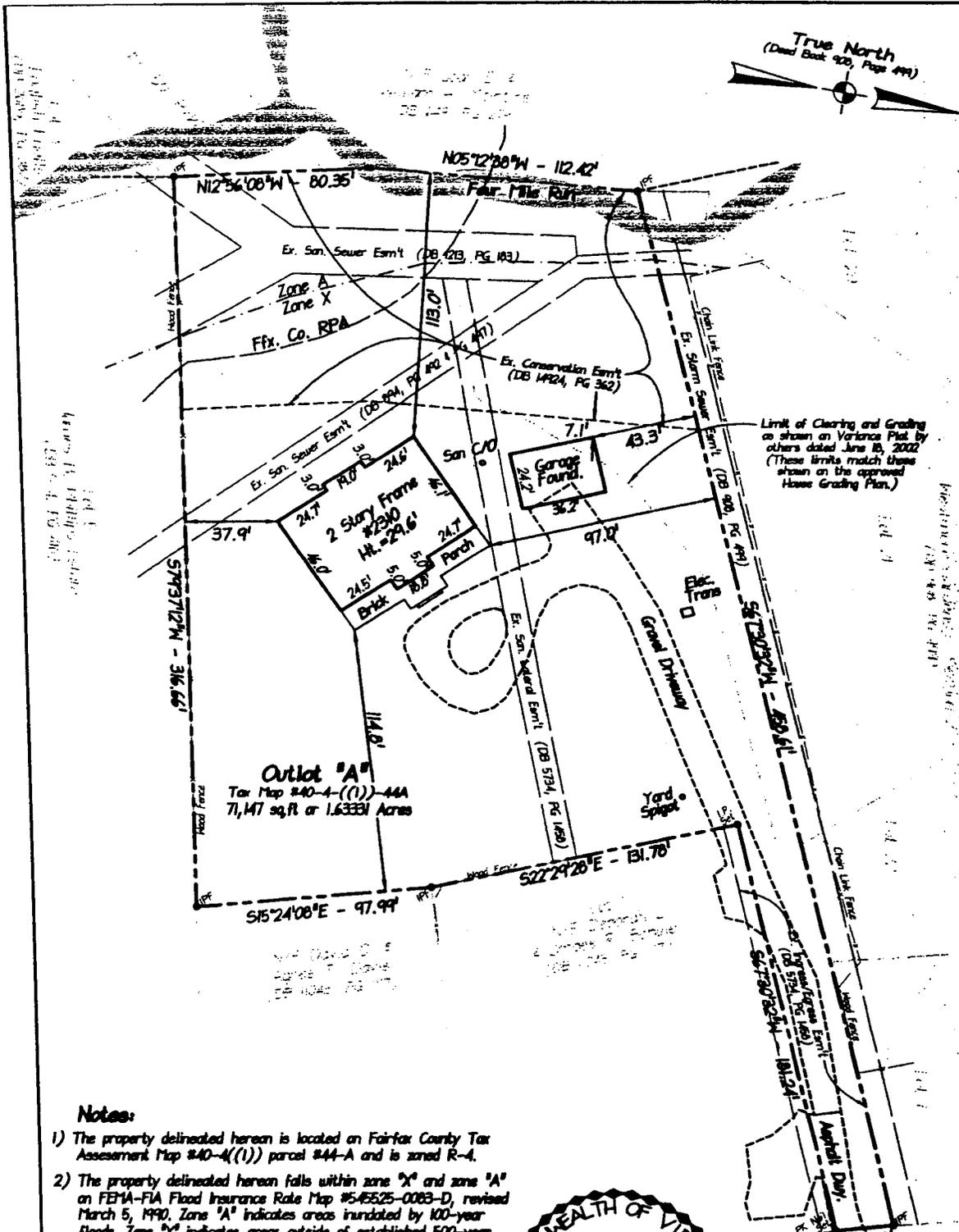
Please review the material and lift the stay that is currently inhibiting his construction.

Sincerely,

  
 Susan F. Earman, Esquire

SFE/lt  
 Enclosures  
 Cc: Stadskev

True North  
(Deed Book 920, Page 494)



Limit of Clearing and Grading as shown on Variance Plat by others dated June 18, 2002 (These limits match those shown on the approved Home Grading Plan.)

**Notes:**

- 1) The property delineated hereon is located on Fairfax County Tax Assessment Map #40-4((1)) parcel #44-A and is zoned R-4.
- 2) The property delineated hereon falls within zone "X" and zone "A" on FEMA-FIA Flood Insurance Rate Map #5-6525-0083-D, revised March 5, 1990. Zone "A" indicates areas inundated by 100-year floods. Zone "X" indicates areas outside of established 500-year flood plains.
- 3) NO TITLE REPORT FURNISHED.
- 4) The improvements shown hereon have been carefully established by modern survey methods and, unless otherwise shown, there are no encroachments.



