



APPLICATION ACCEPTED: March 15, 2012  
BOARD OF ZONING APPEALS: June 13, 2012  
TIME: 9:00 a.m.

# County of Fairfax, Virginia

June 6, 2012

## STAFF REPORT

### VARIANCE APPLICATION NO. VC 2012-PR-001

#### PROVIDENCE DISTRICT

**APPLICANT/OWNER:** Margaret J. DuBois  
**SUBDIVISION:** Idylwood  
**STREET ADDRESS:** 7703 Virginia Lane  
**TAX MAP REFERENCE:** 39-4 ((1)) 146A and 146B  
**LOT SIZE:** 22,198 square feet  
**ZONING DISTRICT:** R-3  
**ZONING ORDINANCE PROVISION:** 18-401  
**VARIANCE PROPOSAL:** To permit construction of a dwelling 13.0 feet from front lot lines and stairs 10.0 feet from front lot line.

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:\dhedri\Variance\6-13 VC 2012-PR-001 DuBois\VC 2012-PR-001 DuBois Staff report.doc

Deborah Hedrick

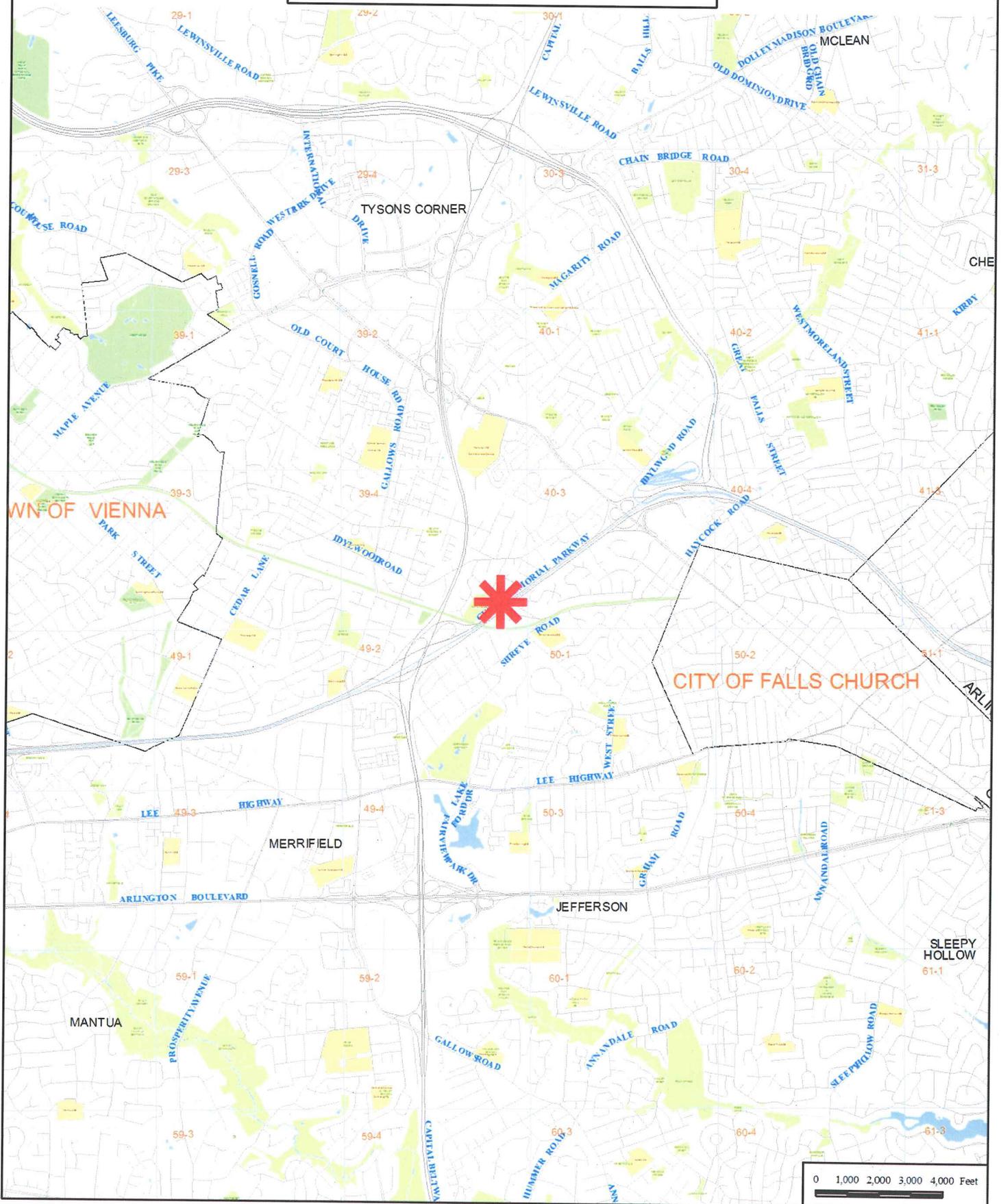


Americans with Disabilities Act (ADA): Reasonable accommodation is available upon 7 days advance notice. For additional information on ADA call (703) 324-1334 or TTY 711 (Virginia Relay Center).



