

AGENDA

STATE BUILDING CODE TECHNICAL REVIEW BOARD

Friday, July 15, 2016 - 10:00 a.m.

Virginia Housing Center, 4224 Cox Road,  
Glen Allen, Virginia 23060

I. Roll Call **(Tab 1)**

II. Approval of May 20, 2016 Minutes **(Tab 2)**

III. Public Comment

IV. Approval of Final Order **(Tab 3)**

In Re: Appeal of Karen McLaughlin  
Appeal No. 11-3

V. Approval of Final Order **(Tab 4)**

In Re: Appeal of Catherine Rowson  
Appeal Nos. 15-16

VI. Approval of Final Order **(Tab 5)**

In Re: Appeal of Peppermill Homes  
Appeal No. 15-19

VII. Appeal Hearing **(Tab 6)**

In Re: Appeals of Bradley Pollack  
Appeal Nos. 15-20

VIII. Appeal Hearing **(Tab 7)**

In Re: Appeal of Lien Tran and Anh Nguyen  
Appeal No. 15-21

IX. Secretary's Report

STATE BUILDING CODE TECHNICAL REVIEW BOARD

Updated October 6, 2015

**J. Robert Allen, CBO**  
**Chairman**  
(Representing the Virginia Building & Code Officials Association)

**James R. Dawson**  
**Vice Chairman**  
(Representing the Virginia Fire Chiefs Association)

**Matthew Arnold**  
(Representing the American Institute of Architects)

**W. Keith Brower, Jr.**  
(Representing the Commonwealth at large)

**Vince Butler**  
(Representing the Virginia Homebuilders Association)

**J. Daniel Crigler**  
(Representing the Virginia Plumbing-Heating-Cooling Contractors Association)

**John H. Epperson, PE**  
(Representing the Virginia Society of Professional Engineers)

**Alan D. Givens**  
(Representing the Virginia Plumbing-Heating-Cooling Contractors Association)

**Joseph A. Kessler, III**  
(Representing the Associated General Contractors of Virginia)

**VACANT**  
(Electrical Contractor)

**Eric Mays, PE**  
(Representing the Virginia Building & Code Officials Association)

**Joanne D. Monday**  
(Representing the Virginia Building Owners and Managers Association)

**Patricia S. O'Bannon**  
(Representing the Commonwealth at Large)

**W. Shaun Pharr, Esq.**  
(Representing the Apartment and Office Building Association of Metropolitan Washington)

**Justin I. Bell, Esq.**  
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# DRAFT MINUTES

## STATE BUILDING CODE TECHNICAL REVIEW BOARD MEETING

May 20, 2016

RICHMOND, VIRGINIA

### Members Present

Mr. J. Robert Allen, Chairman  
Mr. Vince Butler  
Mr. J. Daniel Crigler  
Mr. Alan D. Givens  
Mr. Joseph A. Kessler, III  
Ms. Joanne D. Monday  
Mr. W. Shaun Pharr, Esq.

### Members Absent

Mr. Matthew Arnold  
Mr. W. Keith Brower  
Mr. James R. Dawson  
Mr. John H. Epperson, PE  
Mr. Eric Mays  
Ms. Patricia S. O'Bannon

### Call to Order

The meeting of the State Building Code Technical Review Board ("Review Board") was called to order by the Chairman at approximately 10:00 a.m.

### Roll Call

The attendance was established by the Secretary, Alan W. McMahan, Secretary, and constituted a quorum. Mr. Justin I. Bell, Assistant Attorney General in the Office of the Attorney General, was present and serving as the Board's legal counsel.

### Approval of Minutes

Ms. Monday moved to approve the minutes of the February 19, 2016 meeting as presented in the Review Board members' agenda package. The motion was seconded by Mr. Crigler and passed unanimously with Mr. Kessler abstaining.

Ms. Monday moved to approve the minutes of the March 22, 2016 minutes as presented in the Review Board members' agenda package. The motion was seconded by Mr. Kessler and passed unanimously with Mr. Butler abstaining.

### Public Comment

The Chairman opened the floor for public comment. The Secretary reported that no one was preregistered. The Chairman closed the public comment period.

Final Orders

Appeal of David & Tara Laux; Appeal Nos. 15-15 and 15-22:

After review and consideration, Mr. Kessler moved to approve the final order as presented in the Review Board members' agenda package. The motion was seconded by Ms. Monday and passed unanimously.

Appeal of Harry & Catherine Rowson; Appeal No. 15-17:

After review and consideration, Ms. Monday moved to approve the final order as presented in the Review Board members' agenda package. The motion was seconded by Mr. Kessler and passed unanimously with Mr. Butler abstaining from the vote.

New Business

Appeal of Karen McLaughlin; Appeal No. 11-3:

An appeal hearing convened with the Chairman serving as the presiding officer. The appeal concerned alleged violations of the 2006 Virginia Uniform Statewide Building Code (USBC) as it relates to the construction of a detached single-family dwelling in Loudoun County.

The following persons were sworn in and given the opportunity to present testimony:

Karen McLaughlin  
Karen Skevington, for Ms. McLaughlin  
Paul Skevington, for Ms. McLaughlin  
Tom Marable, Van Metre Homes representative  
Chris Thompson, for Loudoun County

Also present was:

Juan Estrada, Esq, counsel for Van Metre Homes

After testimony concluded, the Chairman closed the hearing and stated a decision from the Review Board members would be

Appeal of Karen McLaughlin; Appeal No. 11-3 (cont'd.):

forthcoming and the deliberations would be conducted in open session. It was further noted that a final order reflecting the decision would be considered at a subsequent meeting and, when approved, would be distributed to the parties and would contain a statement of further right of appeal.

Decision: Appeal of Karen McLaughlin; Appeal No. 11-3:

After deliberation, Mr. Kessler moved to uphold the decision of the local code official and the local appeals board on both issues. The motion was seconded by Ms. Monday and passed unanimously.

Secretary's Report

Mr. Bell updated the Review Board members on pending circuit court appeals of past decisions. Mr. McMahan informed the Review Board members of a tentative July 15, 2016 Review Board meeting date. Mr. McMahan also introduced Mr. Michael Maenner, the newly hired State Building Code Administrator.

New Business

Appeal of Catherine D. Rowson; Appeal No. 15-16:

An appeal hearing convened with the Chairman serving as the presiding officer. The appeal concerned alleged violations of the 2012 Virginia Maintenance Code (VMC or Part II of the Uniform Statewide Building Code) as it relates to the maintenance of a detached single-family dwelling in the City of Chesapeake.

The following persons were sworn in and given the opportunity to present testimony:

Catherine Rowson, homeowner  
Harold Rowson, witness for Rowson  
Quentin Rowson, witness for Rowson  
Armetta Skinner, witness for Rowson  
Richard L. Burkard, Jr., for the City of Chesapeake  
Deborah Butler, for the City of Chesapeake

Appeal of Catherine D. Rowson; Appeal No. 15-16 (cont'd.):

John King, code official for the City of Chesapeake

The following exhibit was submitted by Ms. Rowson, without objection, to supplement the Review Board members' agenda package:

Exhibit A – An estimate by Rid-A-Pest Corporation

After testimony concluded, the Chairman closed the hearing and stated a decision from the Review Board members would be forthcoming and the deliberations would be conducted in open session. It was further noted that a final order reflecting the decision would be considered at a subsequent meeting and, when approved, would be distributed to the parties and would contain a statement of further right of appeal.

Decision: Appeal of Catherine D. Rowson; Appeal No. 15-17:

After deliberation, Mr. Pharr moved to modify the decision of the local appeals board and grant Ms. Rowson a 30 day extension Rowson to complete the necessary repairs, and that failure to comply within 30 days allows the City of Chesapeake to demolish her dwelling, but not before waiting an additional 60 days. The motion was seconded by Mr. Kessler and passed unanimously.

Appeal of Peppermill Homes, Inc.; Appeal No. 15-19:

An appeal hearing convened with the Chairman serving as the presiding officer. The appeal concerned alleged violations of the 2012 Virginia Construction Code (VCC or Part I of the Uniform Statewide Building Code) as it relates to the site plan and exterior grading of a property located in the City of Hampton.

The following persons were sworn in and given the opportunity to present testimony:

Appeal of Peppermill Homes, Inc.; Appeal No. 15-19 (cont'd.):

Chip McErlean, for the City of Hampton  
Steve Shapiro, building official for the City of Hampton  
Kimberly Vaughn, adjacent homeowner  
Robert Vaughn, adjacent homeowner  
Mike Veraldi, for Peppermill Homes

Also present was:

Brandi Law, Esq., counsel for the City of Hampton

The following exhibit was submitted by Peppermill Homes to supplement the documents in the Review Board members' agenda package:

Exhibit A – Letter from Landtech Resources, Inc.

An objection to the exhibit was voice by City of Hampton alleging it is irrelevant and hearsay. The Chairman ruled to admit the exhibit.

Then, the following exhibits were submitted by the Vaughns to supplement the documents in the Review Board members' agenda package with no objection from the City:

Exhibit B – Color photographs of their property

After testimony concluded, the Chairman closed the hearing and stated a decision from the Review Board members would be forthcoming and the deliberations would be conducted in open session. It was further noted that a final order reflecting the decision would be considered at a subsequent meeting and, when approved, would be distributed to the parties and would contain a statement of further right of appeal.

Decision: Appeal of Peppermill Homes, Inc.; Appeal No. 15-19:

After deliberation, Mr. Butler moved to overturn the local appeals

Decision: Appeal of Peppermill Homes, Inc.; Appeal No. 15-19  
(cont'd.):

board on Section 109.2. The motion was seconded by Mr. Kessler and passed unanimously. Mr. Butler than moved to uphold the decision of the local appeals board that a violation of Section 401.2 does exist. The motion was seconded by Mr. Pharr and passed unanimously.

Interpretations

The Chairman notified Review Board members that the Request of Interpretation submitted by the City of Winchester in the members' agenda package had been withdrawn by the city's building official prior to the meeting.

Adjournment

There being no further business, the meeting was adjourned by motion of Mr. Crigler at approximately 3:45 p.m.

Approved: \_\_\_\_\_

\_\_\_\_\_  
Chairman, State Building Code Technical Review Board

\_\_\_\_\_  
Secretary, State Building Code Technical Review Board

Virginia:

BEFORE THE  
STATE BUILDING CODE TECHNICAL REVIEW BOARD (REVIEW BOARD)

IN RE: Appeal of Karen McLaughlin  
Appeal No. 11-3

Hearing Date: May 20, 2016

DECISION OF THE REVIEW BOARD

I. PROCEDURAL BACKGROUND

The State Building Code Technical Review Board (Review Board) is a Governor-appointed board established to rule on disputes arising from application of regulations of the Department of Housing & Community Development. See §§ 36-108 and 36-114 of the Code of Virginia. The Review Board's proceedings are governed by the Virginia Administrative Process Act. See § 36-114 of the Code of Virginia.

II. CASE HISTORY

In July of 2009, the Loudoun County Department of Building and Development (local building department) issued a building permit

to Van Metre Homes (Van Metre), a licensed contractor, for the construction of a single-family dwelling on property located at 42975 Park Creek Drive in Ashburn. Once completed, the home was sold to Frank and Karen McLaughlin (McLaughlin).

In December of 2010, the local building department responded to a complaint by McLaughlin concerning the drainage system and the home's backfill. Upon inspection of the home, the local building department issued a Notice of Violation to Van Metre Homes citing Sections 109.3 (Engineering Details) and 115.1 (Violations) of Part I of the 2009 Virginia Uniform Statewide Building Code (Virginia Construction Code or VCC). The notice indicated that previous geotechnical engineering work for the subdivision showed that the plastic soils at the site were not approved as suitable material for use as backfill and that later laboratory testing suggested the material used as backfill against the McLaughlin's foundation were unsuitable for use as backfill material. As a result, the local building department required Van Metre to provide evidence that the soils had been tested and found suitable for use as backfill material.

In February of 2011, after reviewing the results of a subsurface report by Engineering Consulting Services (ECS) indicating that the soil used as backfill around McLaughlin's home fell at or below the maximum liquid and plastic limits established by the preceding report, the local building

department rescinded its Notice of Violation against Van Metre, noting that the "foundation wall is adequately designed to resist the soil pressures."

Consequently, McLaughlin filed an appeal to the County of Loudoun Board of Building Code Appeals (local appeals board) of the local building department's decision to rescind its Notice of Violation against Van Metre Homes. The local appeals board heard the appeal in March of 2011 and upheld local building department's decision.

From 2011 until 2015, both parties agreed to multiple continuances of the appeal. In March of 2015, the Review Board established a policy that any appeal older than two years from its application date must be processed for a hearing. In July of 2015, Review Board staff notified McLaughlin and Van Metre of this new policy.

In January of 2016, Review Board staff contacted the parties to make them aware of plans to schedule a hearing on the appeal. In subsequent discussions with McLaughlin and Bruce Clendenin, (president of Clendenin), representing McLaughlin, the parties expressed concern about the adequacy of the home's basement walls supporting the backfill material, as well as, the type of backfill material used against the home.

### III. FINDINGS OF THE REVIEW BOARD

The Review Board, in its consideration of the issue, finds that McLaughlin's appeal mainly involves two issues: 1) whether the soil used as backfill against her home's foundation was suitable backfill material, and 2) whether the home's foundation walls were designed to resist the soil lateral loads present.

With respect to the first issue, a representative of ECS (a geotechnical engineering company) offered testimony that its more recent soil investigation determined that the soil used as backfill adjacent to McLaughlin's foundation is not highly plastic or expansive. McLaughlin did not have a geotechnical expert witness present to dispute that assertion.

On the second issue, representatives from Van Metre and ECS testified that the vertically and horizontally reinforced 8" and 10" thick solid concrete foundation walls of McLaughlin's home were installed as shown in the wall sections approved with the original building permit. The Review Board finds that that testimony, as well as the January 12, 2011 document from Alliance Structural Engineers, Inc. stating the sufficiency of the foundations walls, to be compelling in this matter. McLaughlin did not provide any testimony or evidence proving that the foundation walls were not constructed as designed.

Section 109.3 of the 2009 VCC authorizes the local building official to require engineering details when deemed necessary.

With respect to this section, the Review Board finds that the local building official requested and obtained the necessary geotechnical and structural details to make a determination concerning the adequacy of the soil used as backfill and the foundation walls of the McLaughlin home.

With regards to Section 115.1 (Violations), the Review Board finds that the local building official correctly rescinded the Notice of Violation against Van Metre once it had been determined that the soils used as backfill and the foundation walls as constructed met the requirements of the 2009 VCC.

#### IV. FINAL ORDER

The appeal hearing has been given due regard, and for the reasons set out herein, the Review Board orders the decision of the local building department and the local appeals board to be, and hereby is, upheld.

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Chairman, State Technical Review Board

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Date Entered

As provided by Rule 2A:2 of the Supreme Court of Virginia, you have thirty (30) days from the date of service (the date you actually received this decision or the date it was mailed to you, whichever occurred first) within which to appeal this decision by filing a Notice of Appeal with Alan W. McMahan, Secretary of the Review Board. In the event that this decision is served on you by mail, three (3) days are added to that period.

Virginia:

BEFORE THE  
STATE BUILDING CODE TECHNICAL REVIEW BOARD (REVIEW BOARD)

IN RE: Appeal of Catherine Rowson  
Appeal No. 15-16

Hearing Date: May 20, 2016

DECISION OF THE REVIEW BOARD

I. PROCEDURAL BACKGROUND

The State Building Code Technical Review Board (Review Board) is a Governor-appointed board established to rule on disputes arising from application of regulations of the Department of Housing & Community Development. See §§ 36-108 and 36-114 of the Code of Virginia. The Review Board's proceedings are governed by the Virginia Administrative Process Act. See § 36-114 of the Code of Virginia.

II. CASE HISTORY

Catherine Rowson (Rowson) appeals a Notice of Unsafe Structure (Demolition) issued by the City of Chesapeake's Department of Development and Permits (local code official) in June of 2015, under Part III of the 2012 Virginia Uniform Statewide Building Code (the Virginia Maintenance Code or VMC) resulting from an inspection of her property located at 720 Mullen Road. The notice cited VMC Section 105 (Unsafe Structures or Structures Unfit for Human Occupancy) concerning her home and detached garage. According to the local code official, a neighbor's complaint initiated the inspections.

Later that same month, Rowson filed an appeal to the City of Chesapeake's Local Board of Building Code Appeals (local appeals board) which heard the appeal in September of 2015 and ruled to deny the appeal.

Subsequently, Rowson further appealed to the Review Board and a hearing was held before it in May of 2016 with Rowson; her adult daughter and two adult sons; and representatives of the city attending.

### III. FINDINGS OF THE REVIEW BOARD

Part III of the Virginia Uniform Statewide Building Code, known as the Virginia Maintenance Code, addresses when a building maybe ordered by a local enforcing agency to be

demolished, in §105.1, which states in pertinent part as follows:

"[...]when the code official determines that an unsafe structure or a structure unfit for human occupancy constitutes such a hazard that it should be razed or removed, then the code official shall be permitted to order the demolition of such structures in accordance with applicable requirements of this code."

Further, an unsafe structure is defined in § 202 of the Virginia Maintenance Code as follows:

"An existing structure (i) determined by the code official to be dangerous to the health, safety and welfare of the occupants of the structure or the public, (ii) that contains unsafe equipment, or (iii) that is so damaged, decayed, dilapidated, structurally unsafe or of such faulty construction or unstable foundation that partial or complete collapse is likely. A vacant existing structure unsecured or open shall be deemed to be an unsafe structure."

In this appeal, the Review Board finds that the testimony offered by the local code official, and the color photographs submitted by the city, clearly demonstrate damage to the home's floor sheathing, floor framing, interior walls, ceiling finishes, roof framing, and bathroom facilities which is indicative of an unsafe structure, as defined in VMC Section 202 above. The photographs also show debris through the home which may be covering other damage or causing further deterioration of the structure. City representatives testified that plumbing leaks caused raw sewage to collect in the home's crawl space. Rowson provided no substantive arguments concerning the merits

of the violations cited in the city's notice at the hearing before the Review Board, agreeing that some structural damage does exist within the home, but noted that repairs to the structure had already begun. Also, Rowson disputed the city's claim that the home has no functioning toilet. Rowson then emphasized her willingness and desire make the necessary repairs to remain in her home, arguing that she just needs more time to complete them. The city emphasized that the repairs must be completed, and approved through inspection by the city, before Rowson may re-occupy her home. The city also noted that no completed building permit had been submitted by Rowson or her representatives as of the date of the hearing.

In consideration of the issues under appeal, the Review Board finds sufficient evidence was provided by the city to demonstrate that the deteriorated condition of Rowson's home warranted the issuance of a Notice of Unsafe Structure (Demolition) under VMC Section 105. The Review Board also finds that despite the home's current condition, extensive repairs could bring it into compliance with the VMC. Moreover, the Review Board recognizes Rowson's need to complete the specified repairs to reoccupy her home.

#### IV. FINAL ORDER

The appeal hearing has been given due regard, and for the reasons set out herein, the Review Board modifies the decision of the local code official and the local appeals board to grant one 30-day extension from the approval date of the final order to allow the appellant to acquire the necessary building permits. Furthermore, if after 30 days, the final order has not been fully complied with, then the City may commence with its demolition process; however, no demolition may occur sooner than 60 days following the conclusion of the 30-day period.

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Chairman, State Technical Review Board

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Date Entered

As provided by Rule 2A:2 of the Supreme Court of Virginia, you have thirty (30) days from the date of service (the date you actually received this decision or the date it was mailed to you, whichever occurred first) within which to appeal this decision by filing a Notice of Appeal with Alan W. McMahan, Secretary of the Review Board. In the event that this decision is served on you by mail, three (3) days are added to that period.

Virginia:

BEFORE THE  
STATE BUILDING CODE TECHNICAL REVIEW BOARD (REVIEW BOARD)

IN RE: Appeal of Peppermill Homes, LLC  
Appeal No. 15-19

Hearing Date: May 20, 2016

DECISION OF THE REVIEW BOARD

I. PROCEDURAL BACKGROUND

The State Building Code Technical Review Board (Review Board) is a Governor-appointed board established to rule on disputes arising from application of regulations of the Department of Housing & Community Development. See §§ 36-108 and 36-114 of the Code of Virginia. The Review Board's proceedings are governed by the Virginia Administrative Process Act. See § 36-114 of the Code of Virginia.

II. CASE HISTORY

In October of 2014, Peppermill Homes, LLC (Peppermill) was issued a

building permit to construct a detached single-family dwelling on property it owned at 316 S. Hope Street in Hampton. The permit was issued under Part I of the 2009 Virginia Uniform Statewide Building Code (Virginia Construction Code or VCC) by the City of Hampton's Community Development Department (City building department), the agency responsible for the enforcement of the VCC. Subsequently, the City building department issued a certificate of occupancy for the property in February of 2015.

In response to adjacent property owner's complaint about water migration, the City building department conducted an inspection of the property in July of 2015.

As a result of the inspection, the City building department issued a notice of violation to Peppermill for violations of VCC Sections 109.2 (Site Plan) and R401.3 (Drainage) of the 2012 VCC<sup>1</sup> pertaining to the final grading and related surface drainage on the property.

In August of 2015, Southern Chesapeake Realty, acting on behalf of Peppermill, filed an appeal of the notice of violation to the City of Hampton's Building Code Board of Appeals (local appeals board) which heard the appeal in September of 2015 and ruled to uphold the City building department's notice of violation on both citations - VCC Sections 109.2 and R401.3.

<sup>1</sup> Although the effective date of the 2012 VCC was July 14, 2014, Section 103.2 allows permit applicants to choose, for a one-year period following the effective date, whether to comply with the provisions of the 2012 VCC or the 2009 VCC. Regardless, the code language in Sections 109.2 and R401.3 did not change between the editions.

The decision was signed and delivered to Peppermill in November of 2015.

Peppermill then further appealed to the Review Board and a hearing was held before the Review Board with Michael Veraldi, a representative of Peppermill; representatives of the City building department and the city's legal counsel; and Robert and Kimberly Vaughn, adjacent property owners, present.

### III. FINDINGS OF THE REVIEW BOARD

The first issue under appeal is whether the fact that Peppermill did not provide the City with an as-built site plan (i.e. a grading plan) is a violation of Section 109.2 (Site Plan) of the 2009 VCC which states, in part:

"When determined necessary by the building official, a site plan shall be submitted with the application for a permit [...]. The site plan shall also show [...] the established street grades and the proposed finished grades."

On this matter, both parties agreed that a site plan showing the proposed finished grades for the property was submitted by Peppermill as part of the building permit application. However, the City testified that it later required Peppermill to provide an updated site plan showing the current

grading of the property, claiming that it does not match the proposed finished grades shown on the submitted site plan. The Review Board finds that the language in Section 109.2 clearly allows a local building department to require a site plan with the proposed finished grades as a condition for issuing a building permit. However, the Review Board finds that the same section does not expressly authorize a local building department to require the submission of an "as-built" site plan once the final grading of a property has occurred.

The second issue under appeal is whether the current grading constitutes a violation of VCC Section R401.3 (Drainage) which states, in part:

"Surface drainage shall be diverted to storm sewer conveyance or other approved point of collection that does not create hazard to the dwelling unit. Lots shall be graded to drain surface water away from foundation walls. The grade shall fall a minimum of 6 inches (152 mm) within the first 10 feet (3048 mm)."

On this issue, the City testified that the current grading of the property, as reflected on the as-built site plan, is in violation of Section R401.3 because it directs surface drainage to adjacent properties and not towards a storm sewer conveyance or other approved point of collection as required by the section. In addition, the City asserted the intent of Section R401.3 is to prohibit and prevent surface drainage not only against the foundation of the structure under permit, but also

against adjacent structures. Peppermill testified that the grade behind the home is directed to the rear property line and that the grade along the sides and front of the home is directed towards the storm sewer along the S. Hope Street. The adjacent property owners disagreed stating that the current grading is causing surface water to drain onto their property.

On this matter, the Review Board finds that the "as-built" site plan plainly shows that the final grading of the property directs surface drainage at the rear and sides of the structure towards the rear property line, and at the front of the building, towards the S. Hope Street. As a result, the Review Board finds that because the final grading in the rear and side yards of the property does not divert surface drainage to a storm sewer conveyance or another point of collection, it constitutes a violation of Section R401.3.

In its decision, the Review Board did not address the issue of whether the intent of Section R401.3 is to prohibit surface drainage against foundations of adjacent properties.

#### IV. FINAL ORDER

The appeal hearing has been given due regard, and for the reasons set out herein, the Review Board orders the decision of the City of Hampton building official the City appeals board to

be, and hereby is, overturned concerning VCC Section 109.2 (Site Plan) and upheld concerning VCC Section R401.3 (Drainage).

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Chairman, State Technical Review Board

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Date Entered

As provided by Rule 2A:2 of the Supreme Court of Virginia, you have thirty (30) days from the date of service (the date you actually received this decision or the date it was mailed to you, whichever occurred first) within which to appeal this decision by filing a Notice of Appeal with Alan W. McMahan, Acting Secretary of the Review Board. In the event that this decision is served on you by mail, three (3) days are added to that period.

VIRGINIA:

BEFORE THE  
VIRGINIA MANUFACTURED HOUSING BOARD

IN RE: Appeal of Bradley Pollack  
Appeal No. 15-20

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VIRGINIA:

BEFORE THE  
STATE BUILDING CODE TECHNICAL REVIEW BOARD (REVIEW BOARD)

IN RE: Appeal of Bradley Pollack  
Appeal No. 15-20

REVIEW BOARD STAFF DOCUMENT

1. In September of 2015, the Shenandoah County Department of Building Inspections (County building department), the county agency responsible for the enforcement of Part I of the Virginia Uniform Statewide Building Code (the Virginia Construction Code, or VCC), issued 4 building permits to Main Street Homes, LLC (Main Street Homes), a Class A licensed contractor. The permits were for the construction of 2 two-family dwellings by the One building was to be constructed on lot 47 (200 Grafton Court) and lot 48 (202 Grafton Court); the other building on lot 49 (204 Grafton Court) and lot 50 (206 Grafton Court) of the Edinburg Square subdivision, located in the Town of Edinburg.<sup>1</sup>

2. In October of 2015, Bradley Pollack (Pollack), an owner of property near the Edinburg Square subdivision, appealed the County building department's decision to issue the building permits.

3. In November of 2015, the Shenandoah County Board of Building Code Appeals (local appeals board) heard Pollack's appeal and ruled to uphold the decision of the local building department.

4. Subsequently, Pollack further appealed to the Review Board.

<sup>1</sup> Shenandoah County enforces the VCC for the Town of Edinburg, which is located within the county.

5. Review Board staff conducted an informal fact-finding conference, by teleconference, in May of 2015, attended by Pollack, legal counsel to Main Street Homes, representatives of the County building department, and the local appeals board chairman. During the discussion, Pollack opined that the County building department erred in approving the building permits because the zoning approval, which was required prior to issuance of the permit, is illegal. The local building department explained that it had, in fact, temporarily rescinded all four building permits, as a result of the local board of zoning appeal decision to overturn the zoning official's approval. The local building department then explained that once the local zoning board's decision was subsequently overturned in court, it reinstated Main Street Homes' building permits. Staff told the parties the Board cannot rule on zoning-related issues, but only on the application of the VCC, and brought up the possibility of holding a preliminary hearing for consideration for lack of jurisdiction. Pollack contended the Board has jurisdiction since the issue under appeal concerns the issuance of building permits.

6. This staff document was drafted and distributed to the parties and timeframes were established for the submittal of objections; corrections or additions to the staff document; the submittal of additional documents for the record; and written arguments to be included in the record of the appeal prepared for the hearing before the Review Board.

#### Suggested Issue for Resolution by the Review Board

1. Whether to overturn the decision of the local building department to issue the building permits and the local appeals board's decision to uphold that decision.

# REVIEW BOARD APPEAL 15-20

## BASIC DOCUMENTS





Shenandoah Co. Bldg Dept  
 Woodstock VA 22664  
 LIEN AGENT: NONE DESIGNATED

NEW RESIDENTIAL PERMIT

PERMIT NUMBER: 0043967 - 2015  
 USBC: 2012  
 APPLICATION DATE: 9/15/2015  
 ISSUANCE DATE:  
 RENEWAL DATE:  
 DATE: 9/16/2015

OWNER NAME/ADDRESS MAIN STREET HOMES LLC FOLTZ GARY 2471 CAVE RIDGE ROAD MT JACKSON VA 22842 22842 PHONE: 540-477-2686	SITE ADDRESS 000204 GRAFTON CT EDINBURG 00000	CONTRACTOR NAME/ADDRESS Mumaw H Dexter 2471 Cave Ridge Road Mt. Jackson, VA 22842 PHONE: 540 477 2686
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RE ACCOUNT#: 33773 TAX MAP NO.: 070A507	DESCRIPTION OF CONSTRUCTION LOCATION 049 LOT: 49 BLOCK:	SECTION: BLDG NO.:
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SET-BACKS: FRONT: BACK: RIGHT: LEFT: CNTR: FATBE:	HEALTH PERMIT NO.: FLOODPLAIN: AREA: RIGHT-OF-WAY:	DISTRICT: 09-MADISON/EDINBURG SUB-DIVISION: ZONE: S/E CUP NO.: SITE PLAN:
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DIRECTIONS TO SITE: RT 11 SOUTH TO EDINBURG LEFT ONTO JENNIFER COURT STRAIG  
 RT BACK TO END CULDSAC

USE GROUP: R-5 (Residential-IRC) CNST.TYPE:	USE CODE: TWO FAMILY DWELLING NATURE/WRK: THE ROOSEVELT DUPLEX 2BED 2BATH CRAWLSPACE ATTACHED 2CAR GARAGE 200 AMP HEATPUMP GAS FIREPLACE FRONT PORCH REAR PATIO TOWN W&S	SQ FEET: 1300
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ONE FAMILY TWO FAMILY TOWNHOUSE APARTMENT SIZE NOTES: DUPLEX 2BED, 2BATH CRAWL, 200 AMP ATTACHED GARAGE FRONT PORCH, REAR PATIO HE > ATPUMP WITH GAS BACK UP GAS FIREPLACE TOWN W&S	NEW RESIDENTIAL PERMIT #BEDROOMS 2 CARPORT #BATHROOMS 2 BASEMENT CRAWLSPACE #STORIES 1 FRAME GARAGE ATTACHED HEATING HPUMP/GAS PORCH/SIZE	ELECTRICAL YES MECHANICAL YES W/GAS PLUMBING YES TOWN DECK/SIZE NONE
---	--	---

JOB VALUE: 147,000.00	<p>I hereby certify that the proposed work is authorized by the owner of record and that I have been authorized by the owner to make this application as his/her authorized agent and we agree to comply with all provisions of the Virginia Uniform Statewide Building Code as adopted by the County of Shenandoah          WE AGREE TO NOTIFY THE DEPARTMENT OF BUILDING INSPECTION FOR THE REQUIRED INSPECTIONS ON THIS PROJECT IN ACCORDANCE W/ THE VUSBC.</p> <p><i>[Signature]</i>          owner or agent (circle)                      date</p>
PERMIT FEE: 227.85	
2.0% SURCHARGE: 7.96	
ELECTRIC: 52.00	
PLUMBING: 68.00	
MECHANICAL: 50.00	
SEPTIC (NO 2K): FINE (NO 2K):	
TOTAL FEES: 405.81	

9/22/15  
 ISSUE DATE:  
*[Signature]*  
 INITIALS

REQUIRED SIGNATURES  
*[Signature]*  
 CODE OFFICIAL  
 9/21/15  
 DATE:  
 FOR INSPECTIONS CALL 459-6185

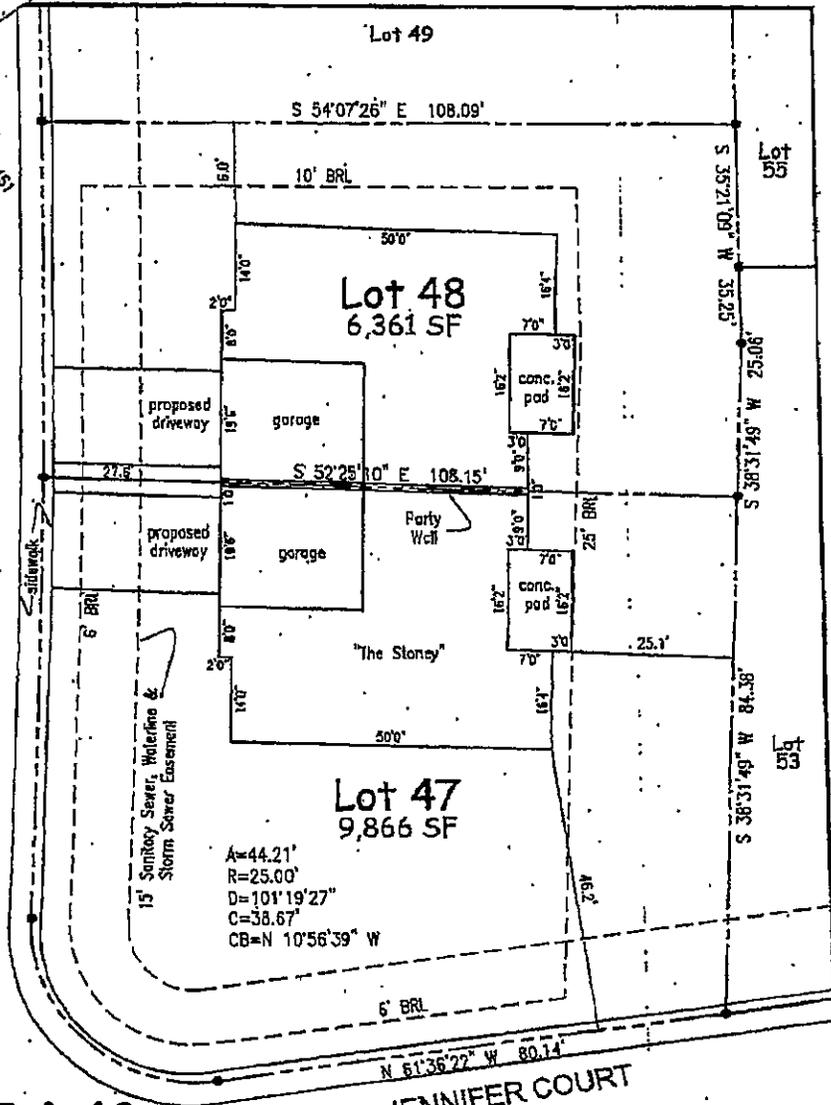
11/11/2015 10:11 AM



A=57.08'  
R=1918.47'  
D=1'42'17"  
C=57.08'  
CB=N 36°43'42" E

A=71.56'  
R=1918.47'  
D=2°08'14"  
C=71.56'  
CB=N 38°38'57" E

A=44.21'  
R=25.00'  
D=101°19'27"  
C=38.67'  
CB=N 10°56'39" W



GRAFTON COURT  
(50' R/W)

JENNIFER COURT

# Plot Plan Lots 47 & 48

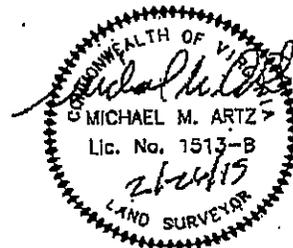
## Edinburg Square, Phase II

Redivision of Lots 32 through 36 & Lots 39 through 61

Town of Edinburg, Madison District, Shenandoah County, Virginia  
Scale: 1" = 20' Date: February 26, 2015

**Notes:**

1. Boundary shown hereon was taken from deeds and plats of record.
2. This plot is subject to easements and restrictions of record.
3. No title report furnished.
4. A six (6) foot wide Sidewalk Easement as per Deed Book 1484, Page 954 and a fifteen (15) foot wide Electric Easement as per Deed Book 1258, Page 141 exists along all the right-of-way lines of Jennifer Court, James Court, and Grafton Court. For clarity purposes, these easements are not shown.
5. There is a twenty (20) foot wide Shenandoah Telephone Company Easement along all front and rear lot lines and a ten (10) foot wide easement along all interior lot lines as described in Deed Book 1215, Page 963.



PREPARED BY:  
**PENNONI ASSOCIATES INC.**



117 East Piccadilly Street  
Winchester, VA 22601  
T 540.667.2129  
F 540.665.0493



**APPLICATION TO FILE AN APPEAL TO THE  
SHENANDOAH COUNTY BOARD OF BUILDING CODE APPEALS**

To: Chairman, Building Code Board of Appeals  
Shenandoah County Department of Building Inspection  
600 North Main Street, Suite 107  
Woodstock, VA. 22664

FEE.....\$125.00

Receipt No. \_\_\_\_\_

Pursuant to Section <sup>119.5</sup> 106 of the Virginia Uniform Statewide Building Code, I Brad Pollack  
Hereby file for appeal on this 19th day of Oct, 20 15.

Appellant (Applicant)	vs	Appellee
Name: <u>Bradley G. Pollack</u>		<u>MAIN STREET HOMES LLC</u>
Address: <u>733 S Main St</u> <u>Woodstock</u>		<u>FOLTZ GARY</u>
Representing: <u>Self</u>		_____

Background Information

- (1) Type or use of building or equipment: R-5
- (2) Code Section(s): \_\_\_\_\_
- (3) Location(s): Edinburg Square
- (4) Claim (check appropriate block)
  - The building official has refused to grant a modification of the provisions of the USBC.
  - The true intent of the USBC has been incorrectly interpreted.
  - The provisions of the USBC do not fully apply.
  - The use of a form of construction that is equal to or better than that specified in the USBC has been denied. See a Hacked Appeal

Signature: BJL Pollack

OFFICE USE

Staff Action

Case No. 1-2015

- Date Received: 10-19-15
- Date of Hearing: 11-17-15
- Date of Parties Notified: 10-210-2015

Final Disposition

- Building Official's decision affirmed
- Building Official's decision modified
- Building Official's decision reversed

Comments: \_\_\_\_\_

To: Shenandoah County Board of Building Code Appeals

Re: Appeal of New Residential Permit Numbers 0043963 - 2015 through 0043967 - 2015

1. Pursuant to § 37-1 of the Edinburg Town Code, Chapter 71 of the Shenandoah County Code, Virginia Code § 36-105, and Section 119.5 of the Virginia Construction Code (Part I of the Virginia Uniform Statewide Building Code), I, Bradley G. Pollack, aggrieved by the Shenandoah County Building Department's application of the Virginia Uniform Statewide Building Code to the above referenced New Residential Permits, request appeal to the Shenandoah County Board of Building Code Appeals.

2. The name and address of the proposed owners of the building or structure is Main Street Homes LLC and Gary Foltz, of 2471 Cave Ridge Road, Mt. Jackson, VA 22842.

3. My name and address is Bradley G. Pollack, 100 Jillian Court, Edinburg, Virginia 22824.

4. A copy of the building official's decisions are attached hereto.

5. Among my grievances are that the re-platted lots referred to in the permits have been appealed to the Circuit Court of Shenandoah County pursuant to Virginia Code Section 15.2-2272(2), and these lots have not been upheld on appeal. Until then, they should not have been filed with the

Shenandoah County Circuit Court, and the Building Department should not have relied upon them.

