



County of Fairfax, Virginia

MEMORANDUM

DATE: October 7, 2010

TO: Ray Pylant,
Building Official, DPWES

FROM: 
Regina C. Coyle, Director
Zoning Evaluation Division
Department of Planning and Zoning

SUBJECT: Proffer Interpretation for SEA 2002-MV-028; Crabtree

This is in response to recent staff inquiries regarding the conformance of the dock/pier proposed to be constructed at 8019 East Boulevard with the approved Special Exception applicable to the site. The proposed dock is the subject of the stop work order issued on September 24, 2010. Since that time the applicant's agent has submitted sufficient information regarding the proposed dock to allow for a determination as to whether the proposed structure is in substantial conformance with Special Exception Amendment (SEA) 2002-MV-028 and the associated development conditions. This determination is based upon the record of SEA 2002-MV-028 approved by the Board of Supervisors on June 4, 2007, information submitted by the property owner's agent in a letter dated October 1, 2010 and an exhibit provided by the agent via e-mail on October 5, 2010. These documents are attached hereto for reference.

The exhibit depicts the dock structure located within the Potomac River with access from the shoreline of 8019 East Boulevard. The access is located in an area shown on the approved SEA plat as a lawn beach area. Par.4 of Section 9-004 of the Zoning Ordinance allows for minor modifications to an approved Special Exception upon a determination that the modification is in substantial conformance with the approved special exception.

It is my determination that the proposed dock depicted on the attached exhibit provides access at the shoreline of the property to a permitted accessory use and as such is in substantial conformance with SEA 2002-MV-028. This determination has been made in my capacity as the duly authorized agent of the Zoning Administrator. If you have any questions about this determination, please feel free to contact me at 703-324-1290.

Attachments: A/S

cc: Gerald Hyland, Supervisor, Mount Vernon District
Earl Flanagan, Planning Commissioner, Mount Vernon District
Eileen McLane, Zoning Administrator
Pam Pelto, Assistant County Attorney
Diane Johnson Quinn, Deputy Zoning Administrator for Zoning Permit Review Branch
Kevin Guinaw, Chief, Special Projects/Applications Management Branch, ZED, DPZ
H. Jay Spiegel, H. Jay Spiegel & Associates, 8778 Thomas J. Stockton Pkwy, Alexandria, VA. 22308
File: SEA 2002-MV-028; SE 2002-MV-028, *Imagily*

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





County of Fairfax, Virginia

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

June 6, 2007

Lynne J. Strobel
Walsh, Colucci, Lubeley, Emrich & Walsh, P.C.
2200 Clarendon Boulevard, 13th Floor
Arlington, VA 22201

Re: Special Exception Amendment Application SEA 2002-MV-028

Dear Ms. Strobel:

At a regular meeting of the Board of Supervisors held on June 4, 2007, the Board approved Special Exception Amendment Application SEA 2002-MV-028 in the name of Scott A. and Phyllis P. Crabtree. The subject property is located at 8019 East Boulevard Drive on approximately 1.34 acres of land zoned R-2 in the Mount Vernon District [Tax Map 102-2 ((1)) 35A]. The Board's action amends Special Exception Application SE 2002-MV-028, previously approved for residential use in a floodplain, to permit a change in development conditions to clarify fill and elevations and associated modifications to site design pursuant to Section 2-904 of the Fairfax County Zoning Ordinance, 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 plat titled Special Exception Plat, and prepared by Dominion Surveys, Inc., which is dated August 19, 2005 and revised to March 9, 2007, and these conditions.
4. A Hold Harmless agreement shall be executed with the County for all adverse effects which may arise as a result of the location of the house and appurtenant structures within a floodplain area.

Office of Clerk to the Board of Supervisors
12000 Government Center Parkway, Suite 533
Fairfax, Virginia 22035

Phone: 703-324-3151 ♦ Fax: 703-324-3926 ♦ TTY: 703-324-3903
Email: clerktothebos@fairfaxcounty.gov
<http://www.fairfaxcounty.gov/bosclerk>

5. The limits of clearing and grading, as shown on the SEA shall be strictly observed and enforced. Any encroachment into or disturbance of the RPA not shown on the Plat is considered a violation of the CBPO and is subject to penalties of Article 9 of the CBPO.
6. The dwelling shall be constructed on pilings, as shown on the SEA Plat and shall be set at an elevation of sixteen (16) feet from the top of the first floor (NGVD 1929). The amount of fill permitted shall not exceed a maximum of 241.5 cubic yards. Trees and indigenous vegetation within the limits of clearing and grading shall be preserved on the site during the construction process to the maximum extent feasible as determined by the FM, DPWES.
7. If deemed necessary by DPWES, a geotechnical report shall be submitted to DPWES for foundation design and earthwork engineering. Plans shall be implemented as required by DPWES.
8. The applicant shall notify the US Army Corps of Engineers prior to the approval of a grading plan to ensure compliance with § 404 of the Clean Water Act. Any required wetlands permit shall be obtained prior to commencement of land disturbing activity.
9. As-built floor elevations for the residence shall be submitted in accordance with Section 3107.12.1 of the Virginia Uniform Statewide Building Code (VUSBC 1977) on a standard FEMA Elevation Certificate prior to approval of the framing inspection.
10. All construction shall be in conformance with Section 3107.0 Flood-Resistant Construction of the Virginia Uniform Statewide Building Code (VUSBC 1977). A statement certifying all floodproofing proposed, and indicating its compliance with all County, State, and Federal requirements shall be provided with the Building Permit application. This certification shall be signed, sealed, and indicate the address of the certifying professional and it shall cover all structural, electrical, mechanical, plumbing, water and sanitary facilities connected with the use.
11. Erosion and sediment control measures shall be installed at all stages of construction. Super-silt fence shall be required along the limits of any clearing and/or grading within the RPA, and shall remain in place, and be properly maintained, for the duration of the land disturbing activity within the RPA until such time that the disturbed area is completely stabilized as determined by the Environmental and Facilities Inspection Division site

inspector. No more land shall be disturbed than is necessary for the proposed construction within the RPA.