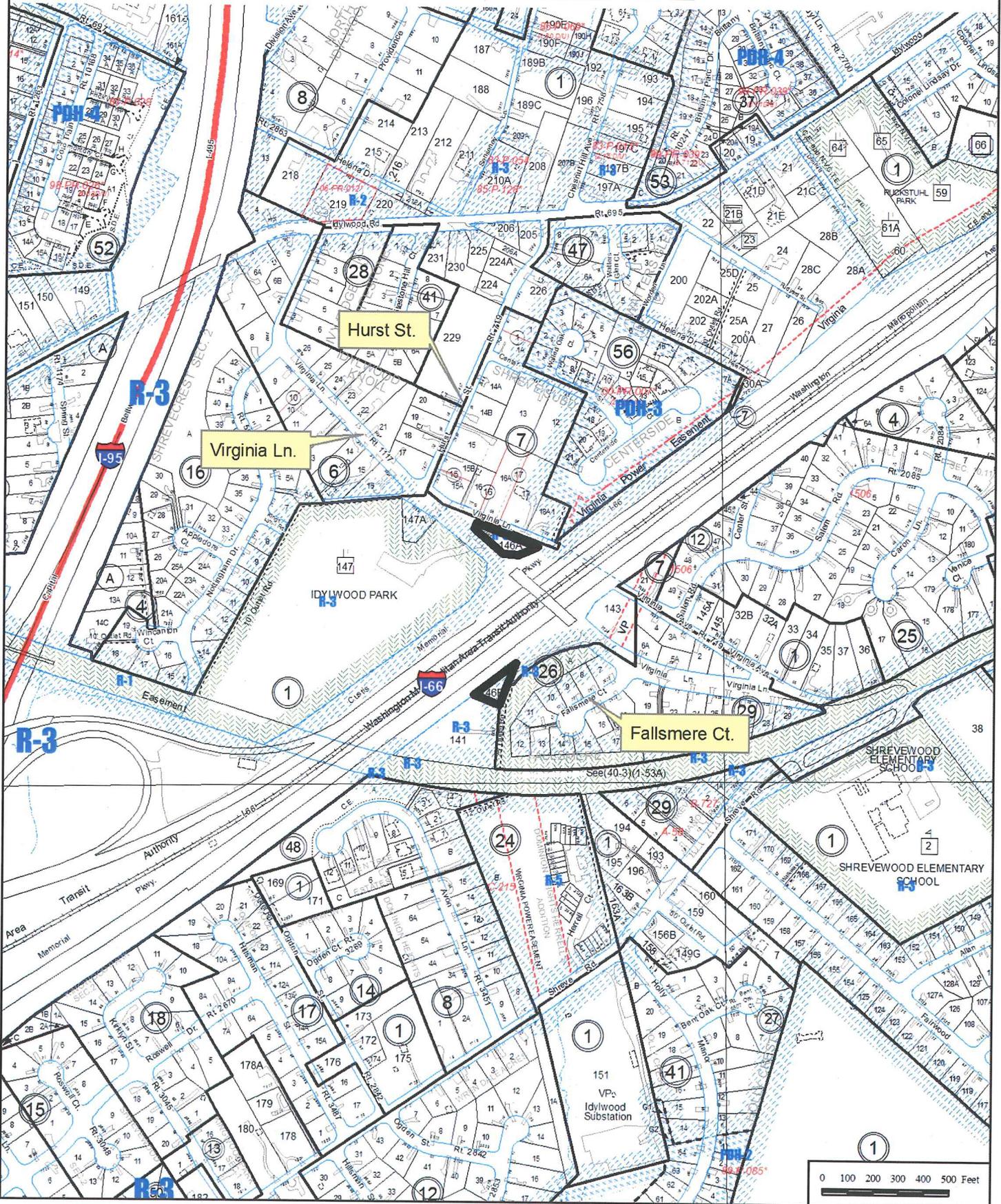
# Variance Application

VC 2012-PR-001  
MARGARET J. DUBOIS

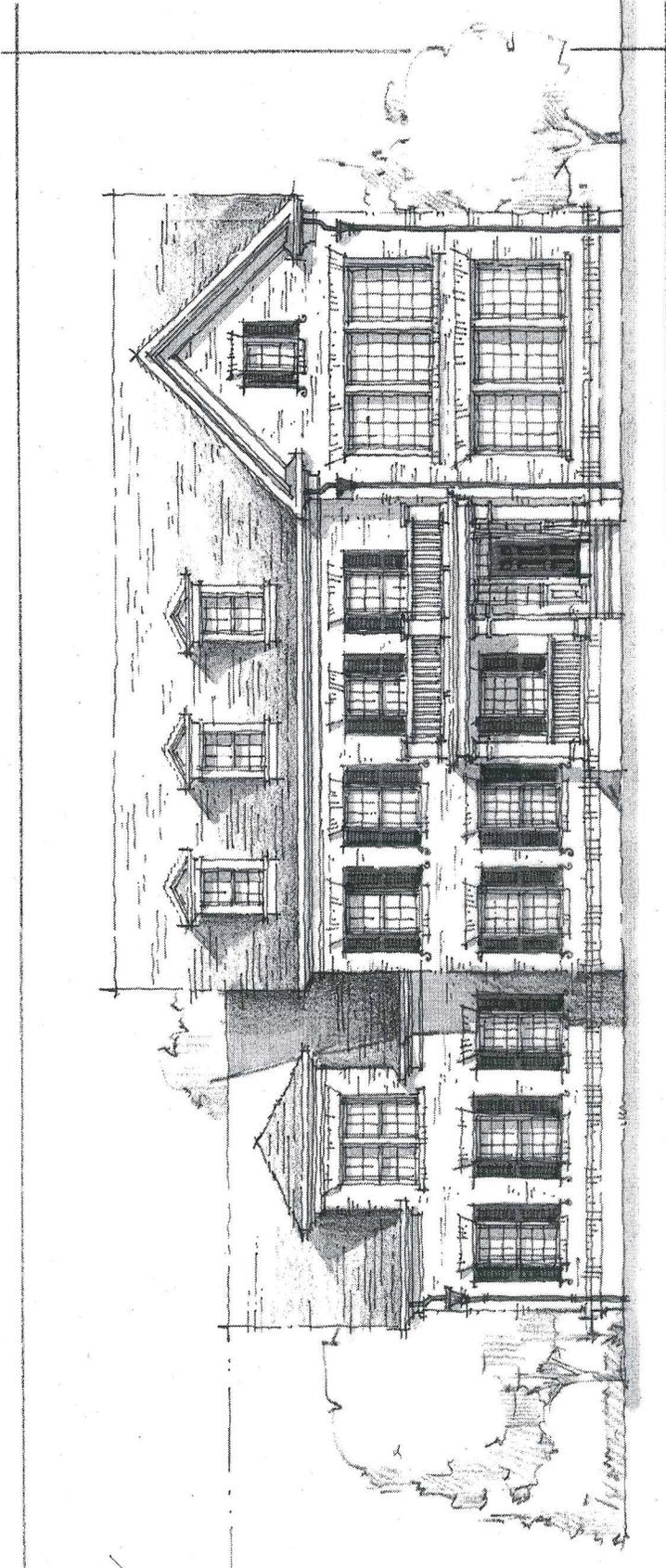


# Variance Application

VC 2012-PR-001  
MARGARET J. DUBOIS







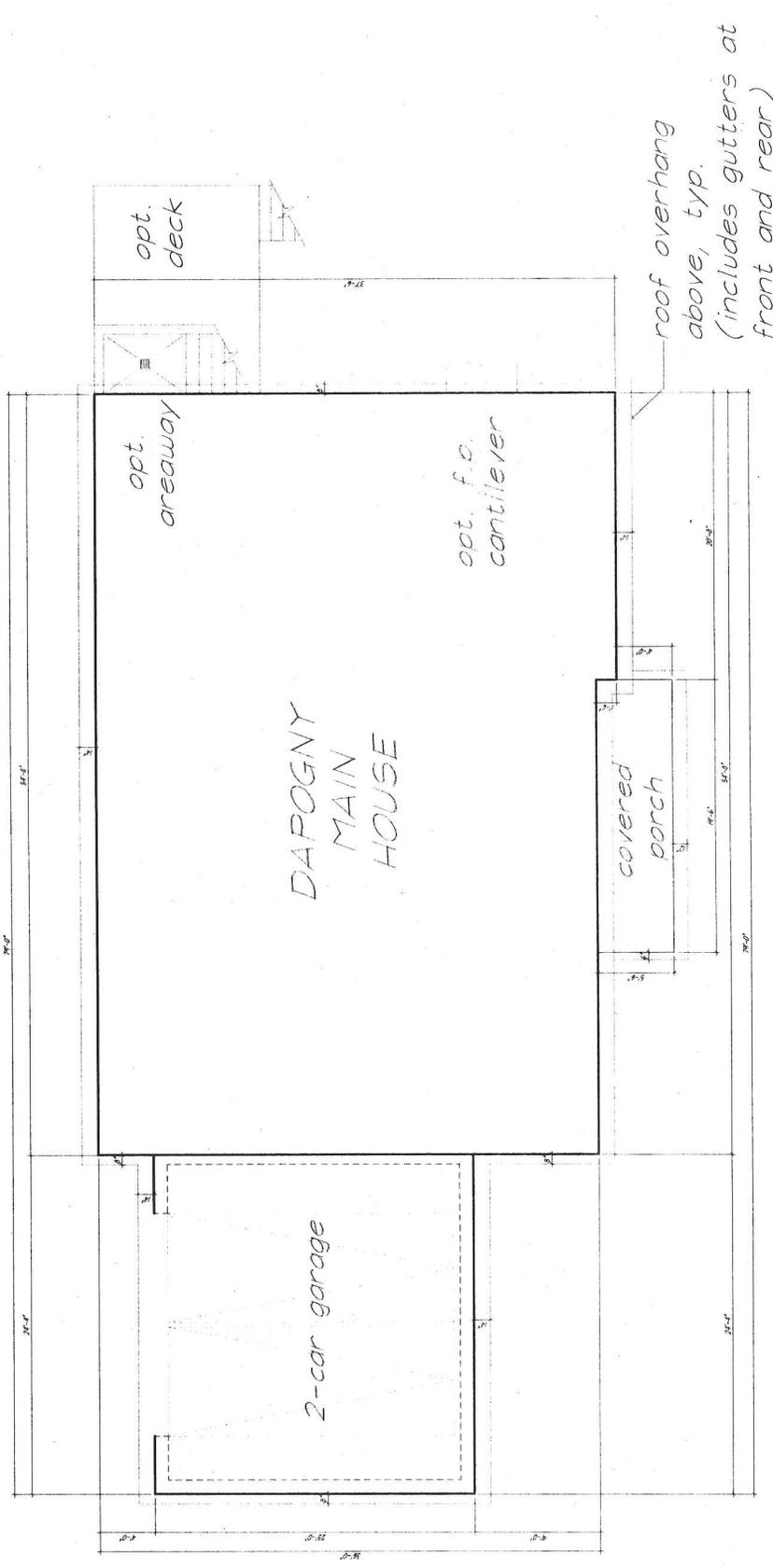
# CONCEPTUAL ELEVATION

Dapogny

0 2 4 8  
SCALE 1/8" = 1'-0"

**K.C. Palston**  
ARCHITECTS

3840 CANTONMENT AVENUE, SUITE 100 | GRANVILLE, OH 43022  
P: 760.375.2395 | F: 760.867.4537 | WWW.KCPALSTON.COM  
A MEMBER OF ARCHITECTURE FIRM GROUP, INC. 100% EMPLOYED BY ARCHITECTURE FIRM GROUP, INC.



