

PROPOSED DEVELOPMENT CONDITIONS

SE 2007-DR-018

August 27, 2008

If it is the intent of the Board of Supervisors to approve SE 2007-DR-018 located at 1942 Virginia Avenue, Tax Map 41-1 ((9)) 1A to permit a waiver of minimum lot width requirement, pursuant to Sect. 9-610 of the Fairfax County Zoning Ordinance, then staff recommends that the Board condition the approval by requiring conformance with the following development conditions.

1. This Special Exception is granted for and runs with the land indicated in this application and is not transferable to other land.
2. This Special Exception is granted only for the purpose(s), structure(s) and/or use(s) indicated on the Special Exception Plat approved with the application, as qualified by these development conditions.
3. Any plan submitted pursuant to this special exception shall be in substantial conformance with the approved Special Exception (SE) Plat entitled "*Special Exception Plat, D.P. Divine Plat, Lot 1A*", prepared by Charles P. Johnson (CPJ) & Associates, Inc., dated May 3, 2007, as revised through May 23, 2008. Minor modifications to the approved special exception may be permitted pursuant to Par. 4 of Sect. 9-004 of the Zoning Ordinance.
4. Tree Preservation: The Applicant shall submit a Tree Preservation Plan as part of the first and all subdivision plan submissions. The Tree Preservation Plan shall be prepared by a professional with experience in the preparation of tree preservation plans, such as a certified arborist or landscape architect, and shall be subject to the review and approval of the Urban Forestry Management Division ("UFMD"), Fairfax County Department of Public Works and Environmental Services ("DPWES"). The Tree Preservation Plan shall consist of a tree survey that includes the location, species, size, crown spread, and condition rating percentage of all trees 8 inches in diameter and greater, and 25 feet to either side of the limits of clearing and grading as shown on the Special Exception Plat for the subject property. The Tree Preservation Plan shall provide for the permanent preservation of all of the trees in those areas shown for tree preservation on the Special Exception Plat and shall include any additional areas in which trees can be preserved as a result of final engineering. The conditions analysis ratings shall be prepared using methods outlined in the latest edition of the *Guide for Plant Appraisal* published by the International Society of Arboriculture. Specific tree preservation activities that will maximize the survivability of any tree identified to be preserved (such as crown pruning, root pruning, mulching, fertilization, and others as necessary) shall be included in the plan.

Concurrently with the submission of the Tree Preservation Plan, the Applicant shall also submit a schedule that sets forth a proposed monetary value for each of the trees surveyed that is to be preserved in accordance with the Special Exception Plat, as well as any additional areas in which trees can be preserved as a result of final engineering. The monetary values for each of the trees to be preserved shall be determined using the Trunk Formula Method contained in the latest edition of the Guide for Plant Appraisal published by the International Society of Arboriculture and shall be subject to review and approval by UFMD. The Location Factor of the Trunk Formula Method shall be based on projected post-development Contribution and Placements ratings. The Site Rating Component shall be equal to at least 80 percent. The combined total of monetary values identified in the approved Tree Preservation Plan for trees designated to be preserved shall serve as a baseline sum for determining the amount of the Tree Bond. In addition, the monetary values identified in the approved Tree Preservation Plan for trees to be preserved shall serve as the baseline amount for determining the amounts to be paid to the County or its assigned agent in the event that the Applicant, his personal representatives, heirs, successors, and assigns violate any of these special exception development conditions and/or any of the provisions set forth in the Conservation Easement, as described more fully in the following paragraph; provided, however, that the baseline amounts shall be subject to increase to reflect inflation (to be calculated using the Consumer Price Index) and tree growth as applicable.