# Conservation Esm't added 9-18-07 #

<p><b>Kendall Consulting, Inc.</b> Land Surveying - Land Planning P. O. Box 1569 - Fairfax, Virginia Phone: (703) 591-1157 -- Fax: (703) 591-1510</p>	<p>Plot Showing Garage Foundation Outlot "A" Nielson's Addition to the <b>James B Phillips Estate</b> T.M. #40-4((1))-44A -- (DB 5734, PG 1458) Dranesville District Fairfax County, Virginia</p>	Scale:	1"=50'
		Date:	9-7-06
		Job:	05-019

## COUNTY OF FAIRFAX, VIRGINIA

## VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

EINER R. & STEFANIA S. NIELSON, VC 2002-DR-139 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit a minimum lot width of 24.23 ft. Located on the W. side of Westmoreland St., approx. 400 ft. S. of its intersection with 33rd St. on approx. 1.63 ac. of land zoned R-4. Dranesville District. Tax Map 40-4 ((1)) 44A. Mr. Hart moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on November 19, 2002; and

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

1. The applicants are the owners of the land.
2. The applicants have presented testimony showing compliance with the required standards for a variance.
3. The parcel is an odd shape that poses significant constraints to development.
4. The required hardship criterion for a variance is particularly met as no improvement is possible without a variance.
5. The property has limited access by being inaccessible from Locust Street, and therefore mandates extension of the existing pipestem driveway.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

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.
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 purpose of this Ordinance and will not be contrary to the public interest.

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

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

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

1. This variance is approved for a minimum lot width of 24.23 feet, as shown on the plat prepared by Kayvan Jaboori, dated June 18, 2002. 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 each of these lots.

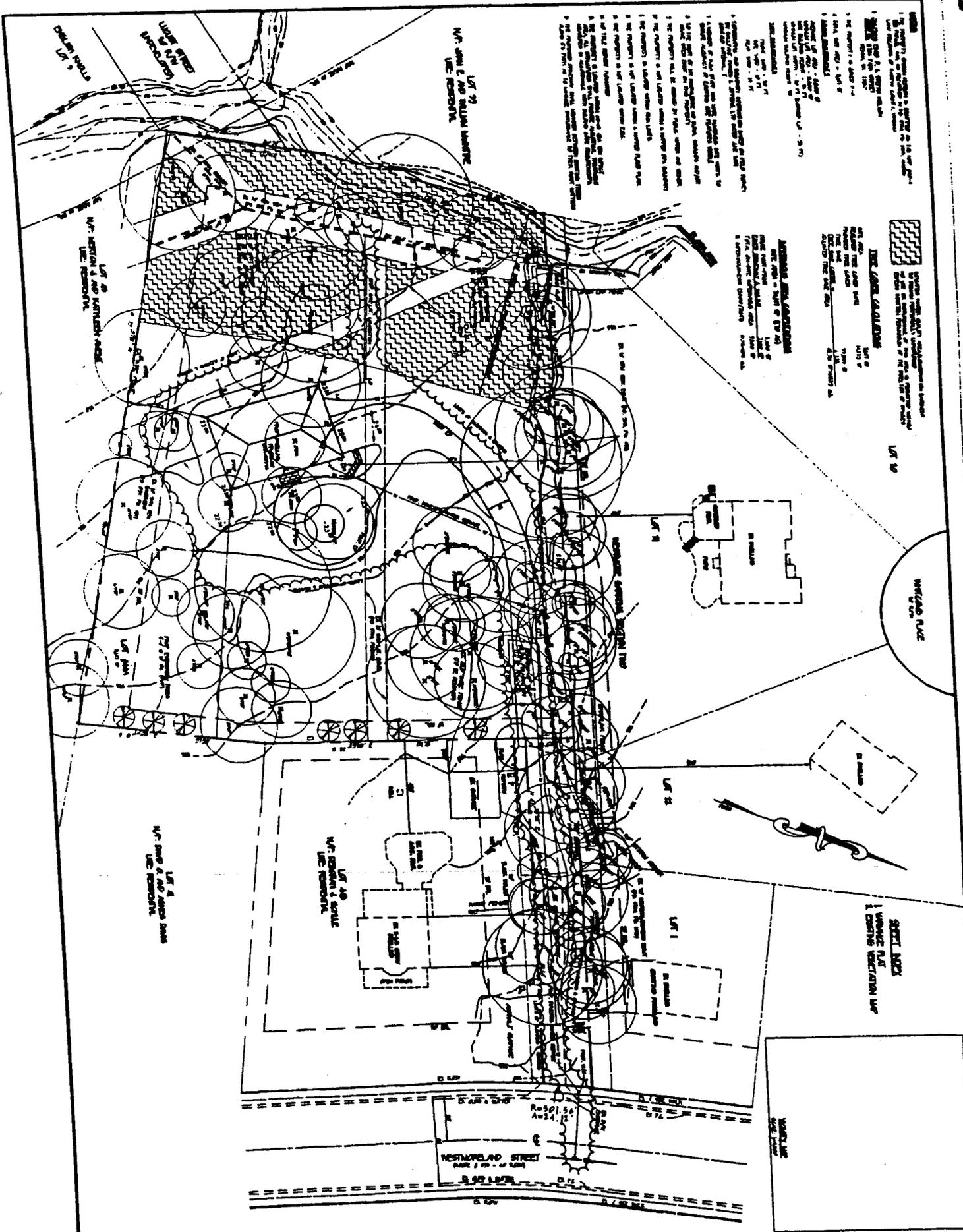
2. The limits of clearing and grading shall be no greater than shown on the variance plat. The limits of clearing and grading shall be the minimum amount feasible to provide for the development as depicted and shall preserve the maximum amount of desirable vegetation possible, as determined by the Urban Forestry Division of DPWES.
3. The applicant shall install supplemental plantings, species, size and number as determined in consultation with the Urban Forestry Division, DPWES, along the eastern lot line of the property to serve as a visual screen between the subject property and the adjacent properties. In addition, every effort will be made to preserve trees located along the pipestem driveway, as determined feasible by the Urban Forestry Division. Replacement trees shall be provided on a one to one ratio for trees removed during construction. Size and species of the replacement trees shall be determined in consultation with the Urban Forestry Division.
4. A conservation easement shall be recorded among the land records of Fairfax County over the western portion of the site as shown on the variance plat. The applicant shall record a conservation easement to the benefit of Fairfax County, in a form approved by the Office of the County Attorney, over the area outside the limits of clearing and grading, as shown on the variance plat. The easement shall specify that undisturbed open space shall be maintained by hand, as needed, only, to remove dead and dying vegetation, and there shall be no fertilizing or mowing of weeds or grass. Prospective purchasers of the subject property shall be advised of these requirements in writing prior to contract execution. Said purchasers shall be required to acknowledge receipt of this information in writing. Every deed of conveyance for Lot 44A shall expressly contain these disclosures.
5. The applicant shall grant an ingress/egress easement for the benefit of proposed Lots 44A and 44B over the common driveway shown on the variance plat. Said easement shall be the subject of a private maintenance agreement among the property owners of Lots 44A and 44B and shall be recorded in the land records of Fairfax County. Purchasers shall execute a disclosure memorandum at time of contract acknowledging the ingress/egress easement.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval unless the subdivision has been recorded among the land records of Fairfax County. The Board of Zoning Appeals may grant additional time to record the subdivision 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.