opt.  
deck

opt.  
areaway

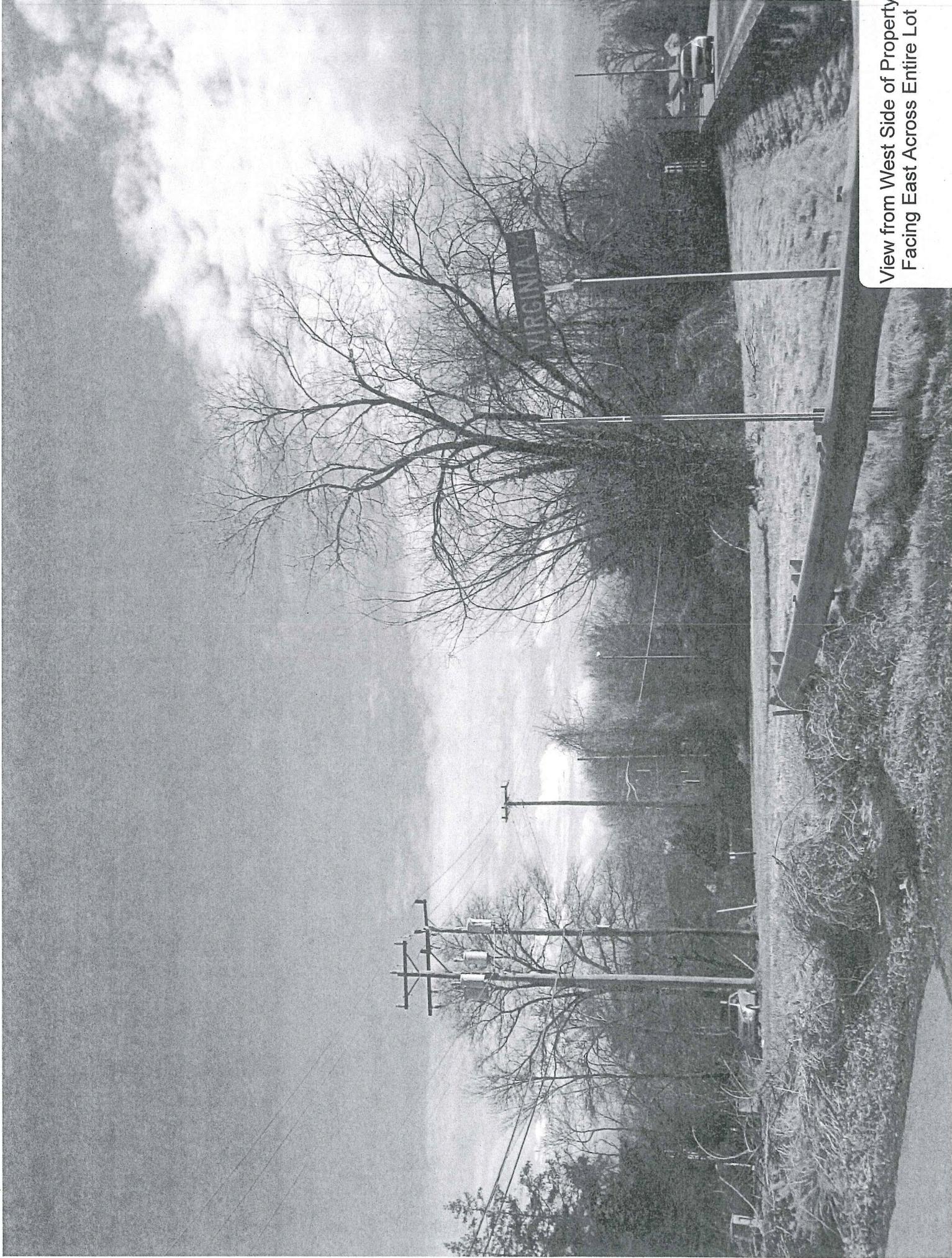
DAPOGNY  
MAIN  
HOUSE

opt. f.o.  
cantilever

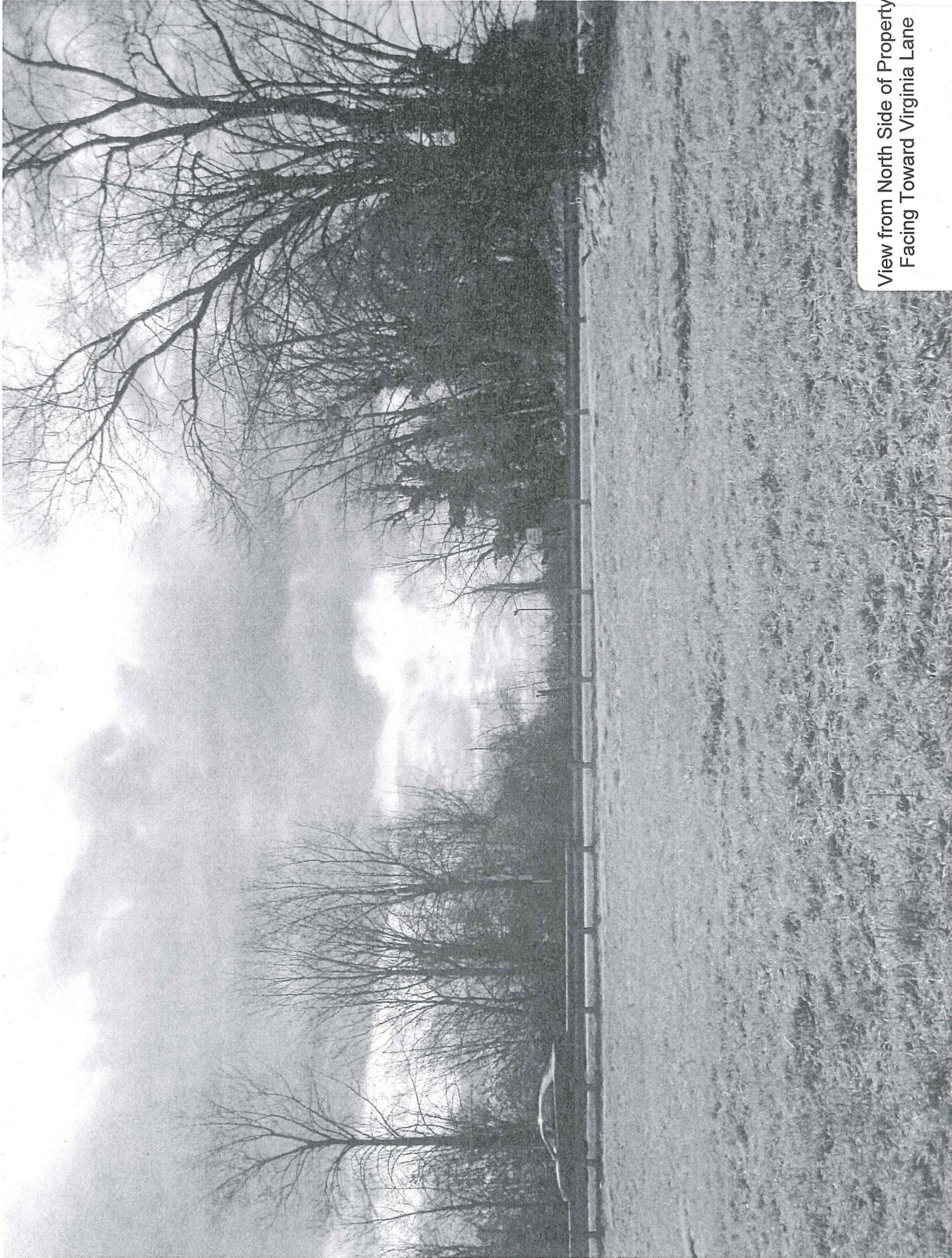
covered  
porch

2-car  
garage

roof overhang  
above, typ.  
(includes gutters at  
front and rear)



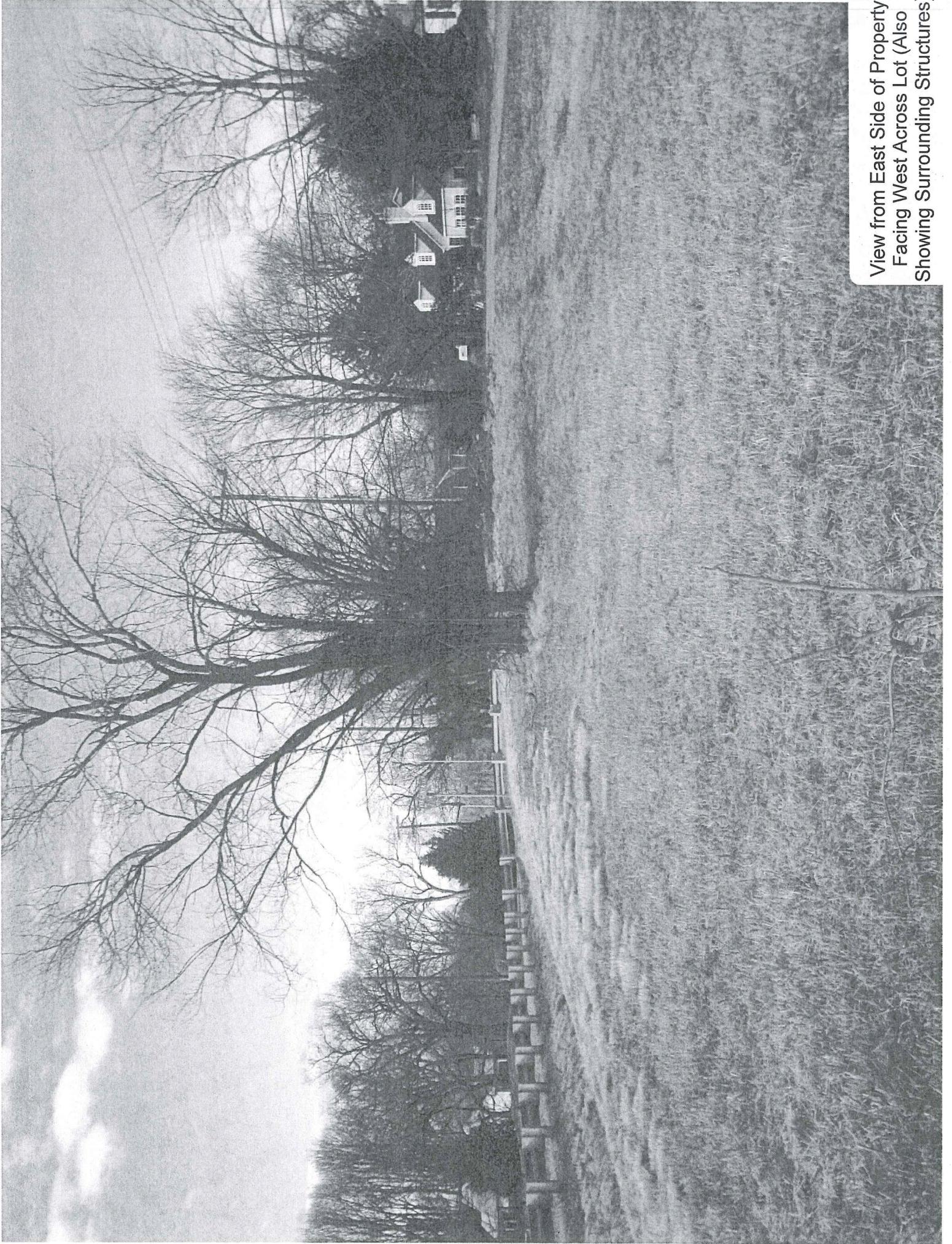
View from West Side of Property  
Facing East Across Entire Lot