5. **Conservation Easement:** No land-disturbing activity shall take place upon the subject property unless and until a conservation easement (the "Conservation Easement") has been recorded in the Land Records of Fairfax County, Virginia, over the area shown on Attachment A (the "Conservation Area"), which shall include all areas encompassed within the Tree Preservation Plan referenced in paragraph 4, above. The Conservation Easement area shall be marked with permanent iron stakes driven into the ground every 30 to 40 feet along the Easement's boundaries and shall be recorded on a survey. A baseline study shall be provided by the applicant to the County which depicts the predevelopment conditions of the Easement area in order to assist in identifying future violations. The Conservation Easement shall name the Applicant as the grantor and the Board of Supervisors of Fairfax County, Virginia (the "Board"), as the grantee of the easement. It shall constitute an easement in gross that runs in perpetuity with the subject property and shall be binding on the Applicant, his personal representatives, heirs, successors, and assigns. The form of the Conservation Easement shall be subject to the approval of the Director of the Zoning Evaluation Division of the Fairfax County Department of Planning and Zoning and the Fairfax County Attorney. **A written disclosure outlining the existence and restriction for the Conservation Easement shall be placed in the contracts of sale and in the deed for each lot and recorded in the land records of Fairfax County in a form approved by the County Attorney. Disclosure of the conservation easement on the proposed lots and the terms of those easements shall be provided in writing to prospective purchasers in both the sales promotion literature and the sales contracts.**

The Conservation Easement shall include, at a minimum, the following provisions:

- A. No person or entity either during construction or afterward (in perpetuity) shall perform any of the following activities in the Conservation Area:
 1. Fill, grade, excavate, or perform any other land disturbing activities in the Conservation Area, except as necessary for (a) erosion and sediment control pursuant to a plan approved by the DPWES and then only in strict accordance with the terms of the approved plan; and (b) the enhancement of existing vegetation through the planting of additional native species on the subject property as approved by UFMD.
 2. Remove, disturb, cut, destroy, or otherwise harm any trees, shrubs, or other vegetation in the Easement Area on the subject property, except as necessary for (a) the control of invasive species of vines and other vegetation; (b) the routine maintenance of existing conditions, such a minor tree limbing or trimming, provided that such activity is consistent with the Tree Preservation Plan; or (c) the removal of trees in order to prevent the endangerment of life. None of the activities in a, b or c above shall be performed without the express written pre-approval of DPWES.
 3. Construct any retaining walls, trails, walkways, buildings, signs, towers, or any other structures in the Conservation Area on the subject property, absent the Board's approval of a special exception amendment permitting such activity and then only in strict accordance with the terms of that approval.
 4. Dump or store soil, trash, ashes, sawdust, bark, dredge spoil, chemicals, pesticides, fertilizers, or other waste on the subject property, except that the Applicant may apply otherwise legally permitted pesticides to the subject property to the extent necessary to control any weeds, insects, pests, and other species destructive to the trees to be preserved as part of these special exception conditions, provided that all use of pesticides shall be consistent with all federal, state, and local regulations and approved by UFMD.
 5. All contractors, sub-contractors and others working on the site must sign and acknowledge the Conservation Easement in advance of starting work on the site.

B. The Conservation Easement additionally shall contain the following provisions:

1. The Applicant, his personal representatives, heirs, successors, and assigns shall be solely responsible for replacing and/or restoring any and all trees in the Easement Area that are removed, disturbed, cut, destroyed, or otherwise harmed, regardless of whether or not such damage has occurred as a result of the Applicant's actions or inactions subject only to the following exception, which is to be strictly limited to its terms. If, in the sole discretion of the Urban Forester, it is determined damage or loss was caused by actions or conditions beyond the owner's control, then the Urban Forester shall have the option in his/her sole discretion to determine that such damaged or dead tree shall not be removed/replaced, but shall continue to be preserved as a continuing and contributing part of the ecosystem within the Conservation Area. If, on the other hand, the Urban Forester determines in is/her sole discretion that the damage or loss should be redressed by requiring the replacement and/or restoration of any dead or damaged tree(s) in the Conservation Area, then the Applicant, his personal representatives, heirs, successors, and assigns shall replace and/or restore such trees in accordance with the first sentence of this paragraph. The determination of the Urban Forester in this regard shall be binding and conclusive upon the parties and may not be challenged by the Applicant, his personal representatives, heirs, successors, and/or assigns in any court proceeding that may be brought to enforce the terms of the Conservation Easement and/or these Development Conditions.
2. The Board and/or its agents shall have the right, but not the obligation, to enter onto the subject property at reasonable times for purposes of ensuring that the Tree Preservation Plan and/or the terms and conditions of the Conservation Agreement are being fulfilled.
3. The Board and/or its agents shall have the right, but not the obligation, to enter onto the subject property and take any and all actions that are necessary to restore the Conservation Area in the event that any trees in the Conservation Area are removed, disturbed, cut, destroyed, or otherwise harmed in whole or in part.
4. The Applicant, his heirs, successors, and assigns shall pay all costs associated with the restoration of the