Mr. Hammack seconded the motion which carried by a vote of 6-0-1. Mr. Pammel abstained from the vote.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on November 27, 2002. This date shall be deemed to be the final approval date of this variance.

//



1. The property is a single lot of 100 acres.
2. The property is a single lot of 100 acres.
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31. The property is a single lot of 100 acres.

THE LAND SURVEYOR  
 HAS REVIEWED THE LAND SURVEY  
 AND HAS FOUND IT TO BE  
 ACCURATE AND CORRECT  
 IN ACCORDANCE WITH THE  
 REQUIREMENTS OF THE  
 VIRGINIA SURVEYING  
 BOARD.

NIELSON PROPERTY  
 100 ACRES  
 WESTMORELAND STREET  
 WESTMORELAND AVENUE  
 WESTMORELAND LANE  
 WESTMORELAND CIRCLE  
 WESTMORELAND DRIVE  
 WESTMORELAND COURT  
 WESTMORELAND PLACE  
 WESTMORELAND TERRACE  
 WESTMORELAND WAY  
 WESTMORELAND ROAD  
 WESTMORELAND BOULEVARD  
 WESTMORELAND PARKWAY

VARIANCE PLAT			<b>KJ &amp; ASSOCIATES</b> SURVEYING & ENGINEERING 1000 WESTMORELAND STREET WESTMORELAND, VA 22190 TEL: 540-885-1234
<b>NIELSON PROPERTY</b> GRANVILLE DISTRICT FAIRFAX COUNTY, VIRGINIA			
SHEET NO. 1 OF 2 DATE: 10/1/2023 DRAWN BY: J. SMITH CHECKED BY: M. JONES APPROVED BY: K. BROWN	SCALE: 1" = 100' NORTH: [Symbol]	PROJECT NO. 2023-001 CLIENT: NIELSON PROPERTY LOCATION: WESTMORELAND STREET AREA: 100 ACRES	SURVEYOR: J. SMITH LICENSE NO. 12345 EXPIRES: 12/31/2024





# County of Fairfax, Virginia

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

July 17, 2008

Susan F. Earman, Esquire  
 Friedlander, Friedlander & Earman, P.C.  
 1364 Beverly Road, Suite 201  
 McLean, Virginia 22101

Re: Interpretation for VC 2002-DR-139, Tax Map 40-4((1)) 44A

Dear Ms. Earman:

This is in response to your letter dated June 10, 2008, (Attachment 1), requesting an interpretation of the variance plat and development conditions imposed by the Board of Zoning Appeals in conjunction with the approval of VC 2002-DR-139. Your letter describes revisions made to a previously submitted interpretation plat that result in the relocation of the garage structure such that it no longer encroaches into the limits of clearing and grading and depicts a breezeway that connects the garage to the principal structure. The revised plat (Attachment 2) has been submitted as a result of a meeting held with staff in an effort to develop a design that could allow for the construction of a garage on site that could be determined to be in substantial conformance with the plat approved pursuant to VC 2002-DR-139 which did not depict a garage structure beyond the footprint of the existing single family detached dwelling. This determination is based on the plat attached to your letter, entitled "Plat Showing Garage & Breezeway, Outlot 'A' Nielson's Addition to the James B. Phillips Estate," prepared by Thomas W. Kendall, and dated May 27, 2008.