6. A second grievance is that the Zoning Permits which underly these building permits were reinstated by the Shenandoah County Circuit Court. However, that ruling is not yet final.

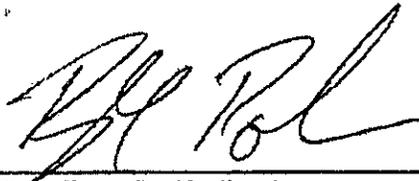
7. Another grievance is that the re-platting is not allowed by the restrictive covenants at Edinburg Square, two family dwellings are not allowed by the restrictive covenants at Edinburg Square, these dwellings have not been approved by the Architectural Review Board at Edinburg Square, and these permits, in turn, may violate the restrictive covenants in other ways. 1

8. Although covenants are not specifically mentioned in the Virginia Construction Code, site plans are an important part of its Section 109 (Construction Documents).

"Site plan" means the proposal for a development or a subdivision including all covenants, grants or easements and other conditions relating to use, location and bulk of buildings, density of development, common open space, public facilities and such other information as required by the subdivision ordinance to which the proposed development or subdivision is subject.

Virginia Code § 15.2-2201.

Respectfully submitted,



---

Bradley G. Pollack  
100 Jillian Court  
Edinburg, VA 22824  
bpollack@shentel.net  
335-4712  
459-8670 (fax)

1 Section 119.5 of the Virginia Construction Code (Part I of the Virginia Uniform Statewide Building Code) does not require the applicant to provide any reasons for his appeal in this application. Applicant, therefore, reserves the right to add any additional grounds at any allowable point in this process.

To: Shenandoah County Board of Building Code Appeals

Re: Appeal of New Residential Permit Numbers 0043963 - 2015 through  
0043967 - 2015

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Respectfully submitted,

---

Bradley G. Pollack  
100 Jillian Court  
Edinburg, VA 22824  
bpollack@shentel.net  
335-4712  
459-8670 (fax)

<sup>1</sup> Section 119.5 of the Virginia Construction Code (Part I of the Virginia Uniform Statewide Building Code) does not require the applicant to provide any reasons for his appeal in this application. Applicant, therefore, reserves the right to add any additional grounds at any allowable point in this process.

Date: 10/21/15 Building Inspection Miscellaneous Receipt Type: G:37:01

Name: BRADLEY FELLACK  
708 SOUTH MAIN STREET  
WINDSOR VA 22664

Receipt No: 0681776

Misc. Rec. Code: 0044 CODE APPEALS

Receipt Date: 10/21/2015 Payment Type: CHECK

Description	Amount	Balance
CODE APPEALS	\$125.00	3.00
Total Received:	\$125.00	

Bradley Fellack  
Signature of Issuing Clerk

10/21/15  
Date

# County of Shenandoah

# FILE COPY

OFFICE OF COMMUNITY DEVELOPMENT  
600 N. Main Street, Suite 107  
WOODSTOCK, VA 22664

*Brandon Davis*  
*Director*



*Inspectors:*  
*Tim Ferguson*  
*Don Williams*  
*Crystal Copenhaver*

*Michael Dellinger*  
*Building Code Official*

*Plans Examiner:*  
*Mark Griffey*

Tel: 540.459.6185 Fax: 540.459.6193  
[www.shenandoahcountyva.us](http://www.shenandoahcountyva.us)

October 26, 2015

Richard E. Byers, Chairman  
Local Building Board Code of Appeals  
3173 Jadwyn Road  
Woodstock, VA 22664

Chairman Byers:

I have received notice from Brad Pollack, 753 South Main Street Woodstock, VA 22664, wishing to appeal the issuance of building permits to Main Street Homes for new dwellings located in the Edinburg Square Subdivision.

Mr. Pollack's appeal is that the town zoning administrator has issued zoning approval in violation of state law therefore making the issuance of the building permits illegal. His appeal is attached.

In accordance with Section 119 of the Virginia Uniform Statewide Building Code, this appeal is scheduled to be heard on November 17, 2015 at 4 p.m. in the Board of Supervisors room located at 600 North Main Street. Please RSVP your intention to either email at [mdellinger@shenandoahcountyva.us](mailto:mdellinger@shenandoahcountyva.us) or telephone at 540-459-6185 no later than 5 p.m. on November 6, 2015

Regards,



M. A. Dellinger CBO, CFM  
Building Official

Cc: Edwin Tamkin  
Dexter Mumaw  
Carl Culp, Jr.  
Wayne Price  
Grayson Getz  
Litten and Sipe, LLC  
Town of Edinburg, VA  
Main Street Homes  
Bradley Pollack

SENDER COMPLETE THIS SECTION	COMPLETE THIS SECTION ON DELIVERY
<ul style="list-style-type: none"> <li>Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.</li> <li>Print your name and address on the reverse so that we can return the card to you.</li> <li>Attach this card to the back of the mailpiece, or on the front if space permits.</li> </ul>	<p>A. Signature  <input checked="" type="checkbox"/> Signature <input type="checkbox"/> Agent  <input type="checkbox"/> Address</p> <p>B. Received by (Printed Name) <input type="checkbox"/> Date of Delivery</p> <p>C. Is delivery address different from item 1? <input type="checkbox"/> Yes  <input checked="" type="checkbox"/> No          If YES, enter delivery address below: <input type="checkbox"/> No</p>
<p>1. Article Addressed to:          Bradley Pollack          753 South Main Street          Woodstock, VA 22664</p>	<p>D. Is delivery address different from item 1? <input type="checkbox"/> Yes  <input checked="" type="checkbox"/> No          If YES, enter delivery address below: <input type="checkbox"/> No</p> <p>2. Service Type  <input checked="" type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail  <input type="checkbox"/> Registered <input type="checkbox"/> Return Receipt for Merchandise  <input type="checkbox"/> Insured Mail <input type="checkbox"/> C.O.D.</p> <p>4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes</p>
<p>2. Article Number (Transfer from service label) 7011 1570 0000 4517 4175</p>	

PS Form 3811, February 2004 Domestic Return Receipt 102585-02-M-1540

SENDER COMPLETE THIS SECTION	COMPLETE THIS SECTION ON DELIVERY
<ul style="list-style-type: none"> <li>Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.</li> <li>Print your name and address on the reverse so that we can return the card to you.</li> <li>Attach this card to the back of the mailpiece, or on the front if space permits.</li> </ul>	<p>A. Signature  <input checked="" type="checkbox"/> Signature <input type="checkbox"/> Agent  <input type="checkbox"/> Address</p> <p>B. Received by (Printed Name) <input type="checkbox"/> Date of Delivery</p> <p>C. Is delivery address different from item 1? <input type="checkbox"/> Yes  <input checked="" type="checkbox"/> No          If YES, enter delivery address below: <input type="checkbox"/> No</p>
<p>1. Article Addressed to:          Main Street Homes, LLC          2471 Cave Ridge Road          Mt. Jackson, VA 22842</p>	<p>D. Is delivery address different from item 1? <input type="checkbox"/> Yes  <input checked="" type="checkbox"/> No          If YES, enter delivery address below: <input type="checkbox"/> No</p> <p>3. Service Type  <input checked="" type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail  <input type="checkbox"/> Registered <input type="checkbox"/> Return Receipt for Merchandise  <input type="checkbox"/> Insured Mail <input type="checkbox"/> C.O.D.</p> <p>4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes</p>
<p>2. Article Number (Transfer from service label) 7011 1570 0000 4517 4205</p>	

PS Form 3811, February 2004 Domestic Return Receipt 102585-02-M-15

WHEREAS, the local Board of Building Code Appeals is duly appointed to resolve disputes arising out of enforcement of the Virginia Uniform Statewide Building Code; and

WHEREAS, an appeal has been filed and brought to the attention of the board of appeals; and

WHEREAS, a hearing has been held to consider the aforementioned appeal; and

WHEREAS, the board has fully deliberated this matter; now, therefore, be it

RESOLVED, That in the matter of

Appeal No. 1-2015

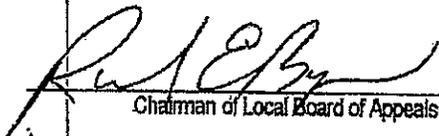
IN RE: Bradley C. Pollack v. Main Street Homes LLC  
Gary Foltz

The appeal is hereby, rejected for the reasons set out below:

The Board upholds the Building Officials decision to issue building permits. All Board members voted to uphold.

Date: 17 November 2015

Signature

  
Chairman of Local Board of Appeals

Upon receipt of this resolution, any person who was a party to the appeal may appeal to the State Building Code Technical Review Board by submitting an application to such Board within twenty-one (21) calendar days. Application forms are available from the Office of the State Building Code Technical Review Board, 501 North Second Street, Richmond, Virginia 23219 (804) 371-7150.

Minutes  
**SHENANDOAH COUNTY BOARD OF BUILDING CODE APPEALS**

4:00 P.M.

Board Meeting Room  
Shenandoah County Government Office  
November 17, 2015

**PRESENT:** Richard Byers, Chairman  
Edwin L. Tamkin  
Carl Culp  
Wayne Price

**ALSO PRESENT:** Michael Dellinger, Code Official  
Meghan Ryman, Community Development Technician

**Chairman Byers** called the meeting to order at 4:00

**Chairman Byers** We will hear an appeal from Mr. Brad Pollack pertaining new residential building permits in the town of Edinburg. All the board member has received a copy of Mr. Pollack appeal. Mr. Dexter Mumaw who is also a member of the board and owner of Main Street Homes is not here and will not be participating in the meeting. Everyone up here will now introduce themselves. I will ask if there is any conflict of interest to excuse themselves from the meeting.

**Carl Culp** I do have a note I didn't recognize Gary Foltz's name. I know GB Foltz he is married to my cousin brother but I do not have any business with them and I don't feel it great any risk.

**Chairman Byers** Mr. Pollack do you have any objections?

**Brad Pollack** No

**Chairman Byers** We will first start with the Building Code Official, I request the board members will only ask questions, Mr. Pollack will have a turn and then it will go to anyone from the town of Edinburg who would like to speak. I would like to stay away from zoning questions. We are here to hear building board appeals. Once we get done talking and presenting the case the board will then do a role call on the vote. Once we come to a decision we will then adjourn the meeting. We will first hear from the Building Code Official.

**Michael Dellinger** In the county Government we are a little unique in the way we issue building permits. Not only do we issue the permits for the incorporated areas in the county, we have mutual agreements with towns that have less the thirty-five hundred to do so for that town. In Shenandoah County we do have a written agreement with all the Mayors or Town Council Chairman. The process normally you go through for any building permit if it's not located on public water, than the permits we require to issue the permit are we have to have approval from

Virginia Department of Highway and a well and septic report from Virginia Health Department. The last permit we required are zoning permits. We do the county and the town issues their own zoning permit. If we do not receive all three approvals that may apply to issuing the permit then the permit may not be issued. In this case we have received approval from the Town of Edinburg Zoning Administrator stating that the construction that was proposed to be built at Edinburg Square met the regulation of the town zoning. We do have on file the zoning letter approval from Edinburg, so that was our bases for issuing the building permits. Again each one of these outside agencies regulates their department and makes their own rules. It's not up to us to question any time of proffers or restricted covenants those types of issue are personal issues. What we are looking for is the final from the Zoning administrator. Once we have everything for the permit to be issued, we then do the inspections. Once they get a final, we then give them a Certificate of Occupancy.

**Chairman Byers** At one point you mention state roads. Will these be state roads when they are all done?

**Michael Dellinger** I am not sure of that.

**Town Representatives** Yes they are state owned

**Chairman Byers** I then take it that all the town sites are serviced by town water and sewer? The town of Edinburg doesn't have any concerns on the use of additional utilities.

**Michael Dellinger** That is correct and not that I have heard of any

**Bradley Pollack** The County had the pieces that they needed it appeared. The problems are numerous, unfortunately. The first problem is that the lots in which the buildings where approved for have been appealed to the circuit court in September of last year. The town of Edinburg approved the re-platting of phase 2. This then created the lots Mr. Dellinger approved building on. The problem is, I timely appealed the decision of the town council to re-plat. The Town of Edinburg approved it on September 16 and on October 16 I appealed that to the circuit court and just for the record I would like to put on record a copy. What the code of Virginia reads to me is that upon that appeal that should have stopped the plat from going on record and without that being on record I think Mr. Dellinger would tell you he wouldn't allow any building on those lots. They were put on record improbably because the codes say that upon appeal the court may notify the ordinance if it finds that an owner of any lot shown on the plat will be irreparably damaged. If not appeal from the adoption on ordinance is filed within the time above provided which is thirty days, or is the ordinance is appealed on appeal a certified copy of ordinance of vacation may be filed in the clerk's office. The clear implication is if there was an appeal then the plat shouldn't have been filed. That if no appealed is filed or the circuit court upholds it on appeal then the plat goes on record. Until then it shouldn't have gone on record. It went on record and understandably Mr. Dellinger relied on it and I think he shouldn't have. That's the first reason the permit should be over turned by the board, because it wouldn't be final due to

this board can then relay on this law suit that has recently been served on town. Once the court makes a ruling then the court will make a decision whether the plat can be filled. Until then I don't think the building official should have approved building on a lot that isn't final until the court makes a ruling. I would ask on that basis either over turn the building permits or put the process on hold until the circuit court makes a final decision.

The next base of the appeal involves litigation and that is the zoning permits Mr. Dellinger relied on the zoning permits that I appealed to the Edinburg Board of Zoning appeals. They over turned the vote to issue the zoning permits. The builders appealed that to the circuit court and they made a ruling that the zoning permits where properly issued and over turned the Board of Zoning appeals. The problem with the building official or taking final action on the building permits is that order isn't final. The judge hasn't made a decision at all but in the other case the judge has came down strong at least for right now saying that the Board of Zoning Appeals was wrong and that I was wrong and that the zoning permits shouldn't have been enter but the judge hasn't made a final ruling. He has made a ruling, but not a final ruling. I would like to put on record the motion to reconsider that I re-filled on that case on the tenth of August and there has been no ruling from the court. The court hasn't ruled on my reconsider my motion over three month so upholding on the zoning permits hasn't been finalized.

The last base is the restrictive covenants and now we are getting into an area that I know Mr. Dellinger doesn't want to go in, understandably and justifiably a pain in the rear stand point. To ask him to review restrict covenants is asking a lot. I don't know if it's generally done or not, to come to think about it, I have seen authority that indicate that the building department should do. I didn't bring that authority with me. It's not clear but my view of the law is although restrict covenants are not mentioned in Mr. Dellinger's Hand book but site plans are. I found in the code part of my appeal that site plans means the proposal for a development, subdivision including all covenants, grants, or easements and other conditions relating to use, location and bulk of buildings, density of development, required by the subdivision ordinance to which the proposed developments or subdivision is subject. So site plan which he must rely on doesn't just mean the drawing and the covenants as well even if that isn't the general practice the law is the law. The problem with the restrictive covenants that at least I am aware of it is a peer deep applicable to this subdivision that they compass the lots that existed before the town decided to change them, which now are before the circuit court so that's one problem with the convenience that they deal with the lots as the previously existed. The other problems are that there is an Architectural Review Board mentions in the covenants that of course did weigh in at all and hadn't been formed I do believe. It is in there and there hasn't been compliance with it and I think technically speaking for instants if Mr. Dellinger was given marching orders to stop all construction, he could look at the restrictive covenants and say there was no architectural review board and you can't have your permit and frankly I think that what the law requires and I think when no one challenges it you go forward, but I am challenging it and I am asking you to stick to the law. And the restrict covenants don't appear to allow it and I think there is going to be arguments that the

restrictive covenants has been amended but we don't believe that there is only one Edinburg square home owner associate mention in both set of covenants phase one and two. And that owner association has never been organized. Phase two owners associate reportedly form and I don't think it is legitimate but at least for the restrictive covenants I do think are legitimate we don't think the building permit complies with this. That's my case but in summary I say the easiest thing this board can do is that the lots and the zoning permits are subject to active litigation in the circuit court and that if the board is not inclining to overturn Mr. Dellinger then the board has every right to continue this hearing until the court rules.

**Chair Byers** Thank you. Does the Town of Edinburg have anything they want to say to us?

**Jay Neal** I am council to the Town Edinburg and there town attorney. I will be very brief the circuit court heard argument on the issuance of the building permit. Judge Sheridan was a substitute judge because the local judge doesn't hear cases from local attorneys. Mr. Pollack is correct he did file a motion to reconsider and it's still sitting there three months later. Judge Sheridan didn't under state it; it was a very strong opinion that he thought the zoning permits should have been issued. We believe Judge Sheridan move correctly a lot of the arguments Mr. Pollack made then are the same arguments he made today. I don't mean any disrespect to Mr. Pollack; I have great respect for Mr. Pollack we just disagree on some things. Restrictive Covenants, I have practiced 35 years and have done a lot of real estate law and I have yet to see a town or county get into the restricted covenants. That is normally done by the HOA or by adjoining land owners. So I suggest that If Mr. Pollack or any other resident out there believes in the covenants and the condition somehow the rights have been violated then they can follow with the suit. As far as the construction goes there is a case depending in the circuit court. If he wants to go to obtain an adjudication to keep them from building until all this is final he can file a request that the court file an adjudication to stop the building until the case is final. There is a process for that in the circuit court.

**Chairman Byers** Anyone have any question up here? Mr. Dellinger do you have anything else you would like to add?

**Michael Dellinger** I don't think so, when you look at the four criteria Mr. Pollack had to choose from I really don't see where we ever issued anything our building code doesn't allow.

**Chairman Byers** Thank you, does anyone else wish to speak?

**Robert Vaughn** I am here to represent Main street homes and GB Foltz. Let me first start out by stating perhaps the obvious or at least from my prospective that there is no confusion and what is attempt to be created confusion and Mr. Pollack is attempting to create that confusion there an old adage in the law when you got the law you pound the law, when you got the facts you pound the facts, when you got neither you pound the podium. Well Mr. Pollack has neither has none and as close to pounding the podium he takes an approach that a quiet voice with no emotion conveys substance in fact there's not. These are arguments that Mr. Pollack has been making for the better part of the year. They are no good and have not context, much of them are simply

made up. No question that the reason Mr. Pollack is here to delay the process he has nothing to do with. Let me start with the bases we are here on. An appeal that Mr. Pollack filed on the issuance of the building permits and under the code that is applicable to this is day specifically in the issuance of the permit if the application complies with the applicable requirements of this code, which is the building code a permit shall be issued as soon as practicable. Mr. Dellinger did exactly what was trans fired in this case. An application was made and it complied with all the applicable requirements with the building code and he issued the building permits. That is under section 110.1 of the Virginia construction code. The appeal process is something Mr. Pollack didn't address at all because if he did, that would be the end of his argument. The appeal process is for a person who is aggrieved by the local building department application can appeal to the body of this board and the issue is whether or not the building official decision was correct, not whether he thought something was wrong (he being Mr. Pollack) or other things he thought the building official should consider, but the only issue was the building official correct. Mr. Dellinger has told you what the building required and what the county requires before issuing the permit and that's what he has done. Mr. Pollack tried to take this same approach when he tried to overturn the town of Edinburg's zoning permit approval. He made the exact same argument and as/was found by Judge Sheridan and Mr. Neal echoed it at that hearing. The issue was whether or not the BZA was correct or not in appealing its own zoning ordinance not whether someone else thought it should be different or could be different. The sole issue was whether or not the Zoning administrator was correct. It was correct. Mr. Pollack was able to convince members of the BZA about what their function or role was, which now required us to go through the processes of taking it to the Virginia Supreme Court and as Mr. Neal pointed out Judge Sheridan came in and heard the case and very clear that Mr. Pollack was not in the position to contest the zoning administrator permits. What Judge Sheridan found was exactly what Mr. Pollack is trying to suggest to you is not the case. Judge Sheridan specifically found I quote "that on September 16, 2014, the town of Edinburg voted to approve a modification of the town's zoning ordinance, the vote was unanimous. The town also voted to approve the subdivision of the 28 lots owned by Foltz in Edinburg Square Phase II to 44 lots. On December 19, 2014 a plat entitled redivision of lots 32 through 36 and lots 39 though 61, in Edinburg square. The plat was prepared by a certified land surveyor in accordance with the VA. Code, was certified by the owner of the land, Gary foltz and contained a certificate of approval executed by the Mayor of the Town of Edinburg and planning commission chairman in the accordance with VA. Code certifying that the plat conformed with the existing subdivision regulations and may be admitted to record. The court main two specific finals that the town properly approved the rezoning application and properly approved putting to record a plat that contains the lots Mr. Foltz acquired to be rezoned. The court found that that Zoning Administrator approval was appropriate and in closing said that the Zoning Administrator was correct in his approval of the zoning applications as the same met all of the applicable ordinances, conditions and subdivision regulations of the town. Given that such was the only inquiry that the BZA was to undertake, its failure to affirm the zoning administrator's decision was in errors as a matter of law and is hereby reversed. It closes by saying the decision of the Zoning Administrator of the Town of Edinburg approving the four applications for zoning permit submitted by Main Street Homes LLC for lots 47-50 of Edinburg square, Phase II, is hereby reinstated. That was an order stated by Judge Paul Sheridan July 27, 2015. What Mr. Pollack also didn't tell you is what is the issue, that is under consideration by Judge Sheridan is what if any sanction to impose against Mr. Pollack for his frivolous filing of the appeal of the Zoning administrator decision to the BZA and

than attempting to inject himself in to a law suit when he has no right to do so. Mr. Pollack had the audacity to suggest that he was the quote “applicant” before the board of zoning appeals and therefore he had the right to intervene in this action and in the circuit court. Judge Sheridan found within the first three seconds that he was not the applicant and had no business being there and the motion to intervene there was a separate order for that. The point being this was an argument that re-read to the town for the application process, BZA process, and Circuit Court. Two other aspects of Mr. Pollack’s situation is again declined to address and the reason why he declined to address because he couldn’t prevail. If we go again back to the requirements for Mr. Pollack to stand before, you he has to meet a criteria and I read from the Virginia Construction Code any person aggrieved by the Building Official's application of the USBC or the refusal to grant a modification to the provisions of the USBC may appeal to the Board of Building Code Appeals. The first criterion that Mr. Pollack has to meet is that he is a person aggrieved. That was part of his problem with the law suit with the outing before the circuit court, because he is not a aggrieved party, he has no interest in this matter other than the desire to frustrate and cause my client expenses. The law in Virginia is very clear and says for a person to be aggrieved, the person must have some direct interest in the subject matter of the proceeding that he seeks to attack. That’s defined at immediate, pecuniary and substantial interest in the litigation, and not a remote or indirect interest. The word “aggrieved” in a statute contemplates a substantial grievance and means a denial of some personal or property right, legal or equitable, or imposition of a burden or obligation upon the petitioner different from that suffered by the public general. Mr. Pollack is no different than any other citizen in Shenandoah. The interest is Mr. Pollack tried to buy the property and didn’t succeed and he doesn’t want anything built behind him that’s what this is all about. He is aggrieved in his own mind but not aggrieved as far as the town or a main street home is concerned. I did neglect to mention to you there are two Supreme Court case exactly on point on what the duties are this board are. The duties of this board are to decide whether or not Mr. Dellinger was correct in his application in the building code. It says the provision in BOCA providing for appeals defines the scope of local board review authority. It is any decision of the building official refusing to grant a modification to provisions of this code covering the manner of construction or materials to be used in the erection, alteration, or repair of a building or structure. There are limits the jurisdiction of local boards of appeal to appeals from decisions of the building official as to manner of construction or materials to be used. Again Mr. Dellinger role in the matter is to review and see whether in fact the requirement of the building code has been satisfied before issuing the permit. There is another decision that is more recent, which came out the exact same way, Avalon assisted living facilities Inc verse Zofia A. Zinger, Fairfax County the decision in that court was an appeal to the Board of Building Appeals and I will just read from a portion of the decision. The legislature had delegated responsibility for the local building department the code section 36-105, which is defined as the agency or agencies of any local governing body charged with the administration, supervision or enforcement of the USBC and local board of building code appeals or other designated body (the local appeals board). Code 36-105. The legislature had provided that a party not satisfied with the local departments decision “concerning application of the USBC or the local departments refusal to grant a modification to the provisions of the USBC covering the manner of the construction or materials to be used in the erections, alteration or repaid of a building or structure” may appeal to the local appeals board. Again the issue is does the permits that were issued comply with the term of the USBC. You haven’t heard one word from Mr. Pollack that there is any violation to the USBC in regards to the issuing of these permits. To summarize that

prong of the discussion the only issue we are here for is to determine whether or not Mr. Dellinger properly applied the USBC, there is no issue with that. Number two Mr. Pollack can appear in front of you as if he is an aggrieved person and he clearly is not. He is a person with a grievance but not an aggrieved person. This pretty much sums up the discussion, but I feel compelled to address one more thing. I think it helps illustrate how inconsistent Mr. Pollack is in his position. He skirted over a pile of words all in which are very important, because when you go to VA Code words have meaning and are very important. Well you heard Mr. Pollack slop all over he is the owner of a lot shown in the plat and this was a re-plat then he used the term plat of vacations and then he told you about a code sections. He only told you in general term some things in order to confusion you. In the argument he continues to make in all the cases. In Mr. Pollack so called appeal he recited to 15.2-2272(2). Why does he want to rely on that statue for a simple's reason it is very unique in Virginia, but it is statue to first require that the town conducted a hearing and voted to vacant and actual existing plat. Mr. Pollack knowledge that portion of his discusses but started out by saying in 1614 the town approved re-platting. Because the entire argument rely on there being an ordinance some where adopted by the town of Edinburg vacating the plat for Edinburg Section 2. What the town did was approved the re-subdivision that it went from x number of lots to a large amount of lots. If you use Mr. Pollack term we re-plat or we re-subdivide and we did not vacant and because it isn't an ordinance adopted by the town vacating a plat his entire argument is completely bogus. He is not a member of Edinburg phase 2 and doesn't own anything on that plat.

**Chairman Byers** Thank you, does any board member have any question or comments? Anybody else have anything else that cares to present to use?

**Bradley Pollack** I would like to respond briefly

**Chair Byers** If we can keep it brief

**Bradley Pollack** My house is on the same plat that is referred to in the deed to Mr. Foltz and that's up to the very development subject to litigation. The town did vacant those lots and put a new plat up and that's why I think that code applies. There only one home owner associate and its all one regardless the court is going to decided on how wrong I was or how sure Mr. Vaughan may be and there has been no final decision made that keeps this board from saying allow how to build on lots that may be turn over by the court.

**Chairman Byers** Is everyone ready to make a decision. I will start, I vote to uphold the building official decision. My main reason is I don't think we should attempt to get involved in the zooming discussion or requirements. I think the building official did his best to follow all the rules and the town gave the information.

**Edwin Tamkin** I to vote in the same manner to up hold the decision of the permits

**Carl Culp** I vote that the building official was correct in issuing the building permits.

**Wayne Price** I also approve the decision the building inspector made and what went on this evening seems like someone got involved in something they shouldn't have. But I uphold the decision Mr. Dellinger did with issuing the permits.

**Chairman Byers** By our vote we will uphold the building official decision and the permits will be upheld. You may appeal to the state and will get a written copy of that in the mail. Thank you.

**COMMONWEALTH OF VIRGINIA  
DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT  
State Building Codes Office  
and Office of the State Technical Review Board  
Main Street Centre, 600 E. Main Street, Suite 300, Richmond, VA 23219  
Tel: (804) 371-7150, Fax: (804) 371-7092, Email:  
alan.mcmahan@dhcd.virginia.gov**

**APPLICATION FOR ADMINISTRATIVE APPEAL**

Regulation Serving as Basis of Appeal is the Uniform Statewide Building Code.

Appealing Party Information (name, address, telephone number and email address):

Bradley G. Pollack  
753 South Main Street  
Woodstock, Virginia 22664  
540-459-8600  
bgpollack@gmail.com

Opposing Party Information (name, address, telephone number and email address of all other parties):

Main Street Homes LLC  
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2395 Hamburg Road  
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gbfoltz@shentel.net

Town of Edinburg  
c/o Paul Jay Neal, Jr., Esquire  
Town Attorney  
122 West High Street  
Woodstock, VA 22664  
(540) 459-4041  
neallaw@shentel.net

Additional Information:

- Copy of enforcement decision being appealed is attached.
- Copy of record and decision of local government appeals board is attached.
- Specific relief sought is the overturning of the rejection of the appeal to the Shenandoah County Board of Building Code Appeals. The building permits should not have been issued for the reasons set forth in the attached Appeal to the Shenandoah County Board of Building Code Appeals.

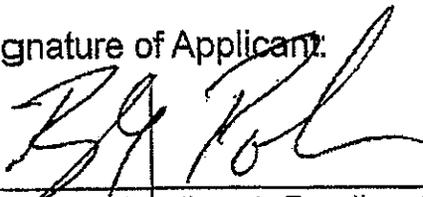
CERTIFICATE OF SERVICE

I hereby certify that on the 5th day of December, 2015, a completed copy of this application, including the additional information required above, was emailed to the Office of the State Technical Review Board, Paul J. Neal, Jr., Esquire, and to

Robert L. Vaughn, Jr.  
O'CONNOR & VAUGHN LLC  
Attorneys at Law  
11490 Commerce Park Drive, Suite 510  
Reston, Virginia 20191  
(703) 689-2100  
[rvaughn@oconnorandvaughn.com](mailto:rvaughn@oconnorandvaughn.com),

who appeared for Main Street Homes, LLC, and Gary Foltz before the Shenandoah County Board of Building Code Appeals. Copies are not being sent directly to these parties as Robert L. Vaughn, Jr., Esquire, could claim a violation of Virginia Rule of Professional Conduct 4.2. If directed by the Office of the State Technical Review Board, copies to these parties will be sent immediately.

Signature of Applicant:



Name of Applicant: Bradley G. Pollack

**REVIEW BOARD APPEAL 15-20**

**COMBINED DOCUMENTS  
SUBMITTED BY BOTH PARTIES**

IN THE SUPREME COURT OF VIRGINIA

THE BOARD OF SUPERVISORS OF FAIRFAX COUNTY, ET AL.

v.

MILLER AND SMITH, INC.

Record No. 790677.

Decided: June 12, 1981.

Present: All the Justices.

Fairfax County ordinance 6-6(1) concerning refund of building permit fees conflicts with BOCA/U.S.B.C. § 118.8 adopted by State Housing Board and is superseded under Code § 1-13.17; other issues.

(1) Cities, Counties and Towns — Boards of Supervisors — Statutory Construction — Appeal From Disallowance of Claim (Code § 15.1-552); When Disallowance of Claim Final (Code § 15.1-553); No Action Against County Until Claim Presented to Board (Code § 15.1-554) — Appeal Procedures to Circuit Court for Requested Refund of Building Fees Proper.

(2) Cities, Counties and Towns — Statutory Construction — Building Permit — Refunds — Validity of Local Ordinance Concerning [Fairfax Code § 6(1)] — No Requirement in BOCA/U.S.B.C. § 127.1 that Appeal Concerning Validity of Local Ordinance be Taken to Local Board of Building Appeals and State Technical Review Board.

(3) Cities, Counties and Towns — Statutory Construction — Building Permit Refunds — Validity of Local Ordinance Concerning [Fairfax Code § 6-6(1)] — State Board of Housing Has Implied Power to Adopt Administrative Rules and Procedures to Carry out Building Code.

(4) Cities, Counties and Towns — Statutory Construction — Ordinances Not to be Inconsistent with Constitution and Laws (Code § 1-13.17) — Building Permit Refunds — Validity of Local Ordinance Concerning [Fairfax Code § 6-6(1)] — Superseded as in Conflict with BOCA/U.S.B.C. § 118.8 Adopted by State Board of Housing.

(5) Pleading and Practice — Supreme Court — Cities, Counties and Towns — Grandfathering Local Ordinance (Code § 36-103) — Argument not Made in Pleadings and not Considered on Appeal.

(6) Pleading and Practice — Evidence — Proffer on Issue of Allocation of Costs in Building Permit Refund Case — Properly Rejected When Only Issue Before Court is Validity of Ordinance.

**(7) Pleading and Practice — Contracts — *Quantum Meruit* — Fairfax County not Entitled to Retain Part of Building Permit Fees under BOCA/U.S.B.C. on *Quantum Meruit* Basis for Services Performed in Handling Permits. [Page 231]**

Miller and Smith sought to recover from Fairfax County fees paid by it for building permits in 1973 and 1974 and never utilized. In 1972 the General Assembly in Code § 36-97 through 36-119 had empowered the State Board of Housing to promulgate a Uniform Statewide Building Code patterned on the Building Officials and Code Administration model codes, referred to in the opinion as "BOCA/U.S.B.C.". The refund provision of BOCA/U.S.B.C. § 118.8, which became effective 1 September 1973, required a refund based on the volume of the work completed when a building project was revoked, abandoned or discontinued. Prior to 1 September 1973 the Fairfax ordinance, continued after the adoption of BOCA/U.S.B.C. as Fairfax Code § 6-6(1), permitted the refund of only 50% of the permit fee. The Trial Court held that Fairfax Code § 6-6(1) must yield to BOCA/U.S.B.C. § 118.8 as in conflict with it and computed the refund due on the amount of the incompleting work. The Board of Supervisors appeal, raising various issues.

1. The record indicating that counsel for the permit holders specifically requested refunds of permit fees and listed the projects involved, the appeal procedures of Code §§ 15.1-552-553 have been followed, Fairfax County has refused or neglected to act upon the claim, and the proceeding before the Circuit Court is not barred by Code §§ 15.1-553-554.
2. There is no requirement that an appeal concerning the validity of a local ordinance, such as Fairfax Code § 6-6(1) pertaining to refund of permit fees, be taken to the local Board of Building Code Appeals. Code § 36-105 provides that the local board's duties and responsibilities shall be prescribed in the building code and this code is defined in Code § 36-97(5) as the Uniform Statewide Building Code (U.S.B.C.). The only provision of BOCA/U.S.B.C. providing for appeals to the local board is § 127.1 and this limits the jurisdiction of the local board to appeals from decisions of the building official as "to the manner of construction or materials to be used", refunds not being covered. The refund question was not a subject of this appeal process and thus not within the purview of the State Technical Review Board.
3. The enabling legislation, Code § 36-98, directed the State Board of Housing to adopt and promulgate a Uniform Statewide Building Code. Implicit in this direction is the power to adopt administrative rules and procedures carrying out the building code. The 1977 Amendment of Code § 36-99 (Acts 1977, c. 427) merely reiterated inherent powers and this construction is not influenced by confused administrative views pertaining to the adoption of BOCA/U.S.B.C. §§ 118.1 through 118.8 pertaining to fees.
4. Under Code § 1-13.17, and the Dillon Rule of Strict Construction concerning the legislative powers of local governing bodies, Fairfax Code § 6-6(1) is in conflict with BOCA/U.S.B.C. § 118.8 as adopted by the State Board of Housing and is superseded.

5. The argument by Fairfax County that Code § 36-103 grandfathered local building regulations within one year prior to 1 September 1973 was not set forth in any of the pleadings and is not properly before the Court. [Page 232]
6. The only issue before the Trial Court was whether the state regulation superseded the local ordinance and it properly rejected a proffer of evidence pertaining to the allocation of costs as irrelevant.
7. Fairfax County under BOCA/U.S.B.C. regulation § 18.8 or the local ordinance is not entitled to consideration in the return of the fee on a *quantum meruit* basis for employee time and service in handling building permit applications. The terms "work actually completed" and "for the incompleting work" refer to the "building project" mentioned immediately before and not the processing of permits. Its proffer of proof on this issue thus was irrelevant.

Appeal from a judgment of the Circuit Court of Fairfax County. Hon. Lewis D. Morris, judge presiding.

*Affirmed.*

David T. Stitt, County Attorney (Frederic Lee Ruck, County Attorney; Edward J. Finnegan, Assistant County Attorney, on briefs), for appellants.

Robert A. Lawrence (Hazel, Beckhoin and Hanes, on brief), for appellee.

*Amicus Curiae:* C. F. Hicks; Martin, Hicks & Ingles, Ltd., for Virginia Association of Counties, appellant.

THOMPSON, J., delivered the opinion of the Court.

The dispositive issue here is whether the building permit refund provisions of a Fairfax County ordinance have been superseded by regulations promulgated under the Uniform Statewide Building Code. For the reasons hereinafter set forth, we hold that the Fairfax County ordinance was in conflict with the statewide regulation and must therefore yield to it.

On June 10, 1976, Miller and Smith, Inc. (Miller and Smith), a housing construction firm located in Fairfax County, sought from the Board of Supervisors of Fairfax County (Fairfax County) a refund of the fees it had paid for eleven of 1,168 building permits acquired by it in 1973 and 1974 but never utilized. Fairfax County denied its request. Miller and Smith again asked in writing for a refund on July 8, 1977, this time for the fees paid on all 1,168 permits, totaling \$42,516. After Fairfax County failed to take action, Miller and Smith, on September 9, 1977, filed for a declaratory judgment, asking the trial court to require Fairfax [Page 233] County to refund the full amount. The trial court, sitting without a jury, heard the case on July 5, 1978.

On 1972, the General Assembly adopted Chapter 829 (Code §§ 36-97 through 36-119) directing and empowering the State Board of Housing to adopt and promulgate a Uniform Statewide Building Code (U.S.B.C.) which would supersede all local building codes and regulations. The adopted code, patterned after the Building Officials and Code Administration model codes (BOCA), will be referred to in the opinion as BOCA/U.S.B.C. The refund provision of BOCA/U.S.B.C. was worded in part:

In the case of a revocation or abandonment or discontinuance of a building project, the volume of the work actually completed shall be computed and any excess fee for the incompleting work shall be returned to the permit holder.

BOCA/U.S.B.C. § 118.8.<sup>1</sup>

Prior to September 1, 1973, Fairfax County had its own building code, basically a codification of BOCA with some modifications. In adopting BOCA, Fairfax County modified the BOCA provision concerning refund of building permit fees to read in pertinent part:

Any permit . . . under which no work is commenced, may be canceled upon the application of the owner at any time within six (6) months from the date of issuance and the Board of Supervisors shall refund fifty percent of the fee paid for such permit.

Fairfax County Code § 6-5(g)(1961) as amended August 4, 1971.

BOCA/U.S.B.C. became effective September 1, 1973. Fairfax County amended its building code subsequent to this date, but did not change its original refund provision, continuing this provision as Fairfax County Code § 6-6(1), the alleged supersession of which is at issue in this case.

The trial court concluded that because BOCA/U.S.B.C. § 118.8 had been adopted by the State Board of Housing, the action of Fairfax County in adopting, in Fairfax County Code § 6-6(1), a different provision dealing with building permit refunds was invalid. The court thus computed the refund based on the amount of [Page 234] incompleting work without regard to the provisions of the local code.

#### *I. Jurisdiction of Circuit Court.*

[1] Fairfax County contends that the circuit court lacked jurisdiction of the claim because Miller and Smith did not follow the appeal procedures set forth in Code §§ 15.1-552, -553, and hence the bar of Code § 15.1-554 controls. See *Chesterfield County v. Town & Country Apartments*, 214 Va. 587, 203 S.E.2d 117 (1974). But the record clearly indicates that counsel for Miller and Smith, by letter dated July 8, 1977, and addressed to the Fairfax County Board and all of its officials charged with the enforcement of the building code, specifically requested the refunds with the listing of the projects involved. Approximately seven months later, the clerk of the Board of Supervisors of Fairfax County notified counsel for Miller and Smith that there was no evidence the refund claim was ever presented to the Board of Supervisors. We agree with the trial court that, within the meaning of Code § 15.1-553, Fairfax

County had "refused or neglected to act upon the claim," and it is excepted from the bar of Code §§ 15.1-553 and -554. *Parker v. Prince William County*, 198 Va. 231, 93 S.E.2d 136 (1956).