Conservation Area in the event that any trees in the Conservation Area are removed, disturbed, cut, destroyed, or otherwise harmed in whole or in part (to include, without limitation, all costs associated with the removal of the trees and/or their roots and the payment of all costs associated with the replacement of any trees that are removed, disturbed, cut, destroyed or otherwise harmed), and shall indemnify and hold the Board harmless from any and all liability for such costs. If such costs are not timely paid to the Board within 30 days after presentation of an invoice for the same, they shall constitute a lien against the subject property.

5. The Applicant, his personal representatives, heirs, successors, and assigns shall promptly, in accordance with a schedule determined by UFMD, replace all trees in the Conservation Area that are removed, disturbed, cut, destroyed, or otherwise irreparably harmed with trees of a like species and diameter at breast height ("DBH") as required by UFMD. In the event that UFMD determines that it is not practicable, prudent or advisable for any reason to replace the trees in the Conservation Area with those of like species and/or DBH, then the Applicant, his personal representatives, heirs, successors, and assigns shall be responsible for planting such other and/or additional trees and/or other vegetation in the Conservation Area of such species and quantities as UFMD may direct to restore the tree canopy in the Conservation Area. All costs associated with such plantings shall be paid by the Applicant, his personal representatives, heirs, successors, assigns in accordance with these development conditions.
6. In the event that the Board must file a lawsuit to enforce these special exception conditions and/or the terms and conditions of the Conservation Easement, the baseline cost of any trees removed, disturbed, cut, destroyed, or otherwise harmed on the subject property shall be determined using the Trunk Formula Method contained in the latest edition of the Guide for Plant Appraisal published by the International Society of Arboriculture in accordance with the schedule approved by UFMD in accordance with paragraph 4, above, of these development conditions. The Location Factor of the Trunk Formula Method shall be based on projected post-development Contribution and Placements ratings. The Site Rating Component shall be equal to at least 80 percent. The baseline costs recoverable by the Board or the Board's assigned/named agent in any such proceeding for the trees set forth on this

schedule shall be subject to increase by the court to reflect inflation and the growth of the trees at the time of their removal, disturbance, cutting, destruction, or harm. To help ensure and facilitate enforcement of this Conservation Easement, should UFMD determine it is impractical or ill-advised to replant a tree (s) within the Conservation Easement area, due to lot size constraints, excessive canopy or any other reason, or should for any reason the value of a designated tree not be fully used in replanting trees on the subject lot, then the County may use excess funds for general replanting and environmental reforestation in the Dranesville District of Fairfax County, as voluntarily agreed to by the applicant on the record. The Board shall be authorized to assign an agent or agents (such as but not limited to the McLean Tree Foundation) to administer allocation of excess funds and identify locations within the Dranesville District for their use.

7. The Applicant, his personal representatives, heirs, successors, and assigns will hold harmless, indemnify, and defend the Board for all costs and liabilities of any kind related to the ownership, operation, upkeep, and maintenance of the Conservation Area, including the maintenance of comprehensive general liability insurance for the Conservation Area.
 8. The Board and/or the County shall not be considered an owner or owner/operator of the subject property for purposes of liability under the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA") (42 U.S.C. Chapter 103) or any similar state law.
 9. The Conservation Easement shall also set forth the agreement of the Applicant, his heirs, successors, and assigns to pay the County's attorney's fees and costs in the event that a lawsuit must be filed to enforce the terms of the Conservation Easement and a judgment is entered in that proceeding in favor of the County.
6. Tree Bond: A letter of credit, or a cash contribution equal to one half (50%) of the total monetary value of trees to be designated to be preserved as identified above shall be placed with the County. The Tree Bond letter of credit shall be prepared in a manner acceptable to the County Attorney naming the County as beneficiary to ensure the preservation, conservation, replacement, removal and/or treatment of the trees identified in the Tree Preservation Plan, and to ensure the undisturbed areas identified on the approved SE. The cash or Tree Bond shall be held by the County as a cash reserve that can be used by the