The development conditions approved in conjunction with VC 2002-DR-139 run with the land and continue to apply to the application property. Development Condition 1 states in part, "... All development shall be in conformance with this plat as qualified by these development conditions. . ." Copies of the approved Development Conditions and the approved variance plat are included as Attachments 3 and 4, respectively.

In May 2008 you met with staff in an effort to develop a site design that incorporates a garage addition on the site within the scope of the minor modification provisions of the Zoning Ordinance. At that time staff provided guidance based upon prior practice and application of the minor modification provisions in similar circumstances. However, recently it has been brought to our attention that legal precedence has been established that indicates approval of an

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

amendment to an approved lot width variance application is necessary to construct an addition or to establish any accessory structure not otherwise depicted on the approved Variance Plat since the principal use (a single family dwelling in this case) would not otherwise have been permitted. The footprint of the proposed attached garage structure was not depicted on the approved Variance Plat. Therefore, it is my determination that the proposed attached garage structure is not in substantial conformance with VC 2002-DR-139. Further, it is my determination that approval of an Amendment to VC 2002-DR-139 or alternatively, approval of a Special Exception for lot width by the Board of Supervisors is necessary to establish any accessory structure not depicted on the approved Variance Plat. This determination has been made in my capacity as the duly authorized agent of the Zoning Administrator.

If you have any questions regarding these requirements, please feel free to contact Susan Langdon at (703) 324-1280.

Sincerely,



Regina Q. Coyle, Director  
Zoning Evaluation Division, DPZ

Attachments: A/S

cc: Members, Board of Zoning Appeals  
Michael R. Congleton, Assistant Zoning Administrator, ZEB, DPZ  
Diane Johnson-Quinn, Deputy Zoning Administrator, Permit Review Branch, ZAD, DPZ  
Ken Williams, Plan Control, Land Development Services, DPWES  
Craig Carinci, Director, Environmental and Facilities Inspection Division, DPWES  
Kevin Guinaw, Chief, Special Projects/Applications Management Branch, ZED, DPZ  
Susan Langdon, Chief, Special Permit & Variance Branch, ZED, DPZ  
File: VC 2002-DR-139, Imaging, Reading File

LAW OFFICES OF  
FRIEDLANDER, FRIEDLANDER & EARMAN, P.C.  
(FOUNDED IN 1925)

1364 BEVERLY ROAD

SUITE 201

MCLEAN, VIRGINIA 22101

(703) 893-9600

FAX (703) 893-9650

MARK P. FRIEDLANDER (1903-1978)  
MARK P. FRIEDLANDER, JR.+  
JEROME P. FRIEDLANDER, II+  
SUSAN FRIEDLANDER EARMAN+

MEMBERS OF  
VIRGINIA BAR+  
D. C. BAR+

OF COUNSEL

COTCHETT, PITRE, SIMON & MCCARTHY  
SAN FRANCISCO AIRPORT OFFICE CENTER  
640 MALCOLM ROAD, SUITE 200  
BURLINGAME, CA 94010  
(650) 697-6000

June 10, 2008

Susan Langdon (#801)  
Regina Coyle  
Bruce Miller (#829)  
12055 Government Center Parkway  
Fairfax, Virginia 22035

Re: Tax Map 040-4((1)) Parcel 44A/Stadsklev property

Dear Ms. Langdon, Ms. Coyle, and Mr. Miller:

Enclosed you will find a revised plat that depicts the attached garage to be built on the above reference property. The breezeway between the home structure and the garage has supports outside the sanitary sewer easement. I spoke with the sanitary sewer department to determine what if any documentation I would need for submission to your office.

Staff in the sanitary sewer department indicated that they have no issues with a breezeway over an easement as long as Zoning did not have any problems with the situation. Since we discussed this as a possible resolution, I believe that it will not be an issue. Mr. Stadsklev understands that if in the course of his ownership the breezeway comes in conflict with any inspection or improvements to the easement, then it will need to be removed and then reconstructed. He is ready and willing to comply with that requirement. Please note the north western corner of the current pad site will move away from the Limits of Clearing and Grading.

Further, it is our understanding that the current permit can remain in place and just be re-issued once you review and accept this solution to the attached garage of the Stadsklevs' home.

RECEIVED  
DEPARTMENT OF PLANNING  
AND ZONING

JUN 13 2008

SPECIAL PERMIT &  
VARIANCE BRANCH

If you need anything further please let me know.

Sincerely,



Susan Earman, Esquire

SFE/ltt  
enclosures  
cc: Stadsklevs





FAIRFAX  
COUNTY

DEPARTMENT OF PLANNING AND ZONING

Zoning Evaluation Division  
Special Permit and Variance Branch  
12055 Government Center Parkway, Suite 801  
Fairfax, Virginia 22035-5510

(703) 324-1280

Fax (703) 324-3924

VIRGINIA

November 27, 2002

Mr. and Mrs. Einer R. & Stefania Nielson  
8704 Park Street  
Vienna, Virginia 22180

Re: Variance Application VC 2002-DR-139  
Einer R. & Stefania Nielson

Dear Mr. and Mrs. Nielson:

At its November 19, 2002 meeting, the Board of Zoning Appeals took action to **APPROVE** the above-referenced application. The final approval date is November 27, 2002. A copy of the Resolution is attached.