[2] Fairfax County argues further that it was a prerequisite to circuit court jurisdiction that administrative remedies under the building code and its regulations should first be exhausted. Code §§ 36-105, -114, -116, and -118, and § 127.1 of the Regulations.

Code § 36-105 provides that "no appeal to the State Building Code Technical Review Board shall lie prior to a final determination by the local Board of Building Code appeals." Code § 36-105 also provides that the local board's "duties and responsibilities shall be prescribed in the Building Code." The Building Code is defined in Code § 36-97(5) as the U.S.B.C.

The only provision in BOCA/U.S.B.C. providing for appeals to the local board is § 127.1. The first sentence of § 127.1 defines the scope of a local board review authority. It is any "decision of the building official refusing to grant a modification to the provisions of this code covering the *manner of construction or materials to be used*" in the erection, alteration, or repair of a building or structure. (Emphasis added.)

The second sentence of § 127.1 provides the situations in which an appeal will lie from a decision concerning "the manner of construction [Page 235] or the materials to be used." These situations are (1) where the true intent of this Code or of the rules legally adopted thereunder has been incorrectly interpreted; (2) where the provisions of this Code do not fully apply; or (3) where an equally good or better form of construction can be used. This sentence does not provide additional areas of appeal, but rather sets out the situations wherein the local board of appeals may overturn the building official's decision as to the "manner of construction or materials to be used" if the local board of appeals finds one or more of the three situations to exist.

Section 127.1 therefore limits the jurisdiction of local boards of appeal to appeals from decisions of the building official as to the "manner of construction or materials to be used." The validity of a local ordinance such as Fairfax County Code § 6-6(1) is not a question within the scope of § 127.1, nor should it be. The local building official would not be qualified to make such a determination. Refunds are not covered by the § 127.1 administrative appeal procedure. Since this is the only statutory delegation of appellate jurisdiction to local boards of appeal, Miller and Smith's refund request was not a proper subject of this appeal process and, consequently, not a matter within the purview of the State Technical Review Board.

## *II. Is Fairfax County Code § 6-6(1) Superseded by State Regulation BOCA/U.S.B.C. § 118.8?*

[3-4] The enabling legislation, Code § 36-98, the regulation promulgated thereunder, and the Fairfax County ordinance are set forth in the margin.<sup>2</sup> [Page 236]

In *Board of Supervisors of Loudoun County, et al. v. Pumphrey*, 221 Va. 205, 206-07, 269 S.E.2d 361, 362 (1980), we said:

Code § 1-13.17. . . precludes a local governing body from enacting ordinances "inconsistent with" state law . . . . [A]n ordinance may not conflict with state law. *Hanbury v. Commonwealth*, 203 Va. 182, 185, 122 S.E.2d 911, 913 (1961); *Allen v. City of Norfolk*, 196 Va. 177, 180, 83 S.E.2d 397, 399 (1954).

....

Code § 1-13.17 provides: "When the council or authorities of any city or town, or any corporation, board, or number of persons, are authorized to make ordinances, bylaws, rules, regulations or orders, it shall be understood that the same must not be inconsistent with the Constitution and laws of the United States or of this State."

On the same day, in *Tabler, etc. v. Supervisors, Fairfax County*, 221 Va. 200, 202, 269 S.E.2d 358, 359 (1980), we said: "As noted in several recent decisions, Virginia follows the Dillon Rule of strict construction concerning the legislative powers of local governing bodies . . . ."

Fairfax County argues that the power given under Code § 36-98 to adopt and promulgate a BOCA/U.S.B.C. does not include the authority to adopt administrative procedures for the code so adopted. In fact, they argue that Code § 36-99 explicating the code was limited to standards in the construction of buildings and structures, and that the provision for "procedures for the administration and enforcement of such standards" was not added until Acts 1977, c. 427, which was adopted subsequent to the events of this case. The argument then is that at the time BOCA/U.S.B.C. was promulgated, January 29, 1973, to be effective not later than September 1, 1973, the power to prescribe administrative standards and procedures did not then exist, and only came into existence by the express language of the 1977 amendment to Code § 36-99.

We reject this argument of Fairfax County. The enabling legislation, Code § 36-98, directed the State Board of Housing to adopt and promulgate a uniform statewide building code, and implicit [Page 237] in this is the power to adopt administrative rules and procedures carrying out the building code. In *Portsmouth v. Virginia Railway and Power Company*, 141 Va. 54, 61, 126 S.E. 362, 364 (1925), we said:

[E]very power expressly granted, or fairly implied from the language used, or which is necessary to enable the Commission to exercise the powers expressly granted, should and must be accorded.

The 1977 amendment to Code § 36-99 was merely a reiteration of inherent powers possessed by the State Board of Housing.

Fairfax County seeks to bolster its case by invoking the rule of administrative construction. To do this it presented the testimony of Jack Allen Proctor, State Building Code Inspector, together with his letter

of January 17, 1978, enclosing interpretations of §§ 118.7 and 118.8 of BOCA/U.S.B.C. by the Technical Review Board. In Proctor's testimony he said:

Q. If the State Board of Housing had no authority in these areas, how did these areas get into the Uniform Statewide Building Code?

A. The State Board of Housing erred when it adopted the BOCA Code. They just didn't go through and purge the sections they didn't have the authority to promulgate. You know they promulgated portions of Article One as advisory in nature for these areas that never had a building code before.

His letter stated that §§ 118.1-118.8 were not adopted by the State Board of Housing as part of the administrative procedures. The Technical Review Board concluded that the sections had not been adopted by the State Board of Housing, and therefore it lacked jurisdiction in the premises. Instead of a consistent administrative policy officially promulgated, we have nothing but confusion and inconsistencies in resolving this controversy. If the administrators themselves cannot agree on the interpretation, then their diverse views are of little value to the court. *Gomes v. City of Richmond*, 220 Va. 449, 453, 258 S.E.2d 582, 585 (1979). [Page 238]

### III. *Applicability of Grandfather Clause.*

[5] Fairfax County makes an alternative argument that, even if BOCA/U.S.B.C. superseded the local ordinance, by Code § 36-103<sup>3</sup>, the local building regulations within one year prior to September 1, 1973, had continuing vitality.

This position was not set forth in any of the pleadings and is not properly before the court. We recently reiterated this rule in *Landcraft Co., Inc. v. Kincaid*, 220 Va. 865, 870, 263 S.E.2d 419, 422 (1980), where we said: "[Courts] have no power to adjudicate issues which are not presented by the parties in their pleadings unless the parties voluntarily try an issue beyond the pleadings." See also *Ted Lansing Supply Company v. Royal Aluminum and Construction Corporation*, 221 Va. 1139, 1141, 277 S.E.2d 228, 229-30 (1981).

### IV. *Proffer of Proof*

[6] Fairfax County went to great lengths to describe the procedures used in application for, processing of, and issuance of the building permits. The time of employees of each department was carefully calculated in proportion to the salary to show the actual costs to the local government of the service it was providing. The trial court rejected the proffered evidence as irrelevant to the issue before it. The issue before the court was whether the state regulation superseded the local ordinance, and this did not involve any allocation of costs. Therefore the lower court was right in declining to consider it.

[7] Fairfax County argues that because of the elaborate service provided on building permit applications, and the time and number of its employees involved, it is entitled to some consideration on a

*quantum meruit* basis. But nothing in BOCA/U.S.B.C. regulation (§ 118.8) or the local ordinance so provides. At the trial, Fairfax County took the position that “work actually completed” and “for the incompleting work” had reference to the work of county employees in processing and issuing building permits. The [Page 239] trial court disagreed.<sup>4</sup> The phrases “work actually completed” and “incompleting work” obviously refer to “building project” mentioned immediately before. We agree with the court and affirm the judgment in that regard.

In conclusion, we hold that the State Board of Housing was authorized to adopt regulation § 118.8 of BOCA/U.S.B.C., that said regulation superseded the refund ordinance of Fairfax County, and that the Circuit Court of Fairfax County had jurisdiction to resolve the controversy. The judgment of the lower court will be

*Affirmed.*

#### FOOTNOTES

<sup>1</sup> § 118.8 was deleted from BOCA/U.S.B.C. in 1978.

<sup>2</sup> Code § 36-98. *State Board of Housing to promulgate Statewide Code; other codes and regulations superseded.* — The State Board of Housing is hereby directed and empowered to adopt and promulgate a Uniform Statewide Building Code. Such Building Code shall *supersede* the building codes and regulations of the *counties*, municipalities and State agencies. [Emphasis added.]

[BOCA/U.S.B.C.] § 118.8 *Refunds.* In the case of a revocation of a permit or abandonment of [sic] discontinuance of a building project, the volume of work actually completed shall be computed and any excess fee for the incompleting work shall be returned to the permit holder; except that all penalties that may have been imposed on the permit holder under the requirements of this code shall first be collected.

[Fairfax County Code] Section 6-6 GENERAL. (1) Any permit issued by the Building Official pursuant to the provisions of this Code, under which no work is commenced, may be canceled upon the application of the owner at any time within six (6) months from the date of issuance and the Board of Supervisors shall refund fifty percent of the fee paid for such permit. Any permit issued pursuant to this Code shall expire and become null and void after the expiration of six (6) months if no work is commenced thereunder . . .

<sup>3</sup> Code § 36-103. *Buildings, etc., existing or projected before effective date of Code.* — Any building or structure, for which a building permit has been issued or on which construction has commenced, or for which working drawings have been prepared in the year prior to the effective date of the Building Code, shall remain subject to the building regulations in effect at the time of such issuance or commencement of construction.

<sup>4</sup> “THE COURT: [B]ut, anyway, there is no doubt in my mind that when they are talking about work here in 118.8, they're talking about work in the project, not work that the County's done in processing these applications. I don't think there is any way in the world you can read that in 118.8 . . . [T]here's no doubt in my mind that the County is bound by 118.8 and there is nothing in that and no way in the world that you can read that what they're talking about insofar as computing the volume of work, that it is the

volume of work that the County has done. They're talking about work that was done on the project and here it is *quite obvious that no work was ever done*. [Emphasis added.]

"MR. FINNEGAN: Your Honor, it's your ruling then that the cost for processing, reviewing, and approving the contract —

"THE COURT: That's right. In other words, the County is not entitled to any offset or any credit for the amount of work done on this . . ."

*Avalon Assisted Living Facilities v. Zager*, 39 Va. App. 484, 574 S.E.2d 298 (2002)

IN THE COURT OF APPEALS OF VIRGINIA  
ARGUED AT ALEXANDRIA, VIRGINIA

AVALON ASSISTED LIVING FACILITIES, INC.,  
D/B/A AVALON HOMES

v.

ZOFIA A. ZAGER, FAIRFAX COUNTY  
BUILDING OFFICIAL, AND DIRECTOR,  
FAIRFAX COUNTY OFFICE OF  
BUILDING CODE SERVICES

STATE BUILDING CODE  
TECHNICAL REVIEW BOARD

v.

ZOFIA A. ZAGER, FAIRFAX COUNTY  
BUILDING OFFICIAL, AND DIRECTOR,  
FAIRFAX COUNTY OFFICE OF  
BUILDING CODE SERVICES

Record Nos. 0778-02-4, 0820-02-4

Decided: December 31, 2002

Present: Judges Elder, Annunziata and Agee

FROM THE CIRCUIT COURT OF FAIRFAX COUNTY, Leslie M. Alden, Judge

*Affirmed in part, reversed in part and remanded. [Page 488]*

#### COUNSEL

Andrew D. Levy (Sharon Krevor-Weisbaum; Shelly Marie Martin; Mark E. Sharp; Brown, Goldstein & Levy, LLP; Culin, Sharp & Autry, P.L.C., on briefs), for Avalon Assisted Living Facilities, Inc.

Jennifer C. Williamson, Assistant Attorney General (Jerry W. Kilgore, Attorney General; Richard B. Zorn, Senior Assistant [Page 489] Attorney General; John B. Purcell, Jr., Assistant Attorney General, on briefs) for State Building Code Technical Review Board.

Cynthia A. Bailey, Assistant County Attorney (David P. Bobzien, County Attorney; J. Patrick Taves, Deputy County Attorney; Jan L. Brodie, Senior Assistant County Attorney, on briefs), for appellee.

#### OPINION

ELDER, J. — Avalon Assisted Living Facilities, Inc., d/b/a Avalon Homes (Avalon), and the State Building Code Technical Review Board (TRB) appeal from a decision of the Fairfax County Circuit Court holding that the TRB erroneously applied the Uniform Statewide Building Code (USBC) to Avalon's request to allow it to depart from the USBC's use group classifications.<sup>1</sup> On appeal, Avalon and the TRB contend the TRB had the authority to grant the requested modification and that the evidence in the record supported its decision to do so. We affirm the circuit court's conclusion that the TRB lacked authority to modify the USBC's use group classifications. Further, we hold, as a matter of law, that Avalon's facility constituted an I-2 use. Finally, we conclude that any modifications to the provisions of the USBC covering the manner of construction or materials to be used in the alteration of Avalon's facility to comply with the I-2 use group standards must be the functional equivalent of those expressly required by the USBC. Thus, we affirm in part, reverse in part, and remand to the circuit court with instructions to remand to the TRB to determine whether the alterations it approved were, in fact, the functional equivalent of those required by the USBC for a facility housing an I-2 use group. [Page 490]

## I.

### BACKGROUND

This appeal stems from a request by Avalon for classification of its facility under the USBC as a residential use group rather than an institutional use group in order to avoid having to meet certain USBC fire safety standards which Avalon alleged were cost-prohibitive. Avalon proposed adding certain lesser protections, which included central station monitoring and a sprinkler system in all compartments except the attic, in exchange for the requested modification of its USBC use group classification. The local building code official (the local official), Zofia A. Zager, after consulting with her advisory committee, denied the request. The local official wrote, "This denial is based on the fact that your proposal for an R-4 use does not provide the occupants the same level of protection as that which is required by the [USBC] for an I-2 use."

Avalon appealed to the local board of building code appeals (the local appeals board). After hearing statements from representatives of Avalon and the local official, the local appeals board granted the modification request. It concluded the additional safeguards Avalon proposed, coupled with added safeguards including the installation of heat rise detectors in the attic space and "smoke tight" doors and partitions separating the corridor from the sleeping rooms, "[were] sufficient to balance the omission of the fire protection requirements of structural components otherwise required by the [USBC]."

The local official appealed to the TRB, which affirmed the decision of the local appeals board. The TRB, in making its decision, had before it the record of the proceedings from the local appeals board. It also swore witnesses and heard additional evidence. The record included evidence of the following:

In a single-family residence in McLean, Virginia, Avalon operates an adult care residence (ACR), *see* 22 Va. Admin. Reg. 40-71-10, which is licensed by the Department of Social [Page 491] Services (DSS) to house up to eight residents.<sup>2</sup> Avalon provides care primarily for elderly women suffering from

Alzheimer's disease and the mental and physical ailments which accompany it. The 2,700-square-foot residence has been converted to house a maximum of eight patients and two full-time staff people.

The purpose of Avalon's McLean ACR is to provide Alzheimer's patients with continuity of care, allowing them to "stay there through until the end, and sometimes have hospice come in when people are at the end-stages of their illness." Avalon's residents are usually "ambulatory from the standpoint that they can walk," although some are wheelchair bound and require physical assistance. However, because the residents are cognitively confused, in the event of an emergency, some of the residents who can walk nevertheless may need to be led out by the hand. Also, due to the fact that Alzheimer's patients "go through . . . peaks and valleys," the number of residents able to respond with help could vary from day to day. In the event of an emergency requiring evacuation, any patients physically incapable of walking would be carried out on their bed sheets. The facility conducts monthly fire drills, and "usually the longest it takes . . . is five, six minutes to get all eight people out," provided none of the occupants are bedridden.

Although Avalon was licensed by DSS for up to eight residents at a time, local officials had interpreted the USBC to allow operation of the ACR under the requirements for a [Page 492] residential use group as long as no more than five of those eight residents were non-ambulatory, i.e., needed assistance to evacuate. Avalon was concerned that this restriction had the potential to force relocation of a resident if her condition deteriorated such that she became the sixth non-ambulatory resident at the ACR. Avalon represented that it would limit to five the number of residents who were bedridden or otherwise *physically* unable to evacuate. It sought a USBC waiver so that it could have up to eight residents unable to evacuate independently due to *psychological* limitations, such as those residents who were physically able to evacuate if led by the hand.

Avalon hired Mark P. Dempsey, a fire protection engineer, to investigate upgrading the ACR to meet the I-2 use group requirements but concluded such upgrades would be cost-prohibitive. Avalon then proposed to add certain lesser safety protections in exchange for being allowed to continue to be classified as a residential rather than institutional use even with more than five non-ambulatory residents. Those protections included (1) installation of (a) an automatic sprinkler system for all areas of the residence except the attic, (b) smoke detectors and (c) a manual fire alarm system connected to both the sprinkler system and an approved central station for monitoring; and (2) placement of any non-ambulatory residents in bedrooms located on the grade level. Ordinarily, an ACR with a residential use group classification is required to have only single station smoke detectors. *See* Code § 36-99.5:1. Dempsey concluded that the additional fire protections he outlined were "at least equivalent in protection to those required by the I-2 standard."

Representatives of the local official noted their "group unanimously . . . came to the conclusion that the differences [between the fire safety requirements for a structure housing an I-2 use group and the protections which Avalon proposed adding] were far too great" and that "[i]t was beyond [the local official's] authority to grant this modification." [Page 493]

The local official continued to object on the ground that Avalon's plan included no "passive fire protection whatsoever." She emphasized that Avalon's facility is Type 5-B construction, which "has zero fire ratings on . . . its structural components." An I-2 use group must be Type 5-A construction, which "requires a minimum of one-hour fire rating on major structural components to make sure that the building does not collapse" during the time it takes the fire department to respond.

After considering the evidence and argument, the TRB granted Avalon's modification request. In doing so, however, it noted

two areas of concern in the wording of the USBC and its application to ACR's. First, the inclusion of group homes licensed by [DSS] in the exception to § 308.2 should not include the statement that such facilities house mentally ill, mentally retarded or developmentally disabled persons[,] as ACR's by statutory and regulatory definition are for persons who are aged, infirm or disabled. Notwithstanding the incorrect language, the [TRB] determines the intent of the USBC is for the exception to apply to ACR's. Secondly, the determination that § 308.2 and its exception permit up to five residents [out of eight] at any given time to be unable to exit the residence without personal assistance from staff does not match the explicit language of the code. Recognizing however that this has been a long-standing application of the code and is supported by an interpretation issued by the BOCA Code Interpretations Committee, the [TRB] agrees § 308.2 and its exception may be applied as stated in this case.

The TRB expressly recommended the Housing Board amend the USBC to address these inconsistencies.

In support of its decision to grant Avalon's requested modification, the TRB relied on four findings. First, it found that allowing Avalon to house eight residents of varying degrees of awareness after equipping its facility with the proposed safety features was an improvement over the situation permitted by the code, which could involve housing five residents totally [Page 494] incapable of exiting in a building with no fire protections whatsoever. Second, it observed that other facilities with the same number and type of residents with equivalent fire safety construction and features presumably are being approved in other states, under the Life Safety Code, another nationally recognized safety standard. Third, it noted that the USBC use group definitions do not distinguish between licensed and unlicensed facilities and the terms of Avalon's DSS license provide additional safeguards and restrictions on Avalon's use of its ACR, including the restriction that it shall not admit or retain individuals requiring continuous licensed nursing care. Finally, it found that Avalon's facility is not "an exact match" for Use Group I-2, "shares most of the characteristics of a Use Group I-1 facility," and "nearly qualifies for the residential exception to the Use Group I-1 classification without any added safety features." As a result, it concluded that the requested modification preserved the spirit and intent of the USBC and assured the public health, welfare and safety.

The TRB did not expressly address the meaning of the I-1 requirement that the residents be "physically capable of responding to an emergency situation without personal assistance." However, the conclusion that this phrase includes those physically but not cognitively able to exit on their own

appears to be implicit in its determination that Avalon “shares most of the characteristics of a Use Group I-1 facility” and “nearly qualifies” for the residential exception.

The local official appealed the decision of the TRB to the Fairfax County Circuit Court under the APA. The circuit court observed as follows:

[M]y concern about the TRB is not in their determination that this fire safety provision is substantially equivalent to that which is required in the I-2 category. . . . [I]n my view, that's what the TRB is there to do, make those technical construction type determinations. . . . My concern is that they're now making the determination that given the adequacy of this system, well, it makes sense to allow three more patients there.

\* \* \* \* \* [Page 495]

[G]iving all due deference to the correctness of administrative decisions, today I conclude the [TRB] must be reversed and Avalon's request denied . . . .

Now, I think the difference between the I-1 and I-2 use groups, as set out in the BOCA Code, is clearly that in the I-1 category the residents must not require personal assistance to be evacuated. And I refer at least in part in that determination on looking at the definition in [Code § ] 63.1-174.1, and I think with . . . the aid of that statute, the construction in the BOCA Code is clear.

Now, the [TRB] has the authority to determine whether a facility is in the I-1 category or in the I-2 category, and it also has the authority to determine whether the technical requirements of those categories had been met, but the review board does not have the authority, under the guise of making a modification to BOCA Code, to create what was essentially a new use group or an exception to the substantive requirements of one or another use group, and I think that's what the TRB has done here.

By the TRB's own wording, they said, well, Avalon is mostly an I-1, but kind of an I-2, and the TRB has declined to put the facility in one category or the other. And what the TRB has clearly done is created another category and tried to call it a modification.

Now, the TRB has determined that the facility is compliant with the I-1, R-4 category, but that simply is belied by the record, because the record clearly establishes that there are persons in the facility who need personal assistance to be evacuated.

And what the TRB has tried to do is to create the same kind of exception to the I-2 category that the Housing and Community Development Department created in the I-1 category, and this is an act that the TRB simply has no authority to do.

And I think the TRB has really recognized that itself, that it's waded into the legislative waters under the guise of [Page 496] [a modification] in this case, because the TRB has recognized that

what its correct role is, I think in this case, is to recommend to the Housing and Community Development Department that some legislative change be made to these use groups. And the TRB is probably absolutely right that some legislative change ought to be made to these use groups.

I think the TRB made a very practical decision, I understand why they did what they did; I just don't think they have the legal authority to do that.

## II.

### STATUTORY AND REGULATORY FRAMEWORK

The legislature has created the Board of Housing and Community Development (the Housing Board) and directed it to adopt a Uniform Statewide Building Code (USBC). Code §§ 36-98, 36-131, 36-135. As described by the legislature,

The provisions [of the USBC] shall be such as to protect the health, safety and welfare of the residents of this Commonwealth, provided that buildings and structures should be permitted to be constructed at the least possible cost consistent with recognized standards of health, safety, energy conservation and water conservation and barrier-free provisions for the physically handicapped and aged.

Code § 36-99(A). The legislature also has directed that, “[i]n formulating the [USBC] provisions, the [Housing] Board shall have due regard for generally accepted standards as recommended by nationally recognized organizations, including . . . the Building Officials Conference of America [BOCA] . . .” Code § 36-99(B). Finally, the legislature has provided that “[t]he [Housing] Board may modify, amend or repeal any [USBC] provisions from time to time as the public interest requires, after notice and hearing,” Code § 36-102, and “in accordance with the Administrative Process Act [(APA)],” Code § 36-100.

The legislature has delegated responsibility for “[e]nforcement of the [USBC] [to] . . . the local building department,” [Page 497] Code § 36-105, which is defined as “the agency or agencies of any local governing body charged with the administration, supervision or enforcement of the [USBC] and regulations,” Code § 36-97. Within each local building department, “[t]here shall be established . . . a local board of Building Code Appeals” or other designated body (the local appeals board). Code § 36-105. The legislature has provided that a party not satisfied with the local department's decision “concerning application of the [USBC] or [the local department's] refusal to grant a modification to the provisions of the [USBC] covering the manner of construction or materials to be used in the erection, alteration or repair of a building or structure” may appeal to the local appeals board. *Id.* A party dissatisfied with the decision of the local appeals board may appeal to the TRB under the provisions of the APA. Code §§ 36-105, 36-114.

The Housing Board, pursuant to the legislature's delegation of authority, has promulgated a USBC.<sup>3</sup> In doing so, the Board incorporated by reference the majority of the BOCA National Building Code of

1996 (BNBC).<sup>4</sup> USBC § 104.1, 13 Va. Admin. Code 5-61-25(A). The USBC provides that the local “building code official [(the local official)] shall enforce the provisions of the USBC as provided herein, and as interpreted by the [TRB].” USBC § 107.1, 13 Va. Admin. Code 5-61-41. The USBC also purports to give the local official the authority to “grant modification to *any* of the provisions of the USBC, provided the spirit and intent of the USBC are observed and public health, welfare and safety are assured.” USBC § 107.2, 13 Va. Admin. Code 5-61-41 (emphasis added). [Page 498]

The USBC classifies all structures “in one or more . . . use groups” with respect to the number of occupants and manner of occupancy. BNBC § 302.1. Among the ten use groups are four categories of residential use groups (groups R-1 to R-4) and three categories of institutional use groups (groups I-1 to I-3). *Id.* The USBC provides that “[a]ll structures shall be classified with respect to occupancy in one or more of the [listed] use groups” and that “[w]here a structure is proposed for a purpose which is not specifically provided for in this code, such structure shall be classified in the use group which the occupancy most nearly resembles.” *Id.*

A structure's use group classification determines which set of USBC safety standards that structure must meet. For example, fire safety standards for structures occupied by residential use groups are more lenient than those for structures occupied by institutional use groups. *See generally* BNBC, chs. 6, 7, 9.

The USBC defines institutional use groups as follows:

*Section 308.0 INSTITUTIONAL USE GROUPS*

*308.1 General:* All structures in which people suffering from physical limitations because of health or age are harbored for medical or other care or treatment, or in which people are detained for penal or correction purposes, or in which the liberty of the inmates is restricted, shall be classified as Use Group I-1, I-2 or I-3. the term “Use Group 1” shall include Use Groups I-1, I-2 and I-3.

*308.2 Use Group I-1:* This use group shall include buildings and structures which house six or more individuals who, because of age, mental disability or other reasons, must live in a supervised environment but who are *physically capable of responding to an emergency situation without personal assistance*. Where accommodating persons of the above description, the following types of facilities shall be classified as I-1 facilities: board and care facilities, half-way houses, group homes, social rehabilitation facilities, alcohol and drug centers and convalescent facilities. A facility such as the above with five or [fewer] occupants shall be classified as a residential use group. [Page 499]

*Exception:* Group homes licensed by the Virginia Department of Mental Health, Mental Retardation and Substance Abuse Services or the Virginia Department of Social Services which house no more than eight mentally ill, mentally retarded or developmentally disabled persons with one or more resident counselors shall be classified as [Residential] Use Group R-3 or R-4.

*308.3 Use Group I-2:* This use group shall include buildings and structures used for medical, surgical, psychiatric, nursing or custodial care on a 24-hour basis of six or more persons who are *not capable of self-preservation*. Where accommodating persons of the above description, the following types of facilities shall be classified as I-2 facilities: hospitals, nursing homes (both intermediate care facilities and skilled nursing facilities), mental hospitals and detoxification facilities. A facility such as the above with five or [fewer] occupants shall be classified as a residential use group.

*308.3.1 Child care facility:* A child care facility which accommodates more than five children 2 1/2 years of age or less for any length of time shall be classified as a Use Group I-2.

*308.4 Use Group I-3:* This use group shall include buildings and structures which are inhabited by six or more persons who are under some restraint or security . . . [including] prisons, jails, reformatories, detention centers, correctional centers and prerelease centers. . . .

BNBC § 308 (emphases added); USBC § 104.1, 13 Va. Admin. Code 5-61-25 (adopting BNBC); 13 Va. Admin. Code 5-61-210 (adding exception to § 308.2).

### III.

#### ANALYSIS

On appeal of an agency decision, “the sole determination as to factual issues is whether substantial evidence exists in the agency record to support the agency's decision. The reviewing court may reject the agency's findings of fact only if, considering the record as a whole, a reasonable mind [Page 500] necessarily would come to a different conclusion.” *Johnston-Willis, Ltd. v. Kenley*, 6 Va. App. 231, 242, 369 S.E.2d 1, 7 (1988). In making this determination, “the reviewing court shall take due account of the presumption of official regularity, the experience and specialized competence of the agency, and the purposes of the basic law under which the agency has acted.” *Id.*

On appeal of an agency's determination on issues of law, the standards differ. “If the issue falls outside the area generally entrusted to the agency, and is one in which the courts have special competence, i.e., the common law or constitutional law,” the court need not defer to the agency's interpretation. *Id.* at 243-44, 369 S.E.2d at 8 (quoting *Hi-Craft Clothing Co. v. NLRB*, 660 F.2d 910, 914-15 (3d Cir. 1981)).

However, where the question involves an interpretation which is within the specialized competence of the agency and the agency has been entrusted with wide discretion by the General Assembly, the agency's decision is entitled to special weight in the courts[, and] . . . “judicial interference is permissible only for relief against the arbitrary or capricious action that constitutes a clear abuse of delegated discretion.”

*Id.* at 244, 369 S.E.2d at 8 (quoting *Va. Alcoholic Beverage Control Comm'n v. York St. Inn, Inc.*, 220 Va. 310, 315, 257 S.E.2d 851, 855 (1979) (quoting *Schmidt v. Bd. of Adjustment*, 88 A.2d 607, 615-16 (N.J. 1952))).

The outcome of this appeal turns, in the first instance, on the scope of the modification authority granted under the USBC and its enabling legislation. This is a legal question involving an interpretation of both regulations and statutes.

A.

AUTHORITY TO MODIFY USBC'S USE  
GROUP CLASSIFICATIONS

The regulations at issue give the local official — and, indirectly via the right of appeal, the local board and the [Page 501] TRB — the authority to “grant modification to *any* of the provisions of the USBC, provided the spirit and intent of the USBC are observed and public health, welfare and safety are assured.” USBC § 107.1, 13 Va. Admin. Code 5-61-41 (emphasis added); *see* Code §§ 36-105, 36-114. The BNBC, by contrast, originally limited the local official to modifications of the “structural or mechanical provisions of [the BNBC].” BNBC § 107.1 (1987 ed.); *see also* BNBC § 107.1 (1996 ed.) (deleting “structural or mechanical” language). We assume without deciding that the Housing Board, in deviating from the language of the BNBC, intended to permit modification of *any* of the USBC's provisions, not just its structural or mechanical provision. Nevertheless, the authority of the Housing Board to permit modification is limited to that granted by the General Assembly in the enabling legislation, *see* Code § 36-105, which implicitly allows modifications only to USBC provisions governing “the manner of construction or materials.” *See, e.g., Brown v. United Airlines, Inc.*, 34 Va. App. 273, 276, 540 S.E.2d 521, 522 (2001) (noting legislative enactment which delegates to agency authority to adopt rules and regulations for carrying out enactment does not permit adoption of inconsistent rules or regulations).

The related statutory scheme does not expressly grant any power to the local official to modify the USBC's provisions. It expressly grants such power only to the Housing Board, which “may modify, amend or repeal any [USBC] provisions . . . after notice and hearing” and “in accordance with the [APA].” Code §§ 36-100, 36-102. However, the legislature expressed its intent in Code § 36-105, which provides that a party not satisfied with the local official's decision “concerning application of the [USBC] or [the local official's] refusal to grant a modification to the provisions of the [USBC] covering the manner of construction or materials to be used in the erection, alteration or repair of a building or structure” may appeal to the local appeals board. In the absence of other statutory language permitting the local official to grant a modification of the USBC, we hold the legislature contemplated the local official would have authority “to grant a modification” only to [Page 502] “the provisions of the [USBC] covering the manner of construction or materials to be used in the erection, alteration or repair of a building or structure,” as listed in Code § 36-105.

**JOINT AGREEMENT FOR  
ADMINISTRATION OF PROFFERS**

CLERK OF COURT'S OFFICE  
SHENANDOAH COUNTY, VA  
BERNICE E. BARBER-ESTERLINE

2014 OCT 16 PM 1:46

FILED

THIS JOINT AGREEMENT, dated this 8<sup>th</sup> day of March, 2005, by and between the **TOWN OF EDINBURG, VIRGINIA**, ("Town"), and the **COUNTY OF SHENANDOAH, VIRGINIA**, ("County").

**WHEREAS**, the Town has adopted conditional zoning provisions in its Zoning Ordinance; and

**WHEREAS**, under said conditional zoning provisions the Town may accept proffered conditions in zoning actions taken by the Town; and

**WHEREAS**, pursuant to Virginia Code § 15.2-1300, the Town and the County desire to enter into a Joint Agreement to provide for the Town to accept proffers for the benefit of the County, for the enforcement and administration of proffers accepted by the Town for the benefit of the County, and for the County to provide data to the Town for the Town's use in residential conditional zonings.

**NOW, THEREFORE**, the Town and the County do hereby jointly agree as follows:

1. The duration of this Joint Agreement shall be five (5) years, and may be renewed by ordinance by both jurisdictions.
2. The purpose of this Joint Agreement is to provide for the Town to accept proffers for the benefit of the County and to provide for the enforcement and administration of proffers accepted by the Town for the benefit of the County.
3. The Town and County do not anticipate additional costs related to this Joint Agreement.
4. Upon the filing with the Town of an application for a residential rezoning, the Town shall provide the County a copy of said rezoning application.
5. The County may provide the Town with information concerning the County's calculation of the net cost to the County of public facilities and services which would be generated by the proposed rezoning, and the fiscal impact to the County of the proposed rezoning, which information the Town may use in any discussions concerning proffer offers in conjunction with the proposed rezoning.
6. The Town may accept proffers for the benefit of the County.

**EXHIBIT**  
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**7. Administration of Proffers.**

A. Proffers accepted by the Town for the benefit of the County, both monetary and non-monetary, shall be received and administered by the Town, subject to the terms of this Agreement.

B. Cash proffers for the benefit of the County for facilities to be provided by the County, shall be paid by the Town to the County as such proffer payments are made to the Town.

**8. Enforcement of Proffers.**

A. It is the intent of the Town and the County that any cost of enforcement of proffers, to include, without limitation, attorney fees, court costs, and expert witness fees, shall be borne by the jurisdiction benefiting from the proffer.

B. For monetary proffers, the cost of enforcement shall be borne by the jurisdiction which is to receive the monetary proffer. If monetary proffers are to be received in part by both jurisdictions, the cost of enforcement shall be shared by the jurisdictions pro rata based upon the amount of the monetary proffer claimed for each jurisdiction.

C. The cost of enforcement of non-monetary proffers shall be borne by the jurisdiction to be primarily benefited by the non-monetary proffer.

D. For circumstances not clearly covered by subparagraph B or C above, the Town and County agree to cooperate in good faith to carry out the intent set forth in subparagraph A, above.

E. In the event the Town is unable or fails for any reason to enforce proffers on any property subject to this Agreement, the County shall have the right to enforce such proffers, with the recipient of cash proffers and the allocation of the expense of enforcement to be as set forth in this Agreement.

9. The Town and County recognize that future proffers may be of a kind not expressly anticipated by this Agreement. The Town and the County agree to use their best efforts to handle proffers consistent with the basis of the proffers and the terms of the proffers. The Town and the County further agree to amend this Agreement in the future, where necessary, to address issues not addressed by this Agreement including, without limitation, proffers that exist on property when such property comes into the Town by annexation or boundary line agreement.

10. The Town shall be responsible for the reporting requirements under Virginia Code § 15.2-2303.2 for cash proffers collected by the Town and paid to The County pursuant to this Agreement.

11. In the event this Agreement is terminated prior to the payment of all monetary proffers for the benefit of the County having been paid, such monetary proffers will continue to be paid by the Town to the County as such proffer payments are made to the Town. In the event this Agreement is terminated prior to the completion of non-monetary proffers for the benefit of the County, such non-monetary proffers shall continue to be enforced as set forth in paragraph 8, above.

**WITNESS** the following signatures and seal:

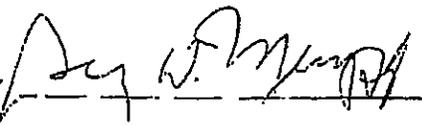
Approved by the  
Edinburg Town Council  
the 8<sup>th</sup> day of March, 2005

TOWN OF EDINBURG, VIRGINIA

By  (SEAL)

Approved by the  
Shenandoah County  
Board of Supervisors  
the 22<sup>nd</sup> day of March, 2005

COUNTY OF SHENANDOAH, VIRGINIA

By  (SEAL)

# County of Shenandoah

## BOARD OF SUPERVISORS

DISTRICT 1 - DICK NEESE 540-856-2186  
DISTRICT 2 - JAMES PATRICK 540-856-8320  
DISTRICT 3 - DAVID E. FERGUSON 540-984-8777  
DISTRICT 4 - BARRY D. MURPHY 540-459-8484  
DISTRICT 5 - DENNIS MORRIS 540-436-9149  
DISTRICT 6 - CONRAD A. HELSLEY 540-465-4145

600 North Main Street, Suite 102  
WOODSTOCK, VA 22664



540-459-6165 • FAX 540-459-6168  
Email: shenco@co.shenandoah.va.us  
Website: http://co.shenandoah.va.us

## OFFICE OF COUNTY ADMINISTRATION

VINCENT E. POLING  
COUNTY ADMINISTRATOR

MARY T. PRICE  
ASSISTANT COUNTY ADMINISTRATOR

June 20, 2005

James G. Gore, Jr.  
Jennifer Grafton-Gore  
P.O. Box 67  
Marshall, Virginia 20116-0067

FILED  
2014 OCT 16 PM 1:46  
CLERK OF SUPERIOR COURT  
SHENANDOAH COUNTY, VA  
EMILIE F. BARRISTER, CLERK

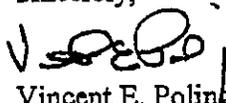
Dear Mr. and Mrs. Gore:

As you are aware, the Shenandoah County Board of Supervisors approved your boundary line adjustment request with the Town of Edinburg. This approval was given based on the sixty two-lot concept plan developed by PHR&A, dated May 2005. In addition to the number of units and type of units proposed, a critical element of the plan was the fifteen (15) foot landscape buffer on the east/northeast portion of the development and the increased open space area. It was represented during the approval process that the fifteen (15) foot landscape buffer and open space would be established as an easement in favor of the home owners association. The homeowner's association would be responsible for the maintenance and up keep of the buffer and open space.

The Board of Supervisors anticipates that the above stated elements of the plan as well as cash proffers will be included in your proffer statement. Please provide copy of the proffer statement for my review prior to submission to the Town of Edinburg.

Thank you.