12. Stormwater drainage shall be directed to ditches through the use of pipes, swales, or other devices, as determined by DPWES. Any fill area shall be stabilized, graded, or have drains installed such that normal rainfall will not flow over unprotected fill area onto adjacent properties.
13. Disclosure of potential flood hazards due to the location of the site within the 100-year floodplain shall be made in writing to any potential home buyers prior to entering into a contract of sale.
14. All building supplies and construction equipment shall be located and stored only within the area designated as disturbed area on the SEA Plat.
15. The existing gravel turnaround located south of the existing driveway shall be removed and restored to a vegetated state, as depicted on the SEA Plat and as determined by DPWES.
16. The dwelling shall be limited to a maximum height of 35.0 feet.
17. An area equal in size to the disturbed area within the RPA shall be restored between the dwelling and the Potomac River, as defined by DPWES, and such area shall be planted with native plant species as determined by the Urban Forest Management Branch. The applicant shall provide plantings under and around the dwelling, as shown on the SEA Plat. No clearing, other than for dead or dying plants, shall be permitted between the dwelling and the Potomac River.
18. The existing carport shown to remain on the SEA Plat shall require a Special Exception Amendment to be enlarged or used for another purpose.
19. The area shown on the SEA Plat as an "existing Lawn Beach Area" shall remain undisturbed. Indigenous vegetation shall be preserved to the maximum extent possible. Additional plantings as indicated on the Landscape Plan shall be installed prior to issuance of a residential use permit.
20. To the extent possible, stable vegetation in the floodplain shall be protected and maintained as determined by DPWES.

June 4, 2007

21. There shall be no storage of herbicides, pesticides, or toxic or hazardous substances as set forth in Title 40, Code of Federal Regulations, Parts 116.4 and 261.30 et seq., within the floodplain.
22. All mechanical, electrical, and utility equipment shall be at or above the flood level.
23. When replaced, all of the driveway that is in the RPA shall be constructed of pervious materials, such as pervious asphalt or brick pavers.
24. The construction material stockpile areas shall be located in the areas of the existing dwelling to be removed and within the existing driveway turnaround area. These stockpile areas shall be restored with vegetation upon completion of construction on the lot.
25. Vegetated buffer areas shall be located in the areas shown on the Plat and shall be of a combined area of at least 10,520 square feet. The size, species and density shall be consistent with the planting requirements of CBPO 118-3-3(f). A minimum of 23 overstory trees, 45 understory trees and 250 shrubs with groundcovers shall be planted within the 10,520 square feet of buffer areas. Notwithstanding the statements in the application or the associated Water Quality Impact Assessment, the proposed vegetation may only be revised with written approval of the Director of the Department of Public Works and Environmental Services (DPWES).
26. A revised lot grading plan shall be submitted and approved by the Director of DPWES prior to issuance of a residential use permit. The lot grading plan shall address the revisions to the Special Exception Plat and the conditions contained herein.
27. Four (4) copies of a slope stability analysis, including plans depicting the current slope of the northern portion of the site shall be submitted to DPWES for review by the Geotechnical Review Board prior to the issuance of a residential use permit. The analysis shall be prepared in accordance with Article 4-0202 of the Public Facilities Manual (PFM) as determined by DPWES and certified by a licensed geotechnical engineer.

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 himself 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, twenty-four (24) months after the date of approval unless the use has been established or construction has commenced and been diligently prosecuted as evidenced by the issuance of a residential use permit. 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.

Sincerely,



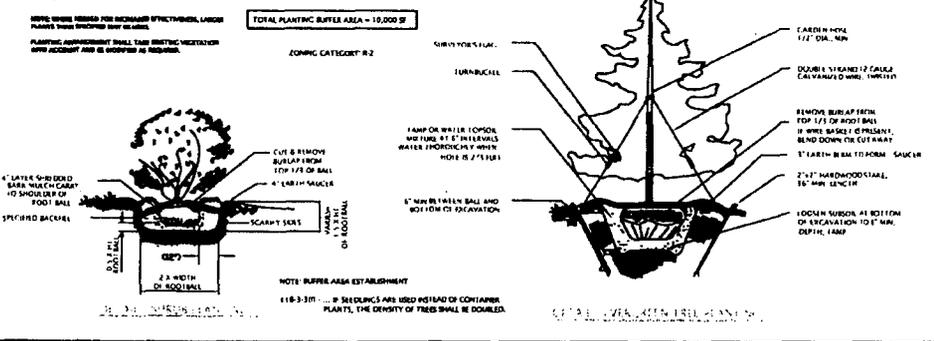
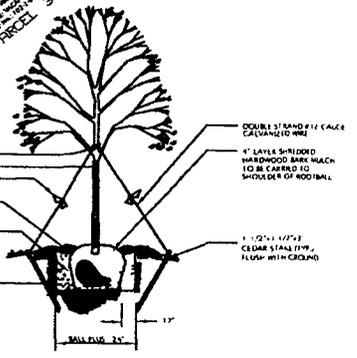
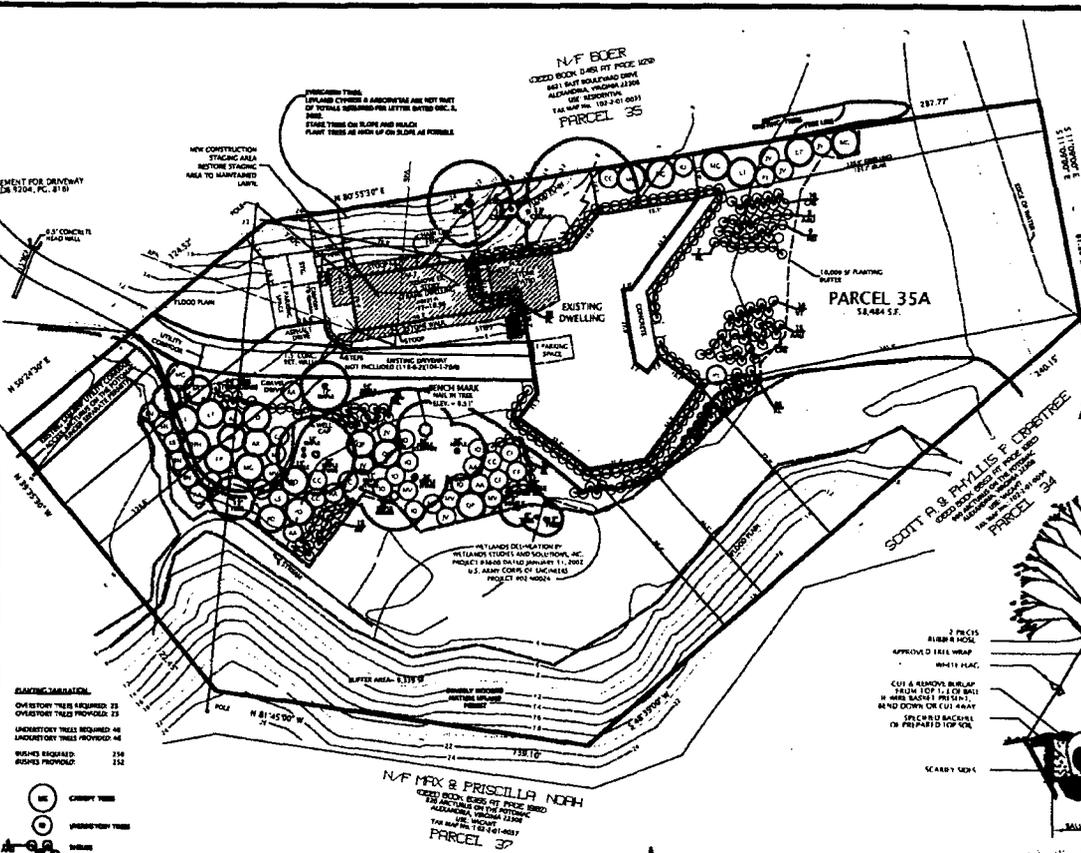
Nancy Vehrs
Clerk to the Board of Supervisors
NV/dms

