



# County of Fairfax, Virginia

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

June 19, 2009

Pat Gallagher  
Long and Foster Realtors  
150 Elden Street, Suite 130  
Herndon, VA 20170

Re: Interpretation for RZ/FDP 2005-DR-009, Winchester Homes (McLean Glen), Tax Map Parcel 29-1 ((1)) 33: Use of Existing House

Dear Ms. Gallagher,

This is in response to your letter of January 13, 2009, requesting an interpretation of the proffers, the Conceptual Development Plan (CDP)/Final Development Plan (FDP), and the development conditions all approved in conjunction with the approval of RZ/FDP 2005-DR-009. As I understand it, you have been marketing Lot 33, which is developed with one dwelling, and you have asked for determinations of how the property and the dwelling may be used and what limitations are placed upon it by the rezoning. This determination is based on your letter, the Zoning Ordinance, and coordination with the Zoning Administration Division (ZAD). Copies of your letter and relevant exhibits are attached.

On June 5, 2006, the Board of Supervisors approved Rezoning RZ 2005-DR-009, subject to proffers, to rezone the 8.11 acre property from the R-1 District to the PDH-3 District to permit nineteen (19) single-family detached dwellings. The rezoning was a consolidation of 13 parcels of land, and included a portion of Gordon Lane and Odrick's Lane to be vacated and/or abandoned. You have indicated that the developer no longer plans to develop the property and, therefore, did not execute the contracts to purchase the properties included in the consolidation. However, all of those properties are now governed by the proffers, the CDP/FDP, and the development conditions that were approved as part of the rezoning.

As I understand it, Lot 33, which is the subject of your inquiry, is developed with one dwelling and a garage. County tax records show that the house was built in 1944 and was remodeled in 1982. The tax records also show that the property was sold in 2008 to Anna Maria Espino who I understand has also contacted this office with inquiries about the permitted uses and restrictions that are applicable to the property.

The subject property is now zoned PDH-3 and its use is governed by the proffers, the CDP/FDP, and the development conditions that were approved with the rezoning. The zoning of a property runs with the

land in perpetuity unless it is amended by action of the Board of Supervisors. Therefore, according to Article 20 of the Zoning Ordinance, the existing dwelling on Lot 33 is considered "nonconforming" because it is a building that lawfully existed on the site at the time of the effective date of the Ordinance, but does not conform with the regulations of the zoning district in which it is located. The Zoning District in which the dwelling is located is now PDH-3. The only conforming use for the property would be one unified development that conforms with the approved CDP/FDP. Parcel 33 is shown in the area of the site that is to be developed with a stormwater management facility for the site.

Paragraph 1 of Sect. 15-103 of the Zoning Ordinance, Regulations Controlling Other Non-Conforming Uses, is applicable to this property and states:

*"Any nonconforming use, other than those specified in Sect. 102 above, may be continued but shall not be enlarged or extended, nor shall any structural alteration be made in any building in which such use is conducted, except (a) as may be permitted by the Board in accordance with Sect. 9-619, or (b) as shall be permitted where any modification to an existing nonconforming building or use is to provide an accessibility improvement."*

Section 9-619, referenced above, addresses the circumstances under which the Board of Supervisors may approve a special exception to permit minor modifications to a nonconformity. This Section is not applicable to this property; however, I have attached a copy of the Section for your information.

Both you and the current owner of the property have asked a number of questions regarding the use of the property, which I have listed below and will address in the order presented. The questions are as follows:

1. May the existing dwelling be razed and a new one built?
2. May there be additions to the dwelling?
3. May the garage be converted to additional residential space, perhaps for an apartment?
4. May the house be remodeled or renovated?

Construction of a new dwelling on the property would not be in conformance with the approved PDH-3 Zoning District and, as a nonconforming use, would not be permitted by Par. 1 of Sect. 15-103 cited above. Additions, which are structural alterations, are not permitted by Par. 1 of Sect. 15-103. Similarly, conversion of the garage to occupied space would not be permitted because it would be a structural alteration. In addition, the property is zoned for single-family use which would not permit the addition of dwellings to a developed lot. The dwelling may be maintained and renovated as long as the renovation does not include structural alterations. All repairs necessary to maintain the dwelling and the garage in good condition may be made.

The other Zoning Ordinance provision that is applicable to this property is Paragraph 6 of Sect. 15-103, which states that if a nonconforming single-family detached dwelling is destroyed or damaged by any casualty other than a natural disaster or an act of God it may be reconstructed within two (2) years after the aforesaid destruction or damage so as to occupy the same space that it occupied prior to such destruction or damage to any part thereof.

It is my determination that to obtain relief from the Zoning Ordinance restrictions that apply to the properties that were included in the rezoning, Board of Supervisors' approval of a proffered condition amendment concurrent with a final development plan for an alternative interim site design, or an application to rezone the entire property from the PDH-3 District back to the R-1 District or another zoning district would be required.

This determination has been coordinated with the Zoning Administration Division and has been made in my capacity as the duly authorized agent of the Zoning Administrator. If you have any questions regarding this interpretation or the application submission procedures, please feel free to contact Mary Ann Godfrey at (703) 324-1290.