This action does not constitute exemption from the various requirements of this County and State. The applicant is responsible for ascertaining if permits are required and for obtaining the necessary permits such as Building Permits, Residential Use Permits and Non-Residential Use Permits. Information concerning building permits may be obtained by calling 222-0801.

Sincerely,

Paula McFarland, Substitute Clerk  
Board of Zoning Appeals

Enclosure: As stated

COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

EINER R. & STEFANIA S. NIELSON, VC 2002-DR-139 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit a minimum lot width of 24.23 ft. Located on the W. side of Westmoreland St., approx. 400 ft. S. of its intersection with 33rd St. on approx. 1.63 ac. of land zoned R-4. Dranesville District. Tax Map 40-4 ((1)) 44A. Mr. Hart moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on November 19, 2002; and

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

1. The applicants are the owners of the land.
2. The applicants have presented testimony showing compliance with the required standards for a variance.
3. The parcel is an odd shape that poses significant constraints to development.
4. The required hardship criterion for a variance is particularly met as no improvement is possible without a variance.
5. The property has limited access by being inaccessible from Locust Street, and therefore mandates extension of the existing pipestem driveway.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

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.



# County of Fairfax, Virginia

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

April 21, 2008

## NOTICE OF VIOLATION

### Certified Mail

### Return receipt Requested

Receipt #: 7099 3400 0007 0874 2844

Mr. Mark J. Stadskev  
 Mrs. Susan M. K. Stadskev  
 2310 Westmoreland Street  
 Falls Church, Virginia 22046

Re: 2310 Westmoreland Street, Falls Church, Virginia  
 Phillips Estate Addition to Nielsons Outlot A  
 Tax Map Ref.: 40-4 ((1)) 44A  
 Zoning District: R-4

Dear Mr. and Mrs. Stadskev:

The above-referenced property ("subject property") is subject to the development conditions of Variance VC 2002-DR-139, which was approved by the Board of Zoning Appeals on November 27, 2002. Development Conditions 1 and 2 of VC 2002-DR-139 state as follows:

1. This variance is approved for a minimum lot width of 24.23 feet, as shown on the plat prepared by Kayvan Jaboori, dated June 18, 2002. All development shall be in conformance with this plat ["Variance Plat"] as qualified by these development conditions. These conditions shall be recorded among the land records of Fairfax County for each of these lots.
2. The limits of clearing and grading shall be no greater than shown on the [Variance Plat]. The limits of clearing and grading shall be the minimum amount feasible to provide for the development depicted and shall preserve the maximum amount of desirable vegetation possible, as determined by the Urban Forestry Division of DPWES.

Section 18-405 of the Fairfax County Zoning Ordinance states:

Upon a determination by the BZA that the applicant has satisfied the requirements for a variance as set forth in Sect. 404 above, the

Mark J. Stadslev  
Susan M. K. Stadslev  
April 21, 2008  
Page 2

BZA shall then determine the minimum variance that would afford relief. In authorizing such variance the BZA 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 insure that the conditions imposed are being and will continue to be met.

Building Permit #71730162 was issued to allow construction of a 2-story detached garage, 24 feet by 36 feet, and 18 feet in height. As you are aware, this Building Permit was subsequently revoked as a result of its issuance in error as detailed in the enclosed letter dated August 16, 2007, issued by Diane Johnson-Quinn, Deputy Zoning Administrator for the Zoning Permit Review Branch.

Zoning inspections of the above-referenced property between February 12, 2008, and March 27, 2008, revealed that you have installed the footing and foundation for the above-referenced detached garage despite the fact that the Building Permit for this garage was revoked. The inspection further revealed that you have constructed on the subject property a freestanding accessory storage structure (shed) in the side yard, an engineered block parking pad, a sandbox or planter box, a fence exceeding 4 feet in height, and engaged in other development within the front and side yards of the subject property. In addition, trees shown on the approved Variance Plat within the limits of clearing and grading have been removed from the subject property. This development and tree removal are not shown on the Variance Plat and exceed what is permitted by VC 2002-DR-139. This development is also located within the limits of clearing and grading shown on the approved Variance Plat. The development is therefore not in conformance with Development Conditions 1 and 2 of VC 2002-DR-139.

Therefore, due to development of the property that is not in conformance with Development Conditions 1 and 2 of VC 2002-DR-139, you are in violation of Par. 1 of Sect. 18-901 of the Zoning Ordinance, which states as follows:

Any building erected or improvements constructed contrary to any of the provisions of this Ordinance and any use of any building or land which is conducted, operated or maintained contrary to any of the provisions of this Ordinance or contrary to any detailed statement or plan approved under the provisions of this Ordinance shall be and the same is hereby declared to be unlawful.

Furthermore, the inspections revealed that you are storing on the subject property construction equipment including ladders, scaffolding, tools, buckets, rebar, contractors boxes, two unlicensed trailers, a boat, construction materials, including but not limited to doors, windows, siding, bricks, lumber, pipe, and miscellaneous other items. The keeping of the aforementioned items on this property constitute a storage yard. Part 3 of Article 10 of the Zoning Ordinance defines a storage yard as follows:

The use of any space, whether inside or outside a building, for the storage or keeping of construction equipment, machinery, vehicles or parts thereof, boats and/or farm machinery.