Cc: Chairman Gerald E. Connolly
Supervisor Gerry Hyland, Mount Vernon District
Janet Coldsmith, Director, Real Estate Division, Dept. of Tax Administration
Regina Coyle, Director, Zoning Evaluation Division, DPZ
Diane Johnson-Quinn, Deputy Zoning Administrator, Dept. of Planning and Zoning
Thomas Conry, Dept. Manager. -- GIS - Mapping/Overlay
Angela K. Rodeheaver, Section Chief, Transportation, Planning Division
Ellen Gallagher, Capital Projects and Operations Div., Dept. of Transportation
Audrey Clark, Director -- Building Plan Review, DPWES
Ken Williams, Plans & Document Control, ESRD, DPWES
Department of Highways-VDOT
Sandy Stallman, Park Planning Branch Manager, FCPA
Charlene Fuhrman-Schulz, Development Officer, DHCD/Design Development Division
District Planning Commissioner
Barbara J. Lippa, Executive Director, Planning Commission
Jose Comayagua, Director, Facilities Management
Gary Chevalier, Office of Capital Facilities/Fairfax County Public Schools
Dale Castellow, Chief Capital Projects Sections, Dept. of Transportation

TREE COVER CALCULATIONS

- TOTAL SITE AREA 58,484 SF
- AREA OF FLOODPLAIN 48,829 SF
- ADJUSTED SITE AREA 10,655 SF
- REQUIRED PERCENT (10, 15, 20) 9.20
- TREE COVER PROVIDED 2,093 SF
- EXISTING TREE COVER AREA (1.23) 28,199 x 1.23 = 34,685 SF
- TREE COVER TO BE PROVIDED BY PLANTING TREES 9,550 SF
- TREE COVER PROVIDED 41,949 SF
- EXCESS TREE COVER 42,916 SF

SYMBOL	BOTANICAL NAME	COMMON NAME	QUANTITY	CALIPER	HEIGHT	TREE COVER CALC	COND.	REMARKS
CANOPY TREES								
AK	ACER RUBRUM	RED MAPLE	1	2"	8'-0"	200 SF	888	
AC	FRAXINUS AMERICANA	AMERICAN BEECH	1	2"	8'-0"	200 SF	888	DEEP LEAVES IN WHITE
AP	PERNYSTYANICA	GREY PIN	1	2"	8'-0"	200 SF	888	
AL	LIRIODENDRON TOURNEFORTII	TULIP POPLAR	4	2"	8'-0"	200 SF	888	
AC	FRAXINUS AMERICANA	AMERICAN BEECH	5	2"	8'-0"	200 SF	888	EVAPORATION
QP	QUERCUS PALUSTRIS	PINE OAK	5	2"	8'-0"	200 SF	888	DEEP LEAVES IN WHITE
PO	PLATANUS OCCIDENTALIS	STICKLE	4	2"	8'-0"	200 SF	888	
QPH	QUERCUS PHellos	WILLOW OAK	1	2"	8'-0"	200 SF	888	
UNDERSTORY TREES								
LS	SWEETGUM	LIGNUM AMER. STYRACIN	2	2"	5'-0"	100 SF	888	
AA	AMELANCHIER ALBIFLORA	DOHNEY	8	2"	5'-0"	100 SF	888	
IV	AMPHIPEL	NORTHERN RED CEDAR	7	2"	5'-0"	100 SF	888	
BR	BETULA ALBA	WHITE BIRCH	4	2"	5'-0"	100 SF	888	
PT	PIPER	LOBLOLLY PINE	2	2"	5'-0"	100 SF	888	
CC	CARPINUS CAROLINENSIS	AMERICAN HORNBEAM	8	2"	5'-0"	100 SF	888	
HO	ORNITHOCEPHALUS	AMERICAN HOLLY	8	2"	5'-0"	50 SF	888	EVAPORATION
MA	MACHONIA VINCIGRANA	SWEETBAY	8	2"	5'-0"	150 SF	888	
CF	MACHONIA VINCIGRANA	BITTERNUT	3	2"	5'-0"	150 SF	888	
SHRUBS, PLANTS AND GROUND COVER								
AM	ARONICA ARISTIFOLIA	RED CHEERLEAF	24			42 CONT.		
CAS	CORNUS ALBA	SHRUB DOGWOOD	18			42 CONT.		RED STEMS IN WHITE
SL	SALIX LANCEOLATA	MOUNTAIN SALIX	24			42 CONT.		
MP	PERNYSTYANICA	NORTHERN RED CEDAR	19			42 CONT.		
PL	PERNYSTYANICA	SPICEWOOD	90			42 CONT.		
VT	VERONICA	VERONICA	10			42 CONT.		
NO	NOCTURNAL	NANDINA	8			42 CONT.		