Sincerely,

  
Vincent E. Poling  
County Administrator

c: John Hash, PHR&A  
Dan Harshman, Town of Edinburg



REGULAR COUNCIL MEETING SEPTEMBER 13, 2005

The Edinburg Town Council met in regular session on Tuesday, September 13, 2005, with the Mayor calling Public Hearing to order at 7:00 P. M. The purpose of the Public Hearing was to receive public comment on the proposed zoning of a piece of property brought into the Town and also to receive public comment on the subdivision of Phase 2 of the Edinburg Square Development. Those attending the public hearing were James Gore, John Hash, Rick Miller, David Williams, Mike O'Hara and Ronald Ross. Mayor proceeded to advise Mr. Gore that the proffer statement needs to be to the Town before the Town Council could move forward on a rezoning decision. Mr. Gore asked for conditional approval with him getting the documents to the Town within a few days. With no further discussion the public hearing adjourned.

Mayor Harshman called the regular meeting to order a 7:30 P.M. with the mayor and all council members present.

Mayor welcomed visitors and advised that the two items under new business would be moved up on the agenda as soon as the minutes and treasurer's report.

Mayor requested to add an item to the agenda. He requested a Closed Session to discuss a Personnel Matter as permitted by 2.2-3711 (A) (7) (1).

Motion was made by Councilman Beachy to dispense with the reading of the minutes of the August meeting with one exception that the location of the 12" water line on Williams Knit Road will tie Madison Village to Well # 2 lot. Motion was seconded by Councilman Wood and passed.

28 SEP 16 PM 4:46  
COUNCIL CHAMBERS  
EDINBURG, TEXAS  
RECEIVED

Mayor asked that two bills be added to the bills to be paid that came in late. They are one to Fort Valley Nursery for \$85.00 and one to Billy Wakeman for \$75.00 for straw.

Motion was made by Councilman Wadkins, seconded by Councilman Dellinger and passed to pay the bills with the two additions.

Motion was made by Councilman Beachy to approve the rezoning of the property recently brought into the Town limits for Phase 2 of Edinburg Square Development. An amendment to this motion was made by Councilman Wadkins that this approval be contingent upon receipt in the next five working days of the proffer statement and subsequent approval of said proffer statement. Recorded vote as follows: Wadkins yes, Dellinger yes, Beachy yes, Wymer yes, Haun yes, Wood yes, and Harshman yes.

Motion was made by Councilwoman Haun, seconded by Councilman Wood and passed to approve the request for a 37-Lot subdivision in Phase 2 of Edinburg Square contingent upon receiving the proper documents. Recorded vote as follows: Wadkins yes, Dellinger yes, Beachy yes, Wymer yes, Haun yes, Wood yes, Harshman yes.

EXHIBIT  
7 0

# Town of Edinburg

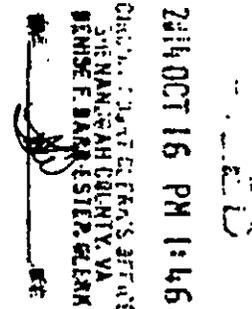
P.O. Box 85  
Edinburg, Virginia 22824

DORIS STOVER  
Clerk-Treasurer

Daniel Harshman  
Mayor-Town Manager

September 16, 2005

Mr. James G. Gore, Jr.  
P. O. Box 67  
Marshall VA 20116-0067  
Fax: (540) 364-2976



RE: Proffer Agreement for the rezoning of Phase 2 of Edinburg Square Subdivision.

Dear Mr. Gore:

There appears to be some confusion about what is being requested by the Town. The reference to the County wanting a proffer statement came from the letter written to you by County Administrator, Vince Poling, on June 20, 2005. I have included a copy of that letter to refresh your memory. The Town does not know why the County felt they should review a Town document before it was submitted to us, but the County Administrator obviously felt this was necessary. Any reference I have made to the County's involvement in previous correspondence has been to ask if you planned to honor the County's request before submitting it to the Town. Since you never responded to my earlier letters of July 7 and August 19, I assumed you were planning to only submit something to the Town.

The proffer statement is part of the rezoning of your wife's property. The only connection it has to the subdividing of this property is that the subdivision can not take place unless the property is properly zoned. When this property was brought into the Town limits it became necessary for the Town to rezone it for the proposed use.

The Town considers the items you agreed to with the County to be conditions of this rezoning. In addition to the number of lots and type of units, are the landscaped buffer and increased open space to be administered by a homeowners association. These need to be spelled out in the proffer statement as conditions of this rezoning.

In addition to these, you have verbally agreed to a landscaped buffer along the Route 11 side of the development and the purchase and installation of the Town's historic style streetlights. These also need to be spelled out in the proffer statement as conditions of this rezoning.



Page 2:

You have also stated that you agreed to the cash proffers that resulted from the County running of the Fiscal Impact Model Analysis on this development in March 2005. The resulting Fiscal Impact per Household was determined to be \$6,501. I discussed the payment of this with you on the phone. At that time it was decided that this will be paid to the Town on a per house basis when the zoning permit is issued. The Town will be responsible for paying the County any portion of these funds due to them. Your agreement to pay these fees needs to be included in the proffer statement as a condition of this rezoning.

To recap: the items that were agreed to with the County boundary line adjustment, the items the Town is requesting and the payment of the cash proffers are conditions of your rezoning request. These items need to be included in a proffer statement to the Town.

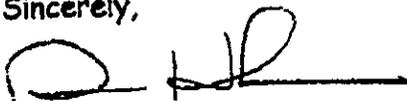
Council set a deadline of Tuesday, September 20, 2005 for the Town to receive, review and approve this document. Without it the rezoning approval of September 13, 2005 will be void. And as I stated earlier, without the rezoning the subdivision can not take place.

You mentioned at the meeting that Attorney Jay Neal had been working on the proffer statement and it would not be a problem meeting this deadline. I am faxing a copy of this to Mr. Neal in case he has not included all the items mentioned above. The Town will accept a faxed copy of the signed statement to meet the deadline. An original signed copy will need to be mailed to the Town at your earliest convenience.

I hope this clears up any confusion on what the Town is requesting. I will be in and out of the office today getting ready for the OLE Time Festival this weekend. I think my explanation of this is clear enough to eliminate confusion on what is expected. But if you still have questions please do not hesitate to call. I will check in at the office for messages.

Have a good weekend.

Sincerely,



Daniel J. Harshman  
Mayor-Town Manager

Cc: Jay Neal, Attorney  
Rob Kinsley, Shenandoah County Planning and Zoning  
John Hash, PHR&A  
Vince Poling, Shenandoah County Administrator

**JAMES G. GORE, JR.  
JENNIFER GRAFTON-GORE  
POST OFFICE BOX 67  
MARSHALL, VA 20116-0067  
PHONE 540-364-2975 FAX 540-364-2976**

September 19, 2005

FILED  
2014 OCT 16 PM 1:46  
CLERK OF COURT  
SHENANDOAH COUNTY, VA  
BERNICE F. HARRIS-ESTER, CLERK

Mr. Vince Poling  
County of Shenandoah  
600 North Main Street  
Woodstock, VA 22664

**RE: PROFFER AGREEMENT FOR PHASE 2  
OF EDINBURG SQUARE SUBDIVISION**

Dear Mr. Poling:

In consideration of the action of the County of Shenandoah to permit a town boundary line adjustment, I hereby agree to the following terms and conditions for the rezoning of my property that is the subject of annexation into the town of Edinburg, which was recently in the County of Shenandoah.

1. The property shall be zoned R-1 residential for exclusive use as single family homes.
2. The property shall be subdivided into 37 residential building lots that conform to the requirement of the Edinburg zoning code for R-1.
3. A 15 foot landscape buffer shall be placed on the east/north east portion of the development.
4. An increased open space area will be placed on the property
5. The 15 foot landscape buffer and open space will be established as an easement in favor of the home owners association, which will be responsible for the maintenance and up keep of the buffer and the open space.
6. I agree to pay to the town, the proffer fee of \$6,501.00 on each of the 37 new homes at the time of issuance of the individual zoning permits.

Sincerely,

*Jennifer Grafton-Gore*

Jennifer Grafton-Gore



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02727

TAX PARCEL IDENTIFICATION NOS.: 70((6)) 2-6 & 70((A)) 179-180

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

of

EDINBURG SQUARE SUBDIVISION

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS (the "Declaration") is made as of March 17, 2006, by **Jennifer Joan Grafton-Gore** (hereinafter referred to as "Declarant") to be indexed as Grantors.

**RECITALS:**

A. The Declarant is the Owner of certain real property located in the Town of Edinburg, Shenandoah County, Virginia, known as **Lots 25 through 61, inclusive, Edinburg Square Subdivision Phase II**, as the same are duly subdivided, platted and recorded by an instrument (the "**Subdivision Plat**") recorded in the Shenandoah County Circuit Court Clerk's Office in Deed Book 1271, at Page 761, which is incorporated herein by this reference.

B. The Declarant desires to create on the Property (as hereinafter defined) a residential community (sometimes referred to herein as the "Development") which shall have permanent open spaces and other common facilities for the benefit of the community.

C. The Declarant desires to provide for the preservation of the values of the community and such other areas as may be subjected to this Declaration, and, to this end, declares and publishes their intent to subject the Property to the covenants, conditions, restrictions, and easements, as hereinafter set forth, it being intended that they shall run with the Property and shall be binding on all persons or entities having or acquiring any right, title or interest in the Property or any part thereof and shall inure to the benefit of each Owner thereof.

D. NVR wishes to join into this declaration to exhibit it's consent to all of the terms, conditions, and covenants set forth

Mailed to: Jennifer J. Grafton-Gore  
P.O. Box 272  
Upperville, VA 20185

BOOK 1277 PAGE 0498

herein.

NOW, THEREFORE, the Declarant, for and in consideration of the premises and the covenants contained herein, grants, establishes and conveys to each Owner of a Lot, mutual, non-exclusive rights, privileges and easements of enjoyment on equal terms and in common with all other Owners of Lots; and further, the Declarant and the Association declare the Property to be held, transferred, sold, conveyed and occupied subject to the covenants, conditions, restrictions, reservations, and easements as hereinafter set forth, which are for the purpose of protecting the value and desirability of, and shall run with, the Property and be binding on all parties having any right, title or interest in the Property or any part thereof, their respective successors and assigns, and shall inure to the benefit of each Owner thereof.

ARTICLE I  
DEFINITIONS

Section 1. "Association" shall mean the Edinburg Square Owners' Association, a non-stock corporation organized under the laws of the Commonwealth of Virginia. The Association shall have the power to adopt reasonable rules and regulations regarding the use and maintenance of Common Areas.

Section 2. "Builder" shall mean and refer to any person or entity (other than the Declarant) who acquires more than two (2) Lots for the purpose of constructing a Dwelling Unit for sale.

Section 3. "Common Area" shall mean all areas shown on the Plat as "Open area" or "Common area", all of which shall be deeded to the Association and shall be maintained by the Association.

Section 4. "Declarant" shall mean and refer to Jennifer Grafton-Gore or her assigns to whom she assigns any or all of her rights as Declarant pursuant to this Declaration by assignment recorded in the Land Records. If the Declarant consists of more than one (1) person or entity, the rights and obligations of the Declarants shall be several and shall be based upon and apportioned in accordance with the number of Lots owned by each Declarant.

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Section 5. "**Declaration**" shall mean and refer to this Declaration of Covenants, Conditions and Restrictions applicable to the Property, which Declaration is recorded in the Office of the Clerk of the Circuit Court of Shenandoah County, Virginia.

Section 6. "**Dwelling Unit**" shall mean and refer to any improvement to the Property intended for any type of independent Ownership for use and occupancy as a residence by a single household and shall, unless otherwise specified, include within its meaning (by way of illustration but not limitation) patio or zero lot line homes, townhouses and detached homes.

Section 7. "**Lot**" shall mean and refer to any plot of land created by and shown on a lawfully recorded subdivision plat of the Property upon which a Dwelling Unit could be constructed in accordance with applicable zoning ordinances, with the exception of the Common Area and streets dedicated to public use.

Section 8. "**Owner**" or "**Lot Owner**" shall mean and refer to the record Owner, whether one (1) or more persons or entities, of the fee simple title to any Lot, including a contract seller but excluding those holding such interest in a Lot solely by virtue of a contract to purchase a Lot or as security for the performance of an obligation. If more than one (1) person or entity is the record Owner of a Lot, the term "Owner" as used herein shall mean and refer to such Owners collectively, so that there shall be only one (1) Owner of each Lot.

Section 9. "**Plat**" refers to the subdivision plat, dated February 9, 2006, prepared by John W. Clark II, Land Surveyor, recorded in the Shenandoah County Circuit Court Clerk's Office in Deed Book 1271, at Page 761.

Section 10. "**Property**" shall mean and refer to that certain real property described as **Lots 25 through 61, Edinburg Square Subdivision Phase II, but specifically excluding Old Lot 1, Edinburg Square Subdivision**, as duly subdivided, platted and recorded on the Subdivision Plat, recorded in Deed book 1230 at Page 451, and such additions thereto which, from time to time, may be added hereto. (An earlier Edinburg Square Subdivision, containing 6 lots, was previously platted and recorded. Lot 1 was sold therefrom, but lots 2 through 6 have been redeveloped into the Development to which this declaration applies. Lot 1 of the original Edinburg Square Subdivision is

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not bound by this Declaration. "Property" shall include any lots in land added to the Development, as set forth herein.

Section 11. "Public Entity" shall mean and refer to any governmental entity or agency, including, without limitation, the Board of Supervisors of Shenandoah County, Virginia, the Virginia Department of Transportation, any legislatively created Water and/or Sewer Authority, the Edinburg Town Council, the Town of Edinburg, Virginia. The phrase "Public Entity" shall not include charitable, volunteer, or civic organizations, including, without limitation, churches, volunteer fire departments and rescue squads, and organizations such as the YMCA.

Section 12. "Structure" shall include, but not be limited to, any building or portion thereof, wall, door, window, roof, deck, play equipment, greenhouse, skylight, solar panel, fence, pool, pavement, driveway or appurtenances to any of the aforementioned.

Section 13. "Supplementary Declaration" shall mean and refer to a supplement to this Declaration which adds additional real property to the real property encumbered by this Declaration. Such Supplementary Declaration may, but is not required to, impose, expressly or by reference, additional restrictions and obligations on the land subjected by that Supplementary Declaration to the provisions of this Declaration.

ARTICLE II

RESTRICTIVE COVENANTS

Section 1. The Property shall be used exclusively for residential purposes except as provided in Section 19 hereof. The Declarant reserves the right, for itself and any Builder, pursuant to a recorded subdivision or resubdivision plat, to alter, amend, and change any lot line or subdivision plan or plat. No building shall be erected, altered, placed or permitted to remain on any Lot other than one Dwelling Unit and appurtenant structures, approved by the appropriate Public Entity, for use solely by the occupant of the Dwelling Unit.

Section 2. No Structure or addition to a Structure shall be erected, placed, altered or externally improved on any Lot

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until the plans and specifications, including design, elevation, material, shape, height, color and texture, and a site plan showing the location of all improvements with grading modifications, shall be filed with and approved in writing by the Declarant, and, if required, by the appropriate Public Entity and, where required, appropriate construction permits obtained.

Section 3. No clothing, laundry or wash shall be aired or dried on any portion of the Property within public view.

Section 4. No fence, wall, tree, hedge or shrub shall be maintained in such a manner as to obstruct sight lines for vehicular traffic.

Section 5. An Owner shall, at all times, maintain its property and all appurtenances thereto in good repair and in a state of neat appearance. All grassy areas of a lawn shall be kept mowed and shall not be permitted to grow beyond a reasonable height. Except as required for proper sight lines, no tree of a diameter of more than four (4) inches measured two (2) feet above ground level shall be removed without the approval of the Architectural Review Board.

Section 6. No noxious or offensive activity shall be carried on upon the Property, nor shall anything be done or placed thereon which is or may become an annoyance or nuisance to the neighborhood. No exterior lighting on a Lot shall be directed outside the boundaries of the Lot.

Section 7. The only signs permitted on the Property shall be customary home and address signs and reasonable real estate sale or lease signs ("**Permitted Signs**"). No more than one (1) Permitted Sign shall be displayed to public view on any Lot and must be less than or equal to two (2) square feet in total surface area and may not be illuminated. All Permitted Signs advertising the property for sale or rent shall be removed within three (3) days from the date of the conveyance of the Lot or of the execution of the lease agreement, as applicable. All signage must be in conformance with Zoning Requirements.

Section 8. No domesticated or wild animal shall be kept or maintained on any Lot, except for common household pets such as dogs and cats which may be kept or maintained, provided that

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they are not kept, bred or maintained for commercial purposes and do not create a nuisance or annoyance to surrounding Lots or the neighborhood and are kept in compliance with applicable governmental ordinances. Law enforcement and animal control personnel shall have the right to enter the Property to enforce local animal control ordinances.

Section 9. Trash shall be collected and stored in trash receptacles only and not solely in plastic bags. Trash and garbage receptacles shall not be permitted to remain in public view except on days of trash collection, except those receptacles designed for trash accumulation located in the Common Area. No accumulation or storage of litter, new or used building materials, or trash of any kind shall be permitted on the exterior of any Dwelling Unit.

Section 10. To the extent not inconsistent with federal law, exterior television and other antennae, including satellite dishes, are prohibited, unless approved in writing by the Declarant. The Declarant shall adopt rules for the installation of such antennae, which rules shall require that antennae and satellite dishes be placed as inconspicuously as possible and screened from view; provided, however, that all such rules relating to antennae and satellite dishes shall not unreasonably delay installation, interfere with reception or increase the cost. It is the intent of this provision that the Declarant shall be able to strictly regulate exterior antennae and satellite dishes to the fullest extent of the law and should any regulations adopted herein or by the Declarant conflict with federal law, such rules as do not conflict with federal law shall remain in full force and effect.

Section 11. No person shall paint the exterior of any building, or portion thereof, a color different than the original color of said building or portion thereof without the proposed color having been first approved in writing by the Declarant.

Section 12. The exteriors of all Structures shall be kept in good maintenance and repair. No structure shall be permitted to stand with its exterior in an unfinished condition for longer than six (6) months after the commencement of construction. In the event of fire, windstorm or other damage, the exterior of a structure shall not be permitted to remain in a damaged

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condition for longer than three (3) months, unless expressly excepted by the Board in writing.

Section 13. No fence or enclosure shall be erected or built on any Lot until first approved in writing by the Declarant as to location, height, material and design. Any fence or wall built on any Lot shall be maintained in a proper manner so as not to detract from the value and desirability of surrounding property. All fences or enclosures must conform to the standards and specifications adopted and published from time to time by the Declarant.

Section 14. No inoperable, junk, unregistered, unlicensed or uninspected vehicle shall be kept on the Property. No portion of the Property shall be used for the repair of a vehicle.

Section 15. No commercial or industrial vehicle, such as but not limited to moving vans, trucks, tractors, trailers, vans, wreckers, tow trucks, hearses and buses, shall be regularly or habitually parked or parked overnight on the Property.

Section 16. No recreational vehicles or equipment, such as but not limited to boats, boating equipment, travel trailers, camping vehicles or camping equipment shall be parked on the Property without the prior, written approval of the Declarant, as to location, size, screening and other relevant criteria.

Section 17. The Declarant shall have the right to tow any vehicle parked or kept in violation of the covenants contained within this Article, upon twenty-four (24) hours' notice and at the vehicle Owner's sole expense.

Section 18. Any rental agreement for a Dwelling Unit must be for an initial period of at least six (6) months, must be in writing and must be subject to the rules and regulations set forth in this Declaration. Every such rental agreement must include a provision stating that any failure by the tenant, its household members or guests, to comply with the terms of such documents shall be a default under the rental agreement, and the Owner shall be responsible for enforcing this provision.

Section 19. The provisions of this Article shall not apply

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to the development of or construction of improvements on the Property by the Declarant, a Builder, or their respective assigns. The Declarant and any Builder or their respective assigns may, during their construction and/or sales period, erect, maintain and operate real estate sales and construction offices, model homes, displays, signs and special lighting on any part of the Property and on or in any building or structure now or hereafter erected thereon.

Section 20. The Declarant shall have the authority to adopt such rules and regulations regarding this Article as it may from time to time consider necessary or appropriate.

ARTICLE III  
ARCHITECTURAL REVIEW BOARD

Section 1. Composition. The Architectural Review Board shall be comprised of the Declarant as long as the Declarant owns a lot within the Subdivision. Upon Declarant selling its last lot, Declarant shall appoint a 3 member (all members being required to be Lot Owners) Architectural Review Board, to make all decisions originally reserved to the Declarant. Members shall serve three (3) year terms. After the appointment of the first Board, successor Boards shall be appointed by a majority vote of the Lot Owners, with each lot, whether owned by one or more persons, being entitled to one vote for each of the three positions, to be voted upon at a meeting held in Edinburg, Virginia, after written notice at least 30 days in advance is provided to all Lot Owners. 40% of the Lot Owners present at such meeting, in person or by written proxy, shall constitute a quorum sufficient for election purposes. The top 3 vote getters in any such election shall be deemed to be duly elected.

Section 2. Vacancies. Appointments to fill vacancies in unexpired terms shall be made in the same manner, election by majority vote, cast in person or by proxy.

Section 3. Duties. The Members of the Architectural Review Board shall regulate the external design and appearance of the Property and the external design, appearance and location of the improvements thereon in such a manner so as to preserve and enhance property values and to maintain harmonious relationships among structures and the natural vegetation and topography, after the initial construction. During the period

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the Architectural Review Board is the Declarant, it shall regulate all initial construction, development or improvements on the Property. In furtherance thereof, the Architectural Review Board shall:

(a) review and approve or disapprove written applications of Owners for proposed alterations or additions to Lots;

(b) periodically inspect the Property for compliance with adopted, written architectural standards and approved plans for alteration;

(c) adopt procedures for the exercise of its duties;  
and

(d) maintain complete and accurate records of all actions taken by the Architectural Review Board.

Approval by the Architectural Review Board of a correctly filed application shall not be deemed to be an approval by the applicable Public Entity nor a waiver of the applicant's obligation to obtain any required governmental approvals or to comply with applicable local ordinances.

Section 4. Failure to Act. In the event the Architectural Review Board fails to approve or disapprove a correctly filed application within sixty (60) days of the receipt of the application sent by Registered Mail or Certified Mail-Return Receipt Requested, then thereafter the application shall be deemed granted, except for those applications for additions or alterations prohibited by this Declaration, in which case no disapproval is necessary to uphold the prohibition. Failure of the Architectural Review Board to enforce the architectural standards or to notify an Owner of noncompliance with architectural standards or approved plans for any period of time shall not constitute a waiver by the Architectural Review Board.

Section 5. Enforcement. Any exterior addition, change or alteration made without application to, and approval of, the Architectural Review Board shall be deemed to be in violation of these covenants and may be required by the Board or any Lot Owner to be restored to its original condition at the offending Owner's sole cost and expense.

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Section 6. Exemption. NVR shall be exempt from all architectural restrictions and limitations, provided all building plans by NVR are approved by Declarant. The issuance of an occupancy permit by the Shenandoah County Department of Building Inspection shall be deemed conclusive proof of the compliance of NVR with the terms of this exemption.

ARTICLE IV  
EASEMENTS

Section 1. The Declarant grants and reserves a blanket easement to the Declarant, its agents and employees, and to any person employed by or on behalf of the Declarant, and to all police, fire, ambulance personnel and all similar persons, to enter upon the Property in the exercise of the functions provided for by this Declaration, and in the event of emergencies and in the performance of governmental functions.

Section 2. When not an emergency situation or a governmental function, the rights accompanying the easements provided for in Section 1 of this Article shall be exercised only during reasonable daylight hours and then, whenever practicable, only after advance notice to, any Owner or tenant directly affected.

Section 3. If any improvement on the Property now or hereafter encroaches on any other portion of the Property by reason of (a) the original construction thereof by the Declarant or its assigns, which shall include, but not be limited to, any driveway which encroaches over a Lot's boundary line and draining of rainwater from roofs, (b) deviations within normal construction tolerances in the maintenance, repair, replacement or reconstruction of any improvement, or (c) the settling or shifting of any land or improvement, an easement is hereby granted to the extent of any such encroachment for both the encroachment and its maintenance for the period of time the encroachment exists. The Owner of the encroaching improvement shall also have an easement for the limited purpose of maintenance of the encroaching improvement. This easement does not relieve any Owner or any other person from liability for such Owner's or other person's negligence or willful misconduct.

Section 4. The Declarant, a Builder and their respective

agents and employees shall have a right of ingress and egress over any easement areas as required for construction on and development of the Property.

Section 5. So long as the Declarant or a Builder owns any Lots within the Property, there is reserved to the Declarant or the Builder a right to grant non-exclusive easements over any Lot for the purposes of installing, repairing and/or maintaining utility lines of any sort, including but not limited to storm drains and drainage swales, sanitary sewers, gas lines, electric lines and cables, water lines, telephone lines, telecommunication lines and cables, and the like, and for any purpose necessary for the Declarant or a Builder or its assigns to obtain the release of any bonds posted with a municipality, governmental agency or regulatory agency, subject to required approvals by any Public Entity, as appropriate. Any such easements shall not interfere with constructed improvements on any lot, and any disturbed area must be restored as nearly as practicable to its pre-disturbance condition.

Section 6. There is reserved to the Declarant and Builder an easement and the right to grant and reserve easements or to vacate or terminate easements across all Lots as may be required by any governmental agency or authority or utility in connection with the release of improvement bonds or the acceptance of public streets for state maintenance with respect to the Property, subject to required approvals by any Public Entity, as appropriate.

Section 7. So long as the Declarant owns any Lots within the Property, there is reserved to the Declarant a non-exclusive easement over all Lots for the purposes of correcting drainage, regrading, maintenance, landscaping, mowing and erecting street intersection signs, directional signs, temporary promotional signs, entrance features, lights and wall features, and for the purpose of executing any of the powers, rights, or duties granted to or imposed on the Declarant herein. The exercise of the rights granted/reserved herein shall not interfere with any constructed improvements, and any disturbed surface area shall be restored to its pre-disturbance condition, as nearly as is practicable. This non-exclusive easement shall also be exercisable by Builder, with the prior written consent of Declarant, until a period of two years has expired after the issuance of the last Occupancy permit issued to Builder in the

BOOK 1277 PAGE 0508

development.

Section 8. Subject to the terms of this Declaration, the Declarant shall have the right to add Additional Land to this Declaration and to provide for similar rights, duties, and obligations for the Owners of lots located as part of such additional land, including the right to usage of common Areas.

Section 9. The Declarant reserves easements for Storm drainage, water lines, and sanitary sewer lines, as shown on the subdivision Plat. In the area of water and sanitary sewer lines, the Declarant may install and maintain such lines, restoring any disturbed surface area as nearly as practicable to its pre-disturbance condition. In the area of storm drainage easements, Declarant may grade or install pipes and culverts, as reasonably necessary to properly channel storm water pursuant to the approved storm water management plan for the development. No Lot Owner shall re-grade the area of a storm drainage easement, without the prior written consent of Declarant or the Town of Edinburg. All such easements may be assigned to the Town or the Association as determined by Declarant.

ARTICLE V

DEDICATION

Section 1. Dedication for Public Use. During any period of construction and development, the Declarant has the unilateral right without the consent of any Owner or Mortgagee to execute and record an amendment to the Declaration withdrawing any portion of the owned by the Declarant or a Builder, if such land is dedicated or to be dedicated to public use, subject to required approvals by any Public Entity, as appropriate.

ARTICLE VI  
COMMON AREA

Section 1. Title and UPKEEP. The DECLARANT, on behalf of itself and its successors and assigns, hereby covenants that the COMMON AREA, if any, in the Subdivision, will be conveyed to the Association in fee simple, subject to all easements and other encumbrances then of record (including those created by this Declaration), prior to the recordation of the conveyance of any LOT. UPKEEP of the COMMON AREA, if any, shall be the

responsibility of the Association.

Notwithstanding anything contained herein, however, the Association shall have the right from time to time, if in its sole discretion it deems appropriate, to lease land, facilities or other amenities to be used in common by the Owners. Such leases shall be made upon such terms and conditions as the Association shall deem proper and during the term of such lease any property so leased shall be treated as COMMON AREA during the term of said lease subject to the definitions contained herein and the applicable provisions and regulations contained herein governing such COMMON AREA.

Notwithstanding any thing contained herein the Association shall have the right, in its sole discretion, to enter into lease agreements, easements, and/or licenses, to allow individuals or groups to use COMMON AREA in the development in common with the Owners. Any such agreement entered into by the Association shall provide for appropriate payment to the Association to compensate for any use or enjoyment of the COMMON AREA by a person other than Owners.

Section 2. Right of Use and Enjoyment. Appurtenant to each LOT, whether or not mentioned in the deed thereto, shall be an easement which is hereby created entitling all persons lawfully occupying or residing on any LOT to enjoy the COMMON AREA in common with all PERSONS occupying or residing on other LOTS. Any purported conveyance or other transfer of that easement without the LOT to which it is appurtenant shall be void. The easements created by this Section are subject to the right of the Association, and in accordance with its Articles of Incorporation and Bylaws, to: (i) regulate the use and enjoyment of the COMMON AREA, (ii) cause a lien to be placed on the COMMON AREA to secure the payment of money borrowed by the Association, (iii) suspend the rights granted by this Section in the case of PERSONS who violate the Rules and Regulation, promulgated by the Association, or to occupy or reside on LOTS for which an assessment or fee owed to the Association is due but not paid, except that no such suspension shall deny access to any LOT lawfully entitled to occupy the same; and (iv) dedicate, convey or otherwise transfer the COMMON AREA or any portion(s) thereof or estates or interests therein to any governments or governmental agencies, or to grant any easements over and through the same to public utility companies.

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Section 3. Assessments. Each Lot Owner shall pay an annual assessment to the Association, to be paid no later than January 31 of each year, which funds shall be used to maintain the Common Areas, and to fulfill all obligations of the Association and the Architectural Review Board under this declaration. The amount of the initial assessment shall be established by Declarant, which amount shall continue until such time as modified by Declarant, or until Declarant has sold all lots owned by Declarant in the development, including any adjacent lands later added to the development by Declarant. Upon Declarant conveying all lots, and the organization of the Association, the amount of the annual assessment shall be determined by the Association, but in no event shall be raised more than 20% in any year, over the previous years amount, without the prior approval of 60% of the Association members, voting in person or by proxy, at a duly called meeting of the Association. Unpaid assessments shall accrue interest at an annual rate of 12%, and constitute a lien upon the lot for which such assessments are unpaid, but such lien shall be automatically subordinate to any recorded Deed of Trust upon such property, and a purchaser taking title from or through a foreclosure shall not be responsible for such unpaid assessments. Any reasonable legal fees incurred by the Association in collecting unpaid assessments shall be added to the amount owed. In No event shall Declarant be responsible for lot assessments on a Lot owned by Declarant prior to the time it has been sold or conveyed by Declarant. Upon Declarant organizing a meeting for the initial organization of the Association, and the conveyance to the Association of all Common Areas as set forth herein, and upon the delivery to the Association of all assessments collected by Declarant, Declarant shall have no further obligation to the Association.

ARTICLE VII  
GENERAL PROVISIONS

Section 1. Enforcement. The Declarant, the Association, or any Owner shall have the right, but not the obligation, to enforce, by a proceeding at law or in equity, all restrictions, conditions, covenants, reservations, easements, liens and charges now or hereafter imposed by the provisions of this Declaration unless such right is specifically limited. Failure by the Association or by any Owner to enforce any right,

provision, covenant or condition which may be granted by this Declaration shall not constitute a waiver of the right of the Declarant or an Owner to enforce such right, provision, covenant or condition in the future. All rights, remedies and privileges granted to the Declarant, the Association, or any Owner pursuant to any term, provision, covenant or condition of the Declaration shall be deemed to be cumulative and the exercise of any one or more thereof shall not be deemed to constitute an election of remedies nor shall it preclude the party exercising the same from exercising such privileges as may be granted to such party by this Declaration or at law or in equity.

Section 2. Severability; Headings; Conflict. Invalidation of any one of the provisions of this Declaration by judgment or court order shall in no way affect any other provision, which shall remain in full force and effect. Titles of paragraphs are for convenience only and are not intended to limit or expand the covenants, rights or obligations expressed therein. In the case of any conflict between the applicable zoning regulations and this Declaration, the regulations shall control.

Section 3. Duration; Amendment. The covenants and restrictions of this Declaration shall run with and bind the land and shall inure to the benefit of and be enforceable by the Declarant or the Owner of any Lot subject to this Declaration, their respective legal representatives, heirs, successors and assigns, unless such right is specifically limited, for a term of twenty (20) years from the date this Declaration is recorded, after which time the covenants and restrictions of this Declaration shall be automatically extended for successive periods of twenty (20) years each. The covenants and restrictions of this Declaration may be amended in whole or in part with the assent of at least sixty-seven percent (67%) of the Members. Any amendment must be properly executed and acknowledged (in the manner required by law for the execution and acknowledgment of deeds) and recorded among the Land Records.

Section 4. Special Amendment. Notwithstanding anything herein to the contrary, the Declarant may unilaterally amend this Declaration for any reason prior to the first conveyance of a Lot to an Owner other than the Declarant or a Builder, and thereafter may make any amendment required by any of the federal mortgage agencies, such as the Veterans Administration, Federal Housing Administration, Federal National Mortgage Association,

or Federal Home Loan Mortgage Corporation, or by the applicable local governmental agencies, as a condition of the approval of this Declaration, by the execution and recordation of such amendment following notice to all Members. The Declarant further reserves the right to make reasonable unilateral amendments within 3 years of the date of the execution of this Declaration to correct clerical or drafting oversight errors, provided however that no such amendment shall interfere with any constructed improvements, or impose greater financial obligations on Lot Owners than as originally set forth herein.

Section 5. Waiver. The Declarant, as long as it owns any lots in the development, and as the present most interested party in maintaining the high quality of development which by these covenants is sought to be assured for the Property, hereby expressly reserves unto itself (so long as these restrictions are in effect), the unqualified right to waive or alter from time to time such of the herein contained restrictions as it may deem best, as to any one or more of the Lots, which waiver or alteration shall be evidenced by the mutual written consent of the Declarant and the then-Owner of the Lot as to which some or all of said restrictions are to be waived or altered; such written consent to be duly acknowledged and recorded among the Land Records.

Section 6. Withdrawable Real Estate.

(a) The Declarant shall have the unilateral right, without the consent of a Lot Owner any Mortgagee, to execute and record an amendment to this Declaration withdrawing any portion of the Property on which Dwelling Units have not been constructed; provided, however, that not more than five (5) years have lapsed since the date such Property was subjected to this Declaration.

(b) Upon the dedication or the conveyance to any Public Entity of any portion of the Property for public purposes, this Declaration shall no longer be applicable to the land so dedicated or conveyed. Notwithstanding the foregoing, if such portion of the Property is subsequently re-conveyed to an entity which is not a Public Entity, then this Declaration shall once again apply to the portion of the Property no longer owned by a Public Entity.

ARTICLE VIII

MISCELLANEOUS PROVISIONS

Section 1. Membership in the Association and Notice Thereof. Each Owner shall be a member of the Association from the time he becomes an Owner and until the time he ceases to be an Owner, and shall give written notice of his acquisition of title to the Secretary of the Association immediately following such acquisition, stating the name(s) and address(es) of the PERSON(S) constituting the new Owner and the number(s) of the LOT(S) acquired. If two or more PERSONS comprise the Owner of a LOT, they shall collectively constitute only one member of the Association but each of them shall be entitled to attend all meetings of the Association.

Section 2. Amendments. No Amendment to this Declaration shall become effective except upon the recordation of the same among the land records, certified by an Officer of the Association to have been approved in writing by all of the PERSONS comprising the Owners entitled to cast at least three-fourths (3/4) of the votes in the Association. Notwithstanding the provisions of the preceding sentence, the DECLARANT reserves the right (for as long as the DECLARANT is an Owner) to amend unilaterally any provisions of this Declaration to satisfy the requirements of any government, governmental agency or governmentally regulated corporation or Association which insures or guaranties MORTGAGES or which purchases MORTGAGES (or participates in MORTGAGES) from banks, savings and loan Association, or other institutional lenders, or of any perspective MORTGAGEE requiring such amendment as a precondition of making MORTGAGE loans on the PROPERTY or any LOTS.

WITNESS the following signature and seal:

Name:

Jennifer Grafton - Gore

Owner:

Jennifer Grafton Gore

Jennifer Grafton-Gore

BOOK 1277 PAGE 0514

COMMONWEALTH OF VIRGINIA,  
COUNTY OF SHENANDOAH, to wit:

I, the undersigned Notary Public, in and for the jurisdiction aforesaid, do hereby certify that Jennifer Joan Grafton-Gore, whose name is signed to the foregoing Declaration of Covenants, Conditions and Restrictions, appeared before me and personally acknowledged the same in my jurisdiction aforesaid.

GIVEN under my hand and seal this 17th day of March, 2006.

My commission expires 6/30/08

Debra K. Davany  
Notary Public

INSTRUMENT #060002727  
RECORDED IN THE CLERK'S OFFICE OF  
SHENANDOAH COUNTY ON  
MARCH 17, 2006 AT 12:38PM  
DENISE F. BARB, CLERK

RECORDED BY: SFF

02728

TAX PARCEL IDENTIFICATION NOS.: 70 6 2-6, 70 A 179, 180

FIRST AMENDMENT TO  
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

of

EDINBURG SQUARE SUBDIVISION

THIS FIRST AMENDMENT TO DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS OF EDINBURG SQUARE SUBDIVISION is made this 17<sup>th</sup> day of MARCH, 2006, by Jennifer Joan Grafton-Gore, to be indexed as a "Grantor" and a "Grantee".

RECITALS:

1. Jennifer Joan Grafton-Gore recorded a Declaration of Covenants, Conditions and Restrictions applicable to Edinburg Square Subdivision on the 2<sup>nd</sup> day of November, 2005, in the Clerk's Office of the Circuit Court of Shenandoah County, Virginia, in Deed Book 1251, at Page 0562.

2. Article VII, Section 4, entitled "Special Amendment", reserved the right to the Declarant, Jennifer Joan Grafton-Gore, to make reasonable unilaterally amendments within three years from the date of the execution of the Declaration to correct clerical or drafting errors.

3. Paragraph A under the Recitals in Deed Book 1251, Page 0562, Page 1 of the Covenants, refers to the Subdivision Plat erroneously as being recorded in Deed Book 1230, at Page 320, when, in fact, it is recorded in Deed Book 1230, at Page 0451.

NOW, THEREFORE, Jennifer Joan Grafton-Gore hereby amends Paragraph A of the Recitals of the Declaration of Covenants, Conditions and Restrictions of Edinburg Square Subdivision to reflect that the Subdivision Plat is recorded in the Clerk's Office of the Circuit Court of Shenandoah County, Virginia, in Deed Book 1230, at Page 0451.

Except as amended, the Covenants will remain in full force and effect as originally written.