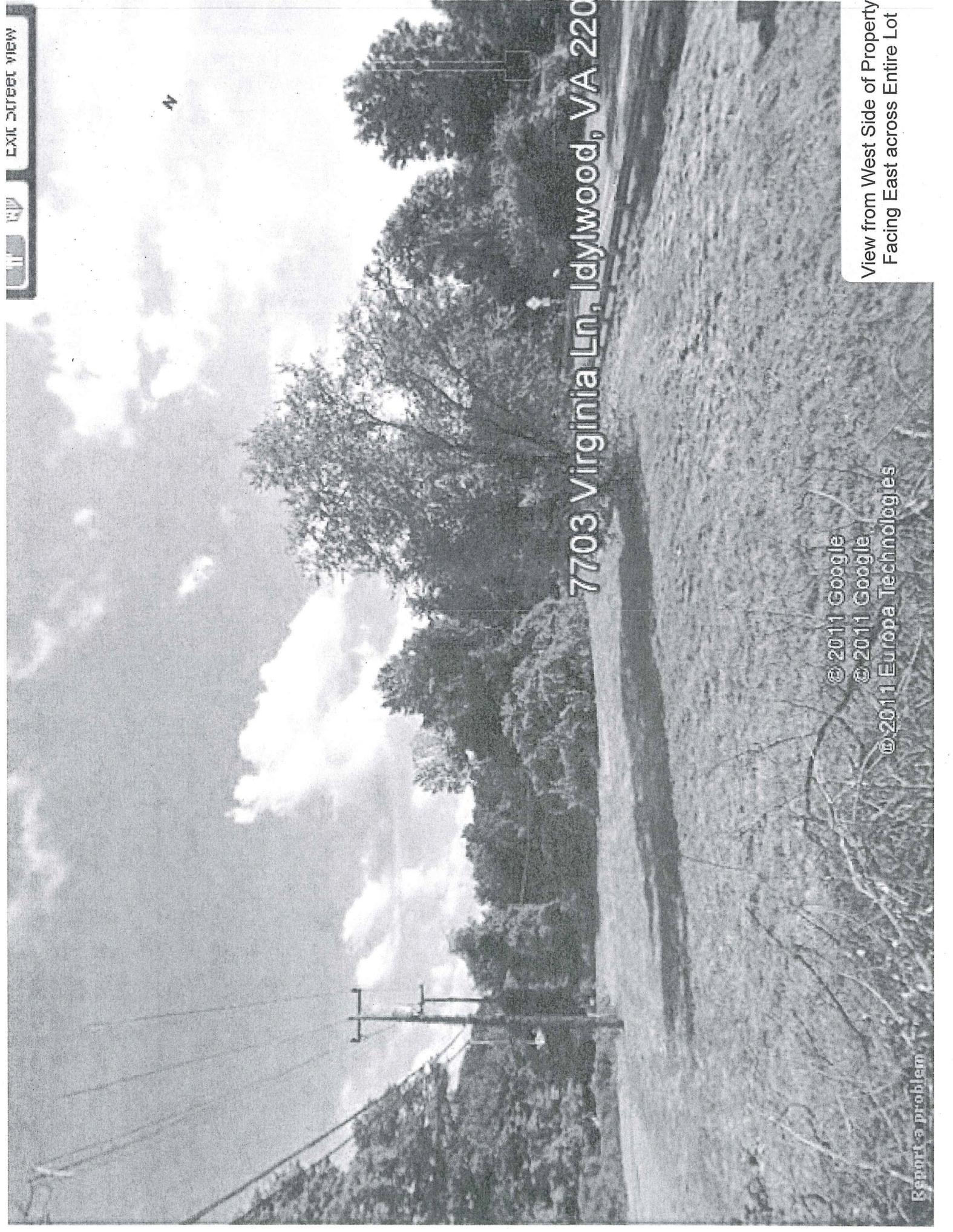
View from North Side of Property  
Facing Toward Virginia Lane



**7703 Virginia Lane: West Side Looking East Across Entire  
Lot with Approx Location of Proposed House Shown**



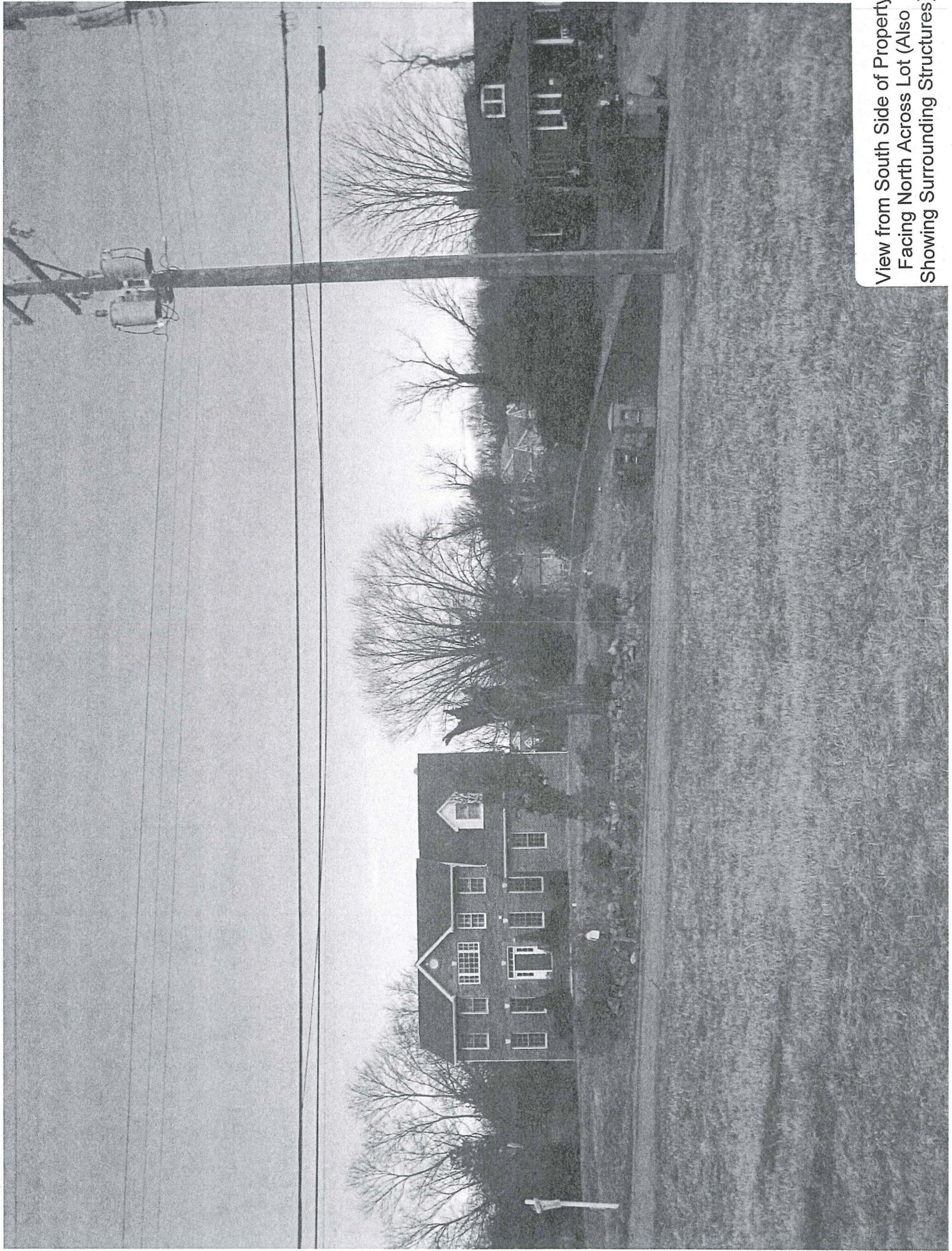
View from East Side of Property  
Facing West Across Lot (Also  
Showing Surrounding Structures)