LANDSCAPE PLAN ON #8019 EAST BOULEVARD DRIVE (DB 9204, PG 814) MOUNT VERNON DISTRICT FAIRFAX COUNTY, VIRGINIA SCALE: 1"=20' AUGUST 19, 2005 SEPTEMBER 22, 2006 (REVISED) MARCH 9, 2007 (REVISED)

SEA-2002-MV-028

DOMINION Surveyors Inc.

8019 EAST TRILLIUM COURT ALEXANDRIA, VIRGINIA 22304 703-819-8315 FAX 703-799-4412

03/09/2007 GEORGE H. OGDEN LICENSE NO. 2008

SHEET 2 OF 2

FILE NO 101-2 60823001

LAW OFFICES OF

H. JAY SPIEGEL & ASSOCIATES

GENERAL CAUSES &

PATENT, TRADEMARK & COPYRIGHT CAUSES

SPIEGEL'S LANDING

8778 THOMAS J. STOCKTON PARKWAY
ALEXANDRIA, VIRGINIA 22308

MAIL ADDRESS: P.O. BOX 11
MOUNT VERNON, VIRGINIA 22121-0011

PARIS CORRESPONDENT
LANGER-NETTER-ADLER
53 AVENUE DE BRETEUIL
PARIS 75007 FRANCE
PHONE: 45 67 01 23
FACSIMILE: 45 67 33 86

D.C. BAR
VIRGINIA BAR
PATENT BAR
PHONE: (703) 619-0101
FAX: (703) 619-0110
WIRELESS: HJS@SPIEGELAW.COM
WWW.SPIEGELAW.COM
E-MAIL: JAYSPIEGEL@AOL.COM

October 1, 2010

Mr. Ray Pylant
Building Official
Fairfax County DPW & ES
Land Development Services
12055 Government Center Parkway
Suite 444
Fairfax, VA 22035

VIA HAND DELIVERY

Re: Scott and Phyllis Crabtree
8019 East Boulevard Drive
Alexandria, VA 22308
Tax Map No. 102-2((1))35A, 34

Dear Mr. Pylant:

We represent Scott and Phyllis Crabtree concerning the pier currently under construction in the riparian area in the Potomac River behind the above-referenced property. On September 29, 2010, reversing a longstanding County policy regarding piers to be constructed in Maryland waters, you issued a STOP WORK ORDER (the Order) in which you required a response within three working days, the deadline being Monday, October 4, 2010. The Order demands that the Crabtrees elect to either accept or reject the terms of the Order. We are writing on behalf of the Crabtrees to inform you that the Crabtrees will comply with item nos. 1, 3, 4 and 5, but are unable to comply with item no. 2 and, as such, request that that item be withdrawn as will be explained in greater detail below.

Concerning the five required corrective actions, we note the following using the same numbering:

1. All construction activity has been ceased concerning the pier.

2. This item requires the Crabtrees to “Obtain approval from the Virginia Marine Resources Commission [VMRC] for your planned pier construction.” Based upon the current policy of the VMRC, it will not be possible to obtain the “approval” required by Fairfax County. We also question the County’s authority to require approval of the VMRC as a condition precedent to the County’s issuance of a building permit which solely covers structural issues, not pier location and dimensions. In particular, in 2009, the Crabtrees submitted a Permit Application with the VMRC. The application was typical of numerous applications filed by their contractor Triple Crown Marine and typically results in a letter from the VMRC indicating that no permit is required because the proposed pier complies with the requirements that it not exceed 300 feet in length, 6 feet in width, or 400 square feet at its distal end. The Crabtrees’ proposed pier also complies with all of these requirements.

When their neighbors, the Boers, learned of the Permit Application, they telephoned an official of the VMRC and informed them that they were alleging the Crabtrees’ pier was proposed to be located within the riparian area owned by the Boers. To back up this allegation, the Boers submitted to the VMRC a hand drawing showing what they considered to be the riparian rights line between their property and the property of the Crabtrees drawn in by hand. I have attached a copy of that hand drawing as Exhibit 1 hereto and note that this hand drawing falls far short of anything that would be admissible in any Court as evidence of a riparian rights line. I also note that the Boers have not served the Crabtrees any law suit filed in any Court concerning the riparian rights issue.

The VMRC has an internal policy that you can verify by telephoning Elizabeth Murphy’s Supervisor, Tony Watkinson, at 757-247-2250, that if a riparian rights dispute is even alleged, the VMRC will not issue its typical “no permit required” letter. As such, on August 31, 2009, the VMRC sent Mr. Crabtree a letter (see Exhibit 2) identifying the riparian rights dispute alleged by Mrs. Boer and stating the following:

“Accordingly, a formal riparian apportionment will be necessary before we will be able to assure that your current request qualifies for the private pier exemption provided in Section 28.2-1203(5) of the Code of Virginia. If you are able to show that your proposed private pier will be wholly within your legally apportioned riparian area, your request may satisfy the criteria for the exemption provided in the Code. Until that time, however, we plan to withhold any further action on your request and inactivate your file.”