Mailed to: Jennifer J. Grafton-Gore  
P.O. Box 272  
Upsherville, VA 20185

PAUL J. NEAL, JR.  
ATTORNEY AT LAW  
P.O. BOX 474  
WOODSTOCK, VIRGINIA

002077

SECOND AMENDMENT TO THE DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR EDINBURG SQUARE SUBDIVISION

THIS SECOND AMENDMENT TO THE DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR EDINBURG SQUARE SUBDIVISION, as amended, is made this 23 day of March, 2010, by JENNIFER JOAN GRAFTON-GORE, ("Declarant") to be indexed as a "Grantor" and "Grantee", and acknowledged by UNITED BANK, ("Noteholder"), and MARK B. CALLAHAN, ("Substitute Trustee").

RECITALS:

1. Jennifer Joan Grafton-Gore, as Declarant, recorded: (i) a Declaration of Covenants, Conditions and Restrictions applicable to Edinburg Square Subdivision on the 2nd day of November, 2005, in the Clerk's Office of the Circuit Court of Shenandoah County, Virginia, in Deed Book 1251, page 0562, covering Lots 1-24 inclusive of said Subdivision (hereinafter "2005 Declaration") (ii) a Declaration of Covenants, Conditions and Restrictions of Edinburg Square Subdivision, dated March 17, 2006 and recorded in the aforementioned Clerk's Office at Deed Book 1277, page 497, covering lots 25-61 inclusive of said Subdivision ("Phase II"), (hereinafter "2006 Declaration") and (iii) a First Amendment to Declaration of Covenants, Conditions and Restrictions of Edinburg Square Subdivision dated March 17, 2006 and recorded in the aforementioned Clerk's Office at Deed Book 1277, page 515.

2. Article IV, Section 6, of both the 2005 Declaration and the 2006 Declaration reserved the right to the Declarant, Jennifer Joan Grafton-Gore, the right to, "grant and reserve easements . . . across all Lots as may be required by any governmental agency . . . in connection with . . . the acceptance of public streets for state maintenance with respect to the Property."

3. The First Amendment to Declaration did not amend, alter or abrogate the Declarant rights recited in recital paragraph 2 above.

4. VDOT and the Town of Edinburg are requiring of the Declarant to provide said public agencies and authorities easements covering the as-constructed sidewalks, and those areas reasonably required by said agencies and authorities for future sidewalk construction, within all Lots of Edinburg Square Subdivision as described in

70A 3007 Lots 1-61  
70A 3007A, B, D, G

Return To:  
MARK & BRADSHAW, P.C.  
ATTORNEYS AT LAW  
12 NORTH LIBERTY STREET  
P.O. BOX 71  
HARRISONBURG, VIRGINIA  
22803

the 2005 Declaration, 2006 Declaration and all recorded Plats and other documents describing the Property subject to both Declarations, as an explicit and non-waivable condition of accepting the streets shown on the Plats attached to the 2005 Declaration and 2006 Declaration, and as constructed within the Subdivision, as public streets.

5. Declarant has had Patton Harris Rust and Associates, Bruce J. Frederick L.S. prepare a plat entitled "Plat Showing Sidewalk Easement for Edinburg Square Subdivision & Edinburg Square Subdivision Phase II" and dated, November 20, 2009, (the, "2009 Plat") showing the easements required by the public agencies and authorities over the Lots, for existing and future sidewalks necessary for acceptance of the public streets within the subdivision into the public road system.

6. The 2009 Plat is attached hereto as Exhibit A and incorporated herein by reference.

7. United Bank has a lien on the property that is subject to this Declaration. United Bank and its Substitute Trustee join in the Declaration to evidence their consent.

NOW, THEREFORE, Jennifer Joan Grafton-Gore hereby amends Article IV of the 2005 Declaration and Article IV of the 2006 Declaration adding a new "Article IV, Section 10" stating as follows:

"Section 10. Declarant hereby grants and reserves mutual cross easements for sidewalk construction, upkeep and usage within the area shown on the 2009 Plat as "6' Sidewalk Easement". The sidewalk easements shown on the Plat, and granted and reserved herein, are for the mutual benefit of the Lot Owners, their guests, invitees and the public for customary sidewalk usage. The Declarant, her successors and assigns, and the Association may govern the usage of said mutual sidewalk easements herein granted and reserved in their discretion for the benefit of the Property. The Association shall provide for the maintenance and upkeep of the sidewalks within the Subdivision per their powers and authorities under the Declaration."

This amendment and addition to the 2005 Declaration and 2006 Declaration is made pursuant to the powers reserved to the Declarant under Article IV, Section 6 of said Declarations.

Except as amended, the Covenants will remain in full force and effect as originally written.

003249

**THIRD AMENDMENT TO DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS OF EDINBURG SQUARE SUBDIVISION**

THIS AMENDMENT ("Amendment") is made this 21<sup>st</sup> day of November, 2013 by the Lot Owners/Members of Edinburg Square Subdivision, Phase II ("Edinburg Square").

WHEREAS, at least sixty-seven percent (67%) of the Lot Owners/Members of Edinburg Square approved an Amendment to the Declaration of Covenants, Conditions and Restrictions of Edinburg Square Subdivision dated March 17, 2006, and recorded in Deed Book 1277 at page 0497, among the land records of Shenandoah County, Virginia, and as amended by First Amendment to Declaration of Covenants, Conditions and Restrictions of Edinburg Square dated March 17, 2006, and recorded in Deed Book 1277 at page 0515, and as further amended by Second Amendment to the Declaration of Covenants, Conditions and Restrictions for Edinburg Square Subdivision dated March 23, 2010, and recorded in Deed Book 1486 at page 0520 among the aforesaid land records (collectively the "Declaration");

NOW THEREFORE, the Declaration shall be deemed to be amended to read as follows:

Article 1; Section 4. "Declarant" shall mean and refer to Gary Foltz or his assigns to whom he assigns any and all rights as Declarant pursuant to this Declaration by assignment recorded in the Land Records. If the Declarant consists of more than one (1) person or entity, the rights and obligations of the Declarants shall be several and based upon and apportioned in accordance with the number of Lots owned by each Declarant.

Article 1; Section 6. "Dwelling Unit" shall mean and refer to any improvements to the Property intended for any type of Independent Ownership for use and occupancy as a residence and shall, unless otherwise specified, include within its meaning (by way of illustration but not limitation) patio or zero lot line homes, townhouses, duplexes, and detached homes.

\* Return to: Donna Mumaw  
2471 Cave Ridge Rd.  
Mt Jackson LA 70842

Article I; Section 8. "Owner" or "Lot Owner" or "Member" shall mean and refer to the record Owner, whether one (1) or more persons or entities, of the fee simple title to any Lot including a contract seller but excluding those holding such interest in a Lot solely by virtue of a contract to purchase a Lot or as security for the performance of an obligation. If more than one (1) person or entity is the record Owner of a Lot, the term "Owner" as used herein shall mean and refer to such Owners collectively, so that there shall be only one (1) Owner of each Lot.

Article II; Section 1. The Property shall be used exclusively for residential purposes except as provided in Section 19 of Article II of the Declaration. The Declarant reserves the right, for itself and any Builder, pursuant to a recorded subdivision or resubdivision plat, to alter, amend, and change any lot line or subdivision plan or plat. No building shall be erected, altered, placed or permitted to remain on any Lot other than one or more Dwelling Units and appurtenant structures, approved by the appropriate Public Entity, for use solely by the occupants of the Dwelling Units.

Article VIII; Section 2. Amendments. No Amendment to this Declaration shall become effective except upon the recordation of the same among the land records, certified in accordance with the provisions of Va. Code §55-515.1(F), as amended, or such successor statute. Notwithstanding the preceding sentence, the Declarant reserves the right to amend unilaterally any provisions of the Declaration as may reserved unto the Declarant by the Declaration, and to satisfy the requirements of any government, governmental agency or governmentally regulated corporation or association which insures or guarantees mortgages or which purchases (or participates in mortgages) from banks, savings and loan associations, or other lenders, or of any perspective mortgagee requiring such amendment as a precondition of making such mortgage loan on the property or any lots.

IN WITNESS WHEREOF, the Lots Owners/Members have caused this Amendment to the Declaration of Covenants, Conditions and Restrictions of Edinburg Square Subdivision, Phase II, to be signed pursuant to due and proper authority as of the date first set forth above, the undersigned hereby certifying in accordance with Virginia Code § 55-515.1(F) that the requisite 67% of the Lot Owners/Members have voted to approve this Amendment.

Gary Folk  
Gary Folk

COMMONWEALTH OF VIRGINIA,  
COUNTY OF SHENANDOAH, to-wit:

The undersigned, a Notary Public in and for the jurisdiction aforesaid, does hereby certify that Gary Folk, whose name is signed to the foregoing Amendment, and who is a Lot Owner/Member and/or who holds a Proxy for a Lot Owner/Member of Edinburg Square Subdivision, Phase II, has acknowledged the same before me in the aforesaid jurisdiction.



Given under my hand and seal on this 21st day of November, 2013.

[Signature]  
Notary Public, Reg. No. 126797

My Commission Expires: 7/31/2015

COMMONWEALTH OF VIRGINIA,  
COUNTY OF SHENANDOAH, to-wit:

The undersigned, a Notary Public in and for the jurisdiction aforesaid, does hereby certify that \_\_\_\_\_, whose name is signed to the foregoing Amendment, and who is a Lot Owner/Member and/or who holds a Proxy for a Lot Owner/Member of Edinburg Square Subdivision, Phase II, has acknowledged the same before me in the aforesaid jurisdiction.

Given under my hand and seal on this \_\_\_\_\_ day of November, 2013.

\_\_\_\_\_  
Notary Public, Reg. No. \_\_\_\_\_

My Commission Expires: \_\_\_\_\_

**PROPOSED AMENDED PROFFER STATEMENT**

**Original Rezoning:** # 2005-01 Transitional to Residential-1

**Original Property Designation:** Tax Map Lots # 180-parcel A & # 179-parcel C

**Original Owner and Applicant:** Jennifer Grafton-Gore.

**Current Property Designation:** Lots 32-33-34-35-36 & Lots 39-40-41-42-43-44-45-46-47-48-49-50-51-52-53-54-55-56-57-58-59-60-61 Edinburg Square Subdivision Phase II

**Current Property Owner:** G. B. Foltz  
**Applicant:** G. B. Foltz

**Project Name:** Edinburg Square, Phase II

**Original Date of Proffers:** September 19, 2005

**Revision Date(s):** May 13, 2014

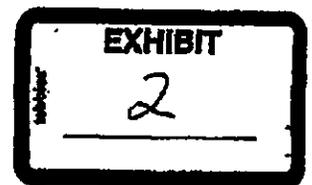
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14 OCT 16 PM 1:45  
PLANNING DEPARTMENT  
EDINBURG TOWN COUNCIL  
EDINBURG, VA  
JENNIFER F. GRAFTON-GORE  
CLERK

The undersigned hereby proffers that the use and development of the subject property as described above, shall be in strict conformance with the following conditions, which shall supersede all other proffers that may have been made prior hereto. The above referenced Residential-1 conditional rezoning was approved by the Edinburg Town Council on September 18, 2005 with the owner and applicant at that time proffering that the use and development of the subject property as described above, shall be in strict conformance with those conditions set forth in the Proposed Proffer Statement dated September 19, 2005, a copy of which is attached for reference. Revisions to said September 19, 2005 Proposed Proffer Statement were presented by the undersigned at a Public Hearing held on Tuesday May 13, 2014.

The headings of the proffers set forth below have been prepared for convenience or reference only and shall not control or affect the meaning or be taken as an interpretation of any provision of the proffers. The improvements proffered herein shall be provide at the time of development of that portion of the Property adjacent to or including the improvement or other proffered requirement, unless otherwise specified herein. The term Applicant as referenced herein shall include in its meaning all future owners and successors in interest. When used in these proffers, the "Master Development Plan", shall refer to the plan entitled "Edinburg Square Subdivision -- Phase 2, Preliminary Plat, 37 Lot Subdivision" dated August 2005 to be amended, and shall include the following:

**1. LAND USE:**

- 1.1 The property shall be zoned R-1, Residential for the use as duplex dwellings as defined in Chapter 175, Zoning § 175-2 of the Edinburg Town Code. Total number of duplex dwellings shall not exceed 50% of the total number of dwellings in Phase I and Phase II of the Edinburg Square Subdivision
- 1.2 The 28 existing lots owned by the undersigned shall be subdivided to permit the selling of individual units up to the maximum number of duplex dwellings as allowed by § 175-7 Residential District R-1, D. Area regulations (2).
- 1.3 Recreational Open Space will be provided in Phase 2 of said project in addition to the existing open space provided in Phase 1 of project.



2. ARCHITECTURAL, SIGNAGE AND LANDSCAPING:

- 2.1 A fifteen (15) foot landscaped buffer area shall be provided along the Route 11 side of the development.
- 2.2 A fifteen (15) foot landscaped buffer area shall be provided along the east/northeast boundary of the development adjacent to the Edinburg Manor Subdivision.
- 2.3 The 15 foot landscaped buffer and recreational open space shall be established as Easements in favor of a home owners association to be established with the responsibility for the maintenance and up keep of these areas.
- 2.4 The street lighting for the development shall be provided by the historic style streetlights common to the Town. These shall be purchased and installed throughout the development by the undersigned; once installed and operational, the ongoing maintenance and operation of these historic style streetlights shall become the responsibility of the Town.

3. MONETARY CONTRIBUTIONS TO OFFSET FISCAL IMPACTS:

- 3.1 The Applicant shall contribute to the Town of Edinburg the sum of \$2,899 per lot for a total of 28 lots, based on the Fiscal Impact Analysis Model prepared by Anderson and Associates, at the time of issuance of each Certificate of Occupancy by the Shenandoah County Building Department for the first 28 individual units sold. It shall be the Applicant's responsibility to ensure that payment is made to the Town of Edinburg.

The Applicant voluntarily proffers the above conditions associated with the rezoning of said Property.

Respectfully Submitted,

PROPERTY OWNER AND APPLICANT:

\_\_\_\_\_   
 G. B. Foltz

\_\_\_\_\_   
 Date

Edinburg Town Council Special Meeting Agenda, September 16, 2014

1. Call to order Special Meeting – Mayor Harshman
2. Planning Commission Report
3. Old Business:
  - (A) Second reading and consideration of an Ordinance to Amend Chapter 175, Zoning, Article II, District Regulations §175-7, Residential District R-1, D. Area regulations, (2) and (3).
  - (B) Ratify amendment to the Proffer Statement that were approved by Town Council on May 13, 2014.
  - (C) Consideration of proposed subdivision of 28 lots in Phase 2 of Edinburg Square Subdivision.
4. Remarks: Mayor and Council
5. Adjournment

FILED  
2014 OCT 16 PM 1:46  
CLERK OF COURTS OFFICE  
SPRINGFIELD COUNTY, VA  
DENISE F. BARR-ESHER, CLERK

EXHIBIT  
10

Page 2:

You have also stated that you agreed to the cash proffers that resulted from the County running of the Fiscal Impact Model Analysis on this development in March 2005. The resulting Fiscal Impact per Household was determined to be \$6,501. I discussed the payment of this with you on the phone. At that time it was decided that this will be paid to the Town on a per house basis when the zoning permit is issued. The Town will be responsible for paying the County any portion of these funds due to them. Your agreement to pay these fees needs to be included in the proffer statement as a condition of this rezoning.

To recap: the items that were agreed to with the County boundary line adjustment, the items the Town is requesting and the payment of the cash proffers are conditions of your rezoning request. These items need to be included in a proffer statement to the Town.

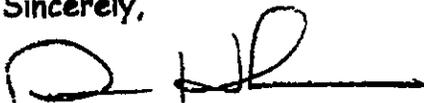
Council set a deadline of Tuesday, September 20, 2005 for the Town to receive, review and approve this document. Without it the rezoning approval of September 13, 2005 will be void. And as I stated earlier, without the rezoning the subdivision can not take place.

You mentioned at the meeting that Attorney Jay Neal had been working on the proffer statement and it would not be a problem meeting this deadline. I am faxing a copy of this to Mr. Neal in case he has not included all the items mentioned above. The Town will accept a faxed copy of the signed statement to meet the deadline. An original signed copy will need to be mailed to the Town at your earliest convenience.

I hope this clears up any confusion on what the Town is requesting. I will be in and out of the office today getting ready for the OLE Time Festival this weekend. I think my explanation of this is clear enough to eliminate confusion on what is expected. But if you still have questions please do not hesitate to call. I will check in at the office for messages.

Have a good weekend.

Sincerely,



Daniel J. Harshman  
Mayor-Town Manager

Cc: Jay Neal, Attorney  
Rob Kinsley, Shenandoah County Planning and Zoning  
John Hash, PHR&A  
Vince Poling, Shenandoah County Administrator



**PROPOSED PROFFER STATEMENT**  
# 2005-01  
Transitional to Residential-1

**REZONING:** # 2005-01  
Transitional to Residential-1

**PROPERTY:** Tax Map Lots # 180-parcel A & # 179-parcel C

**OWNER:** Jennifer Grafton-Gore

**APPLICANT:** Jennifer Grafton-Gore

**PROJECT NAME:** Edinburg Square, Phase 2

**ORIGINAL DATE OF PROFFERS:** September 19, 2005

**REVISION DATE(S):** N/A

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CLERK OF SUPERIOR COURT  
SHENANDOAH COUNTY, VA  
BENJAMIN ESTERLECK

The undersigned hereby proffers that the use and development of the subject property as described above, shall be in strict conformance with the following conditions, which shall supersede all other proffers that may have been made prior hereto. In the event that the above referenced Residential-1 conditional rezoning is not granted as applied for by the applicant, these proffers shall be deemed withdrawn and shall be null and void. Further, these proffers are contingent upon final rezoning of the Property with "final rezoning" defined as that rezoning which is in effect on the day following the last day upon which the Town of Edinburg Town Council (the "Council") decision granting the rezoning may be contested in the appropriate court. If the Council's decision is contested, and the Applicant elects not to submit development plans until such contest is resolved, the term rezoning shall include the day following entry of a final court order affirming the decision of the Council which has not been appealed, or, if appealed, the day following which the decision has been affirmed on appeal. If this application is denied by the Council, but in the event that an appeal is for any reason thereafter remanded to the Council for reconsideration by a court of competent jurisdiction, then these proffers shall be deemed withdrawn unless the Applicant shall affirmatively readopt all or any portion hereof in a writing specifically for that purpose.

The headings of the proffers set forth below have been prepared for convenience or reference only and shall not control or affect the meaning or be taken as an interpretation of any provision of the proffers. The improvements proffered herein shall be provide at the time of development of that portion of the Property adjacent to or including the improvement or other proffered requirement, unless otherwise specified herein. The term Applicant as referenced herein shall include in its meaning all future owners and successors in interest. When used in these proffers, the "Master Development Plan", shall refer to the plan entitled "Edinburg Square Subdivision - Phase 2, Preliminary Plat, 37 Lot Subdivision" dated August 2005, and shall include the following:

*Proffer Statement: Jennifer Grafton-Gore*

**1. LAND USE:**

- 1.1 The property shall be zoned R-1, Residential for the exclusive use as single family homes.
- 1.2 The property shall be subdivided into 37 residential building lots that conform to the Requirements of the Edinburg Town Code for single family homes.
- 1.3 Recreational Open Space will be provided in Phase 2 of said project in addition to existing open space provided in Phase 1 of project.

**2. ARCHITECTURAL, SIGNAGE AND LANDSCAPING:**

- 2.1 A fifteen (15) foot landscaped buffer area shall be provided along the Route 11 side of the development.
- 2.2 A fifteen (15) foot landscaped buffer area shall be provided along the east/northeast boundary of the development adjacent to the Edinburg Manor Subdivision.
- 2.3 The 15 foot landscaped buffer and recreational open space will be established as Easements in favor of a home owners association to be established with responsibility for the maintenance and up keep of these areas.
- 2.4 The lighting for the development will be provided by the historic style streetlights common to the Town. These will be purchased and installed throughout the development by the property owner.

**3. MONETARY CONTRIBUTIONS TO OFFSET FISCAL IMPACTS:**

- 3.1 The Applicant shall contribute to the Town of Edinburg the sum of \$6,501 per lot, based on the Fiscal Impact Analysis Model prepared by Anderson and Associates, at the time of issuance of each zoning permit on the subject property. The Town of Edinburg will be responsible for distributing the appropriate amount to Sherandoah County.

The Applicant voluntarily proffers the above conditions associated with the rezoning of said Property.

Respectfully Submitted,  
PROPERTY OWNER AND APPLICANT

*Jennifer Grafton-Gore*  
Jennifer Grafton-Gore  
Date 9-19-05

*James G. Gore, Jr.*  
JAMES G. GORE, JR. 9-19-05

003249

THIRD AMENDMENT TO DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS OF EDINBURG SQUARE SUBDIVISION

THIS AMENDMENT ("Amendment") is made this 21<sup>ST</sup> day of November, 2013 by the Lot Owners/Members of Edinburg Square Subdivision, Phase II ("Edinburg Square").

WHEREAS, at least sixty-seven percent (67%) of the Lot Owners/Members of Edinburg Square approved an Amendment to the Declaration of Covenants, Conditions and Restrictions of Edinburg Square Subdivision dated March 17, 2006, and recorded in Deed Book 1277 at page 0497, among the land records of Shenandoah County, Virginia, and as amended by First Amendment to Declaration of Covenants, Conditions and Restrictions of Edinburg Square dated March 17, 2006, and recorded in Deed Book 1277 at page 0515, and as further amended by Second Amendment to the Declaration of Covenants, Conditions and Restrictions for Edinburg Square Subdivision dated March 23, 2010, and recorded in Deed Book 1486 at page 0520 among the aforesaid land records (collectively the "Declaration");

NOW THEREFORE, the Declaration shall be deemed to be amended to read as follows:

Article 1; Section 4. "Declarant" shall mean and refer to Gary Foltz or his assigns to whom he assigns any and all rights as Declarant pursuant to this Declaration by assignment recorded in the Land Records. If the Declarant consists of more than one (1) person or entity, the rights and obligations of the Declarants shall be several and based upon and apportioned in accordance with the number of Lots owned by each Declarant.

Article 1; Section 6. "Dwelling Unit" shall mean and refer to any improvements to the Property intended for any type of independent Ownership for use and occupancy as a residence and shall, unless otherwise specified, include within its meaning (by way of illustration but not limitation) patio or zero lot line homes, townhouses, duplexes, and detached homes.

\* Return to: Donna Mumaw  
2471 Cave Ridge Rd.  
Mt Jackson LA 70842

Article 1; Section 8. "Owner" or "Lot Owner" or "Member" shall mean and refer to the record Owner, whether one (1) or more persons or entities, of the fee simple title to any Lot including a contract seller but excluding those holding such interest in a Lot solely by virtue of a contract to purchase a Lot or as security for the performance of an obligation. If more than one (1) person or entity is the record Owner of a Lot, the term "Owner" as used herein shall mean and refer to such Owners collectively, so that there shall be only one (1) Owner of each Lot.

Article II; Section 1. The Property shall be used exclusively for residential purposes except as provided in Section 19 of Article II of the Declaration. The Declarant reserves the right, for itself and any Builder, pursuant to a recorded subdivision or resubdivision plat, to alter, amend, and change any lot line or subdivision plan or plat. No building shall be erected, altered, placed or permitted to remain on any Lot other than one or more Dwelling Units and appurtenant structures, approved by the appropriate Public Entity, for use solely by the occupants of the Dwelling Units.

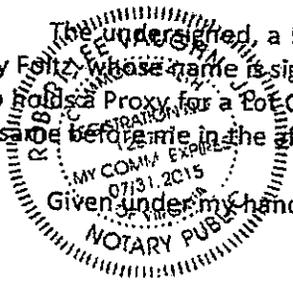
Article VIII; Section 2. Amendments. No Amendment to this Declaration shall become effective except upon the recordation of the same among the land records, certified in accordance with the provisions of Va. Code §55-515.1(F), as amended, or such successor statute. Notwithstanding the preceding sentence, the Declarant reserves the right to amend unilaterally any provisions of the Declaration as may reserved unto the Declarant by the Declaration, and to satisfy the requirements of any government, governmental agency or governmentally regulated corporation or association which insures or guarantees mortgages or which purchases (or participates in mortgages) from banks, savings and loan associations, or other lenders, or of any perspective mortgagee requiring such amendment as a precondition of making such mortgage loan on the property or any lots.

IN WITNESS WHEREOF, the Lots Owners/Members have caused this Amendment to the Declaration of Covenants, Conditions and Restrictions of Edinburg Square Subdivision, Phase II, to be signed pursuant to due and proper authority as of the date first set forth above, the undersigned hereby certifying in accordance with Virginia Code § 55-515.1(F) that the requisite 67% of the Lot Owners/Members have voted to approve this Amendment.

Gary Folz  
Gary Folz

COMMONWEALTH OF VIRGINIA,  
COUNTY OF SHENANDOAH, to-wit:

The undersigned, a Notary Public in and for the jurisdiction aforesaid, does hereby certify that Gary Folz, whose name is signed to the foregoing Amendment, and who is a Lot Owner/Member and/or who holds a Proxy for a Lot Owner/Member of Edinburg Square Subdivision, Phase II, has acknowledged the same before me in the aforesaid jurisdiction.



Given under my hand and seal on this 25<sup>th</sup> day of November, 2013.

[Signature]  
Notary Public, Reg. No. 126717

My Commission Expires: 7/31/2015

COMMONWEALTH OF VIRGINIA,  
COUNTY OF SHENANDOAH, to-wit:

The undersigned, a Notary Public in and for the jurisdiction aforesaid, does hereby certify that \_\_\_\_\_, whose name is signed to the foregoing Amendment, and who is a Lot Owner/Member and/or who holds a Proxy for a Lot Owner/Member of Edinburg Square Subdivision, Phase II, has acknowledged the same before me in the aforesaid jurisdiction.

Given under my hand and seal on this \_\_\_\_\_ day of November, 2013.

\_\_\_\_\_  
Notary Public, Reg. No. \_\_\_\_\_

My Commission Expires: \_\_\_\_\_

REGULAR COUNCIL MEETING MAY 13, 2014

The Edinburg Town Council met for a Public Hearing on Tuesday, May 13, 2014. Mayor Harshman called the Public Hearing to order at 7:00 p.m. All Council Members were present. Also present were visitors: Mr. Walt Talbott, Mr. Paul Blacet, Mrs. Vicki Blacet, Mr. John Chunta, Mr. Russell Brungard, Mr. Brad Pollack, Mr. Thomas Hutchinson, Town Police Chief, Michael Clem and Town Maintenance Supervisor, Ronald Ross.

The purpose of the Public Hearing was to receive comments on proposed amendments to the existing Proffer Statement for Phase II of the Edinburg Square Subdivision for the lots now owned by Mr. G.B. Foltz.

Mr. Harshman asked if any of the visitors had any comments.

Edinburg Square resident, Mr. Brad Pollack stated that he rented a home in Edinburg Square several years; and he is now a homeowner there. Mr. Pollack told the Town Council that he has a problem with the proposed changes in the existing proffers for Edinburg Square, which currently call for single-family homes. He stated that the requirement for single-family homes was set before the property was brought into the Town. He feels that this was agreed to by the developer, the County and the Town when Phase 2's nearly 40 lots were made part of the Town. He stated that the County and Judge Hupp would have to agree to change the existing proffers along with the Town. Mr. Pollack does not feel that it is proper for the Town to consider any changes in either the single-family homes or the cash proffers that are part of the existing proffers. Mr. Pollack apologized for bringing this to the Town's attention at such a late date; he only became aware of the proffers when he received the April 30<sup>th</sup> letter from Mayor Harshman about the public hearing. Mr. Pollack also stated that the restrictive covenants in Edinburg Square do not allow anything but single-family homes and that the current developer cannot change them to allow for duplexes. Mr. Pollack stated that he understood that the developer has prepaid \$72,000 for tap fees for a project that probably is not going happen. He hopes that the Town will be able to pay these fees back with the tax revenues that will be coming in soon. He asked that the Town Council vote against or take no action on the amendments. Mayor Harshman asked Mr. Pollack if the restrictive covenants allow the Home Owners Association (HOA) to amend the covenants. Mr. Pollack said that the HOA could, but there was no HOA. The Mayor pointed out that until a project is completed, the developer acts as the HOA. This was the case with the original developer and the bank took over the HOA when they foreclosed on the property. The new owner of the majority of the undeveloped subdivision has now taken over as the HOA until he has completed the development and turned over the maintenance of the open space to the HOA formed by the individual property owners. The Mayor stated that the Town feels that Mr. Foltz as the current HOA has the right to change the restrictive covenants. Mr. Pollack asked if the Town had ever cut the grass in Edinburg Square. The Mayor stated that the Town has never cut the grass and it has always been the job of the HOA, which is now Mr. Foltz. Mr. Harshman also stated that the Towns feel that Mr. Foltz has taken the proper steps with his request for the proposed amendments. Mr. Pollack stated that he thinks Mr. Harshman is dead wrong. Mr. Pollack also stated that he had attended a property owners meeting that Mr. Foltz held at Creekside Catering and that most of the owners there were against this. Mr. Harshman asked if the property owners have asked Mr. Pollack to speak for them. Mr. Pollack answered that no, they had not. Edinburg Square resident, Mr. Paul Blacet stated that he did always think that the development would be completed as single-family homes and that many of the property owners are concerned about their property values and views. He stated that he is on the fence about the proposed change to duplexes. Mr. Harshman stated that he had contacted a realtor after the question of the property values was raised at a previous meeting. The realtor he talked to has been involved in a number of recent foreclosure sales within Edinburg Square and thought that the duplexes would actually help stabilize and possibly raise the existing home values.

With no additional comments from visitors; a motion was made by Councilman Beachy and seconded by Councilman Hite to adjourn the Public Hearing. Motion carried. The Public Hearing was adjourned at 7:21 p.m.

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SARAH CHUNTA

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The Edinburg Town Council met in regular session on May 13, 2014. Mayor Harshman called the meeting to order at 7:31 p.m. and welcomed the visitors. All Council Members were present. Town Attorney Kevin Black was also present. Visitors included: Mr. Walt Talbott, Mr. Brad Pollack, Mr. Thomas Hutchinson, Town Police Chief, Michael Clem and Town Maintenance Supervisor, Ronald Ross.

Councilman Beachy reported that there should be a correction to the April 8, 2014 minutes. On page 5, paragraph 6, the 2<sup>nd</sup> line should read "According to Theater Shenandoah, they had an average of 120 people at the 10 performances". A motion was made by Councilman Beachy and seconded by Councilman Wood to approve the minutes of the April 8, 2014 meeting with the correction. Motion carried. A motion was made by Councilman Beachy and seconded by Councilwoman Wymer to approve the April 23, 2014 Public Hearing minutes and the April 30, 2014 special meeting minutes. Motion carried.

The Treasurer's report was reviewed. A motion was made by Councilman Beachy and seconded by Councilman Wood to approve the Treasurer's report and to pay all the bills as presented. Motion carried.

Water and Sewer Committee Chairman, Councilwoman Minnick called attention to EEMA's Report and to Ron Ross's report. Mr. Harshman reported that the issues with the new influent pump have been worked out. A larger impeller has been installed and both pumps are working.

Mr. Harshman also reported that the RBC blower, which was reported on last month, needed new bearings. This work was done by Price Electric of Broadway and reconnected by Crawford Electric. Mr. Harshman reported that he doesn't know what the total cost of the repairs will be and that the Town is also waiting on the company to come do the alignment. The alignment is going to cost \$1,394 instead of \$900 which Mr. Harshman reported last month.

Mr. Harshman reported that a digester blower went out and Excelsior Blower Systems made the repairs on site, which cost \$2,698. After scheduling this, the Town discovered that a kungle valve on the digester blower required repair and it was sent off to be evaluated and repaired. The Town has not received a quote on this yet, but Mr. Fansler from EEMA will be checking the status tomorrow.

Mr. Harshman also reported that a PVC cleanout plug made its way to the sludge pumps and broke into a number of pieces and damaged both sludge pumps. Mr. Harshman also reported that pump #1 was sent to Wood Equipment to be rebuilt at a cost of \$3,231. Mr. Fansler is going to replace the rotor and stator in pump #2 once pump #1 is back in service. The rotor and stator cost \$2,390 plus shipping.

Mr. Harshman reported that membranes are needed for filter #1 at the WTP, as well as two butterfly valves that were malfunctioning. The Town had hoped to hold off until August, but things just keep getting worse. The cost for six membranes and two valves is \$7,030 plus shipping. Mr. Harshman reported that the membranes are coming from Australia, so it's hard to say when they will arrive.

Mr. Harshman also reported that this years Consumer Confidence Report (Water Quality Report) is now on the Town website. Being able to put this online is something new that the EPA is allowing as of this year, which saves the Town the cost of printing and mailing approximately 700 reports.

The Street Committee had no report. Mr. Harshman reported that he, Mr. Ross and VDOT met with Ms. Bobbie Sainz today. One of the things that was discussed was the installation of curb and gutter on Hisey Street along Ms. Sainz's property. This is being proposed to eliminate any damage and erosion caused by the snow plowing done by the Town. Mr. Harshman reported that VDOT's bridge crew is going to do the work and they have asked if the Town would be willing to fund up to \$500 for concrete. Even though this may not occur, Mr. Harshman would like to have an answer for VDOT if it does come up. A motion was made by Councilman Beachy and seconded by Councilman Wood to fund up to \$500 to VDOT for concrete. Motion carried.

The Ordinance Committee had no report. Mr. Harshman reported that the Board of Supervisors decided not to take over the new Stormwater Management Regulations from DEQ. The County plans to see how things go for a year or two before adopting a County program. This means that DEQ will be handling stormwater management for the Town as of July 1, 2014.

Personnel Committee Chairman, Councilman Hite thanked the Mayor for the Newsletter explaining the water and sewer fee increases in the new budget and for reporting that Edinburg still is the lowest in water/sewer fees.

The Finance Committee had no report.

Health and Safety Committee Chairman, Councilman Wood called attention to Chief Clem's report.

The Property Committee had no report.

Mr. Harshman reported that the Town is having some issues with the property owners at the southern end of Cedarwood Cemetery. The Town has installed a rope across the property line to stop them from driving through the cemetery to access their backyard. The Town has also received complaints about their dogs being chained outside and scaring visitors at the cemetery. Mr. Harshman stated that he believes that the Town will need to look into some type of privacy fence along the property line in the near future.

Park Committee Chairman, Councilman Wood reported that there have been more cars at the park on Saturdays and Sundays, and that there is now water in the pool. Mr. Harshman reported that he and Mr. Ross met with the Humane Society and decided on a location for their new storage building. They have ordered a tan building with green trim to coordinate with the color scheme at the Park.

The Insurance Committee had no report. Mr. Harshman reported that he heard back on the Town's grant request to the Virginia Department of Game and Inland Fishery for a rain garden at the Edinburg Mill was turned down.

Mr. Harshman reported that he attended the April Tourism Council Meeting, and he will provide copies of the minutes as soon as they are available.

Mr. Harshman reported that Mr. Gary Yew with the Shenandoah County Fire and Rescue along with Fire Marshall, Mr. David Ferguson are organizing a training course called "Incident Command System Overview for Executives and Senior Officers". This will be a half-day class designed for elected officials and staff to provide a better understanding of how incident management works and what their roles are in typical emergencies that each jurisdiction may face. Mr. Harshman stated that Shenandoah County Fire and Rescue would like to know if any of the Town Council is interested in attending this type of training, and if so, to please let him know.

Mr. Harshman reported that he met with Mr. Allen Gray from Gray's Tree Service to get his opinion on the two cedar trees behind the Town Hall. Mr. Gray feels that both trees are healthy and do not need to be removed. Mr. Gray did recommend that the Town lighten the canopy of the trees, so that the wind coming over the roof of the building does not impact them as much. Mr. Harshman reported that this would cost \$350 and that he went ahead and scheduled the work. Mr. Harshman reported that he relayed this information to Mrs. Safranek, who lives behind the Town Hall.

Mr. Harshman reminded the newly re-elected council members to get sworn in before July 1, 2014.

Mr. Harshman reported that the ARB did not meet this month.

Mr. Harshman reported that the Planning Commission did not meet last month.

The Zoning Administrator had no report.

The Town Attorney had no report.

Mr. Harshman asked Council if only the title could be read for the second reading of an Ordinance to Amend Chapter 68, Article II Water, Sewer and Trash Fees § 68-3, Rates Established. A motion was made by Councilman Beachy and seconded by Councilman Dellinger to allow Mr. Harshman to read just the title for the second reading of an Ordinance to Amend Chapter 68, Article II Water, Sewer and Trash Fees § 68-3, Rates Established. Motion carried. Mr. Harshman read the title. A motion was made by Councilman Beachy and seconded by Councilman Dellinger to adopt the Ordinance to Amend Chapter 68, Article II Water, Sewer and Trash Fees § 68-3, Rates Established. Recorded vote as follows: Hite - aye, Dellinger - aye, Beachy - aye, Wymer - aye, Minnick - aye, Wood - aye, Harshman - aye.

Councilman Beachy asked for the Town Attorney's opinion on the previous discussion regarding the proposed amendments to the existing proffer statement for the lots now owned by G.B. Foltz in Phase II of Edinburg Square. Mr. Black stated that he would like to take some time to look into it and that he can't render an opinion right now. Councilman Beachy asked Mr. Black if the Council can change the proffers between the Town and the current owner. Mr. Black stated that he believes that the Town can, but that he will need a week to render an opinion. Mr. Harshman stated that Council should make a decision pending on Mr. Black's opinion. A motion was made by Councilman Beachy and seconded by Councilman Wood to approve the change in proffers based on a positive response by Mr. Black. Motion carried.

Mr. Harshman reported that VRS is offering communities the option of two contribution rates for the year beginning July 1, 2014. The first is the 7.71% that the Town already has in the budget and the second one is an alternative rate of 6.17%, which is 80% of the VRS Board certified rate for FY 2015-2016. Town Clerk, Mary Embrey read a resolution to establish the employer contribution rate for the year beginning July 1, 2014 for Edinburg employees in the Virginia Retirement System. A motion was made by Councilman Beachy and seconded by Councilman Wood to adopt the resolution to establish the employer contribution rate for the year beginning July 1, 2014 for Edinburg employees in the Virginia Retirement System. Motion carried.

Mr. Harshman reported that the Town has received an inquiry from the Edinburg-Mt. Jackson Rotary about creating a Dog Park within the Edinburg Town Park. The Rotary brought up this idea when Mr. Harshman addressed the group back in April and he stated that they have been looking for an appropriate venue, and they feel that the Edinburg Town Park would be a good location. The Rotary talked about the fact that Edinburg is the only town that has clean-up stations for dog owners in a number of locations. Mr. Harshman reported that the Rotary had picked out an area behind the pool and they are thinking about a fenced-in area for large dogs and another one for small dogs. They would raise the funds for the fencing and any other equipment needed. Mr. Harshman stated that he thought a better location might be in the area behind the Fire Department buildings, which is County land, but the County might be convinced to part with it for a worthy project that would serve more than just Edinburg. Mr. Harshman reported that the Rotary has a speaker coming to their Tuesday, May 20<sup>th</sup> meeting from a group that did a dog park in Harrisonburg. Mr. Harshman will be out of town, so Councilman Wood will be attending in his place to learn more about the concept. Councilman Hite asked Mr. Harshman if the dog park would have hours. Mr. Harshman stated that he didn't know, but it would probably have the same hours as the park does. Councilwoman Minnick asked if there would be any increased liability for the Town. Mr. Harshman stated that he didn't think so. Councilman Beachy asked who would be installing fence. Mr. Harshman stated that the Rotary will take care of everything. Councilman Beachy stated that he thought this was a good idea and asked Mr. Harshman to check with the County about allowing them to use the section behind the buildings. Councilman Hite asked how close this would be to the condos and apartments behind the park and stated that he wouldn't want to be living there with the dogs so close. Mr. Harshman stated that he will find out more information and that Councilman Wood will be reporting back also.