7703 Virginia Ln, Idylwood, VA 220

© 2011 Google  
© 2011 Google  
© 2011 Europa Technologies

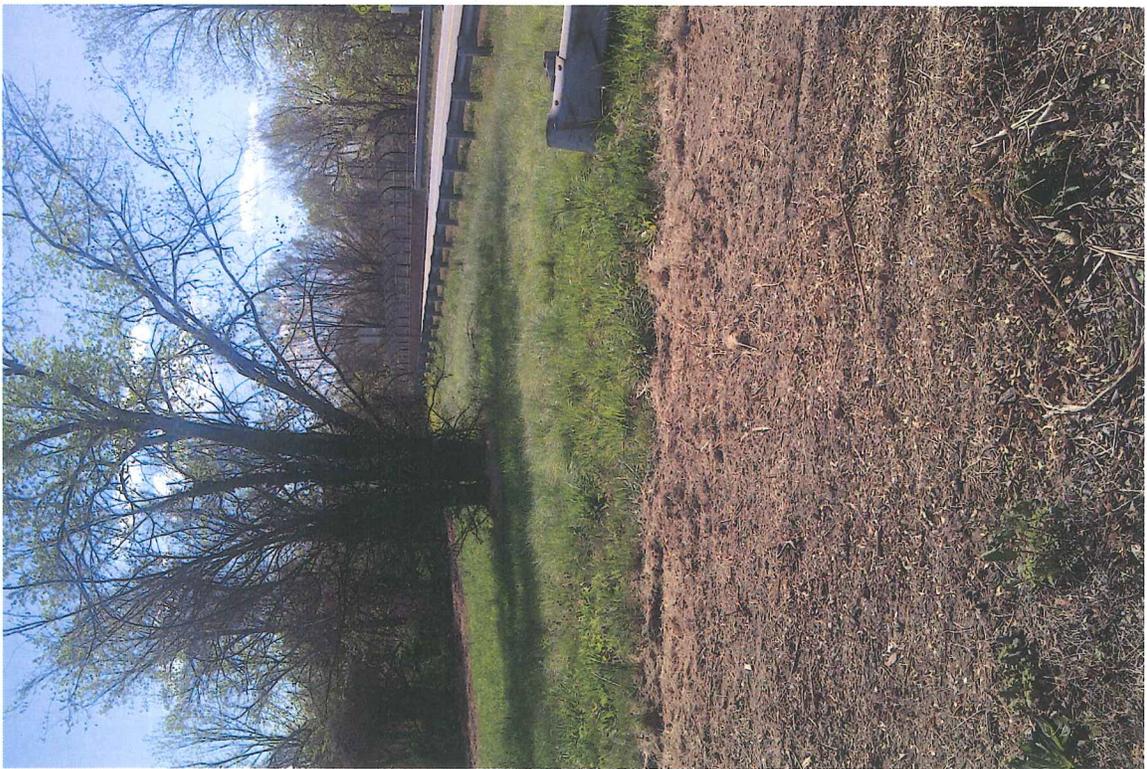
View from West Side of Property  
Facing East across Entire Lot



View from South Side of Property  
Facing North Across Lot (Also  
Showing Surrounding Structures)









**For Illustrative Purposes Only**





## DESCRIPTION OF THE APPLICATION

The applicant is requesting a variance to allow the construction of a new single-family detached dwelling, on a currently vacant lot, to be located 13.0 feet at its closest point from multiple front lot lines and steps to be located 10.0 feet from a front lot line. The bulk regulations for the R-3 District in Par. 2 of Sect. 3-307 of the Zoning Ordinance require a minimum front yard of 30.0 feet. An architectural footprint is represented on the variance plat and the yards depicted are proposed to be the closest point on each of the multiple front lot lines, to include an optional deck and an optional second story above the proposed attached two-car garage.

## EXISTING SITE DESCRIPTION

The application site, which is currently vacant, measures 22,198 square feet in total area; however, consists of two separate parcels. Lot 146A is the subject property proposed to be developed and contains 12,562 square feet in area. Lot 146B is located across Interstate 66 and contains 9,636 square feet in area and will remain vacant. The properties in the vicinity of the subject property are developed with single family homes. The property is abutted by three roads: Interstate 66, Virginia Lane and Virginia Avenue. Yards abutting both Virginia Lane and Virginia Avenue are front yards. The only portion of the lot that is not a front yard is the yard parallel to Interstate 66, which is a rear yard; however, it can take a side yard setback.

## CHARACTER OF THE AREA

	Zoning	Use
North	R-3	Single Family Detached Dwellings
South	R-3	Idylwood Park
East	R-3	Interstate 66
West	R-3	Single Family Detached Dwelling

## VARIANCE PLAT (Copy at front of staff report)

- **Title of Plat:** Variance Plat, 7703 Virginia Lane
- **Prepared by:** Smith Engineering
- **Dated:** January 30, 2012, as revised through April 27, 2012, and sealed on May 3, 2012

## BACKGROUND and PROPOSAL

The application property was acquired by the applicant, Margaret DuBois, in August of 1977. Prior to the construction of Interstate 66 the subject property was a single large parcel of land. The condemnation of land to construct Interstate 66 resulted in the two parcels that comprise the application property. Both parcels are currently vacant.

The applicant proposes a minimum front yard that will allow the construction of a new single family detached dwelling on the parcel identified as Lot 146A, consisting of 12,562 square feet in size. The new dwelling is proposed to be constructed at its closest point to be located 13.0 feet from multiple front lot lines. These dimensions include eaves and overhangs on the proposed two-story dwelling, a two-car garage with an optional second level above, a covered front porch with steps leading into the front yard facing Virginia Lane and an optional deck located on the east side of the dwelling. The maximum building height is proposed to be 35 feet. Included as Appendix 4 is a proposed conceptual architectural footprint submitted by the applicant for illustrative purposes only.



***For Illustrative Purposes Only – Lot 146A***

A Buildable Lot Determination, attached as Appendix 5, was issued by the County which confirmed the property is a buildable lot. In a letter dated September 1, 2011, by the Zoning Administration Division, attached as Appendix 6, it was also determined that the lot is a corner lot and that the yards abutting Virginia Lane and Virginia Avenue are front yards that require a minimum front yard of 30.0 feet. A minimum rear yard of 12 feet was determined to be required adjacent to Interstate 66. Since the lot was created prior to the effective date of the current Ordinance, the subject property is not subject to the required 200 foot setback from an interstate highway.

Appeal A 2011-PR-037 is currently scheduled for a Board of Zoning Appeals public hearing on September 12, 2012, appealing the Zoning Administrators determination that deemed the subject property to be a corner lot and therefore that it must meet the minimum required yards as determined based on the configuration of the property.

Following the adoption of the current Ordinance, the BZA has heard the following variance in the vicinity of the application parcel:

- Variance VC 99-P-002 was approved on April 21, 1999, for Tax Map 39-4 ((7)) 15A, zoned R-3, at 2425 Hurst Street, to permit construction of addition 23.0 feet from the street line of a corner lot.

### **ZONING ORDINANCE REQUIREMENTS**

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, which 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, the BZA should 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. Illustrative Conceptual Architectural Footprint
5. Buildable Lot Determination
6. September 1, 2011, Letter from Zoning Administration Division
7. Applicable Zoning Ordinance Provisions

**PROPOSED DEVELOPMENT CONDITIONS**

**VC 2012-PR-001**

**June 6, 2012**

1. This variance is approved for the maximum size and location of a two-story, single-family detached dwelling, including optional items, as shown on the plat prepared by Smith Engineering dated January 30, 2012, as revised through April 27, 2012, and sealed on May 3, 2012, submitted with this application and is not transferable to other land.
2. All applicable building permits and final inspections shall be obtained for the single-family detached dwelling.

This approval, contingent upon the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations or adopted standards including requirements for building permits.

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 construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Application No.(s): VC 2012 - PR-001  
 (county-assigned application number(s), to be entered by County Staff)

**SPECIAL PERMIT/VARIANCE AFFIDAVIT**

DATE: February 9, 2012  
 (enter date affidavit is notarized)

I, Lynne J. Strobel, attorney/agent, 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

115028

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)
Margaret J. DuBois	9310 Glasgow Drive Fredericksburg, VA 22408	Applicant/Title Owner of Tax Map 39-4 ((1)) 146A, 146B
John P. Dapogny	117 Elm Street, SW Vienna, VA 22180	Contract Purchaser of Tax Map 39-4 ((1)) 146A, 146B
Smith Engineering, PLLC Agents: Blake A. Smith Ashleigh W. Thompson	14901 Bogle Drive, Suite 101 Chantilly, Virginia 20151	Engineer/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): VC 2012-PH-001  
(county-assigned application number(s), to be entered by County Staff)

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

DATE: February 9, 2012  
(enter date affidavit is notarized)

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

<b>NAME</b> (enter first name, middle initial, and last name)	<b>ADDRESS</b> (enter number, street, city, state, and zip code)	<b>RELATIONSHIP(S)</b> (enter applicable relationships listed in <b>BOLD</b> above)
Walsh, Colucci, Lubeley, Emrich & Walsh, P.C.  Agents: Martin D. Walsh Lynne J. Strobel Timothy S. Sampson M. Catharine Puskar Sara V. Mariska G. Evan Pritchard Jonathan D. Puvak Elizabeth D. Baker Inda E. Stagg Elizabeth A. McKeeby	2200 Clarendon Boulevard 13th Floor Arlington, Virginia 22201	<b>Attorneys/Planners/Agent</b>

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

Application No.(s): VC 2012-PH-001  
(county-assigned application number(s), to be entered by County Staff)

**SPECIAL PERMIT/VARIANCE AFFIDAVIT**

DATE: February 9, 2012  
(enter date affidavit is notarized)

115028

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)  
Smith Engineering, PLLC  
14901 Bogle Drive, Suite 101  
Chantilly, Virginia 20151

**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)

Blake A. Smith, Sole Member

(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): VC 2012 PB-001  
(county-assigned application number(s), to be entered by County Staff)

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

DATE: February 9, 2012  
(enter date affidavit is notarized)

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**NAME & ADDRESS OF CORPORATION:** (enter complete name, number, street, city, state, and zip code)  
Walsh, Colucci, Lubeley, Emrich & Walsh, P.C.  
2200 Clarendon Boulevard, 13th Floor  
Arlington, Virginia 22201

**DESCRIPTION OF CORPORATION:** (check one statement)  
 There are 10 or less shareholders, and all of the shareholders are listed below.  
 There are more than 10 shareholders, and all of the shareholders owning 10% or more of any class of stock issued by said corporation are listed below.  
 There are more than 10 shareholders, but no shareholder owns 10% or more of any class of stock issued by said corporation, and no shareholders are listed below.