Exhibit 3 attached hereto is a copy of a riparian rights survey that was conducted by George M. O’Quinn of Dominion Surveyors, Inc. Mr. O’Quinn’s survey used as a line of navigation the six foot contour line shoreward of the main shipping channel of the Potomac River established by the United States National Oceanographic and Atmospheric Administration (NOAA) on their chart no. 12289, the most recent edition of which (49th edition) was published

in June 2005. The survey was created in accordance with the requirements of the well known 1897 Virginia Supreme Court case *Groner v. Foster*, 94 Va. 650 (1897). The result of that survey is that the riparian rights line between the Boer and Crabtree properties is offset from the extension of their common property line by 4° 48' 49". To avoid any possibility of a riparian rights dispute, the Crabtrees intend to construct their pier at least 3 feet to their side of a 6° offset from the extension of the common property line such that at its end, it is spaced about 13 feet to their side of the riparian rights line and about 35 feet from the extension of their common property line. Accordingly, the Crabtrees have a reasonable basis to believe their pier will be constructed within their own riparian rights area based upon information provided to them by Mr. O'Quinn who is well known and well respected by County Staff.

During our telephone conversation on September 29, 2010, you informed me that the County wishes to avoid getting in the middle of a civil dispute between the Crabtrees and Boers. However, by making a requirement the Crabtrees cannot meet due to the internal policy of the VMRC, the County is doing just that. As you should understand, the Boers, by making a telephone call to the VMRC and submitting a rough sketch devoid of all documentation, have been able to prevent the Crabtrees from obtaining the "no permit required" letter they would have otherwise been able to receive. The County, by requiring the Crabtrees to provide a letter they are unable to provide for the reasons set forth above is, in effect, allowing the Boers to stop the Crabtrees from constructing their pier without even having filed a civil action or providing any credible proof of their claim. Of course, as explained above, the County permit has nothing whatsoever to do with the pier location or its dimensions. Accordingly, we demand that the County withdraw its requirement that the Crabtrees provide a letter of approval from the VMRC. If the County refuses to do so, the Crabtrees will have no choice but to sue the County and ask the Virginia Circuit Court to direct the County to withdraw the requirement.

3. Attached to this letter as Exhibit 4 is a Water Quality Impact Assessment for the subject pier, typical of those customarily approved by the County. We request that it be immediately accepted.

4. The County has required that the Crabtrees:

"obtain a favorable determination from the Fairfax County Department of Planning and Zoning, Zoning Evaluation Division, that the planned construction is in substantial conformance with the approved Special Exception Amendment for the cited property."

In this regard, please find attached as Exhibit 5 a copy of a letter obtained from George M. O'Quinn and a copy of the Special Exception development conditions dated April 12, 2007, confirming that there is nothing in the Special Exception Amendment that restricts the Crabtrees from being able to construct a pier from their shoreline into the Potomac River.

5. The County has also required that the Crabtrees apply for and obtain “the prescribed USBC permit(s) for your planned pier construction.” In this regard, submitted herewith as Exhibit 6 is a plan stamped by a licensed engineer showing the structural details of the proposed pier construction. We again note that based upon complaints by the Crabtrees’ neighbor, Mrs. Boer, the County has reversed its longstanding policy of not requiring landowners whose riparian rights are located in Maryland to obtain a County building permit. In fact, under that very policy, the Boers constructed a 100 foot extension of their pier. Under these circumstances, we request that you promptly review the particulars of the building permit application and provide the County’s approval forthwith.

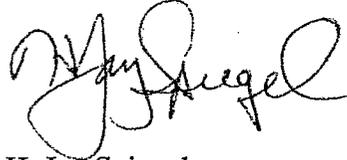
The Crabtrees have been victimized by the County’s willingness to entertain every complaint the Boers have lodged against the Crabtrees since they commenced the process of constructing their home at least five years ago. Hundreds of complaints have been lodged by the Boers and fewer than a handful have ever been substantiated, yet the County continues to allow itself to be used by the Boers as an instrument of harassment. This latest incident is truly the last straw. The Crabtrees have consistently taken the high road in the face of the Boers’ relentless campaign against them and have never once made a complaint against the Boers even though there is ample justification to have done so on more than one occasion. The Crabtrees have been taxpaying citizens of Fairfax County for over 30 years, and operate an extremely successful business with numerous facilities in the County. They have never asked for the special treatment they may very well deserve, only that they be treated fairly and impartially by County officials. It is nothing short of astounding to the Crabtrees that the County Staff appears to have no ability to filter the numerous false complaints lodged by the Boers. We understand that when Mrs. Boer perceives she will not quickly get her way with County officials, she often starts crying and/or claims that she is terminally ill to obtain sympathy. Since the County appears unwilling or unable to have the good judgment to determine that it is being used by the Boers purely as an instrument of harassment, the Crabtrees will soon have little choice but to commence legal proceedings against the Boers and perhaps the County for its unwillingness to responsibly protect one family from harassment by another.

Summarizing, by this letter, the Crabtrees have complied with corrective action nos. 1, 3, 4 and 5, and have explained why it is not possible to comply with corrective action no. 2. We accordingly request that the County quickly indicate (1) that the Water Quality Impact Assessment is accepted, (2) that the proposed pier does not violate the approved Special Exception Amendment, (3) that the building permit is granted, and (4) that the Crabtrees may immediately continue with construction of their pier.

I want these issues to be resolved by the close of business on Friday, October 8, 2010.

Very truly yours,

H. JAY SPIEGEL & ASSOCIATES

A handwritten signature in black ink, appearing to read "H. Jay Spiegel". The signature is fluid and cursive, with the first name "H. Jay" written in a smaller, more compact script than the last name "Spiegel", which is written in a larger, more prominent cursive style.