Mr. Harshman reported that he met with Ms. Mary Beth Thompson Foltz and the Shenandoah County Economic Development Director, Mr. Brandon Davis to discuss a possible use for the C.E. Thompson building. A number of possibilities were discussed, and Mrs. Foltz asked if there were any incentives

that the State, County and Town could give to attract new business. Mr. Davis stated that the Town would need to have an established Enterprise or Technology Zone to allow for tax and licensing breaks to be allowed. Mr. Harshman reported that an Enterprise Zone requires the Town to go to the State Legislature to get approval to establish, but a Technology Zone is a newer thing that does not require State approval to establish. Mr. Davis stated that the State was very broad in their interpretation of what kind of businesses could fall under this. Mr. Harshman stated that they were talking about a Farmer's Market/commercial kitchen type operation and Mr. Davis thought that this could fit under it. Mr. Davis mentioned that Bridgewater has designated the entire town as a Technology Zone. Mr. Harshman reported that once a Technology Zone is established, the Town would be able to waive permits and user fees, give local tax incentives, special zoning treatment or exemptions from ordinances. Incentives may be provided for up to ten years and each locality designs and administers their own program. There is also the possibility of State and/or County incentives being available too. Mr. Harshman asked Council if this was something the Town should pursue. Councilman Hite asked if the Town would control what is waived and what is not waived. Mr. Harshman stated yes. Councilman Beachy asked what we see as a benefit to the Town of Edinburg. Mr. Harshman stated that the Town would get revenue. Mr. Harshman also stated that there could be some expense involved if the Town got assistance from the Northern Shenandoah Valley Regional Commission. Councilman Wood suggested getting copies of Tech Zones from other towns. Mr. Harshman will look further into this.

Mr. Walt Talbott asked Mr. Harshman the status of the "Rails to Trails" Program. Mr. Harshman stated that there is still great interest in it and many are still pushing for it, but it is still up to the Railroad to give up the track.

Mr. Harshman reported that Mr. Paul Blacet has expressed interest in becoming a member of the Board of Zoning Appeals. Mr. Blacet is currently a member of the Planning Commission, and he can serve on both. A motion was made by Councilman Dellinger and seconded by Councilman Hite to approve the appointment of Mr. Paul Blacet to the Edinburg Board of Zoning Appeals. Motion carried.

With no further business, a motion was made by Councilman Wood and seconded by Councilman Beachy to adjourn the meeting. Motion carried. The meeting was adjourned at 8:26 p.m.

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Mayor

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Town Clerk

**ORRIN L. FRENCH  
KEVIN C. BLACK**

Attorneys At Law  
106 Lawyers' Row, Suite 201  
P.O. Box 129  
Woodstock, Virginia 22664  
May 22, 2014

Telephone: (540) 459-2175

Facsimile: (540) 459-3496

Dan Harshman, Mayor  
Town of Edinburg  
101 Town Hall Avenue  
Edinburg, VA 22824

RE: AMENDMENT OF PROFFERS

Dear Dan:

At the May 13, 2014 Edinburg Town Council meeting the Town Council requested that I advise them whether the Town Council can act on a request to amend proffers by amending such proffers that were previously made and accepted. In this instance the amendment involves proffers that were made pertaining to the zoning of real estate comprising a subdivision known as Edinburg Square located in the Town of Edinburg.

Virginia Code Section 15.2-2302 A. specifically provides: "Subject to any applicable public notice or hearing requirement of subsection B but notwithstanding any other provision of law, any landowner subject to conditions proffered pursuant to Section 15.2-2297, 15.2-2298, 15.2-2303, or 15.2-2303.1 may apply to the governing body for amendments to or variations of such proffered conditions provided only that written notice of such application be provided in the manner prescribed by subsection H of Section 15.2-2204 to any landowner subject to such existing proffered conditions".

Subsection H of Virginia Code Section 15.2-2204 provides, in part, that "Written notice mailed to the owner at the last known address of the owner as shown on the current real estate tax assessment books or current real estate tax assessment records shall satisfy the notice requirements of this subsection".

Subsection B of Virginia Code Section 15.2-2302 provides: "There shall be no such amendment or variation of any conditions proffered pursuant to Section 15.2-2297, 15.2-2298, 15.2-2303, or 15.2-2303.1 until after a public hearing before the governing body advertised pursuant to the provisions of Section 15.2-2204. However, where an amendment to such proffered conditions is requested pursuant to subsection A, and where such amendment does not affect conditions of use or density, a local governing body may waive the requirement for a public hearing (i) under this section and (ii) under any other statute, ordinance, or proffer requiring a public hearing prior to amendment of such proffered conditions."

2814 OCT 16 PM 1:46  
RECEIVED  
CIRCUIT COURT CLERK'S OFFICE  
SHENANDOAH COUNTY, VA  
JENNIFER BARR ESTER, CLERK



Dan Harshman, Mayor  
Page 2  
May 22, 2014

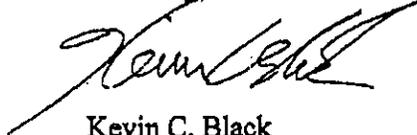
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Subsection D of Virginia Code Section 15.2-2302 provides: "Notwithstanding any other provision of law, no claim of any right derived from any condition proffered pursuant to Section 15.2-2297, 15.2-2298, 15.2-2303, or 15.2-2303.1 shall impair the right of any landowner subject to such a proffered condition to secure amendments to or variations of such proffered conditions."

Consequently, provided that all applicable procedural and notice requirements have been met, it is my opinion that the Edinburg Town Council may agree to an application of the current landowner for an amendment of proffered conditions as permitted by Virginia Code Section 15.2-2302.

If you have questions or if you wish to discuss this matter with me, please contact me.

Sincerely,



Kevin C. Black



OFFICIAL RECEIPT  
SHENANDOAH COUNTY CIRCUIT COURT  
DEED RECEIPT

DATE: 07/07/14 TIME: 15:37:59 ACCOUNT: 171CLR140003249 RECEIPT: 14000007132  
CASHIER: DEB REG: EN14 TYPE: AMEND PAYMENT: FULL PAYMENT  
INSTRUMENT : 140003249 BOOK: 1649 PAGE: 176 RECORDED: 07/07/14 AT 14:28  
GRANTOR: EDINBURG SQUARE SUBDIVISION PHASE II EX: N LOC: CO  
GRANTEE: EDINBURG SQUARE SUBDIVISION PHASE II EX: N PCT: 100%  
AND ADDRESS :  
RECEIVED OF : MAIN STREET HOMES LLC DATE OF DEED: 11/21/13  
CHECK: \$21.00 1002  
DESCRIPTION 1: THIRD AMENDMENT TO DECLARATION OF COVENANTS PAGES: 4 OP: 0  
2: CONDITIONS & RESTRICTIONS EDINBURG SQUARE NAMES: 0  
CONSIDERATION: .00 A/VAL: .00 MAP: PIN:  
301 DEEDS 14.50 145 VSLE 1.50  
106 TECHNOLOGY TRST FND 5.00  
TENDERED : 21.00  
AMOUNT PAID: 21.00  
CHANGE AMT : .00

CLERK OF COURT: DENISE B. ESTEP

PAYOR'S COPY  
RECEIPT COPY 1 OF 2

Edinburg Town Council Special Meeting Agenda, September 16, 2014

1. Call to order Special Meeting – Mayor Harshman
2. Planning Commission Report
3. Old Business:
  - (A) Second reading and consideration of an Ordinance to Amend Chapter 175, Zoning, Article II, District Regulations §175-7, Residential District R-1, D. Area regulations, (2) and (3).
  - (B) Ratify amendment to the Proffer Statement that were approved by Town Council on May 13, 2014.
  - (C) Consideration of proposed subdivision of 28 lots in Phase 2 of Edinburg Square Subdivision.
4. Remarks: Mayor and Council
5. Adjournment

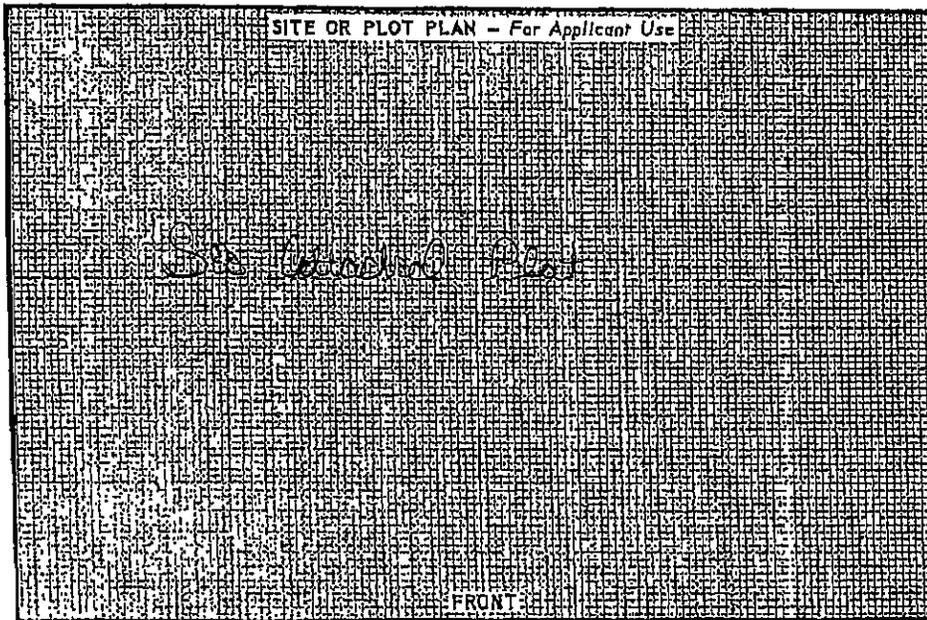
FILED  
2014 OCT 16 PM 1:46  
COUNTY CLERK'S OFFICE  
SPRINGGARD COUNTY, VA  
DENISE F. SANDERS, CLERK



APPLICATION FOR ZONING PERMIT

Town of Edinburg, Virginia

- (1) Owners Name Main Street Homes LLC (2) Date 2/17/15
- (3) Mailing Address 2491 Cowe Ridge Road W. Jackson Va 22842
- (4) Telephone 540-477-2186 (5) Size of Parcel \_\_\_\_\_
- (6) If purchased in last two years, give previous owners name \_\_\_\_\_
- (7) Location of Property Lot 47 Scafton Court - Edinburg Va. 22824
- (8) The purpose of this permit:  Building ( ) Enlarge ( ) Remodel ( ) at
- (9) Use of Structure None
- (10) Size of Structure 1500 sq ft (11) No. of other Dwellings on Parcel 0
- (12) No. of other Structures on Parcel 0
- (13) Building Setbacks: Front 27'-6" Side 0 Side 46' Rear 25'



I CERTIFY THE ABOVE INFORMATION IS TRUE AND CORRECT:

FEE \$ 25.00 <sup>CK</sup> ~~#102~~

Signature of Applicant [Signature] Date 2/17/15

Proposed Completion Date 7/31/15

OFFICE USE ONLY

Tax Map Designation \_\_\_\_\_ Zoning District \_\_\_\_\_

Approved  Disapproved \_\_\_\_\_ Flood Plain \_\_\_\_\_

Zoning Administrator [Signature] Date 3-4-15

NOTES: \_\_\_\_\_

APPLICATION FOR ZONING PERMIT

Town of Edinburg, Virginia

Owners Name Maple Street Homes, LLC (2) Date 2/7/15

(3) Mailing Address 2497 Cove Ridge Road W. Jackson VA 22842

(4) Telephone 540-697-2186 (5) Size of Parcel \_\_\_\_\_

(6) If purchased in last two years, give previous owners name \_\_\_\_\_

(7) Location of Property Lot 48 Barton Court - Edinburg, VA 22830

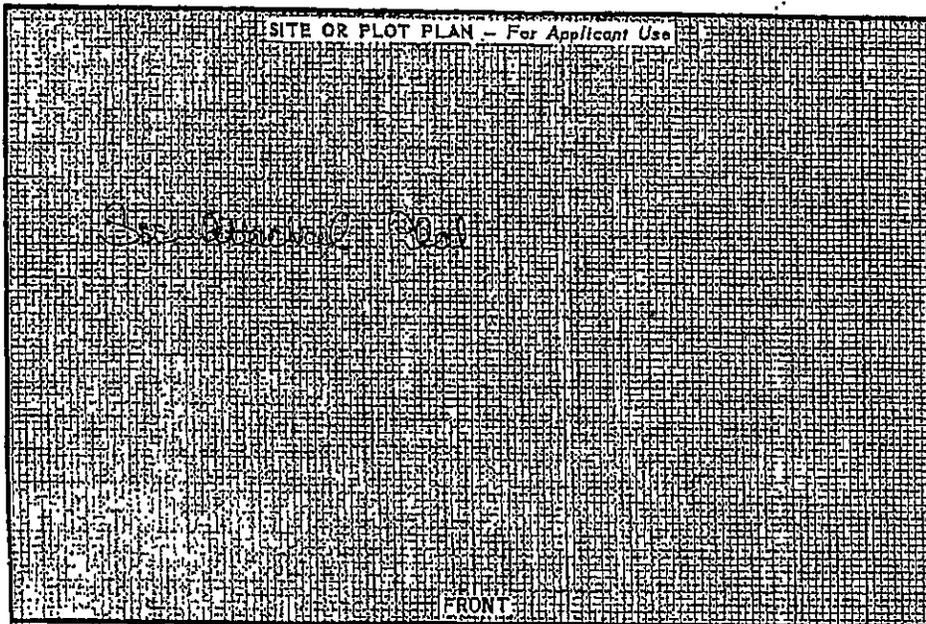
(8) The purpose of this permit:  Building ( ) Enlarge ( ) Remodel ( ) or

(9) Use of Structure Home

(10) Size of Structure 1,500 sq ft (11) No. of other Dwellings on Parcel 0

(12) No. of other Structures on Parcel 0

(13) Building Setbacks: Front 27'-6" Side 0 Side 11a' Rear 25'



I CERTIFY THE ABOVE INFORMATION IS TRUE AND CORRECT:

FEE \$ 25.00

Signature of Applicant D. M. ...

Date 2/7/15

Proposed Completion Date 2/30/15

OK  
102

OFFICE USE ONLY

Tax Map Designation \_\_\_\_\_ Zoning District \_\_\_\_\_

Approved  Disapproved \_\_\_\_\_ Flood Plain \_\_\_\_\_

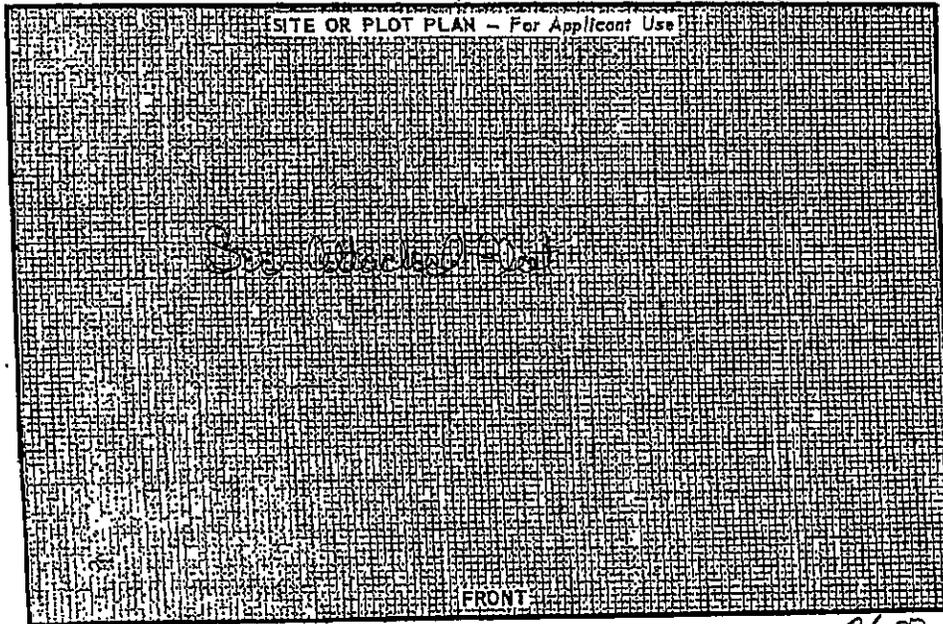
Zoning Administrator Romina Hoffman Date 3-4-15

NOTES: \_\_\_\_\_

APPLICATION FOR ZONING PERMIT

Town of Edinburg, Virginia

- (1) Owners Name 7000 Street Homes, LLC (2) Date 2/17/15
- (3) Mailing Address 2471 One Ridge Road W H Jackson, Va 22882
- (4) Telephone 540-477-2186 (5) Size of Parcel \_\_\_\_\_
- (6) If purchased in last two years, give previous owners name \_\_\_\_\_
- (7) Location of Property 49 Haydon Court - Edinburg, Va 22824
- (8) The purpose of this permit: (X) Building ( ) Enlarge ( ) Remodel ( ) of
- (9) Use of Structure Home
- (10) Size of Structure 1300 sq ft (11) No. of other Dwellings on Parcel 0
- (12) No. of other Structures on Parcel 0
- (13) Building Setbacks: Front 22'7" Side 18'-6" Side 0 Rear 25'-2"



I CERTIFY THE ABOVE INFORMATION IS TRUE AND CORRECT:

FEE \$ 26.00 <sup>OK</sup> <sub>#10</sub>

Signature of Applicant Donna H. Johnson Date 2/17/15

Proposed Completion Date 2/23/15

OFFICE USE ONLY

Tax Map Designation \_\_\_\_\_ Zoning District \_\_\_\_\_

Approved  Disapproved \_\_\_\_\_ Flood Plain \_\_\_\_\_

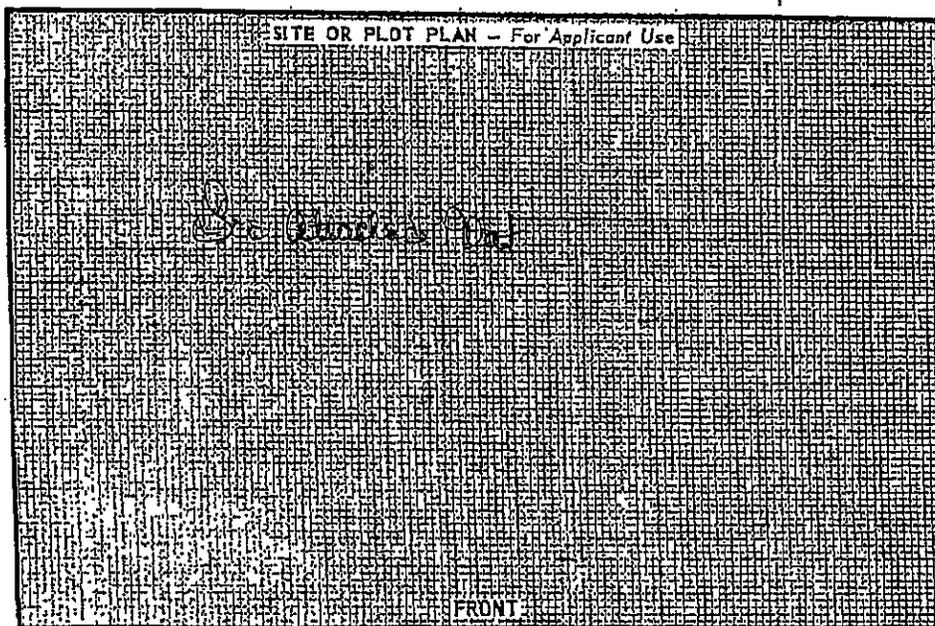
Zoning Administrator Ronnie Huffman Date 3-4-15

NOTES: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

APPLICATION FOR ZONING PERMIT

Town of Edinburg, Virginia

- (1) Owners Name 7 Main Street Homes LLC (2) Date 2/17/15
- (3) Mailing Address 2471 One Ridge Road - Mt Jackson, VA 22842
- (4) Telephone 540-477-2686 (5) Size of Parcel \_\_\_\_\_
- (6) If purchased in last two years, give previous owners name \_\_\_\_\_
- (7) Location of Property 50 Drayton Court - Edinburg, VA 22824
- (8) The purpose of this permit:  Building  Enlarge  Remodel  or
- (9) Use of Structure Home
- (10) Size of Structure 1300 sq ft (11) No. of other Dwellings on Parcel 0
- (12) No. of other Structures on Parcel 0
- (13) Building Setbacks: Front 22'-2" Side 18'-6" Side 0 Rear 25'-2"



I CERTIFY THE ABOVE INFORMATION IS TRUE AND CORRECT:

FEE \$ 25.00

Signature of Applicant [Signature]

Date 2/17/15

Proposed Completion Date 7/31/15

012  
1022

OFFICE USE ONLY

Tax Map Designation \_\_\_\_\_ Zoning District \_\_\_\_\_

Approved  Disapproved \_\_\_\_\_ Flood Plain \_\_\_\_\_

Zoning Administrator [Signature] Date 3.4.15

NOTES: \_\_\_\_\_

**RECEIVED**  
DEC 17 2015  
BY: R. Potts

VIRGINIA:

IN THE CIRCUIT COURT FOR THE COUNTY OF SHENANDOAH

BRADLEY G. POLLACK,

CL14-282

Complainant,

v.

COUNCIL OF THE TOWN OF EDINBURG,

Respondent.

Serve: Kevin C. Black, Esquire  
Town Attorney  
106 Lawyers' Row  
Woodstock

FILED  
2014 OCT 16 PM 1:45  
CIRCUIT COURT CLERK'S OFFICE  
SHENANDOAH COUNTY, VA  
BENJAMIN F. BOND, CLERK

COMPLAINT and APPEAL

COMES NOW Bradley G. Pollack, pursuant to Virginia Code §§ 15.2-2272, 15.2-2285(F) and/or 8.01-184, et al., and contests and appeals the decisions of the September 16, 2014, Council of the Town of Edinburg as set forth herein:

COUNT I - PURPORTED AMENDMENT OF ZONING ORDINANCE

1. Bradley G. Pollack is the title holder of Lot 10, Edinburg Square Subdivision, Town of Edinburg, County of Shenandoah, which lot joins the

real estate subject to this contest, all found on a plat in Deed Book 1484, Page 954 of this Court.

2. On September 16, 2014, the Edinburg Town Council purportedly held and passed a "Second reading and consideration of an Ordinance to Amend Chapter 175, Zoning, Article II, District Regulations Sec. 175-7, Residential District R-1, D. Area regulations, (2) and (3)." Exhibit 10.

3. The aforesaid purported Ordinance was improperly initiated as a part of an Ordinance Committee report during the August 12, 2014, Town Council meeting when the Ordinance Committee had, in fact, not met and taken no action whatsoever.

4. In violation of Virginia Code Sections 15.2-2285(A) and 15.2-2204(A), the Planning Commission failed to hold a public hearing.

5. In violation of Virginia Code Section 15.2-2285(A), the Planning Commission made no recommendation to the Town Council. The only action taken by the Planning Commission was the voting down of a motion by member Richard Ritter to not recommend approval. Thereafter, the Planning Commission made no recommendation at all.

**COUNT II - APPROVAL OF THE PURPORTED AMENDED PROPOSED  
PROFFER STATEMENT**

**Procedural Violations Leading to Purported Approval**

6. All paragraphs in Count I are incorporated herein.
7. On May 13, 2014, the Council of the Town of Edinburg took the action set forth in the Regular Council Meeting May 13, 2014, minutes, page 4, in the paragraph beginning with "Councilman Beaty." Exhibit 1.
8. "The proposed amendments to the existing proffer statement for the lots now owned by G.B. Foltz in Phase II of Edinburg Square" is set forth in Exhibit 2. The lots conveyed to Foltz refer to the same plat set forth in paragraph 1 above.
9. The original Proposed Proffer Statement is set forth in Exhibit 3.
10. In violation of Virginia Code Sections 15.2-2285(A) and 15.2-2204(A), the Planning Commission held no public hearing on the Amended Proposed Proffer Statement.
11. On May 22, 2014, Town Attorney Kevin C. Black wrote the Town of Edinburg Mayor a letter set forth at Exhibit 4.
12. On September 16, 2014, the Edinburg Town Council Special Meeting Agenda was presented to the public for the first time and, without any prior notice to the public, item 3(B) was included on the Agenda: "Ratify

amendment to the Proffer Statement that were approved by Town Council on May 13, 2014." This item had not been carried over to the September 16, 2014, Special Meeting by any action of the Town Council and is therefore void and of not effect. Exhibit 10.

Town's Actions Violate Agreements with County Approved by this Court

13. The Joint Agreement for Administration of Proffers dated the 8th day of March, 2005, by and between the Town of Edinburg and County of Shenandoah specifically includes the following paragraph:

"11. In the event this Agreement is terminated prior to the payment of all monetary proffers for the benefit of the County having been paid, such monetary proffers will continue to be paid by the Town to the County as such proffer payments are made to the Town. In the event this Agreement is terminated prior to the completion of non-monetary proffers for the benefit of the County, such non-monetary proffers shall continue to be enforced as set forth in paragraph 8, above."

Exhibit 5.

14. On June 20, 2005, Vince Poling, Shenandoah County Administrator, wrote a letter to the original developers, which included the following:

"As you are aware, the Shenandoah County Board of Supervisors approved your boundary line adjustment request with the Town of Edinburg. This approval was given based on the sixty-two lot concept plan developed by PHR&A, dated May 2005."

The letter concluded by stating that "The Board of Supervisors anticipates that the above stated elements of the plan as well as cash proffers will be included in your proffer statement." Exhibit 6.

15. According to the Edinburg Town Council minutes of September 13, 2005, Exhibit 7, the Edinburg Town Council adopted a motion "to approve rezoning of the property recently brought into the Town limits for Phase 2 of Edinburg Square Development" (although it had not yet been brought into the Town).

16. A letter of September 16, 2005, from the Edinburg Town Mayor to James G. Gore, Jr., included the following:

"The Town considers the items you agreed to with the County to be conditions of this rezoning."

"The resulting Fiscal Impact per Household was determined to be \$6,501. I discussed the payment of this with you on the phone. At that time it was decided that this will be paid by the Town on a per house basis when the zoning permit is issued."

Exhibit 8.

17. The September 19, 2005, Proposed Proffer Statement to rezone the property to Residential, R-1 (Exhibit 3) includes the following paragraphs:

1.1. The property shall be zoned R-1, Residential, for exclusive use as single family homes.

**1.2 The property shall be subdivided into 37 residential building lots that conform to the requirements of the Edinburg Town Code for single family homes.**

**3.1. The Applicant shall contribute to the Town of Edinburg the sum of \$6,501.00 per lot, based on the Fiscal Impact Analysis Model prepared by Anderson and Associates, at the time of issuance of each zoning permit on the subject property.**

**18. On September 19, 2005, Jennifer Grafton-Gore, the Developer, and predecessor in title to virtually all of the current Edinburg Square homeowners, wrote to the County of Shenandoah about the prerequisite boundary line adjustment with the Town. Ms. Grafton-Gore agreed with the County of Shenandoah to the above provisions. Exhibit 9.**

**19. On September 26, 2005, the Town of Edinburg and the County of Shenandoah filed a Petition for a Boundary Line Agreement in this Court. Chancery No. 05-263.**

**20. On September 30, 2005, the Boundary Line Agreement was approved by this Court. Order Book 1246, Page 0710.**

**21. Again, preconditions for the County agreeing to the Boundary Line Agreement was that the property shall be for exclusive use as single family homes and that the applicant contribute to the Town \$6,501.00 per lot.**

**22. The Edinburg Town Council cannot take unilateral action on changing those preconditions to allow duplexes and to reduce the per lot**

contribution by \$3,602 without consent of the County of Shenandoah and this Court. Accordingly, those purported changes are void and of no effect.

Homeowners Prejudiced

23. Many citizens, including contestant, purchased homes in Edinburg Square, both in Phases I and II--after the Court's Order was recorded in the land records—relying on the above proffers applicable to Edinburg Square, including the one assuring single family homes in Phase II. Accordingly, the Town's May 13, 2014, and September 16, 2014, action making wholesale changes to those proffers is arbitrary, capricious, and/or unreasonable.

24. The Proposed Amended Proffer Statement, in its paragraph 1.1, purports to cover 28 existing dwellings in Phase I:

"Total number of duplex dwellings based on the total number of dwellings in Phase I and Phase II of the Edinburg Square Subdivision."

None of the owners of the 28 existing dwelling applied for, nor had adequate notice of, this Proposed Amended Proffer Statement. Accordingly, the Proposed Amended Proffer Statement should be void without their consent or notice.

Comprehensive Plan Does Not Cover Subject Lots

25. Edinburg Town Code Sec. 175-59(B)(3) and Virginia Code Sec. 15.2-2297(A)(viii) require compliance with the comprehensive plan. The Town does not have a comprehensive plan applicable to the lots subject to the Proposed Amended Proffer Statement. Accordingly, the Town had no authority to act on the Proposed Amended Proffer Statement and their action on May 13, 2014, and September 16, 2014, is, therefore void.

Proffer Unlawfully Covers More Than One Zoning District

26. Edinburg Square Subdivision is partially zoned residential and partially zoned commercial. The Proposed Amended Proffer Statement covers both of these zones. This is contrary to the provisions of Virginia Code § 15.2-2297(A), which only allows for conditional zoning within a single zoning ordinance or zone.

Proffer Violates Town Zoning

27. The Town attempted to amend its zoning ordinance immediately prior to voting on the amendment to the proffer which would, otherwise, be in violation of the zoning ordinance. Not only was the amendment to the zoning ordinance null and void as set forth in Count I above, any amendment to the zoning ordinance passed on September 16, 2014, would

not have become effective until thirty days later as set forth in the Edinburg Town Charter § 3-a(9). Regardless, therefore, the amended proffer violated the zoning ordinance at the time it was purportedly passed on September 16, 2014.

#### Spot Zoning Illegal

28. The purpose of the Proposed Amended Proffer Statement approved by the Edinburg Town Council is solely to serve the private interests of G. B. Foltz. It is, therefore, an arbitrary and capricious exercise of legislative power, constituting illegal spot zoning, and should be declared void.

#### \$72,000 Paid Before Town Approval

29. The Town convinced Mr. Foltz to pay \$72,000 for tap fees for the duplexes before they were even approved. Long before September 16, 2014, the Council of the Town of Edinburg had improperly approved duplexes. This is yet another reason why the subsequent action by the Town Council was arbitrary, capricious, and/or unreasonable, and should be declared void.

No Record That Proper Notice Was Given

30. Although the contestant herein had notice of the public hearing in this matter, there is nothing in the aforesaid minutes, nor in the Town Attorney's letter, that indicate that there has been any compliance with the notice provisions of Virginia Code Sec. 15.2-2302. Without proper notice to the public, the action of the Council is void.

Motion of Town Council Not Properly Passed

31. The minutes at Exhibit 1 make clear that the approval was conditioned upon a positive response from the Town Attorney. A legislative body has no authority to pass a motion conditioned upon "a positive response" from the Town Attorney. The Town Attorney is to provide advice to a town prior to their action. Their action cannot be based upon a subsequent act of the Town Attorney.

32. Regardless, the response from the Town Attorney was not positive. It was contingent upon whether or not "all applicable procedural and notice requirements have been met." Again, there is nothing in the minutes indicating that the notice requirements have been met. Therefore, the Proposed Amended Proffer Statement does not appear to have ever

been properly or finally approved by the Edinburg Town Council and is, therefore, null and void.

Conclusion

33. In sum, the Town's acceptance of the Proposed Amended Proffer Statement is void because it is contrary to the restrictive covenants, contrary to an agreement with the County of Shenandoah approved by this Court, contrary to the Code of Virginia, contrary to the Edinburg Town Code, and for the other arbitrary, capricious, and/or unreasonable actions set forth above.

WHEREFORE, Bradley G. Pollack prays that this Court declare the September 16, 2014, motion passed by the Council of the Town of Edinburg approving the aforesaid Proposed Amended Proffer Statement null and void.

COUNT III - APPEAL OF PURPORTED RE-SUBDIVISION IN EDINBURG SQUARE SUBDIVISION

34. All paragraphs in Counts I and II are incorporated herein.

35. The actions of the Edinburg Town Council contested in Counts I and II are necessary prerequisites to the approval of the resubdivision set

forth in paragraph 3(C) of Exhibit 10, and as both were improper, the resubdivision is necessarily improper, null and void as well.

Vacation Action Improperly Taken

36. Pursuant to Virginia Code Sec. 15.2-2261(F), "An approved final subdivision plat that has been recorded, from which any part of the property subdivided has been conveyed to third parties (other than to the developer or local jurisdiction), shall remain valid for an indefinite period of time unless and until any portion of the property is subject to a vacation action as set forth in §§ 15.2-2270 through 15.2-2278."

37. Contrary to Virginia Code § 15.2-2272(2), the notice of the vacation action did not clearly describe the plat or portion thereof to be vacated. It didn't even mention that it was a resubdivision or a vacation of any lots.

38. Complainant, the owner of a lot shown on the plat in Deed Book 1484, Page 954, which also shows the lots purportedly resubdivided, will be irreparably damaged by the resubdivision into 44 duplexes immediately behind the home he bought last year, when the record as set forth above makes clear that no more than 28 single family homes, harmonious with the rest of the subdivision, were to be built. Pursuant pursuant to Virginia Code § 15.2-2272(2), he hereby appeals for nullification of the ordinance.

39. In 2011, a successor in title to the original developer, and the immediate predecessor in title to Gary Foltz, conveyed out two of the lots in Phase II, recognizing that they were specifically subject to restrictive covenants in Edinburg Square, Phases I and II. See Deed Book 1530, Page 0934. Mutuality of covenant, accordingly, makes all of the developers lots subject to both, clearly prohibiting any restrictive covenant amendment, and prohibiting the resubdivision wrongfully approved by the Town of Edinburg set out in Paragraph 3(C) of Exhibit 10.

#### Planning Commission Took No Action

40. In violation of Virginia Code Sec. 15.2-2259(A)(1), the Planning Commission took no action on the resubdivision. The only action taken by the Planning Commission was the voting down of a motion by member Richard Ritter to not recommend approval. Thereafter, the Planning Commission took no action at all, making the Town's action null and void.

#### Resubdivision Wrongly Uses Lots in Commercial District to Allow Numerous Duplexes

41. The purported zoning amendment set forth in Count I only applies to residential districts.

42. There are 24 building lots (with 21 current houses) in Phase I of Edinburg Square, all of which are in a commercial zone, and not in the residential district that the current 37 lots of Phase II (purportedly resubdivided into 44 lots) are zoned.

43. These 24 building lots, therefore, cannot be used for the 50% ratio that the amendments set forth in Counts I and II proposed; and the resubdivision set forth in paragraph 3(C) of Exhibit 10, therefore, even violates the improperly passed zoning amendment and amended proffer. The resubdivision is, therefore, arbitrary, capricious, unreasonable, null and void.

**Edinburg Square is One Subdivision Which Prohibits this Resubdivision**

44. 44 duplexes were illegally approved under the aforesaid resubdivision, as that would require the ability to have 44 single family houses in the rest of Edinburg Square. That is impossible as 33 is the most single family homes that can built in the rest of Edinburg Square.

45. As the Town Council (wrongly) believes that Phase II is a stand alone subdivision which can independently amend its restrictive covenants to allow the re-subdivision, then the approval of 44 duplexes in a subdivision with only 9 single family lots (on which 7 houses are currently built) was illegal. As only 50% can be duplexes, the Town Council has

approved 35 more than allowed, or almost 400% more than their own purported amended ordinance allows (and over 750% more than the existing ordinance allows). This is surely arbitrary, capricious, and unreasonable, and should be declared null and void by this Court.

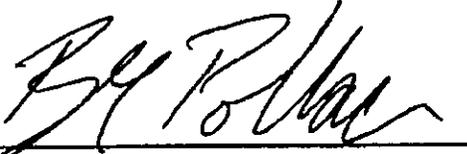
46. In sum, Phase II can't be their own subdivision for purposes of changing the restrictive covenants, but both Phases are the subdivision for determining how many duplexes they are allowed to build.

47. Furthermore, the restrictive covenants prohibit such resubdivision and have not and cannot be amended to allow resubdivision of the developers' 28 lots. That requires a 3/4 vote of 61 lots, or 46 votes. The developers only have 28 lots. Also, contrary to the requirements of the restrictive covenants and Virginia Code § 55-515.1(F), no officer of the Edinburg Square Owners' Association has certified any such approval has been given. In the face of clear violation of the Edinburg Square restrictive covenants, approval of the resubdivision by the Edinburg Town Council was arbitrary, capricious, and unreasonable, and this Court should declare it null and void.

WHEREFORE, Bradley G. Pollack appeals from the adoption of the ordinance approving the vacation/resubdivision, and prays this Honorable Court declare the subdivision purportedly approved by the Edinburg Town Council on September 16, 2014, be declared null, void and of no effect.

TRIAL BY JURY IS DEMANDED.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "B.G. Pollack", written over a horizontal line.

Bradley G. Pollack  
Virginia State Bar No. 25290  
753 South Main Street  
Woodstock, VA 22664  
540-459-8600  
[bpollack@shentel.net](mailto:bpollack@shentel.net)  
540-459-8670 (fax)

To: Zoning Administrator, Town of Edinburg  
Board of Zoning Appeals, Town of Edinburg

Notice of Appeal of Approvals of Four Applications for Zoning Permits by  
Main Street Homes, LLC

I, Bradley G. Pollack, hereby appeal the Approvals by the Town of Edinburg Zoning Administrator on 3-4-15 of four Applications for Zoning Permit by Main Street Homes, LLC, for Lots 47, 48, 49, 50, Grafton Road, Edinburg, on the grounds that these four lots, among others, are subject to an appeal of their approval in the Circuit Court of Shenandoah County, in *Bradley G. Pollack v. Council of the Town of Edinburg*, CL14000282-00.

Pursuant to Virginia Code § 15.2-2311(A), please forthwith transmit to the Board of Zoning Appeals all the papers constituting the record upon which the action appealed from was taken. As soon as you determine the fee for filing the appeal, I will immediately tender that to you.

Pursuant to Virginia Code § 15.2-2311(B), this appeal shall stay all proceedings in furtherance of the Approvals of the Applications for Zoning Permit.