**NAMES OF THE SHAREHOLDERS:** (enter first name, middle initial, and last name)  
David J. Bomgardner, E. Andrew Burcher, M. Catharine Puskar, John E. Rinaldi,  
Thomas J. Colucci, Peter M. Dolan, Jr., Jay Lynne J. Strobel, Garth M. Wainman,  
du Von, William A. Fogarty, John H. Foote, Nan E. Walsh, Martin D. Walsh  
H. Mark Goetzman, Bryan H. Guidash,  
Michael D. Lubeley, J. Randall Minchew,

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

**DESCRIPTION OF CORPORATION:** (check one statement)  
 There are 10 or less shareholders, and all of the shareholders are listed below.  
 There are more than 10 shareholders, and all of the shareholders owning 10% or more of any class of stock issued by said corporation are listed below.  
 There are more than 10 shareholders, but no shareholder owns 10% or more of any class of stock issued by said corporation, and no shareholders are listed below.

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

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

Application No.(s):

VC 2012-PR-001

(county-assigned application number(s), to be entered by County Staff)

SPECIAL PERMIT/VARIANCE AFFIDAVIT

DATE: February 9, 2012

(enter date affidavit is notarized)

115028

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)
None

(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 attachment page.

Application No.(s):

VC 2012-PR-001

(county-assigned application number(s), to be entered by County Staff)

Page Four

**SPECIAL PERMIT/VARIANCE AFFIDAVIT**

DATE: February 9, 2012

(enter date affidavit is notarized)

115028

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):

VC 2012-PR-001

(county-assigned application number(s), to be entered by County Staff)

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SPECIAL PERMIT/VARIANCE AFFIDAVIT

DATE: February 9, 2012
(enter date affidavit is notarized)

115028

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)

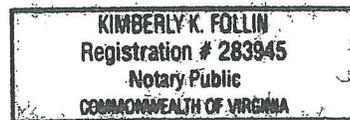
[ ] Applicant [x] Applicant's Authorized Agent
Lynne J. Strobel

Lynne J. Strobel, attorney/agent
(type or print first name, middle initial, last name, and title of signee)

Subscribed and sworn to before me this 9 day of February 2012, in the State/Comm. of Virginia, County/City of Arlington.

Kimberly K. Follin
Notary Public

My commission expires: 11/30/2015





Lynne J. Strobel  
 (703) 528-4700 Ext. 5418  
[lstrobel@arl.thelandlawyers.com](mailto:lstrobel@arl.thelandlawyers.com)

WALSH COLUCCI  
 LUBELEY EMRICH  
 & WALSH PC

RECEIVED  
 Department of Planning & Zoning

MAR 07 2012

Zoning Evaluation Division

REVISED  
 March 6, 2012

Via Hand Delivery

Barbara C. Berlin, Director  
 Zoning Evaluation Division  
 Fairfax County Department of Planning & Zoning  
 12055 Government Center Parkway, Suite 801  
 Fairfax, Virginia 22035

Re: Proposed Variance  
 Fairfax County Tax Map Reference: 39-4 ((1)) 146A and 146B  
 (the "Subject Property")  
 Applicant: Margaret J. DuBois

Dear Ms. Berlin:

Please accept the following as a statement of justification for a variance of the minimum front yard requirement for property identified among the Fairfax County tax map records as 39-4 ((1)) 146A and 146B (the "Subject Property").

The Applicant is the owner of the Subject Property that consists of approximately 22,198 square feet (0.51 acre) located at 7703 Virginia Lane. Zoned to the R-3 District, the Subject Property consists of two (2) parcels, separated by Interstate 66. Prior to the construction of Interstate 66, the Subject Property was part of a single larger parcel. The condemnation of land to construct Interstate 66 resulted in the two (2) parcels that comprise the Subject Property. If these parcels were not contemplated for some type of residential development, the entire land area would have been condemned. Instead, the result is two (2) parcels on either side of Interstate 66 that are currently vacant.

The Subject Property is located within the J10 Jefferson North Community Planning Sector of the Jefferson Planning District in the Area I Comprehensive Plan (the "Plan"). The Plan notes that the sector is largely developed as stable residential neighborhoods. The Plan does not include any specific guidance for the Subject Property, however, the Plan generally encourages development of compatible uses and intensity to existing development. The properties in the vicinity of the Subject Property are developed with single family homes. Therefore, the development of a single family home on the Subject Property is in harmony with the Plan's recommendations.

The Applicant requests a variance of the minimum front yard requirement, that will allow the construction of a single family home on the parcel currently identified among the Fairfax County tax map records as 39-4 ((1)) 146A. The Applicant's proposal is illustrated on the enclosed variance plat (the "Variance Plat") prepared by Smith Engineering, and the photographs submitted with the application. The R-3 District permits single family detached dwellings with the following minimum yard requirements: 30 feet for the front yard, 12 feet for the side yard and 25 feet for the rear yard. The Subject Property is bounded on all sides by right-of-way, thereby creating more than one front yard.

PHONE 703 528 4700 | FAX 703 525 3197 | WWW.THELANDLAWYERS.COM  
 COURTHOUSE PLAZA | 2200 CLARENDON BLVD., THIRTEENTH FLOOR | ARLINGTON, VA 22201-3359

LOUDOUN OFFICE 703 737 3633 | PRINCE WILLIAM OFFICE 703 680 4664

ATTORNEYS AT LAW

In the way of background, a Buildable Lot Determination issued by Fairfax County Land Development Services on June 13, 2011 confirmed that the Subject Property is a buildable lot. In addition, a letter was issued by Cathy S. Belgin, Senior Assistant to the Zoning Administrator, on September 1, 2011, stating the Subject Property is a corner lot and that the yards abutting Virginia Lane and Virginia Avenue are front yards that require a minimum yard of 30 feet. A minimum rear yard of 12 feet was determined to be required by Ms. Belgin adjacent to Interstate 66. In addition, Ms. Belgin confirmed that, pursuant to Paragraph 4 of Section 2-414 of the Fairfax County Zoning Ordinance (the "Ordinance"), a residential building on the Subject Property is not subject to the required 200 foot setback from interstate highways because the lot was created prior to the effective date of the current Ordinance and application of the setback would negate the use of the lot. A copy of Ms. Belgin's letter is attached for your reference.

Application of the R-3 minimum yard requirement as described in Ms. Belgin's letter eliminates the use of the Subject Property as a buildable lot. An exhibit entitled, "R-3 Conventional Yard Requirements," attached to this letter, illustrates the resulting buildable area when the minimum yard requirements as defined by Fairfax County are applied. The exhibit has been forwarded to Ms. Belgin, who has confirmed that it represents the yard setbacks described in her letter. A copy of Ms. Belgin's e-mail is attached for your reference. The resultant building footprint does not permit a reasonable development of the Subject Property. Therefore, the Applicant requests a variance of the minimum front yard requirement from 30 feet to a minimum of 13.83 and 13.71 feet, inclusive of roof overhangs, on the Virginia Lane and Virginia Avenue sides of the Subject Property as shown on the Variance Plat. Features that are typically permitted to encroach into minimum required yards are also shown on the Variance Plat. The proposed dwelling will comply with the minimum rear yard requirement adjacent to Interstate 66 and the minimum front yard requirement on the connector road portion of Virginia Lane. The Applicant is in negotiations with a contract purchaser who proposes to construct a single family two-story dwelling with a height up to 35 feet. The dwelling will be approximately 55 feet by 39 feet with an attached garage of approximately 22 feet by 25 feet. The front elevation of the dwelling will face Virginia Lane and the ingress/egress will be located on Virginia Avenue.

In accordance with the requirements of Section 18-404 of the Ordinance, please accept the following information in conjunction with the requested variance:

- The Subject Property was acquired in good faith by Margaret J. DuBois on or about August 1, 1977, as evidenced by deed recorded among the Fairfax County land records in Deed Book 4670 at page 451. Since acquisition, the Applicant has paid real estate taxes with the expectation that a reasonably sized home could be constructed on the Subject Property.
- The Subject Property has an exceptional narrowness and shape. Both the exceptional narrowness and shape existed at the time of the effective date of the Ordinance as a result of condemnation for Interstate 66. In addition, the Subject Property has the unique circumstance of being bounded on all sides by right-of-way creating multiple front yards. Due to these exceptional characteristics, a strict application of the R-3 minimum front yard requirement negates the use of the Subject Property as a buildable lot.
- The condition or situation of the Subject Property is not so general or recurring in nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors. The existing conditions are unique due to the location of

the Subject Property, the impacts associated with the construction of Interstate 66, and adjacent rights-of-way.

- A strict application of the minimum yard requirements of the Ordinance will produce an undue hardship, as it will preclude the use of the Subject Property as a buildable lot and in a manner consistent with surrounding parcels zoned to the same residential district and residentially developed with single family homes.
- The undue hardship is not shared generally by other properties in the same zoning district and in the same vicinity. The Subject Property's condition is a unique situation created by condemnation for the construction of Interstate 66.
- A strict application of the Ordinance will effectively prohibit and unreasonably restrict the utilization of the Subject Property in a manner that is consistent with the existing zoning, surrounding property, and the previously issued determination by Fairfax County that the Subject Property is a buildable lot. The application of minimum yard requirements results in a triangularly shaped buildable area that at its widest point is 17.6 feet as shown in the attached exhibit. This building envelope will not permit reasonable development that is compatible with the area.
- The authorization of the variance will not be detrimental to adjacent properties. The surrounding properties are developed with single family dwellings of a comparable size to the Applicant's proposal.
- The character of the zoning district will not be changed by the granting of this variance. The proposed dwelling will comply with all other requirements of the Ordinance.
- The proposed variance is in harmony with the intended spirit and purpose of the Ordinance and will not be contrary to the public interest. The stated purpose of the R-3 zoning district is to provide for single family detached dwellings to maintain the low density residential character of the district. The Applicant's proposal accomplishes this objective.