H. Jay Spiegel

HJS:tg
Enclosures

cc: Triple Crown Marine (w/out encls., hand delivery)
Tony Watkinson (w/out encls.)
Eileen M. McLane (w/out encls.)
Regina Coyle (w/out encls.)
Jerry Stonefield (w/ Water Quality Impact Assessment)
Debra K. McMahon (w/out encls.)
Pamela Pelto (with encls., hand delivery)
The Honorable Gerald M. Hyland (w/out encls., via facsimile)

Exhibit 5



Servicing your local land surveying needs

8808-H Pear Tree Village Ct.
Alexandria, VA 22309
703.619.6555 fax: 703.799.6412
www.dominionsurveyors.com

September 30, 2010

H. Jay Spiegel, Attorney
P.O. Box 11
Mount Vernon, VA 22121

RE: 1019 East Boulevard Drive
Tax Map Parcel ID No.: 102-2-01-0035-A
Scott & Phyllis Crabtree
SEA-MV-028

Subject: Development Conditions

Dear Mr. Spiegel,

The purpose of this letter is to respond to your inquiry as to whether the development conditions contained in SEA-MV-028 contain language regarding limitations on docks or riparian rights.

I have reviewed the development conditions, the special exception plat and the motion verbatim and can find no language or limitation regarding docks or riparian rights.

Regards,

A handwritten signature in cursive script that reads "George M. O'Quinn".

George M. O'Quinn, L.S.
President
Dominion Surveyors, Inc.



APPLICATION FILED: September 30, 2005
ORIGINAL PLANNING COMMISSION HEARING: May 18, 2006
CURRENT PLANNING COMMISSION HEARING: April 26, 2007
BOARD OF SUPERVISORS: Not Yet Scheduled

County of Fairfax, Virginia

April 12, 2007

STAFF REPORT ADDENDUM II

APPLICATION SEA 2002-MV-028 and
Resource Protection Area (RPA) Encroachment Request #15043-WRPA-002-1

MOUNT VERNON DISTRICT

APPLICANTS: Scott A. and Phyllis P. Crabtree

ZONING: R-2

PARCEL(S): 102-2 ((1)) 35A

ACREAGE: 58,484 square feet (1.34 acres)

PLAN MAP: Residential; 2-3 du/ac

SE CATEGORY: Category 6; Uses in a Floodplain

PROPOSAL: Amendment to SE 2002-MV-028 previously approved to allow construction of a single-family detached residential structure within a 100 year floodplain to permit site modifications and changes to the development conditions.

STAFF RECOMMENDATIONS:

Staff recommends approval of SEA 2002-MV-028 subject to the proposed development conditions contained in Appendix 1 of this addendum.

O:\gchase\Crabtree\Crabtree Staff Report Adendum II.doc

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/

Staff also recommends approval of Resource Protection (RPA) Encroachment Request #15043-WRPA-002-1 subject to the imposition of the proposed RPA exception conditions dated March 30, 2007 contained in the Resource Protection (RPA) Encroachment Staff Report included as Appendix 8 of this Addendum and subject to the approval of SEA 2002-MV-028.

It should be noted that it is not the intent of staff to recommend that the Board, in adopting any conditions proffered by the owner, relieve the applicant/owner from compliance with the provisions of any applicable ordinances, regulations, or adopted standards.

It should be further noted that the content of this report reflects the analysis and recommendation of staff; it does not reflect the position of the Board of Supervisors.

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

For information, contact the Zoning Evaluation Division, Department of Planning and Zoning, 12055 Government Center Parkway, Suite 801, Fairfax, Virginia 22035-5505, (703) 324-1290.



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).

BACKGROUND

The applicants, Scott A. and Phyllis P. Crabtree, request to amend the previously approved SE 2002-MV-028 which permitted construction of a single-family detached home on a 1.34 acre residential lot within a 100 year floodplain and Resource Protection Area (RPA). The application proposes to amend the approved Special Exception to clarify development condition number 8 accepted pursuant to the approval of the aforementioned special exception. The development condition allowed 11 cubic yards of fill required to support construction of an elevator platform. The proposed dwelling is under construction and is substantially complete. The SEA plat indicates that 241.5 cubic yards of fill was used for the construction of an existing elevator shaft, stairwell and 4,700+ square foot concrete slab. The 4,700+ square foot concrete slab was not shown on the previously approved special exception plat. The purpose of the application is to reflect this change in fill area and to acknowledge as-built conditions of the site and structure.

On April 11, 2006, the Staff Report for SEA 2002-MV-028 was published. In this report, staff concluded that with the imposition of the proposed development conditions contained in Appendix 1 of the staff report, which includes conditions that require the removal of the existing carport and the provision of additional plantings in the "lawn beach area", the additional disturbance on the site and intrusion into the RPA caused by the additional fill would be effectively mitigated and that the subject application was in harmony with the Comprehensive Plan and in conformance with the applicable Zoning Ordinance provisions and thus recommended approval of the application.

DISCUSSION

At the Planning Commission public hearing on SEA 2002-MV-028 held on May 18, 2006, several issues were raised which required additional information from the applicant. On that date the case was deferred for decision only until May 31, 2006 (see Appendix 2).

The decision was subsequently deferred to June 14, 2006, at which time an addendum to the staff report was published which included revisions to the development conditions. These included deletion of previously proposed development condition number 5 which required the recordation of an ingress egress access easement across Tax Map 102-2 ((1)) 35. This easement has been acquired and verified by the applicant. Previously proposed development condition number 19 which would make the Special Exception null and void if the necessary easements to extend sanitary sewer to the site were not acquired was also deleted. This easement has also been acquired and verified by the applicant.

Several other development conditions were modified including a modification to clarify the method of measurement used to determine floor elevations, NGVD (National Geodetic Vertical Datum) 1929, (the standard for elevation measurement established by the U.S. Geological Service), and the addition of a development condition to require all of the driveway that is in the RPA to be constructed of pervious materials such as pervious asphalt.

At the June 14, 2006 Planning Commission meeting the decision was deferred again to June 21, 2006. On June 21, 2006 SEA 2002-MV-028 was indefinitely deferred until necessary information was secured to resolve the outstanding issues related to sanitary sewer access and building height.