A storage yard is not a use permitted by right, by special exception, or special permit in the R-4 District.

Therefore, the storage yard use of the subject property is a violation of Paragraphs 4 and 5 of Sect. 2-302 of the Zoning Ordinance, which states as follows:

4. No structure shall hereafter be built or moved, and no structure or land shall hereafter be used or occupied, except for a use that is permitted in the zoning district in which the structure or land is located.
5. No use shall be allowed in any district which is not permitted by the regulations for the district.

The inspections also revealed that you have outdoor storage located in the front yard of the subject property, which includes the storage of various items on the front porch and in the front and side yards of the property. Such storage includes, but is not limited to, tools, tool boxes, cabinets, lawn equipment and lawn tools, boxes, buckets, barrels, and building materials and scrap materials on the front porch and in the front and side yards of the subject property. This outdoor storage is not located in accordance with Par. 24 of Sect. 10-102 of the Zoning Ordinance, which allows outdoor storage as a permitted accessory use in R districts, subject to the following limitations:

Storage, outdoor, in R districts, provided such storage is located on the rear half of the lot, is screened from the view from the first story window of any neighboring dwelling, and the total area for such outdoor storage does not occupy more than 100 square feet.

Therefore, because your outdoor storage on the subject property does not conform to § 10-102(24) of the Zoning Ordinance, you are in violation of that provision and Par. 6 of Sect. 2-302 of the Zoning Ordinance, which states as follows:

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

You are hereby directed to clear these violations within thirty (30) days of receipt of this notice. Compliance can be accomplished as follows:

- For the violation of Par 1 of Sect. 18-901 of the Zoning Ordinance that pertains to the development of the property that does not conform to

Development Conditions 1 and 2 of VC 2002-DR-139, compliance may be achieved as follows:

- Removing from the property, on a permanent basis, the footing and foundation for the detached garage, the shed, the engineered block parking pad, sandbox or planter box, fence exceeding 4 feet in height, and other development within the front and side yards of the subject property, and
  - Making application and obtaining the approval from the Department of Public Works and Environmental Services (DPWES) of a restoration plan to restore the property to the condition shown on the approved Variance Plat, and
  - Restoring such areas in accordance with the aforementioned restoration plan, and
  - Complying with all detailed conditions, plats, and plans associated with VC 2002-DR-139.
- For the storage yard use of the property that violates Paragraphs 4 and 5 of Sect. 2-302 of the Zoning Ordinance, compliance may be achieved as follows:
    - Ceasing, on a permanent basis, the storage yard use of the subject property, and
    - Removing all items comprising the storage yard, which includes but is not limited to, the construction equipment, ladders, scaffolding, tools, buckets, rebar, contractors boxes, two unlicensed trailers, construction materials, doors, windows, siding, bricks, lumber, pipe, and miscellaneous other items, to a lawful location.
  - For the outdoor storage that does not conform to the limitations set forth in Par. 24 of Sect. 10-102 of the Zoning Ordinance above, and is therefore in violation of Par. 6 of Sect. 2-302 of the Zoning Ordinance, compliance may be achieved by:
    - Removing all outdoor storage from the property in its entirety to a lawful site, or
    - Relocating the outdoor storage to the rear half of the lot in an area that does not exceed 100 square feet and does not require the clearing of existing vegetation, and

Mark J. Stadskev  
Susan M. K. Stadskev  
April 21, 2008  
Page 5

- Insuring the such storage is not located in the conservation easement recorded in the land records of Fairfax County, Virginia, in Deed Book 14924 at Pages 362 through 369, and
- Screening such outdoor storage from the view from the first story window of any neighboring dwelling.

A follow-up inspection will be made at the expiration of this time period.

You may have the right to appeal this Notice of Zoning Violation within thirty (30) days of the date of this letter in accordance with Sec. 15.2-2311 of the Code of Virginia. This decision shall be final and unappealable if it is not appealed within such thirty (30) days. Should you choose to appeal, the appeal must be filed with the Zoning Administrator and the Board of Zoning Appeals (BZA) in accordance with Part 3 of Article 18 of the Fairfax County Zoning Ordinance. Those provisions require the submission of an application form, written statement setting forth the decision being appealed, date of decision, the grounds for the appeal, how the appellant is an aggrieved party, and any other information you may wish to submit and a \$375.00 filing fee. Once an appeal application is accepted, it is scheduled for public hearing and decision before the BZA.

Failure to comply with this notice will result in the initiation of appropriate legal action to gain compliance with the Zoning Ordinance.

Should you have any questions or need additional information, please call me at (703) 324-1391 or (703) 324-1300.