The requested variance will permit the development of a vacant parcel in a manner consistent with surrounding property. I would appreciate the acceptance of this application and the scheduling of a hearing before the Board of Zoning Appeals at your earliest convenience. Should you have any questions regarding this request, or require additional information, please do not hesitate to contact me.

Very truly yours,

WALSH, COLUCCI, LUBELEY, EMRICH & WALSH, P.C.

  
Lynne J. Strobel

LJS/jdp

cc: Margaret J. DuBois      Jonathan Puvak      Martin D. Walsh  
John Dapogny      Blake A. Smith

{A0509401.DOC / 1 Statement of Justification 007438 000002}





## Hedrick, Debbie

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**From:** John Dapogny <johndapogny@yahoo.com>  
**Sent:** Thursday, May 31, 2012 11:40 AM  
**To:** Hedrick, Debbie  
**Cc:** Puvak Jonathan; Lynne Strobel  
**Subject:** 7703 Va Lane Variance - Conceptual House Elevation  
**Attachments:** 2012-5-25 7703 Virginia Lane - Conceptual Elevation - WCRalston.pdf

Debbie, per our discussion attached is the conceptual elevation I received from the architect the other day. The triple windows on the right side of the front of the house may be revised, but I like the general look of the house and am comfortable with it being shown as a concept as long as it is for illustrative purposes only. I do not have side or rear elevations yet. The intent is for the main exterior material to be brick, although there may be some areas that contain siding.

As I mentioned I have sent letters to two neighbors, emailed one and left the other a voice mail requesting an opportunity to meet with them late this week to show them the site plan and elevation of the home and answer any questions they have regarding the variance. I hope to have met with each of them in the next two weeks.

Thank you for reaching out to me today. JD 703-850-0103



# County of Fairfax, Virginia

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

## Buildable Lot Determination

**Lot Validation Number 25393 - LV - 002 - 1**

**Property Tax Map Number:** 039-4-01-146A & B  
**Property Address:** 7703 Virginia Lane  
**Applicant's Name:** John Dapogny  
**Applicant's Address:** 117 Elm St. S.W., Vienna, VA 22180  
**Applicant's Phone Number:** 703-850-0103  
**Current Zoning:** R-3  
**Magisterial District:** Providence  
**Subdivision Name:** if applicable

The Department of Public Works and Environmental Services have reviewed the subject lot for compliance with the Fairfax County Subdivision Ordinance. Based on a search of the pertinent deed information associated with this lot, it appears that the subject lot was created and recorded on 08/30/1961 in Deed Book 2055 Page 579. From a subdivision perspective, this action is described as one of the following:

- \_\_\_\_\_  
 Initial/Date                      Recordation of a metes and bounds description or plat prior to September 1, 1947.
- \_\_\_\_\_  
 Initial/Date                      Recordation of a deed and plat in compliance with the Subdivision Ordinance in effect at the time.
- ENE/5/23/2011  
 Initial/Date                      Recordation of a metes and bounds description or plat after September 1, 1947 and at least on March 25, 2003, or thereafter the subject lot has been included on the Fairfax County Real Property Identification Map as a separate lot and has been taxed as a separate lot.

The Zoning Administration Division, Department of Planning and Zoning (DPZ) have reviewed the subject lot for compliance with the applicable requirements of the Fairfax County Zoning Ordinance. The subject lot is currently zoned R-3 which district requires a minimum lot area of 10,500 sq. ft. and a minimum lot width of 105 feet for corner lots. The subject lot has a lot area of 22,198 sq. ft. and a lot width of 105 feet.

The subject lot meets the current Zoning Ordinance requirements for lot area and lot width.

Department of Public Works and Environmental Services  
 Land Development Services  
 12055 Government Center Parkway, Suite 535  
 Fairfax, Virginia 22035-5503  
 Phone 703-324-1720 • TTY 703-324-1877 • FAX 703-324-8359



- The subject lot does not meet the current Zoning Ordinance requirements for lot area and/or lot width. However, the grandfathering provision of Sect. 2-405 of the Zoning Ordinance is applicable based on DPZ research that indicates that the lot met the applicable Zoning Ordinance requirements, with regard to lot area and lot width, when created/recorded or such creation/recordation predated the first Zoning Ordinance (March 1, 1941).
- The subject lot does not meet the current Zoning Ordinance requirements for lot area and/or lot width and did not meet such requirements at the time it was created. However, the grandfathering provision of Section 2-405 of the Zoning Ordinance is applicable based on DPZ research that indicates that the lot contained a principal structure on March 9, 2004, that was occupied or had been occupied at any time between March 9, 1999 and March 9, 2004, or is under construction pursuant to a building permit and that a Non-Residential Use Permit will be issued within 12 months after March 9, 2004.
- The subject lot does not meet the current Zoning Ordinance requirements and did not meet the applicable lot area and/or lot width requirements when the lot was created or any time thereafter. A separate letter from the DPZ, explaining this noncompliance will be subsequently issued.

Reviewing Authority: Lorrie Kirst 6/9/11  
Zoning Administration Division Date  
Department of Planning and Zoning

Based on the foregoing the following is applicable to the subject lot:

- X The subject lot is considered a valid lot under the Subdivision Ordinance and a building permit may be issued for the development of a use permitted by right, by special permit or by special exception on the lot, provided all County and applicable Zoning Ordinance regulations, including minimum yard requirements, are met.
- The subject lot is an **outlot** under the Subdivision Ordinance and does not constitute a buildable lot.

Approving Authority: Ellen Eggerton 6/13/11  
Land Development Services Date  
Department of Public Works and Environmental Services

cc: Janet E. Coldsmith, Director, Real Estate Division, DTA  
Robert A. Farrimond, GIS and Mapping Services Branch, DIT  
Ordinance Administration Branch, DPZ  
Diane Johnson-Quinn, Deputy Zoning Administrator, Zoning Permit Review Branch, DPZ  
Ken Williams, Chief, Plan and Document Control, ESRD, DPWES



# County of Fairfax, Virginia

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WW

### Buildable Lot Determinations

2	5	3	9	3	-	L	V	-	0	0	1	-	1
0	6	6	3	9	-	L	V	-	0	0	1	-	1

**Property Tax Map Number:** 039-4-01-146-A & 146B  
**Property Address:** N/A *7703 Virginia Ln*  
**Applicant's Name:** John Dapogny  
**Applicant's Address:** 117 Elm St. SW, Vienna, VA 22180  
**Applicant's Phone Number:** 703-850-0103  
**Current Zoning:** R-3  
**Magisterial District:** Providence  
**Subdivision Name:** N/A



The Department of Public Works and Environmental Services have reviewed the subject lot for compliance with the Fairfax County Subdivision Ordinance. Based on a search of the pertinent deed information associated with these lots, it appears that the subject property is a portion of that 4-acre parcel conveyed to Lindemans by deed dated March 22, 1954, and recorded among the land records of Fairfax County, Virginia, on March 25, 1954, in Deed Book 1163 at Page 134. The Lindemans conveyed 3.28-acres of the 4-acre parcel to Commonwealth of Virginia for the Route 66 State Highway Project by deed dated August 30, 1961, and recorded among the land records on October 5, 1961, in Deed Book 2056 at Page 579. The residue of the 4-acre parcel consisted of 3 small tracts, collectively totaling 0.72 acres, including the two tracts that make up the subject property.

In 1962, the Lindemans conveyed one of the three tracts, consisting of 0.202 acres, to an adjoining property owner ("the Templeman conveyance"). The Lindemans conveyed the remaining two tracts (the subject property) by deed dated April 21, 1966, and recorded among the land records on May 4, 1966, in Deed Book 2762 at Page 286. The latter deed described the land conveyed as all of the land once owned by the Lindemans by virtue of the original deed, except for the Route 66 conveyance and the Templeman conveyance, "which leaves two parcels, together comprising 0.518 acres more or less." To date, the subject property has never been conveyed or legally described as separate tracts; rather, it has been repeatedly conveyed and described as the 4-acre parcel, LESS AND EXCEPT both the 3.28-acre Route 66 conveyance and the 0.202-acre Templeman conveyance. The two tracts that make up the subject property have never been established as separate lots and, therefore, neither tract would constitute a valid lot under the Fairfax County Subdivision Ordinance.

In your letter you note the case of *Leake v. Casati*, 234 Va. 646, 363 S.E.2d (1988). The holding in *Leake* pertains to the division of property pursuant to a court order. In this matter, the division of the 4-acre parcel resulted from the voluntary conveyance by the owner, by a deed to the Commonwealth. There having been no court order, *Leake* would not apply to the subject property. Accordingly, the subject property would remain subject to the Fairfax County Subdivision Ordinance after the Route 66 conveyance.