The additional information included verification of sanitary sewer access to the site. Appendix 3 of this staff report addendum provides documentation, in the form of a plumbing permit from Fairfax County indicating that such access had been acquired. Note number 12 on the revised SEA Plat also indicates that sanitary sewer to the site is available on Arcturus on the Potomac and/or East Boulevard Drive. The plat shows an existing sanitary sewer utility corridor access to Arcturus on the Potomac connecting to adjacent parcel 34 to the west of the subject parcel which is also owned by the applicant.

In addition a certification that the proposed structure does not exceed the maximum residential building height in the R-2 Zoning District of 35 feet was requested from the applicant. A letter dated October 13, 2006, from Richard C. Lessard, AIA of Lessard Commercial, Inc., which certifies the height of the structure at 34.6 feet, is included as Appendix 4. A letter from Senior Deputy Zoning Administrator, which verifies the height certification is in compliance with the maximum height limitation of the R-2 District is included as Appendix 5.

The applicant submitted a revised SEA Plat dated March 9, 2007 (Appendix 6) which addressed issues raised in the DPWES/Environmental and Site Review Division analysis (Appendix 7) dated January 31, 2007. These issues were either corrected subsequent to the publication of the analysis or have been addressed by proposed development conditions.

Under Section 118-6-2 of the CBPO, a Resource Protection Area Exception (RPAE) may be approved when the strict application of the RPA criteria would result in the effective loss of a reasonable buildable area on a lot established prior to the effective date of the CBPO. The exception may be considered only if the proposed development does not exceed 10,000 square feet of land disturbance and does not create more than 5,000 square feet of impervious surface within the RPA and shall be the minimum necessary to afford relief to achieve a reasonable buildable area for a principal structure and necessary utilities.

On December 9, 2002 RPA Exception (#24919A) was approved for the subject property which has since expired and is no longer valid. Since that time it was determined that the additional encroachment into the RPA from that shown on the approved SE plat, and amendments to the provisions in the CBPO, made the previously approved RPA Exception invalid and that approval of a new RPA Exception would be required.

A request for an RPA Exception was submitted, Resource Protection Area Encroachment Request #15043-WRPA-002-1, through DPWES is to be processed concurrently with this Special Exception Amendment, by the Board of Supervisors.

The DPWES staff report has been amended to address modifications made to the SEA Plat which indicates that the total proposed impervious area within the RPA is shown to be 4,880 square feet (exclusive of the driveway) and that 9,992 sf of RPA is to be disturbed, a total of at least 10,000 square feet of vegetated buffer is required to be provided on the lot as indicated on the SEA Plat and required by proposed development conditions in both the SEA and RPA requests. The revised RPA exception report continues to recommend approval of RPA Exception #15043-WRPA-002-1, subject to the proposed RPAE conditions dated March 30, 2007 contained in the report which is included as Appendix 8 of this addendum.

CONCLUSIONS AND RECOMMENDATIONS

Staff Conclusions

With the imposition of the proposed development conditions, staff concludes that the subject application is in harmony with the Comprehensive Plan and is in conformance with the applicable Zoning Ordinance provisions.

Recommendations

Staff recommends approval of SEA 2002-MV-028 subject to the proposed development conditions contained in Appendix 1 of this addendum. Staff also recommends approval of Resource Protection (RPA) Encroachment Request #15043-WRPA-002-1 subject to the imposition of the proposed RPA exception conditions dated March 30, 2007 contained in the Resource Protection (RPA) Encroachment Staff Report included as Appendix 8 of this Addendum and subject to the approval of SEA 2002-MV-028.

It should be noted that it is not the intent of staff to recommend that the Board, in adopting any conditions proffered by the owner, relieve the applicant/owner from compliance with the provisions of any applicable ordinances, regulations, or adopted standards.

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

It should be further noted that the content of this report reflects the analysis and recommendation of staff; it does not reflect the position of the Board of Supervisors.

APPENDICES

1. Revised Proposed Development Conditions dated April 12, 2007
2. Minutes from April 27, 2006 public hearing on SEA 2002-MV-028.
3. Sanitary Sewer Access verification.
4. Letter dated October 13, 2006, from Richard C. Lessard, AIA of Lessard Commercial, Inc., which certifies the height of the subject structure.
5. Letter from Leslie Johnson, Senior Deputy Zoning Administrator, which verifies the height certification.
6. Revised SEA Plat dated March 9, 2007.
7. DPWES/Environmental and Site Review Division Analysis.
8. RPA Exception #15043-WRPA-002-1 Staff Report and Proposed Exception Conditions.
9. Revised approved Affidavit for SEA 2002-MV-028 dated March 12, 2007

REVISED PROPOSED DEVELOPMENT CONDITIONS

SEA 2002-MV-028

April 12, 2007

If it is the intent of the Board of Supervisors to approve SEA 2002-MV-028 located at 8019 East Boulevard (Tax Map 102-2 ((1)) 35A) to allow uses in a floodplain pursuant to Sect. 2-904 of the Fairfax County Zoning Ordinance, staff recommends that the Board condition the approval by requiring conformance with the following development conditions. These development conditions incorporate and supersede all previous development conditions. Those conditions carried forward from the previous special permit and special exception are marked with an asterisk (*). Minor edits have been made to conform to current standards.