Sincerely,



Bruce Miller  
Property Maintenance/Zoning Enforcement Inspector

BM/bm



# County of Fairfax, Virginia

## MEMORANDUM

August 15, 2008

**TO:** Bruce Miller, Property Maintenance/Zoning Enforcement Inspector  
Zoning Enforcement/Property Maintenance, DPZ

**FROM:** Heather Finch, Urban Forester II  
Forest Conservation Branch, DPWES

**SUBJECT:** 2310 Westmoreland Street

At your request, I visited the above site on August 14, 2008 to determine the extent of vegetation removal that has taken place outside of the limits of clearing and grading to the east of the existing house and between the driveway and the property line. It is difficult to determine the exact number of trees that have been removed from the area, as no stumps or remnants of trees remain and it appears that only trees greater than 8" in diameter are shown on the variance plat. The following observations were made based on the tree information provided on the variance plat, comparison of aerial photography from before and after construction and visual inspection:

It appears that approximately nine trees shown on the variance plat have been removed in the area outside the limits of clearing and grading. According to the plat, these trees ranged in size from 8" in diameter to 36" in diameter.

Upon aerial photography comparison, it appears that the understory layers have been removed from the majority of this area. Currently, only mature trees and grass remain throughout much of the area and it does not appear that the maximum amount of desirable vegetation has been preserved, as required by development condition #2.

Based on the above observations, UFMD recommends the following actions take place:

1. The (approximately) nine mature trees that have been removed should be replaced with an adequate number of native, deciduous trees to compensate for the loss of tree cover. These should be a combination of category I – IV trees, as referenced in the Fairfax County Public Facilities Manual – Chapter 12. UFMD will accept tree sizes ranging from seedlings to 2" caliper, as this size variety will help restore the area to an uneven-aged forest setting. The driplines of trees shown on the variance plat can be used to determine the approximate area of tree cover lost.
2. The area outside the limits of clearing and grading should no longer be mowed, and an appropriate mix of nursery-grown native shrubs and herbaceous vegetation and/or

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**Department of Public Works and Environmental Services**  
**Land Development Services, Urban Forest Management Division**  
 12055 Government Center Parkway, Suite 518  
 Fairfax, Virginia 22035-5503  
 Phone 703-324-1770, TTY: 703-324-1877, Fax: 703-803-7769  
[www.fairfaxcounty.gov/dpwes](http://www.fairfaxcounty.gov/dpwes)



native seed mix should be planted evenly throughout the area to restore it to its pre-disturbance state.

3. A restoration plan, including the above mentioned elements, should be provided to UFMD for review and approval prior to installation of new trees and vegetation.

Unrelated to the violation, a 60" diameter yellow poplar remains just within the limits of clearing and grading south of the driveway loop. This tree is in poor condition with significant crown dieback and unhealthy foliage, as well as cavities. This tree is a potential hazard to the house and property. It appears that grading took place within its critical root zone, and this root damage probably contributed to the decline of this tree. The Urban Forest Management Division (UFMD) recommends that the owner have the tree evaluated for health and structural stability by a Certified Arborist.

Please contact me at 703-324-1770 if you have any questions or concerns.

HAF/  
UFMID #: 106860

cc: RA File  
DPZ File

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**Department of Public Works and Environmental Services**  
**Land Development Services, Urban Forest Management Division**  
12055 Government Center Parkway, Suite 518  
Fairfax, Virginia 22035-5503  
Phone 703-324-1770, TTY: 703-324-1877, Fax: 703-803-7769  
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# County of Fairfax, Virginia

## MEMORANDUM

June 9, 2009

RECEIVED  
DEPARTMENT OF PLANNING  
AND ZONING

JUN 12 2009

**TO:** Debbie Hedrick, Staff Coordinator  
Zoning Evaluation Division, DPZ

SPECIAL PERMIT &  
VARIANCE BRANCH

**FROM:** Craig Herwig, Urban Forester III *CH*  
Forest Conservation Branch, DPWES

**SUBJECT:** Nielson/Stadsklev Property (2310 Westmoreland Street), VCA 2002-DR-139

**RE:** Request for assistance dated May 28, 2009

This review is based upon the Amended Variance Plat stamped "Received, Department of Planning and Zoning, May 27, 2009." A site visit was conducted on Wednesday, June 3, 2009.

**Site Description:** The site is a 1.63 acre residential property, zoned R-4. It contains an existing 2-story, single family dwelling, an existing concrete foundation and an existing pre-fabricated storage shed located north of the dwelling. A recorded 100 foot water quality/conservation easement noted in deed book 894, page 497, is located at the eastern portion of the property. Existing vegetation within the conservation easement includes overstory trees consisting of black cherry, black walnut, red maple, silver maple, tulip and river birch. The understory vegetation is dominated by invasive species including multiflora rose, Japanese honeysuckle and creeping euonymus. Some native understory plants within the conservation easement include common blackberry, spicebush and jewelweed. Vegetation outside the conservation easement includes overstory trees consisting of black cherry, black walnut, red maple, silver maple, tulip tree, mulberry, red and black oak trees. The understory vegetation outside the conservation easement includes numerous supplemental plantings consisting of elm, red maple, southern magnolia, red oak, birch, redbud, and holly and several species of shrubs. A portion of the site east of the dwelling is maintained open space consisting of existing overstory trees, landscape trees, shrubs and maintained turf. A portion of the site south of the dwelling also contains maintained open space consisting of native overstory trees, landscape trees and shrubs and woodchip mulch.