Sincerely,



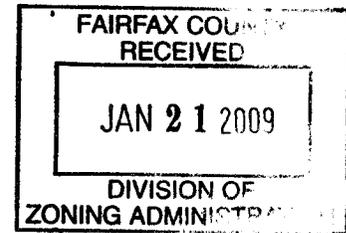
Regina C. Coyle, Director  
Zoning Evaluation Division, DPZ

O:\mgodfr\Proffer Interpretations PI\Winchester Homes (RZ 2005-DR-009) existing house uses.DOC

Attachments: A/S

cc: John Foust, Supervisor, Dranesville District  
Jay Donahue, Planning Commissioner, Dranesville District  
Diane Johnson Quinn, Deputy Zoning Administrator, ZAD, DPZ  
Kenneth Williams, Plan Control, Land Development Services, DPWES  
Angela Rodeheaver, Chief, Site Analysis Section, DOT  
Jack Weyant, Director, Environmental and Facilities Inspection Division, DPWES  
Anna Maria Espino, 8341 Lewinsville Road, McLean, VA 22102  
Kevin J. Guinaw, Chief, Special Projects/Applications Management Branch, DPZ  
File: RZ 2005-DR-009, PI 0901 006, Imaging, Reading File

*Pat Gallagher  
Long and Foster Realtors  
150 Elden St., Suite 130  
Herndon, Va 20170*



*2009-0023*

January 13, 2009

Zoning Administrator  
12055 Government Center Parkway, Suite 807  
Fairfax, Virginia 22035

Re: 8341 Lewinsville Rd., McLean, Virginia 22102

I will be listing the above property for sale and I would like to know what restrictions will apply in regards to zoning for a potential buyer. Can the existing home be razed and a new home built; can the existing home be added on to, etc.?

I know that Winchester assembled some of the properties in this neighborhood and had it re-zoned from R-1 to PDH3 and the plan was never implemented.

Any information you can give me will be most helpful to better market this property in an informative and helpful way.

You can either mail the response to Pat Gallagher, Long and Foster, 150 Elden St., Suite 130, Herndon, VA 20170; fax to 703-904-7201 Attn: Pat Gallagher; or e-mail to [pat.gallagher@lnf.com](mailto:pat.gallagher@lnf.com).

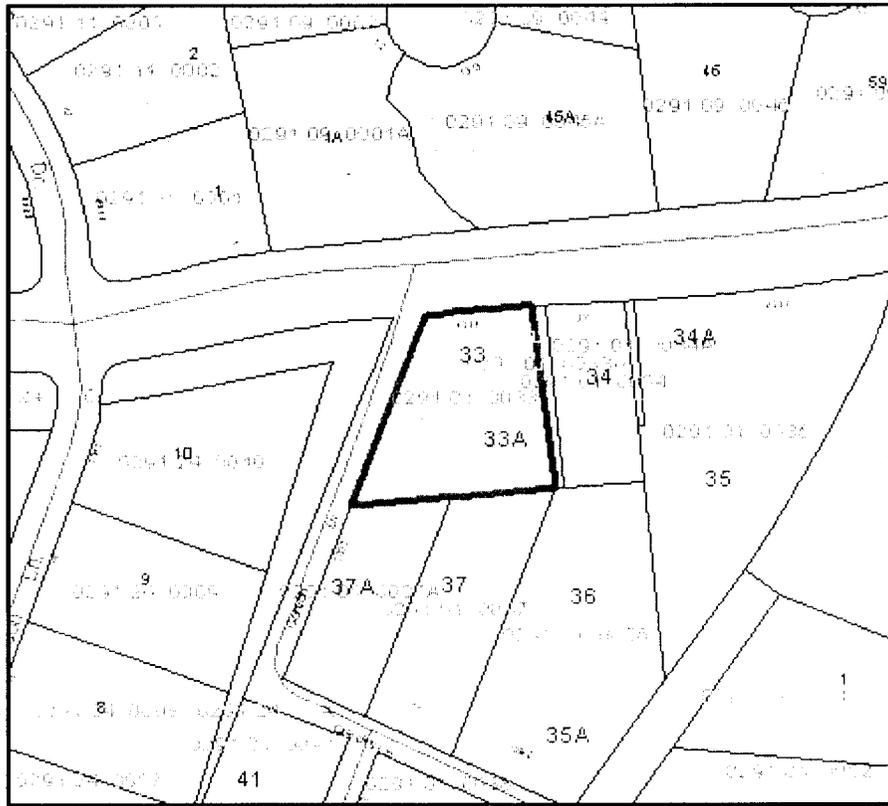
Thanking you in advance for a speedy reply,

A large, stylized handwritten signature in cursive that reads "Pat Gallagher".

Pat Gallagher  
Long and Foster Realtors

MAP #: 0291 01 0033  
ESPINO ANA MARIA

8341 LEWINSVILLE RD



Aerial Imagery © 2002 Commonwealth of Virginia  
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Source: Fairfax County Department  
of Tax Administration, Real Estate Division.