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 plat titled **Special Exception Plat, and prepared by Dominion Surveys, Inc., which is dated August 19, 2005 and revised to March 9, 2007, and these conditions.**
4. A Hold Harmless agreement shall be executed with the County for all adverse effects which may arise as a result of the location of the house and appurtenant structures within a floodplain area. *
5. The limits of clearing and grading, as shown on the SEA shall be strictly observed and enforced. Any encroachment into or disturbance of the RPA not shown on the Plat is considered a violation of the CBPO and is subject to penalties of Article 9 of the CBPO.*

Revised Proposed Development Conditions

SEA 2002-MV-028

April 10, 2007

Page 2

6. The dwelling shall be constructed on pilings, as shown on the SEA Plat and shall be set at an elevation of sixteen (16) feet from the top of the first floor (NGVD 1929). The amount of fill permitted shall not exceed a maximum of 241.5 cubic yards. Prior to issuance of a building permit, a revised grading plan shall be submitted to DPWES for approval. Trees and indigenous vegetation within the limits of clearing and grading shall be preserved on the site during the construction process to the maximum extent feasible as determined by the UFM, DPWES.
7. If deemed necessary by DPWES, a geotechnical report shall be submitted to DPWES for foundation design and earthwork engineering. Plans shall be implemented as required by DPWES.*
8. The applicant shall notify the US Army Corps of Engineers prior to the approval of a grading plan to ensure compliance with § 404 of the Clean Water Act. Any required wetlands permit shall be obtained prior to commencement of land disturbing activity. *
9. As-built floor elevations for the residence shall be submitted in accordance with Section 3107.12.1 of the Virginia Uniform Statewide Building Code (VUSBC 1977) on a standard FEMA Elevation Certificate prior to approval of the framing inspection. *
10. All construction shall be in conformance with Section 3107.0 Flood-Resistant Construction of the Virginia Uniform Statewide Building Code (VUSBC 1977). A statement certifying all floodproofing proposed, and indicating its compliance with all County, State, and Federal requirements shall be provided with the Building Permit application. This certification shall be signed, sealed, and indicate the address of the certifying professional and it shall cover all structural, electrical, mechanical, plumbing, water and sanitary facilities connected with the use. *
11. Erosion and sediment control measures shall be installed at all stages of construction. Super-silt fence shall be required along the limits of any clearing and/or grading within the RPA, and shall remain in place, and be properly maintained, for the duration of the land disturbing activity within the RPA until such time that the disturbed area is completely stabilized as determined by the Environmental and Facilities Inspection Division site inspector. No more land shall be disturbed than is necessary for the proposed construction within the RPA.*

12. Stormwater drainage shall be directed to ditches through the use of pipes, swales, or other devices, as determined by DPWES. Any fill area shall be stabilized, graded, or have drains installed such that normal rainfall will not flow over unprotected fill area onto adjacent properties. *
13. Disclosure of potential flood hazards due to the location of the site within the 00-year floodplain shall be made in writing to any potential home buyers prior to entering into a contract of sale. *
14. All building supplies and construction equipment shall be located and stored only within the area designated as disturbed area on the SEA Plat.*
15. The existing gravel turnaround located south of the existing driveway shall be removed and restored to a vegetated state, as depicted on the SEA Plat and as determined by DPWES. *
16. The dwelling shall be limited to a maximum height of 35.0 feet. *
17. An area equal in size to the disturbed area within the RPA shall be restored between the dwelling and the Potomac River, as defined by DPWES, and such area shall be planted with native plant species as determined by the Urban Forest Management Branch. The applicant shall provide plantings under and around the dwelling, as shown on the SEA Plat. No clearing, other than for dead or dying plants, shall be permitted between the dwelling and the Potomac River.*
18. The existing carport shown to remain on the SEA Plat shall be removed from within the RPA and the area restored with vegetation to a density consistent with the planting requirements of CBPO 118-3-3(f) as determined by UFM, DPWES.
19. The area shown on the SEA Plat as an "existing Lawn Beach Area" shall remain undisturbed. Indigenous vegetation shall be preserved to the maximum extent possible. Additional plantings as indicated on the Landscape Plan shall be installed prior to issuance of a residential use permit .
20. To the extent possible, stable vegetation in the floodplain shall be protected and maintained as determined by DPWES.
21. There shall be no storage of herbicides, pesticides, or toxic or hazardous substances as set forth in Title 40, Code of Federal Regulations, Parts 116.4 and 261.30 et seq., within the floodplain.

22. All mechanical, electrical, and utility equipment shall be at or above the flood level.
23. All of the driveway that is in the RPA shall be constructed of pervious materials such as pervious asphalt or brick pavers.
24. The construction material stockpile areas shall be located in the areas of the existing dwelling to be removed and within the existing driveway turnaround area. These stockpile areas shall be restored with vegetation upon completion of construction on the lot.
25. Vegetated buffer areas shall be located in the areas shown on the Plat and shall be of a combined area of at least 10,520 square feet. The size, species and density shall be consistent with the planting requirements of CBPO 118-3-3(f). A minimum of 23 overstory trees, 45 understory trees and 250 shrubs with groundcovers shall be planted within the 10,520 square feet of buffer areas. Notwithstanding the statements in the application or the associated Water Quality Impact Assessment, the proposed vegetation may only be revised with written approval of the Director of the Department of Public Works and Environmental Services (DPWES).
26. A revised lot grading plan shall be submitted and approved by the Director of DPWES prior to issuance of a residential use permit. The lot grading plan shall address the revisions to the Special Exception Plat and the conditions contained herein.

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 himself 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 or construction has commenced and been diligently prosecuted. 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.

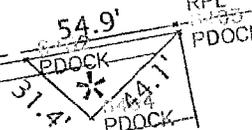
(TAX MAP)

ELLEN BOER
DEED BOOK 11451 AT PAGE 1129
(TAX MAP #1022 Q1 0035)

N 80°55'30" E ~ 287.77'

MEAN LOW (ELEVATION)

PROP. DOCK



* 400 SF

300'

MEANDER LINE

5004
IPF
15.43
21.89
IPF

4100
21.89
STAPK

6201
STAHT

4242
IPF

5033
40.90
CHK SPK

5002
4.75
IPF

4138
0.00
STASPK

6200
STAHT
5.58

IPSTA
3003
3.28
IPF

551
IPF

S 73°41'00" W
118.56'

516
IPF

523
IPF

519
IPF

FRISCILLA NOAH
DEED BOOK 6355 AT PAGE 1902
(TAX MAP #1022 Q1 0037)