Department of Public Works and Environmental Services  
 Land Development Services, Environmental and Site Review Division  
 12055 Government Center Parkway, Suite 535  
 Fairfax, Virginia 22035-5503  
 Phone 703-324-1720 • TTY 703-324-1877 • FAX 703-324-8359



**Buildable Lot Determinations**

2	5	3	9	3	-	L	V	-	0	0	1	-	1
0	6	6	3	9	-	L	V	-	0	0	1	-	1

Additionally, the subject property does not benefit from the grandfathering provisions of Section 2-405 of the Fairfax County Zoning Ordinance ("Section 2-405"). Two lines of analysis follow:

1. The "4-acre parcel" argument:

Under the analysis presented, it is suggested that since the 4-acre parcel was recorded prior to March 1, 1941, the "parent parcel" of the subject property would be "entitled to the grandfathering provision." While this may be true, the point is irrelevant because there is no issue with regard to the legality of the 4-acre parcel and because it does not necessarily follow that the grandfathering of the 4-acre parcel would flow to the subject property.

It is argued that the subject property satisfies the grandfathering test under Section 2-405 because the tracts are the residue of the 4-acre parcel after the dedication of 3.28 acres to the Commonwealth for a public purpose. Essentially, the application seeks to qualify the 4-acre parcel for grandfathered status under the opening paragraph of Section 2-405, and then cleverly, but inappropriately, applies that status to the subject property pursuant to language added to Section 2-405 in 1993. Portions of Section 2-405 cited by the application in support of the argument include the following:

*This provision shall not apply to any such lot which, subsequent to the effective date of this Ordinance [August 14, 1978], is rezoned at the request of the owner or his agent or is subdivided by the owner or his agent, except for:*

- A. *A subdivision resulting from a voluntary dedication by the owner or a condemnation or acquisition of a portion thereof for public purposes by any governmental agency[.]*

Subparagraph "A" was newly adopted by the Board in 1993. "[A]ny such lot" would refer to the 4-acre parcel. The phrase, "subsequent to the effective date of this Ordinance," is determinative because the phrase defines a broad class of lots that, by virtue of either a rezoning or a subdivision after August 14, 1978, would not be entitled to grandfathered status under Section 2-405. Since the 4-acre parcel was neither rezoned nor subdivided by the owner or his agent after August 14, 1978, subparagraph A would not apply to the subject property. Since there was no Zoning Ordinance provision similar to subparagraph A prior to August 14, 1978, the voluntary dedication of 3.28 acres in 1961 did not render the subject property eligible for grandfathered status under Section 2-405.

2. The "subject property" argument.

Setting aside the application's 4-acre parcel argument, if one attempts to qualify the individual tracts that make up the subject property under Section 2-405.1, neither tract would qualify, as neither tract was ever recorded as a separate parcel. (See above discussion.) The two broad categories of lots eligible for grandfathered status are those *recorded* prior to March 1, 1941 (the date of the first Fairfax County Zoning Ordinance), and those *recorded* prior to August 14, 1978, that also meet the requirements of the Zoning Ordinance upon recordation. The first

**Buildable Lot Determinations**

2	5	3	9	3	-	L	V	-	0	0	1	-	1
0	6	6	3	9	-	L	V	-	0	0	1	-	1

category would be irrelevant because the subject property was "created" in 1961. The second category would be inapplicable, because it does not appear that either of the two tracts would have satisfied the Zoning Ordinance requirements in effect on October 5, 1961, especially with regard to lot width. On that date the subject property was zoned to the R-12.5 Zoning District, which substantially mirrors the current R-3 zoning. The minimum lot width for a conventional lot was 80 feet, while that for a corner lot was 105 feet).

The subject tracts do not qualify under Section 2-405.2. As stated above, a metes and bounds description or plat for either parcel was not recorded (prior to March 25<sup>th</sup>, 2003), nor has evidence been provided that principal structures ever existed on the properties in accordance with 2-405.2.C.

Summary: The subject tracts do not meet the requirements of the Subdivision Ordinance, 101-1-14, "Validation of Parcels". Pursuant to Section 101-1-14 paragraph a.1, it is not clear that the two parcels were ever created with a metes and bounds description or shown on an unapproved plat (either being recorded) and the two parcels would not have complied with the applicable provisions of the Zoning Ordinance in effect at the time if a description or plat had been recorded, and did not comply with the provisions of Section 2-405 of the Zoning Ordinance thereafter. Pursuant to Section 101-1-14.b the subject parcels qualify as outlots.

Approving Authority: Shahat Day 12/16/2010  
 Land Development Services Date  
 Department of Public Works and Environmental Services

- cc: Janet E. Coldsmith, Director, Real Estate Division, DTA
- Robert A. Farrimond, GIS and Mapping Services Branch, DIT
- Leslie Johnson, Deputy Zoning Administrator, Ordinance Administration Branch, DPZ
- Diane Johnson-Quinn, Deputy Zoning Administrator, Zoning Permit Review Branch, DPZ
- Ken Williams, Chief, Plan and Document Control, ESRD, DPWES
- Bruce Nassimbeni, Director, Environmental and Site Review Division East, DPWES
- Greg McLaughlin, Chief Site Review Engineer, Environmental and Site Review Division East, DPWES



## County of Fairfax, Virginia

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

### Via Mail

September 1, 2011

John Dapogny  
117 Elm Street, SW  
Vienna, Virginia 22180

RE: Lot Type and Minimum Required Yards  
7703 Virginia Lane  
Tax Map Ref: 39-4 ((1)) 146A, 146B  
Zoning District: R-3

Dear Mr. Dapogny:

This letter is in response to your letter to Eileen McLane dated July 21, 2011 regarding the lot type and minimum required yards for the property located at 7703 Virginia Lane, identified as Tax Map 39-4 ((1)) 146A, 146B, which is zoned R-3, Residential, Three Dwelling Units/Acre, and is currently undeveloped. You are requesting clarification of the type of lot and the minimum required yards, specifically for the location of a dwelling proposed on Parcel 146A. The property is abutted by three roads: I-66, Virginia Lane, and Virginia Avenue.

A Buildable Lot Determination was issued on June 13, 2011 which indicated that this property is a buildable lot. This buildable lot determination also indicates that the property is a corner lot. The Zoning Ordinance definition of a corner lot is as follows: *"A lot at the junction of and abutting on two (2) or more intersecting streets when the interior angle of intersection does not exceed 135 degrees; provided, however, that when one of the intersecting streets is an interstate highway, the resultant lot shall not be deemed a corner lot."* In your letter you correctly note that when an intersection of two streets includes an interstate highway that it does not create a corner lot; however in this instance the corner lot is created by the intersection of the other two streets, Virginia Lane and Virginia Avenue. As such, it is not a reverse frontage lot as you suggest.

Regarding the minimum required yards, in the R-3 District the minimum required yards are 30 feet for front yards, 10 feet for side yards, and 25 feet for rear yards. All yards abutting both Virginia Lane and Virginia Avenue are front yards and require a minimum yard of 30 feet. The only portion of this lot that is not a front yard is the yard that runs most directly parallel to I-66, which is a rear yard. However, rear yards on corner lots in the R-3 District can take on the dimensions of a side yard. As such, a minimum rear yard of 12 feet is required along I-66.

Sect. 2-414 of the Zoning Ordinance states that a setback of 200 feet from interstate highways is required for residential buildings. However, pursuant to Par. 4 of Section 2-414, you correctly state that in this case, this

Department of Planning and Zoning  
Zoning Administration Division  
12055 Government Center Parkway, Suite 807  
Fairfax, Virginia 22035-5505  
Phone 703-324-1374 FAX 703-803-6372  
[www.fairfaxcounty.gov/dpz/](http://www.fairfaxcounty.gov/dpz/)



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DEPARTMENT OF  
PLANNING  
& ZONING

Mr. John Dapogny  
September 1, 2011  
Page 2

provision is not applicable, as the lot was created prior to the effective date of the current Zoning Ordinance, and enforcement of a 200 foot setback from I-66 would negate the use of the lot.

Pursuant to Sect. 2-417 of the Zoning Ordinance, a 20% reduction in the minimum required yard may be permitted by the Director of the Department of Public Works and Environmental Services on any yard reduced in dimension below minimum requirements at any time by condemnation of or by acquisition of a portion thereof for public purposes by any governmental agency. Given that land has been acquired from this property for the construction of I-66, that yard most parallel to I-66 may be permitted a 20% reduction by the Director.

Approval of a variance application may also be requested of the Board of Zoning Appeals (BZA) to permit construction of a dwelling that does not meet the minimum required yards. Variance applications require an application fee, plat, notification of adjacent property owners, and a public hearing before the BZA. Please contact the Zoning Evaluation Division at 703-324-1290 for more information about filing a variance application.

This determination is based upon the facts presented in your request and the applicable Fairfax County Zoning Ordinance provisions in effect as of the date of this letter. If the facts as presented change or if the applicable provisions of the Zoning Ordinance change subsequent to the issuance of this determination, the determination may be subject to modification.

Although this is not the response you had hoped for, I trust this correspondence adequately responds to your request. If you have any additional questions, please feel free to contact me at 703-324-1314.

Sincerely,



Cathy S. Belgin, AICP  
Senior Assistant to the Zoning Administrator

CSB/

cc: Linda Q. Smyth, Supervisor, Providence District  
Eileen M. McLane, Zoning Administrator  
Barbara C. Berlin, Director, Zoning Evaluation Division  
Lorrie Kirst, Deputy Zoning Administrator for Ordinance Administration Branch  
Diane Johnson-Quinn, Deputy Zoning Administrator for Zoning Permit Review Branch  
Margaret J. DuBios, 9310 Glasgow Drive, Fredericksburg, Virginia 22408 (property owner)

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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 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.