- 1. Comment:** The applicant has requested a modification of the limits of clearing and grading to that shown on the Variance Plat Amendment to remove the portion of the existing garage foundation that extends into the undisturbed area as shown on the previous Variance Plat.

Department of Public Works and Environmental Services  
Land Development Services, Urban Forest Management Division  
12055 Government Center Parkway, Suite 518  
Fairfax, Virginia 22035-5503  
Phone 703-324-1770, TTY: 703-324-1877, Fax: 703-803-7769  
www.fairfaxcounty.gov/dpwes



**Recommendation:** Removing the portion of the existing foundation of the proposed garage located outside the limits of clearing would undoubtedly cause additional damage to vegetation outside the limits of clearing and grading and possibly within the conservation easement. Staff from the Urban Forest Management Division (UFMD) recommends the limits of clearing and grading be amended to that shown on the Variance Plat Amendment. In addition, during the construction of the proposed garage, 14-gauge welded wire tree protection fence should be installed adjacent to any vegetation to be preserved within the area of the garage construction envelope.

2. **Comment:** The applicant has requested a modification to the limits of clearing and grading to that shown on the previous Variance Plat for a proposed turf/stone turn-around adjacent to the existing gravel driveway.

**Recommendation:** The proposed turf/stone turn-around should be adjusted approximately 8-10 feet to the east to avoid damage to the critical root zones of adjoining existing trees. Tree protection fence in the form of 14-gauge welded wire should be installed at the limits of clearing and grading adjacent to the proposed turf/stone turn-around to protect existing vegetation shown to be preserved.

3. **Comment:** There is an existing pre-fabricated shed located north of the existing garage foundation outside the limits of clearing and grading. A note on the Variance Plat Amendment states the shed is "to be relocated." It is unclear how the shed will be relocated to the location south of the existing dwelling as shown on the Variance Plat Amendment without damage to existing vegetation shown to be preserved.

**Recommendation:** The existing shed shown to be relocated on the Variance Amendment Plat should be removed from outside the limits of clearing and grading without the use of motorized equipment, to avoid damage to vegetation outside the limits of clearing and grading. No large motorized equipment (including bobcats) should be allowed outside the limits of clearing and grading. The shed should be dismantled by hand and reassembled at the proposed new location. Care should be taken when reassembling the shed at the new location to avoid damage to the oak trees that have been planted in that area.

4. **Comment:** The applicant has requested the shaded areas shown on the Variance Plat Amendment be considered "Maintained Open Space" with three conditions listed under Maintained Open Space Notes. These conditions are as follows:
  - Current trees in area to remain unless dead or designated as in decline or to be removed

Nielson/Stadsklev Property (2310 Westmoreland Street)

VCA 2002-DR-139

June 9, 2009

Page 3 of 3

- Grass that exists to be mowed with a push behind type mower with only organic fertilizer
- Mulched area to remain mulched, planting only permitted as authorized by Fairfax County DPZ.

**Recommendation:** Based on a site visit to review the existing vegetation located in the undisturbed water quality/conservation easement and a review of the Existing Vegetation Map (EVM) dated June 18, 2002, staff from UFMD believes that the area shaded to depict the maintained open space shown on the Variance Plat Amendment previously contained many of the same non-native, invasive species as those found in the undisturbed water quality/conservation easement. In addition, the EVM dated June 18, 2002 described the site as “mostly covered by unmaintained grass fields and undesirable undergrowth of greenbriar and invasive vines.” This vegetation is not considered “desirable vegetation” required to be preserved in development condition #2. Therefore UFMD suggests that the area described as maintained open space as depicted on the Variance Plat Amendment be allowed. Vegetation in this area should include existing native trees, native and desirable landscape trees, shrubs and groundcovers, organic mulch and maintained turf grass. UFMD suggests the proposed conditions described in the Maintained Open Space Notes be amended to state the following:

- Trees located in the area depicted as Maintained Open Space shall remain unless they are in advanced decline, at high risk of failure, or dead as determined by an ISA Certified Arborist or Registered Consulting Arborist.
- The existing turf grass in the area depicted as Maintained Open Space shall be maintained with a motorized push-mower and if fertilization is necessary, it shall be organic fertilizer applied in the prescribed amounts as determined by the manufacturer.
- The mulched area in the Maintained Open Space shall remain mulched using organic mulch such as woodchips or shredded hardwood. Planting of additional trees, shrubs and ground covers should be species that are considered native and desirable.

Please feel free to contact me at 703-324-1770 if you have any further questions or concerns.

CSH/

UFMID #: 145240

cc: RA File  
DPZ File

---

Department of Public Works and Environmental Services  
Land Development Services, Urban Forest Management Division  
12055 Government Center Parkway, Suite 518  
Fairfax, Virginia 22035-5503  
Phone 703-324-1770, TTY: 703-324-1877, Fax: 703-803-7769  
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**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.
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.

**18-405 Conditions**

Upon a determination by the BZA that the applicant has satisfied the requirements for a variance as set forth in Sect. 404 above, the BZA shall then determine the minimum variance that would afford relief. In authorizing such variance the BZA 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 insure that the conditions imposed are being and will continue to be met.