County to ensure the preservation, conservation, replacement, removal and/or treatment of the trees identified in the Tree Preservation Plan and as approved on the subdivision plan, and for work relating to the protection and management of undisturbed areas identified on the approved SE. If the applicant fails to complete any work identified in the approved subdivision plan, then the County may use cash or money from the Tree Bond to accomplish the required work. If the County must use all or part of the cash or Tree Bond to accomplish the outstanding work, then the applicant will replenish the cash or Tree Bond to its full amount. If the applicant fails to replenish the cash or Tree Bond to its full amount, then the cash or Tree Bond may be used by the County to replenish the Tree Preservation Deposit to its full amount. The cash/Tree Bond may be used by the County as described in the Tree Preservation condition, above. Any cash or funds remaining in the Tree Bond shall be released along with the project's final bond-release, or sooner, if approved in writing by UFMD, DPWES.

7. Tree Preservation Walk-Through. The Applicant shall retain the services of a certified arborist or landscape architect, and shall have the limits of clearing and grading marked with a continuous line of flagging prior to the walk-through meeting. During the tree-preservation walk-through meeting, the Applicant's certified arborist or landscape architect shall walk the limits of clearing and grading with an UFMD, DPWES, representative to determine where adjustments to the clearing limits can be made to increase the area of tree preservation and/or to increase the survivability of trees at the edge of the limits of clearing and grading, and such adjustment shall be implemented. Trees that are identified as dead or dying may be removed as part of the clearing operation if approved by UFMD. Any tree that is so designated shall be removed using a chainsaw and such removal shall be accomplished in a manner that avoids damage to surrounding trees and associated understory vegetation. If a stump must be removed, this shall be done using a stump-grinding machine in a manner causing as little disturbance as possible to adjacent trees and associated understory vegetation and soil conditions.
8. Limits of Clearing and Grading. The Applicant shall conform strictly to the limits of clearing and grading as shown on the Special Exception Plat, subject to allowances specified on the SE Plat, in these conditions and for the installation of utilities and/or trails as determined necessary by the Director of DPWES, as described herein. If it is determined necessary to install utilities in areas protected by the limits of clearing and grading as shown on the Special Exception Plat, they shall be located in the least disruptive manner necessary as determined by UFMD, DPWES. A replanting plan shall be developed and implemented, subject to approval by UFMD, DPWES, for any areas protected by the limits of clearing and grading that must be disturbed for such trails or utilities.
9. Tree Preservation Fencing: All trees shown to be preserved on the tree preservation plan shall be protected by tree protection fence. Tree protection fencing in the form of four (4) foot high, fourteen (14) gauge welded wire attached to six (6) foot steel posts driven eighteen (18) inches into the ground and placed no further than ten (10) feet apart or, super silt fence to the extent that required

trenching for super silt fence does not sever or wound compression roots which can lead to structural failure and/or uprooting of trees shall be erected at the limits of clearing and grading as shown on the demolition, and phase I & II erosion and sediment control sheets, as may be modified by the "Root Pruning" proffer below. All tree protection fencing shall be installed after the tree preservation walk-through meeting but prior to any clearing and grading activities, including the demolition of any existing structures. The installation of all tree protection fencing shall be performed under the supervision of a certified arborist, and accomplished in a manner that does not harm existing vegetation that is to be preserved. Three (3) days prior to the commencement of any clearing, grading or demolition activities, but subsequent to the installation of the tree protection devices, the UFMD, DPWES, shall be notified and given the opportunity to inspect the site to ensure that all tree protection devices have been correctly installed. If it is determined that the fencing has not been installed correctly, no grading or construction activities shall occur until the fencing is installed correctly, as determined by UFMD, DPWES.