 4/2/2015  
\_\_\_\_\_  
Bradley G. Pollack  
100 Jillian Court  
Edinburg, VA 22824  
bpollack@shentel.net  
335-4712  
459-8670 (fax)

cc: Shenandoah County Building Inspection and Code  
Enforcement

**VIRGINIA:**

**IN THE CIRCUIT COURT FOR SHENANDOAH COUNTY**

**IN RE:       APRIL 27, 2015 DECISION OF THE BOARD OF ZONING APPEALS OF  
              THE TOWN OF EDINBURG**

**CONSENT ORDER**

THIS MATTER came on to be heard upon the Petition for Certiorari filed herein by Gary Foltz and Main Street Homes, LLC (collectively "Petitioners") to review the April 27, 2015 decision of the Board of Zoning Appeals of the Town of Edinburg reversing the approval of the Zoning Administrator of the Applications for Zoning Permit submitted by Main Street Homes, LLC for Lots 47, 48, 49 and 50 of Edinburg Square, Phase II; and

IT APPEARING TO THE COURT that the parties are in agreement as to the entry of this Order, as evidence by the endorsement of their counsel hereto; it is, hereby,

ORDERED, ADJUDGED and DECREED as follows:

1. Gary Foltz, also known as G. B. Foltz, ("Foltz") acquired what was then known as Lots 32 through 36 and 39 through 61 of Edinburg Square Subdivision, Phase II, by Deed dated June 27, 2013 and recorded in Deed Book 1611 at page 457 among the land records of Shenandoah County, Virginia (hereinafter "Edinburg Square Phase II").

2. Main Street Homes, LLC, is a Virginia limited liability company formed by Foltz, among others, to develop Edinburg Square Phase II (hereinafter "Main Street Homes").

3. Edinburg Square Phase II lies within the town limits of the Town of Edinburg, Virginia (hereinafter "Town" and/or "Town of Edinburg").

4. On September 16, 2014, the Town of Edinburg voted to approve a modification of §175-7(D) (2) and (3) of the Town's Zoning Ordinance to increase the maximum number of

duplex and/or townhouse dwellings from 25% of a development to 50%, with the remainder of the development being single-family detached dwellings. The vote was unanimous. The Town also voted to approve the subdivision of the 28 lots owned by Foltz in Edinburg Square Phase II to 44 lots.

5. On or about October 16, 2014, Bradley G. Pollack ("Pollack"), individually, filed what he denoted as a "Complaint and Appeal" in the Circuit Court of Shenandoah County, *Case No. 14000282*. ("Pollack Suit"). Pollack named the Council of the Town of Edinburg as the Defendant in the Pollack Suit; however, he has never requested that the Clerk prepare the Complaint and Appeal for service on the Town, nor has service ever been affected in any manner. The Town has never entered an appearance in the case. Pollack has never taken any action in the matter beyond the filing of the suit.

6. On December 19, 2014, a plat entitled "Redivision of Lots 32 through 36 & Lots 39 through 61, Edinburg Square, Phase II" was recorded in Deed Book 1664 at page 0140 of the land records of Shenandoah County, Virginia ("Plat"). The Plat was prepared by a certified land surveyor in accordance with Va. Code §15.2-2262, was certified by the owner of the land, Gary Foltz, in accordance with Va. Code §15.2-2264 as having been with the free consent and in accordance with the desires of the owner of the property, and contained a Certificate of Approval executed by the Mayor of the Town of Edinburg and by Steven D. Wood, Planning Commission Chairman, in accordance with Va. Code §15.2-2258 certifying that the Plat conformed with the existing subdivision regulations and may be admitted to record. A copy of the aforesaid Plat is attached to the Petition for Certiorari filed herein marked Exhibit A.

7. On February 17, 2015, Main Street Homes submitted an Application for Zoning Permit to the Town of Edinburg for Lots 47, 48, 49 and 50 of Edinburg Square, Phase II (the "Zoning Applications"), along with the required application fee. A copy of the Zoning Applications are attached to the Petition for Certiorari filed herein marked Exhibit B.

8. On March 4, 2015, the Zoning Administrator for the Town approved the Zoning Applications.

9. On April 2, 2015, stating that he was proceeding in accordance with Va. Code §15.2-2311, Pollack submitted what he denoted as a Notice of Appeal of the approval of the Zoning Applications on the basis that the "four lots ... are subject to an appeal of their approval in the Circuit Court of Shenandoah County, in *Bradley G. Pollack v. Council of the Town of Edinburg, CL14000282-00.*" ("Notice of Appeal 1") A copy of the Notice of Appeal 1 is attached to the Petition for Certiorari filed herein marked Exhibit C.

10. On April 3, 2015, again stating that he was proceeding in accordance with Va. Code §15.2-2311, Pollack submitted a second Notice of Appeal of the approval of the Zoning Applications on the basis that the "applicant for the zoning permits is not the owner of record of the real property." ("Notice of Appeal 2") A copy of the aforesaid Notice of Appeal 2 is attached to the Petition for Certiorari filed herein marked Exhibit D. (collectively Notice of Appeal 1 and Notice of Appeal 2 shall be referred to as "Notices of Appeal").

11. On April 27, 2015, the Board of Zoning Appeals of the Town of Edinburg ("BZA") conducted a public hearing to consider the Notices of Appeal. After close of the public hearing portion of the meeting, the Chairman of the BZA, Mr. Paul Blacet, in his capacity as Chairman of the BZA, made a motion to reverse the decision of the Zoning Administrator on the basis that

Pollack may eventually prevail in his lawsuit and Foltz may not be able to complete the development of Edinburg Square Phase II once construction was started. The Motion was seconded and approved by the members of the BZA. Mr. Blacet voted in favor of his motion.

12. Va. Code §15.2-2309 mandates that in hearing an appeal of a decision or determination by the Zoning Administrator, the BZA's "decision on such appeal shall be based on the board's judgment of whether the administrative officer was correct."

13. Pollack's filing of a lawsuit which has never been served, in which the Town has never entered an appearance, and in which no action has ever been taken, inclusive of any orders being entered enjoining or otherwise restraining the actions of the Town, had no impact on the validity of the Town of Edinburg's actions of September 16, 2014 approving the subdivision of the 28 lots owned by Foltz in Edinburg Square Phase II to 44 lots, of the December 19, 2014 approval by the Town of the plat entitled "Redivision of Lots 32 through 36 & Lots 39 through 61, Edinburg Square, Phase II", or of the approval by the Zoning Administrator of the Zoning Applications.

14. The Zoning Administrator was correct in his approval of the Zoning Applications as the same met all of the applicable ordinances, conditions and subdivision regulations of the Town. Given that such was the only inquiry that the BZA was to undertake, its failure to affirm the Zoning Administrator's decision was in error as a matter of law and is hereby reversed.

15. The decision of the Zoning Administrator of the Town of Edinburg approving the four (4) Applications for Zoning Permit submitted by Main Street Homes, LLC for Lots 47, 48, 49 and 50 of Edinburg Square, Phase II, is hereby reinstated.

ENTERED this 27<sup>TH</sup> day of July 2015

A True Copy Teste:  
DENISE B. ESTEP, CLERK

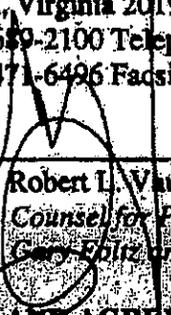
  
JUDGE

By: Karla S. Ott D.C. 4

**I ASK FOR THIS:**

**O'CONNOR & VAUGHN LLC**  
11490 Commerce Park Drive, Suite 510  
Reston, Virginia 20191  
(703) 689-2100 Telephone  
(703) 471-6426 Facsimile

By \_\_\_\_\_

  
Robert L. Vaughn, Jr., VSB 20633  
*Counsel for Petitioner*  
*Gary Ebitz and Main Street Homes, LLC*

**SEEN AND AGREED:**

  
\_\_\_\_\_  
Paul J. Neal, Jr.  
Edinburg Town Attorney  
122 W. High Street  
Woodstock, Virginia 22664  
*Counsel for the Council of the Town of Edinburg*

**I ASK FOR THIS:**

**O'CONNOR & VAUGHN LLC**  
11490 Commerce Park Drive, Suite 510  
Reston, Virginia 20191  
(703) 689-2100 Telephone  
(703) 471-6496 Facsimile

By \_\_\_\_\_  
Robert L. Vaughn, Jr., VSB 20633  
*Counsel for Petitioner*  
*Gary Foltz and Main Street Homes, LLC*

**SEEN AND AGREED:**

\_\_\_\_\_  
Paul J. Neal, Jr.  
Edinburg Town Attorney  
122 W. High Street  
Woodstock, Virginia 22664  
*Counsel for the Council of the Town of Edinburg*

COPY

# Supreme Court of Virginia

To All To Whom These Presents Shall Come — Greetings:

Know Ye, That I, DONALD W. LEMONS,

Chief Justice of the Supreme Court of Virginia, by virtue of authority vested in me by law, do hereby designate —

THE HONORABLE PAUL F. SHERIDAN, RETIRED JUDGE  
OF THE SEVENTEENTH JUDICIAL CIRCUIT TO PRESIDE IN THE  
CIRCUIT COURT OF SHENANDOAH COUNTY

In the case of

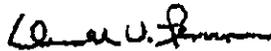
In Re: April 27, 2015 Decision of the Board of Zoning Appeals of the Town of Edinburg  
Case Number CL15-101

To be heard on a date set by the Judge, and continuing  
until the matters presented to him in this case  
have been disposed of according to law.

In the place of  
THE JUDGES OF THE TWENTY-SIXTH JUDICIAL CIRCUIT  
who are so situated as to render it improper, in their opinion,  
for them to preside at the trial of the said case.

FILED  
15 JUN 23 AM 9:38  
CLERK'S OFFICE  
SHENANDOAH COUNTY, VA.  
DENISE B. ESTEP, CLERK  
D.C.

It is so Ordered. Given under my hand and seal this 22<sup>nd</sup> day of June 2015.



(SEAL)

Chief Justice of the Supreme Court of Virginia

A True Copy Teste:  
DENISE B. ESTEP, CLERK

By: Karla S. Ortle D.C.

**VIRGINIA:**

**IN THE CIRCUIT COURT FOR SHENANDOAH COUNTY**

**IN RE: APRIL 27, 2015 DECISION \*  
OF THE BOARD OF ZONING APPEALS \* Case No. CL15-101  
OF THE TOWN OF EDINBURG \***

**CONSENT ORDER**

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IT APPEARING TO THE COURT that the parties are in agreement as to the entry of this Order, as evidence by the endorsement of their counsel hereto; it is, hereby,

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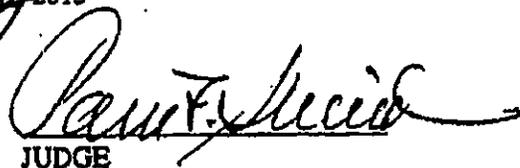
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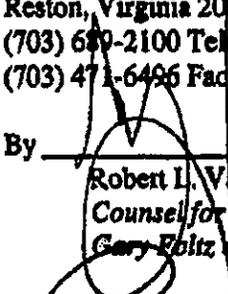
  
JUDGE

By: Karla S. Ortt D.C. 4

**I ASK FOR THIS:**

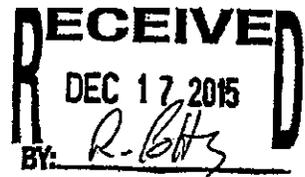
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By \_\_\_\_\_

  
Robert L. Vaughn, Jr., VSB 20633  
Counsel for Petitioner  
Gary Foltz and Main Street Homes, LLC

**SEEN AND AGREED:**

  
\_\_\_\_\_  
Paul J. Neal, Jr.  
Edinburg Town Attorney  
122 W. High Street  
Woodstock, Virginia 22664  
Counsel for the Council of the Town of Edinburg



VIRGINIA: IN THE CIRCUIT COURT FOR SHENANDOAH COUNTY

In Re: April 27, 2015 Decision of the Board of Zoning Appeals of the  
Town of Edinburg

Case No: CL15-101

MOTION TO RECONSIDER

COMES NOW Bradley G. Pollack, by special appearance, and moves this Honorable Court to reconsider the Consent Order entered in this matter on July 27, 2015, and the tendered Order on Motion to Intervene and Dismiss and on the Issue of Sanctions, to which this Motion is attached, and in support thereof states:

Pollack is an Applicant under Virginia Code § 15.2-2314

Pollack is an applicant because:

1. Virginia Code § 15.2-2308(A) uses the term "application" twice to generally apply to all matters coming before a board of zoning appeals.
2. The General Assembly recognized this view earlier this year when passing Virginia Code § 15.2-2308.1, which uses only the term "applicant" for its general purposes, of course applying this Code section to all matters, including appeals, coming before boards of zoning appeals.

3. Virginia Code § 15.2-2312 includes the following sentence:

The concurring vote of a majority of the membership of the board shall be necessary to reverse any order, requirement, decision or determination of an administrative officer or to decide in favor of the

**applicant** on any matter upon which it is required to pass under the ordinance or to effect any variance from the ordinance. (**Emphasis added.**)

4. The concurring vote of **all** members of the Town of Edinburg Board of Zoning Appeals reversed the issuance of the zoning permits by the Town of Edinburg Zoning Administrator and decided in favor of the applicant, Bradley G. Pollack.

WHEREFORE, Bradley G. Pollack, by special appearance, prays that this Honorable Court reconsider its holding that Pollack was not the applicant before the Board of Zoning Appeals of the Town of Edinburg.

**Pollack is a Necessary Party pursuant to Virginia Code § 15.2-2314 and, pursuant to *Frace v. Johnson*, this Case should be Dismissed**

5. The petition for writ of certiorari filed in this matter was filed pursuant to Virginia Code § 15.2-2314, which provides:

“Any person or persons jointly or severally aggrieved by any decision of the board of zoning appeals, or any aggrieved taxpayer or any officer, department, board or bureau of the locality, may file with the clerk of the circuit court for the county or city a petition that shall be styled “In Re: [date] Decision of the Board of Zoning Appeals of [locality name]” specifying the grounds on which aggrieved within 30 days after the final decision of the board.”

6. Petitioners Gary Foltz and Main Street Homes, LLC, have done that set forth in paragraph 5 above.

7. Virginia Code § 15.2-2314 goes on to provide that:

**"Upon the presentation of such petition, the court shall allow a writ of certiorari to review the decision of the board of zoning appeals and shall prescribe therein the time within which a return thereto must be made and served upon the secretary of the board of zoning appeals or, if no secretary exists, the chair of the board of zoning appeals, which shall not be less than 10 days and may be extended by the court."**

**8. This court did that set forth in paragraph 7 above on 8 May 2015.**

**9. Virginia Code § 15.2-2314 goes on to provide that "The governing body, the landowner, and the applicant before the board of zoning appeals shall be necessary parties to the proceedings."**

**10. The Town of Edinburg and the landowner, Gary Foltz, have properly been made parties to this proceeding.**

**11. The applicant before the board of zoning appeals, Bradley G. Pollack, has not been properly made a party to this proceeding.**

**12. In *Frace v. Johnson*, 768 S.E. 2d 427, Va. Supreme Court (Record No. 140676, 2/26/2015), "the circuit court held a hearing on the Zoning Administrator's motion to dismiss. After hearing argument from counsel, the circuit court granted the motion, ruling that:**

**The code section is crystal clear that the governing body is a necessary party to the proceeding.**

**It is the basic rule of appellate procedure that you have to serve all necessary parties.... Failure to serve, and the matter fails for that reason."**

***Frace v. Johnson*, 768 S.E. 2d 427, 428.**

13. Pollack is a necessary party to this proceeding, has not been served, and this matter must, therefore, fail as well.

14. The *Frace* Court stated:

"To properly institute proceedings under Code § 15.2-2314, an aggrieved person must give timely notice to the necessary parties identified by statute. See *Board of Supervisors I*, 225 Va. at 238, 302 S.E.2d at 21. Nothing in Code § 15.2-2314 suggests otherwise. Rather, the General Assembly expressly identified parties with an interest in the proceeding and who must be given notice and an opportunity to protect such interest.

Moreover, while the 30-day period "is not an aspect of the circuit court's subject matter jurisdiction," timely compliance with Code § 15.2-2314 is nonetheless required to trigger the circuit court's "active jurisdiction." See *Board of Supervisors v. Board of Zoning Appeals*, 271 Va. 336, 340, 343-44, 626 S.E.2d 374, 376, 378-79 (2006) ("*Board of Supervisors II*"). As stated in *Board of Supervisors II*, the 30-day filing requirement is a "statutory prerequisite" that could be considered "notice jurisdiction, [requiring] effective notice to a party" before a circuit court may exercise its subject matter jurisdiction. *Id.* at 345 & n. 3, 626 S.E.2d at 379 & n. 3 (internal quotation marks and citation omitted)."

*Frace v. Johnson*, 768 S.E. 2d 427, 430.

15. Foltz and Main Street Homes, LLC, must have given timely notice to the necessary parties identified by statute, including Pollack, and they failed to do so. That failure precludes this Court's active jurisdiction in this matter.

16. Pollack has not waived the 30-day filing requirement.

17. Like Sheila Frace, Foltz and Main Street Homes, LLC, failed to name any necessary adverse party within the 30-day period.

18. Like Sheila Frace, Foltz and Main Street Homes, LLC, never served Pollack or otherwise attempted to make Pollack a party to this proceeding.

19. Without Pollack as a party, there is no one before this Court advocating the position of the Board of Zoning Appeals of the Town of Edinburg.

20. Without Pollack as a party, there is no adverse party whatsoever. Both Petitioners and the Town of Edinburg are in agreement.

21. Should this decision stand, anytime a mere “appellant” prevails before a Board of Zoning Appeals, an appeal to a circuit court by the governing body or the landowner—when they are in agreement—will automatically result in the overturning of the ruling of the Board of Zoning Appeals. The decision of the Board of Zoning Appeals, and the prevailing party before it, will have no voice at all.

WHEREFORE, Bradley G. Pollack, by special appearance, requests that this Honorable Court reconsider its rulings in this matter, allow him to intervene, and then dismiss this matter as required by *Frace v. Johnson*.

The Board of Zoning Appeals of the Town of Edinburg Ruled Correctly

22. Virginia Code § 15.2-2261(F) provides:

**“An approved final subdivision plat that has been recorded, from which any part of the property subdivided has been conveyed to third parties (other than to the developer or local jurisdiction), shall remain valid for an indefinite period of time unless and until any portion of the property is subject to a vacation action as set forth in §§ 15.2-2270 through 15.2-2278.”**

**23. Approved final subdivision plats of Edinburg Square, Phase I, Edinburg Square, Phase II, along with a combined plat, have all been recorded, from which parts of each have been conveyed to third parties other than to the developer or local jurisdiction.**

**24. A vacation action as set forth in the first paragraph of Virginia Code § 15.2-2272(2) was initiated by Petitioners herein. That paragraph provides:**

**By ordinance of the governing body of the locality in which the land shown on the plat or part thereof to be vacated lies on motion of one of its members or on application of any interested person. The ordinance shall not be adopted until after notice has been given as required by § 15.2-2204. The notice shall clearly describe the plat or portion thereof to be vacated and state the time and place of the meeting of the governing body at which the adoption of the ordinance will be voted upon. Any person may appear at the meeting for the purpose of objecting to the adoption of the ordinance. An appeal from the adoption of the ordinance may be filed within thirty days with the circuit court having jurisdiction of the land shown on the plat or part thereof to be vacated. Upon appeal the court may nullify the ordinance if it finds that the owner of any lot shown on the plat will be irreparably damaged. If no appeal from the adoption of the ordinance is filed within the time above provided or if the ordinance is upheld on appeal, a certified copy of the ordinance of vacation may be recorded in the clerk's office of any court in which the plat is recorded.**

25. The Council of the Town of Edinburg voted on September 16, 2014, on motion of one of its members, and on application of Petitioners, to vacate a part of the plats mentioned in paragraph 23 above.

26. The ordinance was not adopted until after notice was purportedly given as required by § 15.2-2204. The notice described the plat or portion thereof to be vacated and stated the time and place of the meeting of the governing body at which the adoption of the ordinance would be voted upon.

27. Many persons, including Pollack, appeared at the meeting for the purpose of objecting to the adoption of the ordinance.

28. An appeal from the adoption of the ordinance was filed within thirty days with this Court.

29. Upon appeal, this Court may nullify the ordinance if it finds that the owner of any lot shown on the plat will be irreparably damaged.

30. As an appeal from the adoption of the ordinance was filed within the time above provided, and the ordinance has not yet been upheld on appeal, neither the Mayor, nor the Planning Commission Chairman, should have signed the following CERTIFICATE OF APPROVAL:

The Redivision of Lots 32 through 36 & Lots 39 through 61, and dedication of Easements, Edinburg Square, Phase II, is approved by the undersigned in accordance with existing subdivision regulations and may be admitted to record.

31. It was upon this wrongly recorded plat of vacation and resubdivision that the zoning permits were issued.

32. Virginia Code § 15.2-2309(1) includes the following:

At a hearing on an appeal, the administrative officer shall explain the basis for his determination after which the appellant has the burden of proof to rebut such presumption of correctness by a preponderance of the evidence. The board shall consider any applicable ordinances, laws, and regulations in making its decision.

33. The administrative officer did not even appear, no matter explain the basis for his determination. Accordingly, there was no presumption of correctness of his determination.

34. Pollack, accordingly, had no burden to rebut anything.

35. The Board, as they were required to do, considered any applicable ordinances, laws, and regulations in making its decision.

36. The Board considered Virginia Code § 15.2-2272(2) which, as set forth in paragraphs 24 through 31 above, makes clear that the plat upon which the zoning administrator granted the zoning permits should not have been recorded.

WHEREFORE, should the Court not dismiss the matter as requested above, Bradley G. Pollack, by special appearance, prays that this

Honorable Court reconsider its order that the Board of Zoning Appeals of the Town of Edinburg decided incorrectly.

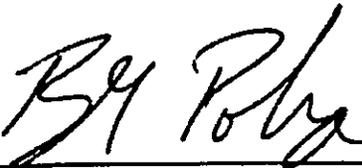
**No evidence that the Board of Zoning Appeals Erred**

37. Virginia Code § 15.2-2314 includes the following:

the findings and conclusions of the board of zoning appeals on questions of fact shall be presumed to be correct. The appealing party may rebut that presumption by proving by a preponderance of the evidence, including the record before the board of zoning appeals, that the board of zoning appeals erred in its decision. Any party may introduce evidence in the proceedings in the court. The court shall hear any arguments on questions of law de novo.

38. Petitioners, the appealing party, as set forth in the paragraphs above, have not rebutted that presumption by proving by a preponderance of the evidence that the Board of Zoning Appeals of the Town of Edinburg erred in its decision.

WHEREFORE, should the Court not dismiss this case as requested above, Bradley G. Pollack, by special appearance, prays that this Honorable Court grant his motion to intervene and set this matter for an evidentiary hearing.

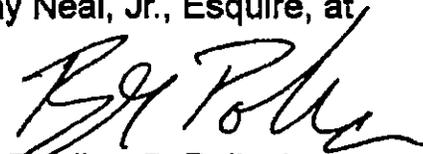
  
Bradley G. Pollack  
Attorney at Law

Respectfully submitted,  
BRADLEY G. POLLACK

753 South Main Street  
Woodstock, VA 22664  
[bgpollack@gmail.com](mailto:bgpollack@gmail.com)  
540-459-8600  
540-459-8670 (fax)

Certificate

Copies were served as Virginia Supreme Court Rule 1:12 requires on August 10, 2015, by transmitting by facsimile to Robert L. Vaughn, Jr., Esquire, at 703-471-6496 and to Paul Jay Neal, Jr., Esquire, at 540-459-3398.



Bradley G. Pollack

FILED  
2015 AUG 10 PM 2:19  
SHIRQUI LUCHT, LEAD CLERK  
SHERMANDEAN COUNTY, VA  
SHEMARDAN COUNTY CLERK  
DENISE F. BARR-ESTEP, CLERK  
BY F. Otto, O.C.

SCANNED

VIRGINIA:

IN THE CIRCUIT COURT FOR SHENANDOAH COUNTY

IN RE: APRIL 27, 2015 DECISION \*  
OF THE BOARD OF ZONING APPEALS \* Case No. CL15-101  
OF THE TOWN OF EDINBURG \*

ORDER ON MOTION TO INTERVENE AND DISMISS AND  
ON THE ISSUE OF SANCTIONS

THIS MATTER came before the Court on July 27, 2015 upon the Motion to Intervene and Dismiss filed herein by Bradley G. Pollack, appearing specially, and upon the Motion to Strike Motion to Intervene and for Sanctions filed by Petitioners, Gary Foltz and Main Street Homes ; and,

IT APPEARING to the Court based upon the argument and submissions of counsel, and the Court finding, that Bradley G. Pollack was not the applicant before the Town of Edinburg Board of Zoning Appeals and is not a necessary party to these proceedings; and

IT FURTHER APPEARING to the Court that the Petitioners withdrew any claims against the Board of Zoning Appeals and/or Paul Blacet for attorney's fees and/or sanctions of any kind; and

IT FURTHER APPEARING to the Court that further consideration is required on the Petitioners' Motion for Sanctions against Mr. Pollack it is, therefore,

ORDERED, ADJUDGED and DECREED as follows:

1. The Motion of Bradley G. Pollack to Intervene is denied;
2. The Motion of Bradley G. Pollack to Dismiss is denied;
3. Petitioners shall have until August 6, 2015 within which to submit such documentation, affidavits and arguments as they may be advised on the issue of sanctions against Mr. Pollack; Mr. Pollack shall have until August 17, 2015 to submit such documentation affidavits and arguments in response as he may be advised. The issue of sanctions will be limited to the filings by Mr. Pollack in this action, and to what contentions he made that are legally and/or factually unsupported,

unsupportable, and/or untrue. The Court will review the submissions and determine whether a further hearing is required or whether it will rule on the submissions. If the Court determines that a further hearing is required, counsel for the Petitioners and Mr. Pollack shall cooperate in the setting of a hearing date. Counsel for the Town of Edinburg may, but is not required, to participate in any hearing on the issue of sanctions.

ENTERED this 14<sup>th</sup> day of August, 2015



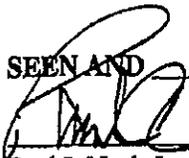
Paul F. Sheridan  
Judge Designate

**SEEN AND OBJECTED TO AS TO THE COURT NOT  
IMPOSING SANCTIONS AGAINST MR. POLLACK AT  
THE HEARING OF JULY 27TH:**

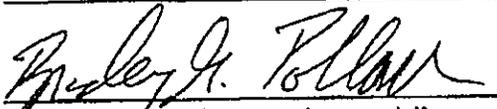


Robert L. Vaughn, Jr., VSB 20633  
O'CONNOR & VAUGHN LLC  
11490 Commerce Park Drive, Suite 510  
Reston, Virginia 20191  
(703) 689-2100 Telephone  
(703) 471-6496 Facsimile  
*Counsel for Petitioners*  
*Gary Foltz and Main Street Homes, LLC*

SEEN AND

  
Paul J. Neal, Jr.  
Edinburg Town Attorney  
122 W. High Street  
Woodstock, Virginia 22664  
540-459-4041 Telephone  
540-459-3398 Facsimile  
Neallaw@shentel.net  
*Counsel for the Council of the Town of Edinburg*

SEEN AND OBJECTED TO AS SET  
FORTH IN ATTACHED MOTION  
TO RECONSIDER.



Bradley G. Pollack, appearing specially  
Attorney at Law  
753 South Main Street  
Woodstock, VA 22664  
540-459-8600  
540-459-8670  
[bgpollack@gmail.com](mailto:bgpollack@gmail.com)  
*Requested Intervenor*

O'CONNOR & VAUGHN, L.L.C.  
Attorneys at Law  
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Telephone (703) 689-2100  
Facsimile (703) 471-6496

Brian M. O'Connor

Robert L. Vaughn, Jr.

October 30, 2015

The Honorable Paul S. Sheridan  
Judge Designate  
Circuit Court of Shenandoah County  
112 S. Main Street  
Woodstock, Virginia 22664

**In Re: April 27, 2015 Decision of the Board of Zoning Appeals  
of the Town of Edinburg  
Shenandoah County Circuit Court Case No. CL15-101**

FILED  
2015 NOV -2 PM 1:06  
CLERK OF SUPERIOR COURT  
SHENANDOAH COUNTY, VA  
DENISE F. BARR ESTER, CLERK  
BY  O.C.

Dear Judge Sheridan:

I am writing with regard to the above-referenced matter. In accordance with the Court's ruling at the July 27<sup>th</sup> hearing, on August 6<sup>th</sup>, on behalf of the Petitioners, Gary Foltz and Main Street Homes LLC, I filed a Motion for Sanctions against Mr. Pollack along with related Declarations. Mr. Pollack filed a response to that Motion as well as a Motion to Reconsider, to which responses and replies were filed.

I would like to set a hearing date for all of the pending Motions as soon as reasonably possible. I am happy to coordinate with other counsel in the scheduling if you could advise of your available dates for a hearing. Alternatively, if there is another method that you would prefer be utilized to set a hearing date, just let me know and I will do so.

I thank you for your time and attention in this matter.

Respectfully submitted,

  
Robert L. Vaughn, Jr.

RLV:vk

cc: Main Street Homes LLC  
Bradley Pollack  
J. Paul Neal

O'CONNOR & VAUGHN, L.L.C.  
Attorneys at Law  
11490 Commerce Park Drive, Suite 510  
Reston, Virginia 20191  
Telephone (703) 689-2100  
Facsimile (703) 471-6496

Brian M. O'Connor

Robert L. Vaughn, Jr.

October 30, 2015

Clerk of Court  
Circuit Court of Shenandoah County  
112 S. Main Street  
Woodstock, Virginia 22664

**In Re: April 27, 2015 Decision of the Board of Zoning Appeals  
of the Town of Edinburg  
Case No. CL15-101**

Dear Sir/Madam:

Enclosed please find a letter to Judge Sheridan, Judge Designate in the above-styled cause. I would ask that it be forwarded to his attention at your earliest opportunity.

I thank you for your assistance in this regard.

Sincerely yours,

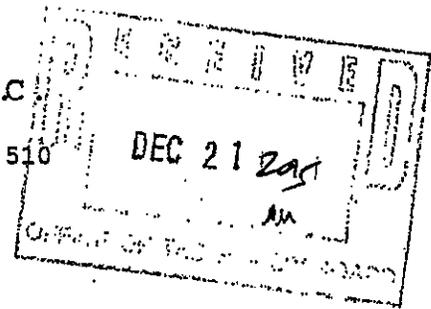
Robert L. Vaughn, Jr.

RLV:vk

cc: Main Street Homes LLC  
Bradley Pollack  
J. Paul Neal

FILED  
2015 NOV -2 PM 1:06  
SHENANDOAH COUNTY VA  
DENISE F. DAVIS-ESTEP, CLERK  
BY  D.C.

O'CONNOR & VAUGHN, L.L.C.  
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Brian M. O'Connor

Robert L. Vaughn, Jr.

**VIA OVERNIGHT DELIVERY**

December 18, 2015

Members of the State Building Code Technical Review Board  
State Building Code Office  
600 East Main Street, Suite 300  
Richmond, Virginia 23219

**In Re:     Bradley Pollack appeal to the Review Board  
          Appeal No. 15-20**

Dear Members:

I am counsel for Main Street Homes, LLC and Gary "G.B." Foltz (hereinafter collectively "Main Street"). In accordance with the December 7<sup>th</sup> email received from Alan McMahan, C.B.O., CLGM, Secretary of the Board, the following is submitted to facilitate the processing of this appeal. At the risk of making what is a rather straight forward matter overly complicated, it is necessary to recite some of the pertinent history of this matter so as to put the current proceedings into context.

In June of 2013, Main Street acquired the remaining 28 lots in a development known as Edinburg Square, Phase II ("Phase II"). The development had stalled during the recent recession and been taken over by the lender. Sometime thereafter, Mr. Pollack, who also is an attorney, purchased a home in the adjoining, but separate, development, Edinburg Square, Phase I. When he found out that Main Street acquired the lots in Phase II, he attempted to purchase them from Mr. Foltz; those efforts were not successful.

Since that time, Mr. Pollack has engaged in a pervasive and persistent effort to try and prevent Main Street from building on its property. Those efforts include, but are not limited to, opposing any and all requests made by Main Street to the Town of Edinburg with regard to the development of Phase II--inclusive of proceedings/hearings before the Planning Commission and before the Town Council itself. Notwithstanding his efforts, the Town approved Main Street's request to re-subdivide the 28 lots into 44 lots. Thereafter, having received the requisite approvals from the Town, Main Street duly recorded its re-subdivision plat among the land records of Shenandoah County. During this same time frame, over Mr. Pollack's vigorous opposition, the Town also amended its zoning ordinance with respect to the density of the development of town homes and duplexes.

When his efforts at stopping the development at the local level failed, Mr. Pollack then filed not one but two lawsuits against the Town--the first in June 2014, and the second in October 2014.

He made the same contentions in those lawsuits that are the basis for his appeal first to the Local Board of Building Code Appeals ("LBBCA"), and now to this Board. Mr. Pollack has never pursued those lawsuits beyond the filing stage until very recently. That action being only to serve the suits on the Town. The Town has filed Demurrers to each of those suits seeking their dismissal on the basis that Mr. Pollack lacks standing to raise the claims he is attempting to make to the Town's actions. As of the time of the drafting of this submission, a hearing on those Demurrers has not yet been scheduled.

Demurrers  
sustained  
w/ prejudice

Once the re-subdivision plat was recorded, Main Street commenced its development efforts by taking the first step: obtaining zoning permits from the Town. The Town's Zoning Administrator duly approved those applications and issued the permits. As he had done with every other step in the proceedings, Mr. Pollack challenged their issuance to the Board of Zoning Appeals ("BZA"). The contentions made by Mr. Pollack to the BZA are the exact same contentions made in this instance. Over the advice of their own legal counsel, the BZA bought into Mr. Pollack's argument and invalidated the permits.

That one and only "victory" of Mr. Pollack was short lived. Main Street sought and obtained a Writ of Certiorari from Circuit Court. In its ruling, the Circuit Court emphatically rejected Mr. Pollack's contentions and reinstated the Zoning Administrator's issuance of the zoning permits. Attached as **Exhibit A** is a certified copy of the Order entered by the Honorable Paul Sheridan, Judge Designate for the Circuit Court of Shenandoah County, on July 27, 2015. The Board will note that the Order sets forth various judicial findings of fact, including those recited above. Among the findings is paragraph 6 that recites the proper recordation of the very plat that Mr. Pollack nevertheless contends was improper, and paragraph 13 that states that the filing of the lawsuits by Mr. Pollack have no impact on the validity of either the plat or the issuance of permits related to the subdivision.

Attached as **Exhibit B** is a second order entered by Judge Sheridan in the matter. He found that Mr. Pollack was not a proper party to the proceedings and dismissed his claims. In paragraph 3 of his Order, Judge Sheridan also authorized the filing of a request for sanctions against Mr. Pollack for his meritless claims. The hearing on the determination of such sanctions is set for January 29<sup>th</sup>.

Sheridan  
Awarded  
3/4/16  
Final order  
1/22/16

Once the zoning permits were reinstated, Main Street was able to move to the next step in the process, obtaining building permits. Those applications were submitted and duly approved by the local Building Code Official. Mr. Pollack then challenged the issuance of those permits, the challenge being on the same basis that he challenged the zoning permits.

The sole issue before the LBBCA, as is before this Board, is whether the building permit applications submitted by Main Street Homes complied with the requirements for the issuance of such permits. Michael Dellinger, the local Building Code Official, appeared at the earlier hearing and informed the LBBCA that the applications did, in fact, comply with all of the pre-requisites for the issuance of building permits, including the Town of Edinburg having previously issued zoning permits for the same structures. He also informed the LBBCA that the review of restrictive covenants was not part of the building permits issuance process.

The Town of Edinburg appeared by its counsel and concurred with Mr. Dellinger's position, inclusive of his view that consideration of restrictive covenants had nothing to do with determining whether building permits should be issued.

In his presentation, Mr. Pollack, who is an attorney, did not contend that there were any deficiencies in the applications themselves or that there was any noncompliance with the Building Code. He offered nothing of substance to support his contention that Mr. Dellinger was required to ascertain whether the issuance of the building permits were in conformance with any restrictive covenants on the property, much less anything of substance to demonstrate that the permits did, in fact, run afoul of the covenants. He made the same argument with regard to the recordation of the re-subdivision plat that he made with regard to the zoning permits that he made to, and were rejected by, the Circuit Court.

The undersigned made a presentation on behalf of Main Street Homes, concurring with the position of Mr. Dellinger and the Town of Edinburg. Counsel also responded to the recurring arguments regarding recordation of the re-subdivision plat and provided the LBBCA with a copy of Judge Sheridan's two Orders.

Thereafter, the LBBCA voted and unanimously found that the applications were proper, and sustained the issuance of the building permits. For no reasons other than he can, Mr. Pollack has appealed that decision to this Board. He offers nothing new or more with respect to this appeal, nor can he. Accordingly, that is the end of the discussion and Mr. Pollack's appeal must be summarily denied.

While it is submitted that the foregoing is sufficient to resolve this appeal as the only issue is whether the applications comply with the Building Code, in the interest of being complete, I also will address Mr. Pollack's claims that his filing of a lawsuit challenging the recordation of the re-subdivision plat prevents the issuance of the subject building permits.

First and foremost, the code section on which Mr. Pollack relies, Virginia Code §15.2-2272, relates to the vacation of a plat. Not only is that clear from the title of the statute itself, "Vacation of plat after sale of lot," it is crystal clear by the first sentence in subsection B. It reads, in pertinent part as follows:

**§ 15.2-2272. Vacation of plat after sale of lot.** — In cases where any lot has been sold, the plat or part thereof may be vacated according to either of the following methods:

.....

B. By ordinance of the governing body of the locality in which the land shown on the plat or part thereof to be vacated lies on motion of one of its members or on application of any interested person.

Despite all of his machinations, Mr. Pollack cannot point to any ordinance adopted by the Town of Edinburg that vacated the plat that created Phase II, much less to any plat that was vacated. What

the Town did was re-subdivide Phase II from 28 lots to 44 lots. This same threshold question was asked by Judge Sheridan of Mr. Pollack, and he had no answer, the reason being is that there is no such ordinance nor vacation of a plat.

Secondly, the same statute, §15.2-2272(2), requires that Mr. Pollack be the owner of a lot in the development for which he challenges vacation of the Plat:

Upon appeal, the court may nullify the ordinance if it finds that the owner of any lot shown on the plat will be irreparably damaged.

As with the first point, while Mr. Pollack has continuously and repeatedly suggested otherwise, he owns Lot 10 in Phase I; he owns no lot in Phase II.