10. Root Pruning and Mulching: The Applicant shall root prune and mulch, as needed to comply with the tree preservation requirements of these conditions. All treatments shall be clearly identified, labeled, and detailed on the erosion and sediment control sheets of the subdivision plan submission. The details for these treatments shall be reviewed and approved by UFMD, DPWES, accomplished in a manner that protects affected and adjacent vegetation to be preserved, and may include, but not be limited to the following:
 - Root pruning shall be done with a trencher or vibratory plow to a depth of 18 inches.
 - Root pruning shall take place prior to any clearing and grading, or demolition of structures.
 - Root pruning shall be conducted with the supervision of a certified arborist.
 - Immediately after the phase II E&S activities are complete, mulch shall be applied at a depth of 3 inches within designated areas without the use of motorized equipment.
 - Mulch shall consist of wood chips, shredded hardwood and/or pine bark mulch. Hay or straw mulch shall not be used within tree preservation areas.
 - An UFMD, DPWES, representative shall be informed when all root pruning and tree protection fence installation is complete.
11. Site Monitoring. During any clearing or tree/vegetation/structure removal on the Applicant Property, a representative of the Applicant shall be present to monitor the process and ensure that the activities are conducted in conformance with these conditions and as approved by UFMD. The Applicant shall retain the services of a certified arborist or landscape architect to monitor all construction and demolition work and tree preservation efforts in order to ensure conformance with all tree preservation proffers, and UFMD approvals. The monitoring schedule shall include once weekly inspections during phase I activities and once monthly inspections during phase II activities. This schedule shall be described

and detailed in the Landscaping and Tree Preservation Plan, and reviewed and approved by UFMD, DPWES.

12. A letter of permission from the owner(s) of Tax Map Parcel 41-1 ((8)) 11 (1944 Virginia Avenue) for the removal of Tree #6, as depicted on the SE Plat, shall be submitted to DPWES for review and approval at the time of Subdivision plan review. No plan, plat, or permit shall be approved authorizing the tree's removal until said Subdivision plan is approved.
13. Stormwater Management (SWM) and Best Management Practices (BMP) measures may be provided in infiltration trenches as shown on the SE Plat as determined by DPWES. These trenches shall be privately maintained. If a modification of the Public Facilities Manual (PFM) to permit the proposed stormwater management/best management practices as shown on the SE Plat is not granted by DPWES and SWM/BMP facilities in substantial conformance with the SE Plat cannot be provided, then a Special Exception Amendment (SEA) shall be filed to provide water quantity and quality control measures in accordance with the PFM as determined by DPWES. Prior to record plat approval, residential covenants shall be recorded in the County Land Records which disclose to the existing and all subsequent property owners the maintenance obligations of the infiltration trenches.
14. Adequate outfall shall be demonstrated in accordance with the PFM, as determined by DPWES, at the time of Subdivision plan review.
15. The driveways serving Lot 1A1 and Lot 1A2 shall be composed of porous pavement and/or pavers.
16. Garages shall be designed to accommodate two (2) vehicles. A covenant shall be recorded in the land records of Fairfax County which provides that garages shall only be used for a purpose that will not interfere with the intended purpose of garages (i.e., the parking of vehicles). This covenant shall be recorded among the land records of Fairfax County in a form approved by the County Attorney prior to the sale of any lots and shall inure to the benefit of Fairfax County. Initial purchasers shall be advised of the use restriction prior to entering into a contract of sale.
17. All proposed dwellings shall be required to qualify for the Energy Star Qualified Homes designation.

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. The applicant shall be responsible for obtaining the required Residential Use Permit through established procedures, and this Special Exception shall not be valid until this has been accomplished.

Pursuant to Sect. 9-015 of the Zoning Ordinance, this special exception shall automatically expire, without notice, thirty (30) months after the date of approval unless the use has been established as evidenced by commencement of construction on one of the dwelling units for either of the proposed lots. The Board of Supervisors may grant additional time to establish the use or 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 exception. 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.