Last, but not least, the statute under which Mr. Pollack mounts his appeal is Va. Code §15.2-2311. That code provision dictates that only a person who is "aggrieved" by the actions of the Town can challenge their actions in the Courts. The law in Virginia on this point is well-settled; to be "aggrieved"

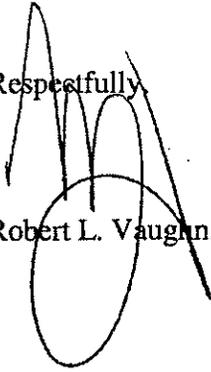
it must affirmatively appear that such person had some direct interest in the subject matter of the proceeding that he seeks to attack. The petitioner must show that he has an immediate, pecuniary and substantial interest in the litigation, and not a remote or indirect interest. Thus, it is not sufficient that the sole interest of the petitioner is to advance some perceived public right or to redress some anticipated public injury when the only wrong he has suffered is in common with other persons similarly situated. The word "aggrieved" in a statute contemplates a substantial grievance and means a denial of some personal or property right, legal or equitable, or imposition of a burden or obligation upon the petitioner different from that suffered by the public generally. *Virginia Beach Beautification Comm'n v. Board of Zoning Appeals*, 231 Va. 415, 419-20, 344 S.E.2d 899, 902-03 (1986); *Vulcan Materials Co. v. Board of Supervisors*, 248 Va. 18, 24, 445 S.E.2d 97, \_\_\_ (1994). (internal citations omitted)

Mr. Pollack did not suffer any immediate pecuniary and substantial interest by the actions of the Town in approving the re-subdivision of Phase II—or the Zoning Administrator's approval of the zoning permits, or the Building Official's approval of the building permits. Moreover, Mr. Pollack was not denied any personal or property rights. Unquestionably, Mr. Pollack remains quite upset by a development adjacent to his home—however, such a generalized grievance does not even remotely approach the denial of a right that would give rise to the ability to contest the action of the Zoning Administrator. At the least, Mr. Pollack has an affirmative obligation to establish he is aggrieved, which he has not and cannot do.

No matter how Mr. Pollack packages his claims, they remain the same. His claims are baseless, both factually and legally. They are interposed solely for the purpose of attempting to harass Main Street and make the cost of the development so high that the project is abandoned. The

fact remains that the subject building permits were properly issued and this appeal is completely frivolous. It should be soundly and summarily rejected.

Respectfully,

  
Robert L. Vaughn, Jr.

RLV:vk

cc: Main Street Homes

Bradley G. Pollack [Via Fax - 540-459-8670]

J. Paul Neal, Esq. [Via Fax - 540-459-3398]

Robert T. Mitchell, Jr., Esq. [Via Fax - 540-662-4304]



# Monitor Report

Date/Time: 12/18/2015 11:49

Fax Number : 7034716496  
Company Name :

The documents were sent.

No.	Job#	Remote Station	Start Time	Dura.	Pages	Mode	Contents	Result
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 Keeton, Virginia 20151  
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 Facsimile (703) 471-6496

Brian M. O'Connor

Robert L. Vaughn, Jr.

VIA OVERNIGHT DELIVERY

December 18, 2015

Members of the State Building Code Technical Review Board  
 State Building Code Office  
 600 East Main Street, Suite 300  
 Richmond, Virginia 23219

In Re: **Bradley Pollack appeal to the Review Board**  
**Appeal No. 15-20**

Dear Members:

I am counsel for Main Street Homes, LLC and Gary "G.B." Foltz (hereinafter collectively "Main Street"). In accordance with the December 7<sup>th</sup> email received from Alan McMahan, C.E.O., CLGM, Secretary of the Board, the following is submitted to facilitate the processing of this appeal. At the risk of making what is a rather straight forward matter overly complicated, it is necessary to recite some of the pertinent history of this matter so as to put the current proceedings into context.

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Since that time, Mr. Pollack has engaged in a pervasive and persistent effort to try and prevent Main Street from building on its property. Those efforts include, but are not limited to, opposing any and all requests made by Main Street to the Town of Edinburg with regard to the development of Phase II--inclusive of proceedings/hearings before the Planning Commission and before the Town Council itself. Notwithstanding his efforts, the Town approved Main Street's request to re-subdivide the 28 lots into 44 lots. Thereafter, having received the requisite approvals from the Town, Main Street duly recorded its re-subdivision plat among the land records of Shenandoah County. During this same time frame, over Mr. Pollack's vigorous opposition, the Town also amended its zoning ordinance with respect to the density of the development of town homes and duplexes.

When his efforts at stopping the development at the local level failed, Mr. Pollack then filed not one but two lawsuits against the Town--the first in June 2014, and the second in October 2014.

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279

# Monitor Report

Date/Time: 12/18/2015 11:36

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Company Name :

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O'CONNOR & VAUGHN, L.L.C.  
Attorneys at Law  
11490 Commerce Park Drive, Suite 510  
Reston, Virginia 20191  
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Facsimile (703) 471-6496

Brian M. O'Connor

Robert L. Vaughn, Jr.

VIA OVERNIGHT DELIVERY

December 18, 2015

Members of the State Building Code Technical Review Board  
State Building Code Office  
600 East Main Street, Suite 300  
Richmond, Virginia 23219

In Re: Bradley Pollack appeal to the Review Board  
Appeal No. 15-20

Dear Members:

I am counsel for Main Street Homes, LLC and Gary "G.B." Foltz (hereinafter collectively "Main Street"). In accordance with the December 7<sup>th</sup> email received from Alan McMahon, C.E.O., CLGM, Secretary of the Board, the following is submitted to facilitate the processing of this appeal. At the risk of making what is a rather straight forward matter overly complicated, it is necessary to recite some of the pertinent history of this matter so as to put the current proceedings into context.

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# Monitor Report

Date/Time: 12/18/2015 11:25

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Company Name :

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O'CONNOR & VAUGHN, L.L.C.  
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Telephone (703) 699-2100  
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Brian M. O'Connor

Robert L. Vaughn, Jr.

VIA OVERNIGHT DELIVERY

December 18, 2015

Members of the State Building Code Technical Review Board  
State Building Code Office  
600 East Main Street, Suite 300  
Richmond, Virginia 23219

In Re: **Bradley Pollack appeal to the Review Board**  
**Appeal No. 15-20**

Dear Members:

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Telephone (703) 689-2100  
Facsimile (703) 471-6496

Brian M. O'Connor

Robert L. Vaughn, Jr.

SENT VIA FIRST CLASS MAIL ON 12.21.15 *to McMahan*  
AND EMAIL WOULD NOT UPLOAD.

December 21, 2015

VIA EMAIL TO: [alan.mcmahan@dhcd.virginia.gov](mailto:alan.mcmahan@dhcd.virginia.gov)

Alan McMahan  
Department of Housing and Community Development  
State Building Code Office  
600 East Main Street, Suite 300  
Richmond, Virginia 23219

**In Re: Bradley Pollack appeal to the Review Board  
Appeal No. 15-20**

Dear Mr. McMahan:

I am counsel for Main Street Homes, LLC and Gary Foltz. I made a previous submission which was sent to your offices by overnight mail. I write today in response to Mr. Pollack's email last week on which I was copied.

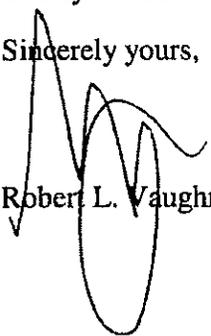
The documents Mr. Pollack submitted are not relevant to the matter before the Board. That matter is whether the Building Official was correct in issuing the subject building permits. As detailed in my initial response, no contention has been raised by Mr. Pollack in that regard. Instead, he has gone to great lengths to obfuscate the matter at hand.

Specifically, Mr. Pollack continues to raise matters unrelated to the issuance of the building permits, in particular, the vague assertion that the construction approved in the subject permits does not comply with the restrictive covenants of Phase II. At the risk of giving credence to Mr. Pollack's contentions by responding to them, I reference paragraph 7 of his Application for Administrative Appeal. Therein he asserts that the restrictive covenants for Phase II do not permit what Mr. Pollack refers to as "two family dwellings." I presume by that term he means to refer to duplexes. In that regard, I refer the Board to the amendment to Article I, Section 6 of the Third Amendment which, for your convenience, is attached to this email. That provision expressly includes "duplexes" as a type of dwelling permitted to be constructed in Phase II. In other words, the very document which Mr. Pollack has provided to you directly contradicts the representations made in his Application.

His second contention, that approval of the Architectural Review Board ("ARB") is required before the building permits can be issued, is equally specious. Article III, Section 1 of the restrictive covenants states that so long as the Declarant owns any lots in the subdivision, the Declarant is the ARB. Article 1, Section 4 expressly defines the Declarant as Gary Foltz. There is no dispute that Mr. Foltz continues to own lots in Phase II; accordingly there is no dispute that he is the ARB; ergo, any dwellings which he proposed to construct, by definition, meet with his approval.

As with my initial submission, I submit the foregoing so that the Board can put this appeal in context. The context being that Mr. Pollack's contentions raise no issues of merit and are not interjected for that purpose. Instead, he repeatedly raises the same issues at every step of the way in every venue conceivable to harass my clients and needlessly increase the costs of the development.

Sincerely yours,



Robert L. Vaughn, Jr.

# REVIEW BOARD APPEAL 15-20

## ADDITIONAL DOCUMENTS SUBMITTED BY MAIN STREET HOMES

O'CONNOR & VAUGHN, L.L.C.  
Attorneys at Law  
11490 Commerce Park Drive, Suite 510  
Reston, Virginia 20191  
Telephone (703) 689-2100  
Facsimile (703) 471-6496

Brian M. O'Connor

Robert L. Vaughn, Jr.

June 30, 2016

**VIA REGULAR MAIL AND  
EMAIL TO: [alan.mcmahan@dhcd.virginia.gov](mailto:alan.mcmahan@dhcd.virginia.gov)**

Alan McMahan  
Department of Housing and Community Development  
State Building Code Office  
600 East Main Street, Suite 300  
Richmond, Virginia 23219

**In Re: Bradley Pollack appeal to the Review Board  
Appeal No. 15-20**

Dear Mr. McMahan:

As you will recall, I represent Main Street Homes, LLC ("Main Street") and Gary Foltz. I write for two reasons – the first is with respect to Mr. Pollack's email of June 29<sup>th</sup> requesting a continuance; the second is to provide the Board with additional submissions in accordance with your email of June 1<sup>st</sup>.

With regard to the former, my clients vigorously object to Mr. Pollack's ongoing efforts to delay these proceedings and needlessly increase the cost thereof. The current request is nothing more than a continuation of that effort.

The so-called Amended Appeal to which Mr. Pollack refers has nothing whatsoever to do with the matter that is before the Board—which is whether Mr. Dellinger, the Shenandoah County building official, properly issued the subject building permits. It is just another meritless filing, among many, made by Mr. Pollack. The Court has already dismissed his initial Complaint on all counts; the Town has filed Demurrers and Motion to Dismiss Mr. Pollack's Amended Complaint (which he has now denoted as an Amended Appeal).

Mr. Pollack's reference to the Demurrers and Motion to Dismiss as having "not been resolved one way or the other" is both ironic and troubling. Those matters were set for hearing on June 3<sup>rd</sup>—just two days after the Informal Fact Finding Conference *during which Mr. Pollack fully participated with no hint nor suggestion of any health issues and/or difficulties*. However, the day

after the fact finding conference, Mr. Pollack wrote to Judge Sheridan and represented that he was “ill and have been for two weeks” and as a result had been “unable to prepare for tomorrow’s hearing.” A copy of the email chain confirming the hearing on June 3<sup>rd</sup> and Mr. Pollack’s email of June 2<sup>nd</sup> is attached as **Exhibit A**. Judge Sheridan, being the gentleman that he is, removed the matter from the docket. Regardless of the outcome of those proceedings, which undoubtedly will be dismissal of Mr. Pollack’s frivolous claims, those proceedings do not bear on the matter before the Board.

I further note that the Order entered by Judge Sheridan on February 22, 2016 with regard to the first round of Demurrers did **not** permit Mr. Pollack to refile with respect to his claims that are contained in Counts XI, XII and XIII of his so-called Amended Appeal. Those are the claims attacking the validity of the Town’s approval of my client’s re-subdivision of their property—which is the very underpinning of his contentions in this matter. Nonetheless, Mr. Pollack did refile those claims—and knowing that those claims are going to be thrown out, is now telling this Board it has elicited a homeowner in Phase II to make the same claims. A copy of Judge Sheridan’s February 22<sup>nd</sup> Order is attached as **Exhibit B**; a copy of the Town’s Motion to Dismiss the referenced Counts is attached as **Exhibit C**.

Mr. Pollack’s reference to his intention to file a “petition for appeal” with regard to the Circuit Court’s sustaining the validity of the Town’s issuance of the zoning permits as a basis for continuing this matter is of even more concern. There is a *Consent* Order entered in that action approving the Town’s issuance of the zoning permits; that Order is final and non-appealable.

The Petition for Appeal to which Mr. Pollack refers is his effort to have the sanctions imposed against him by Judge Sheridan for his meritless actions reversed or reduced. A brief background with regard to that aspect of the matter. As I recited in my initial correspondence to the Board of December 18<sup>th</sup>, at my clients’ request, the Town of Edinburg had issued zoning permits, which is a predicate for the County’s issuance of building permits. Mr. Pollack appealed the issuance of those permits to the Town’s Board of Zoning Appeals (“BZA”). Against the advice of its own counsel, the BZA rescinded the issuance of those permits. I thereupon filed a Petition for a Writ of Certiorari in the Circuit Court—the mechanism under the Virginia Code to obtain the Court’s review of the BZA’s decision. The Town and I agreed to the terms of a Consent Order that reinstated the zoning permits.

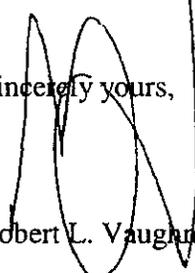
In the interim, Mr. Pollack attempted to intervene in those proceedings. On July 27<sup>th</sup>, Judge Sheridan denied Mr. Pollack’s request, finding there to be no basis for the same, and on August 14, 2015, entered an Order to that effect. The only remaining issue to be resolved was what sanctions were to be awarded against Mr. Pollack for his frivolous and meritless filings and actions. While that determination was pending, Mr. Pollack compounded his improper conduct by filing a Motion requesting that the Circuit Court reconsider its decision.

After further submissions to the Court, on April 4<sup>th</sup>, Judge Sheridan issued the referenced Opinion Letter, denying Mr. Pollack’s Motion to Reconsider. He went on to award \$14,309 in sanctions against Mr. Pollack finding that he had made “**untrue allegations**” and further finding that there was no good faith factual or legal basis for his position. Unfortunately the award of

sanctions and a factual finding that Mr. Pollack is untruthful has not deterred him, as evidenced by the subject proceedings.

Lastly, I wish to confirm per your email of June 2<sup>nd</sup>, that my submissions of December 18 and December 21, 2015 will be included in the agenda package for the upcoming meeting. If you need an additional copy or copies, please let me know and I will be happy to provide the same.

Sincerely yours,



Robert L. Vaughn, Jr.

RLV:vmk

Encs.

cc: Bradley G. Pollack [via email to [bpollack@shentel.net](mailto:bpollack@shentel.net)]

G. B. Foltz

-----Original Message-----

From: [GSherman@courts.state.va.us](mailto:GSherman@courts.state.va.us) [mailto:[GSherman@courts.state.va.us](mailto:GSherman@courts.state.va.us)]  
Sent: Friday, April 22, 2016 1:13 PM  
To: Robert T. Mitchell Jr. <[rmitchell@hallmonahan.com](mailto:rmitchell@hallmonahan.com)>; Bradley G. Pollack  
<[bpollack@shentel.net](mailto:bpollack@shentel.net)>  
Cc: [pfsheridan22@yahoo.com](mailto:pfsheridan22@yahoo.com); [jmsheridan@comcast.net](mailto:jmsheridan@comcast.net)  
Subject: Pollack cases

We now have a firm date and time. JUNE 3, 2016 AT 11:00 A.M. Judge Sheridan will still be coming here. Mr. Pollack, you may still appear by phone and Mr. Mitchell, if you would, please let me know how you plan to attend. I am leaving for the day and will not be here Monday so I look forward to receiving an email from you by Tuesday. Either of you may set the call up or, if you wish, I can set the call up but you MUST provide me with a number by which you can accept a COLLECT call. Thank you very much.

Glenda Sherman  
Secretary to Judge Dennis L. Hupp  
Shenandoah County Circuit Court  
(540) 459-6158

This e-mail and any attachments with it are privileged and confidential and are intended solely for the use of the individual(s) to whom they are addressed. If you have received this e-mail in error or are not the addressee, please immediately delete it and notify the sender

-----Original Message-----

From: Brad Pollack [mailto:[bgpollack@gmail.com](mailto:bgpollack@gmail.com)]  
Sent: Thursday, June 2, 2016 08:33 AM  
To: 'Robert T. Mitchell, Jr.'  
Cc: [GSherman@courts.state.va.us](mailto:GSherman@courts.state.va.us), [pfsheridan22@yahoo.com](mailto:pfsheridan22@yahoo.com), [jmsheridan@comcast.net](mailto:jmsheridan@comcast.net), 'rvaughn'  
Subject: Re: Pollack cases

Dear Judge Sheridan:

I am ill and have been for two weeks. An antibiotic prescribed has done nothing to help. I have been unable to prepare for tomorrow's hearing, although I can now be present as I was unable to go on vacation as planned. I will be appearing briefly tomorrow for minor matters in Shenandoah Juvenile and Domestic Relations District Court and Shenandoah General District Court that I did not reschedule. But right now I am quite lightheaded and planning to go back to bed.

Accordingly, I would ask the Court to grant me leave to file written responses to the Town's Demurrers and Motion to Dismiss by Monday, June 11, and either reset tomorrow's hearing or rule on the written pleadings as Mr. Mitchell and I have previously agreed to. *Bradley G. Pollack v. Council of Town of Edinburg*, Civil Case No. CL14-282, was finalized by final order over 21 days ago and I have paid the judgment entered against me in that matter in full.

Thank you for your consideration.

Respectfully,

Bradley G. Pollack  
Attorney at Law  
753 South Main Street  
Woodstock, VA 22664  
[bpollack@shentel.net](mailto:bpollack@shentel.net)  
540-459-8600  
540-459-8670 (fax)



VIRGINIA:

IN THE CIRCUIT COURT FOR THE COUNTY OF SHENANDOAH

BRADLEY G. POLLACK,

Complainant,

v.

CASE NO. CL14-164

COUNCIL OF THE TOWN OF  
EDINBURG,

Respondent.

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BRADLEY G. POLLACK,

Complainant,

v.

CASE NO. CL14-282

COUNCIL OF THE TOWN OF  
EDINBURG,

Respondent.

---

**ORDER**

The 29<sup>th</sup> day of January, 2016, came the parties, by counsel, upon the Demurrers and Supplemental Demurrer filed by the Respondent in the above cases, and upon argument of counsel.



IN CONSIDERATION WHEREOF, the Court finds:

1. The Complainant had no standing under Virginia Code § 15.2-2259 to appeal the approval of the subdivision by the Town Council on September 16, 2014.

2. The Complaints failed to allege sufficient facts to establish standing of the Complainant as the Complaints failed to allege sufficient facts to establish that the Complainant had suffered a particularized harm as a result of the actions of the Town Council.

NOW, THEREFORE, it is ADJUDGED and ORDERED:

1. The Respondent's Demurrers to the Complaints on the basis of a lack of standing under Virginia Code § 15.2-2259 to appeal the approval by the Town Council of the subdivision is sustained, with no leave granted to the Complainant to file an amended complaints on this issue.

2. The Respondent's Demurrers and Supplemental Demurrer on the basis of lack of standing to the remaining causes of actions in the Complaints are sustained, with leave granted to the Complainant to file an amended complaint or complaints on the remaining causes of action on or before February 29, 2016.

ENTER this 22<sup>d</sup> day of February 2016.

Paul F. Sheridan  
The Hon. Paul R. Sheridan, Judge

SEEN AND OBJECTED TO:

Bradley G. Pollack  
Bradley G. Pollack, Esquire, pro se  
Complainant

A True Copy Teste:  
SARONA S. IRVIN, CLERK

BY: Sarona S. Irvin, D.C.  
Shenandoah County Circuit Court  
Sarona S. Irvin, Clerk  
Copy Teste: Sarona S. Irvin, Clerk, Shenandoah County Circuit Court  
Electronic Certification Made Pursuant § 17.1-258.3 & 17.1-258.4

SEEN:

Robert T. Mitchell, Jr.  
Robert T. Mitchell, Jr., Esquire  
Counsel for Town Council of the  
Town of Edinburg, Respondent

Feb 25 2016 3:13 PM.

VIRGINIA :

IN THE CIRCUIT COURT FOR THE COUNTY OF SHENANDOAH

BRADLEY G. POLLACK,

Complainant,

v.

CASE NO. CL14-164

COUNCIL OF THE TOWN OF  
EDINBURG,

Respondent.

---

BRADLEY G. POLLACK,

Complainant,

v.

CASE NO. CL14-282

COUNCIL OF THE TOWN OF  
EDINBURG,

Respondent.

---

**TOWN'S MOTION TO DISMISS**  
**COUNTS XI, XII, AND XIII OF AMENDED APPEAL**

Comes now the Defendant, Town Council of the Town of Edinburg,  
Virginia ("Town"), by counsel, and in support of this motion to dismiss  
submits the following:



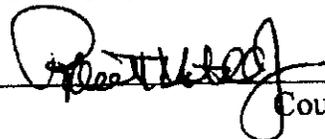
1. Counts XI, XII, and XIII of the "Amended Appeal" seek to appeal the approval by the Town Council of the resubdivision of Phase II of Edinburg Square Subdivision.

2. By Order entered on February 22, 2016, this Court sustained the Town's demurrers to the Complaints on the basis of lack of standing to appeal the approval by the Town Council of the subdivision, with no leave to the Plaintiff to file an amended complaint on this issue.

3. Having been denied leave by this Court to file an amended complaint on the issue of the subdivision approval, the Plaintiff is without authority to include in the Amended Appeal filed an attempt to appeal the approval of the subdivision.

WHEREFORE, the Town moves the Court to grant this Motion to Dismiss and to dismiss Counts XI, XII, and XIII of the Amended Appeal.

TOWN COUNCIL OF THE  
TOWN OF EDINBURG

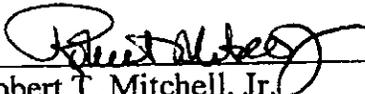
By:  \_\_\_\_\_  
Counsel

Robert T. Mitchell, Jr., Esquire  
VSB#: 3190  
Hall, Monahan, Engle, Mahan & Mitchell  
9 East Boscawen Street  
P. O. Box 848  
Winchester, VA 22604-0848  
Telephone: 540-662-3200  
Facsimile: 540-662-4304  
[rmitchell@hallmonahan.com](mailto:rmitchell@hallmonahan.com)

Paul J. Neal, Jr., Esquire  
Edinburg Town Attorney  
VSB#: 18715  
122 W. High Street  
Post Office Box 474  
Woodstock, VA 22664  
Telephone: 540-459-4041  
Facsimile: 540-459-3398  
Co-Counsel for Respondent  
Town Council of the  
Town of Edinburg

CERTIFICATE

I hereby certify that on this 17<sup>th</sup> day of March, 2016, a true copy of the foregoing Town's Motion to Dismiss Counts XI, XII, and XIII was mailed and emailed to Bradley G. Pollack, Esquire, 753 South Main Street, Woodstock, VA 22664, [bpollack@gmail.com](mailto:bpollack@gmail.com), Complainant, pro se.

  
Robert T. Mitchell, Jr.

# REVIEW BOARD APPEAL 15-20

## ADDITIONAL DOCUMENTS SUBMITTED BY POLLACK

## McMahan, Alan (DHCD)

---

**From:** Brad Pollack <bgpollack@gmail.com>  
**Sent:** Wednesday, June 29, 2016 4:11 PM  
**To:** McMahan, Alan (DHCD)  
**Cc:** rvaughn; Valerie Kaye; Potts, Richard (DHCD)  
**Subject:** Re: Bradley Pollack appeal to the Review Board (Appeal No. 15-20)  
**Attachments:** Edinburg September Contest.pdf

Dear Mr. McMahan,

Attached is an Amended Appeal in the underlying Shenandoah County Circuit Court case challenging the zoning amendment, the proffer amendment, and the replatting of the subdivision that were prerequisites to the issuance of the building permits that are now before the State Building Code Technical Review Board. This Amended Complaint is active on the Shenandoah County Circuit Court's docket and has not been resolved one way or another.

The above said, zoning permits for these building lots have been upheld by the Shenandoah County Circuit Court, but a petition for appeal of that ruling will be filed with the Virginia Supreme Court by July 22.

Also, the Board should be aware that since the only valid plats and restrictive covenants that cover these purported building lots don't allow the duplexes that were approved by the Shenandoah County Board of Building Code Appeals, I expect an owner in Phase II of Edinburg Square to file a new action against the landowner soon, hopefully by your July 15 hearing date. If that is done, I will be sure to share a copy of it with you.

In light of the above, I would suggest that the Board continue this matter until the above litigation is resolved.

Should you or the Board have any questions or concerns, please do not hesitate to contact me.

Sincerely,

Brad Pollack  
Attorney  
753 South Main Street  
Woodstock, VA 22664  
[bpollack@shentel.net](mailto:bpollack@shentel.net)  
540-459-8600  
540-459-8670 (fax)

On Wed, Jun 1, 2016 at 11:25 AM, McMahan, Alan (DHCD) <[Alan.McMahan@dhcd.virginia.gov](mailto:Alan.McMahan@dhcd.virginia.gov)> wrote:

To the parties:

Please find attached a PDF of a staff document (i.e. summary) on the Bradley Pollack appeal to the Review Board (Appeal Nos. 15-20), as well as, two PDFs of all of the documents submitted thus far by the parties on

the appeal. The latter PDFs are exactly what was sent to the parties in advance of the informal fact-finding conference yesterday.

The hearing on this appeal is scheduled for the Review Board meeting on Friday, July 15, 2016. You may submit additions, corrections or objections to the staff document; you may submit additional documents for the record; and you may submit written arguments to be included in the board package for the July meeting. All submittals must be received by the Office of the Review Board by close of business on Thursday, June 30, 2016. Anything received after that date will not go into the Review Board package, but will be held for the hearing for the Chairman to decide whether to include it.

Should you have any questions, please contact me or Richard Potts at [804-786-1157](tel:804-786-1157).

Regards,

***Alan McMahan, MPA, C.B.O.***

Senior Construction Inspector II and

Secretary - State Building Code Technical Review Board

Department of Housing & Community Development

Division of Building & Fire Regulation

State Building Code Office

600 East Main Street, Suite 300

Richmond, Virginia 23219

[\(804\) 371-7175](tel:804-371-7175)

[\(804\) 371-7092](tel:804-371-7092) - fax

[alan.mcmahan@dhcd.virginia.gov](mailto:alan.mcmahan@dhcd.virginia.gov)

***Code Connection Blog*** <http://dhcdcodeconnection.wordpress.com>

***Click and "follow" our Blog***

VIRGINIA:

IN THE CIRCUIT COURT FOR THE COUNTY OF SHENANDOAH

BRADLEY G. POLLACK,

Appellant,

v.

Case Numbers: CL14000164-00  
and CL14000282-00

COUNCIL OF THE TOWN OF EDINBURG,

Appellee.

**AMENDED APPEAL**

COMES NOW Bradley G. Pollack, appellant pursuant to Virginia Code §§ 15.2-2272 and 15.2-2285(F), and contests and appeals decisions of the Council of the Town of Edinburg on May 13, 2014, and September 16, 2014, as set forth herein:

**PURPORTED AMENDMENT OF ZONING ORDINANCE**

1. Bradley G. Pollack is a resident of the Town of Edinburg.

**COUNT I - Purported Amendment of Zoning Ordinance Was Not Properly Approved**

2. On September 16, 2014, the Edinburg Town Council purportedly held and passed a "Second reading and consideration of an Ordinance to Amend Chapter 175, Zoning, Article II, District Regulations § 175-7,

Residential District R-1, D. Area regulations, (2) and (3).” It read: “The maximum number of duplex and/or townhouse dwellings shall not exceed 50% with the remainder of the development being single-family detached dwellings.” Exhibits 1 and 2.

3. The aforesaid purported Ordinance was improperly initiated as a part of an Ordinance Committee report during the August 12, 2014, Town Council meeting when the Ordinance Committee had, in fact, not met and taken no action whatsoever.

4. The Planning Commission failed to hold a public hearing in accordance with Virginia Code §§ 15.2-2285(A) and 15.2-2204(A).

5. In violation of Virginia Code § 15.2-2285(A), the Planning Commission made no recommendation to the Town Council. The only action taken by the Planning Commission was the voting down of a motion by member Richard Ritter to not recommend approval. Thereafter, the Planning Commission made no recommendation at all.

6. As the Council of the Town of Edinburg failed to comply with the Code of Virginia in amending this zoning ordinance of general application throughout the Town, it is null and void.

WHEREFORE, Appellant prays that this Court declare the aforesaid amendment to the Edinburg Town Zoning Ordinance be declared null, void and of no effect. FURTHERMORE, as this amendment was a necessary prerequisite to the Amended Proposed Proffer Statement and the Resubdivision, described below, Appellant prays that such Amended Proposed Proffer Statement and the resubdivision also be declared null, void, and of no effect.

PURPORTED APPROVAL OF AMENDED PROPOSED PROFFER  
STATEMENT

Standing for Counts II through X

7. All the rights set forth in Counts II through X are legally enforceable and this Court is able to evaluate all of those claims of rights.

8. Appellant claims an ownership interest in the subject property. The Amended Proposed Proffer Statement, Exhibit 3, in its paragraph 1.1, purports to cover 28 existing dwellings in Phase I:

“Total number of duplex dwellings based on the total number of dwellings in Phase I and Phase II of the Edinburg Square Subdivision.”

9. Appellant is an owner of one of those 28 existing dwellings—Lot 10, Edinburg Square Subdivision, Town of Edinburg, County of Shenandoah, which lot joins the lots to be vacated and resubdivided

pursuant to the purported Amended Proposed Proffer Statement, all found on a plat in Deed Book 1484, Page 954, in the Office of the Clerk of this Court.

10. The restrictive covenants, covering the 28 existing dwellings as well as the lots attempted to be resubdivided by the Proposed Amended Proffer Statement, provide Appellant a real property ownership interest in the entire Edinburg Square subdivision.

11. The aforesaid ownership interest in the subject property gives Appellant standing.

12. Furthermore, Appellant owns and occupies real property on the aforesaid plat, and directly adjacent to the lots that the Proposed Amended Proffer Statement attempts to vacate and resubdivide. This establishes that Appellant has a direct, immediate, pecuniary, and substantial interest in the decision.

13. Every fact alleged in this pleading, other than those set forth in Count I, demonstrate a particularized harm to some personal or property right, legal or equitable, or imposition of a burden or obligation upon the Appellant, as a resident of Edinburg Square, different from that suffered by the public generally.

14. The site in question is subject to a 2005 Proffer Statement, Exhibit 4, making clear that only 28 individual housing units are to be built there.

(Single family homes as set forth below.) The addition of an additional 16 units in Appellant's backyard, which will create significantly more traffic driving by Appellant's house, imposes a significant burden upon him. The creation of small duplex housing completely inconsistent with and unharmonious with the rest of the neighborhood also imposes a significant burden upon Appellant.

15. Both Proffer Statements include "1.3 Recreational Open Space will be provided in Phase 2 of said project in addition to existing open space provided in Phase 1 of project." Appellant's lot is in Phase 1 of said project and Appellant is, therefore, an integral part of the currently approved Proffer Statement.

16. The Amended Proposed Proffer Statement is directly contrary to Appellant's property rights in the Edinburg Square restrictive covenants and 2005 Proffer Statement, rights not shared by the public in general.

17. The Amended Proposed Proffer Statement is clearly a rezoning of a Proffer Statement that twice refers to the Phase in which Appellant lives. At minimum, Appellant's lot joins the lots that are proposed to be vacated and resubdivided under the Amended Proposed Proffer Statement.

COUNT II - Amended Proposed Proffer Statement Violates Town Zoning

18. Paragraphs 1 through 17 are incorporated herein.

19. The Amended Proposed Proffer Statement was approved by the Town on May 13, 2014; and on September 16, 2014, immediately after the purported attempt to amend its zoning ordinance as set forth in Count I above. The amendment to the zoning ordinance was a necessary prerequisite to the Amended Proposed Proffer Statement.

20. Not only was the amendment to the zoning ordinance null and void as set forth in Count I above, any amendment to the zoning ordinance passed on September 16, 2014, would not have become effective until thirty days later as set forth in the Edinburg Town Charter § 3-a(9).

21. Regardless, therefore, the Amended Proposed Proffer Statement violated the zoning ordinance at the time it was purportedly passed on May 13, 2014, and on September 16, 2014.

WHEREFORE, Appellant prays that this Court declare the aforesaid Amended Proposed Proffer Statement null, void and of no effect.

COUNT III - Procedural Violations Leading to Purported Approval of Amended Proposed Proffer Statement

22. Paragraphs 1 through 21 are incorporated herein.

23. The Council of the Town of Edinburg took the action set forth in the Regular Council Meeting May 13, 2014, minutes, page 4, in the paragraph beginning with "Councilman Beaty." Exhibit 5.

24. "The proposed amendments to the existing proffer statement for the lots now owned by G.B. Foltz in Phase II of Edinburg Square" is set forth in Exhibit 3. The lots conveyed to Foltz refer to the same plat set forth in paragraph 9 above.

25. The original Proposed Proffer Statement is set forth in Exhibit 4.

26. The Planning Commission failed to hold a public hearing in accordance with Virginia Code §§ 15.2-2285(A) and 15.2-2204(A).

27. On May 22, 2014, Town Attorney Kevin C. Black wrote the Town of Edinburg Mayor a letter set forth at Exhibit 6.

28. On September 16, 2014, the Edinburg Town Council Special Meeting Agenda was presented to the public for the first time and, without any prior notice to the public, item 3(B) was included on the Agenda: "Ratify amendment to the Proffer Statement that were approved by Town Council on May 13, 2014." Exhibit 1. This item had not been carried over to the September 16, 2014, Special Meeting by any action of the Town Council and is therefore void and of no effect.

29. As the Council of the Town of Edinburg failed to comply with the Code of Virginia in approving the Amended Proposed Proffer Statement, it is null and void.

WHEREFORE, Appellant prays that this Court declare the aforesaid Amended Proposed Proffer Statement be declared null, void and of no effect.

COUNT IV - Town's Actions Violate Agreements with County Approved by this Court

30. Paragraphs 1 through 21 are incorporated herein.

31. The Joint Agreement for Administration of Proffers dated the 8th day of March, 2005, by and between the Town of Edinburg and County of Shenandoah specifically includes the following paragraph:

“11. In the event this Agreement is terminated prior to the payment of all monetary proffers for the benefit of the County having been paid, such monetary proffers will continue to be paid by the Town to the County as such proffer payments are made to the Town. In the event this Agreement is terminated prior to the completion of non-monetary proffers for the benefit of the County, such non-monetary proffers shall continue to be enforced as set forth in paragraph 8, above.”

Exhibit 7.

32. On June 20, 2005, Vince Poling, Shenandoah County Administrator, wrote a letter to the original developers, which included the following:

“As you are aware, the Shenandoah County Board of Supervisors approved your boundary line adjustment request with the Town of Edinburg. This approval was given based on the sixty-two lot concept plan developed by PHR&A, dated May 2005.”

The letter concluded by stating that “The Board of Supervisors anticipates that the above stated elements of the plan as well as cash proffers will be included in your proffer statement.” Exhibit 8.

33. According to the Edinburg Town Council minutes of September 13, 2005, Exhibit 9, the Edinburg Town Council adopted a motion "to approve rezoning of the property recently brought into the Town limits for Phase 2 of Edinburg Square Development" (although it had not yet been brought into the Town).

34. A letter of September 16, 2005, from the Edinburg Town Mayor to James G. Gore, Jr., included the following:

“The Town considers the items you agreed to with the County to be conditions of this rezoning.”

“The resulting Fiscal Impact per Household was determined to be \$6,501. I discussed the payment of this with you on the phone. At that time it was decided that this will be paid by the Town on a per house basis when the zoning permit is issued.”

Exhibit 10.

35. The September 19, 2005, Proffer Statement to rezone the property to Residential, R-1 (Exhibit 4) includes the following paragraphs:

1.1. The property shall be zoned R-1, Residential, for exclusive use as single family homes.

1.2 The property shall be subdivided into 37 residential building lots that conform to the requirements of the Edinburg Town Code for single family homes.

3.1. The Applicant shall contribute to the Town of Edinburg the sum of \$6,501.00 per lot, based on the Fiscal Impact Analysis Model prepared by Anderson and Associates, at the time of issuance of each zoning permit on the subject property.

36. On September 19, 2005, Jennifer Grafton-Gore, the Developer, and predecessor in title to virtually all of the current Edinburg Square homeowners, wrote to the County of Shenandoah about the prerequisite boundary line adjustment with the Town. Ms. Grafton-Gore agreed with the County of Shenandoah to the above provisions. Exhibit 11.

37. On September 26, 2005, the Town of Edinburg and the County of Shenandoah filed a Petition for a Boundary Line Agreement in this Court. Chancery No. 05-263.

38. On September 30, 2005, the Boundary Line Agreement was approved by this Court. Order Book 1246, Page 0710.

39. Again, preconditions for the County agreeing to the Boundary Line Agreement was that the property shall be for exclusive use as single family homes and that the applicant contribute to the Town \$6,501.00 per lot.

40. The Edinburg Town Council cannot take unilateral action on changing these preconditions to allow duplexes and to reduce the per lot contribution by \$3,602 without consent of the County of Shenandoah and this Court. Doing so was unlawful, unwarranted, arbitrary, capricious, unreasonable and void.

WHEREFORE, Appellant prays that this Court declare the aforesaid Amended Proposed Proffer Statement null, void and of no effect.

COUNT V - Approval of Amended Proposed Proffer Statement Prejudices Appellant as a Homeowner

41. Paragraphs 1 through 40 are incorporated herein.

42. Appellant purchased his home in Edinburg Square after the Court's Order adjusting the boundary line was recorded in the land records.

43. The Boundary Line Adjustment was, in turn, based on the aforesaid proffers applicable to Edinburg Square, including the one assuring single family homes in Phase II.

44. Appellant did not apply for, did not consent to, nor, as set forth above, did he or anyone have adequate notice of, this Proposed Amended Proffer Statement.

45. Accordingly, the Town's May 13, 2014, and September 16, 2014, actions making wholesale changes to those proffers is unlawful, unwarranted, arbitrary, capricious, unreasonable and void.

WHEREFORE, Appellant prays that this Court declare the aforesaid Amended Proposed Proffer Statement null, void and of no effect.

COUNT VI - Comprehensive Plan Does Not Cover Subject Lots

46. Paragraphs 7 through 20 are incorporated herein.

47. Edinburg Town Code § 175-59(B)(3) and Virginia Code § 15.2-2297(A)(viii) require compliance with the comprehensive plan. The Town does not have a comprehensive plan applicable to the lots subject to the Proposed Amended Proffer Statement. Accordingly, the Town had no authority to act on the Proposed Amended Proffer Statement and their actions on May 13, 2014, and September 16, 2014, is, therefore void.

WHEREFORE, Appellant prays that this Court declare the aforesaid Amended Proposed Proffer Statement null, void and of no effect.

COUNT VII - Proffer Unlawfully Covers More Than One Zoning District

48. Paragraphs 7 through 20 are incorporated herein.

49. Edinburg Square Subdivision is partially zoned residential and partially zoned commercial. The Proposed Amended Proffer Statement covers both of these zones. This is contrary to the provisions of Virginia Code § 15.2-2297(A), which only allows for conditional zoning within a single zoning ordinance or zone.

WHEREFORE, Appellant prays that this Court declare the aforesaid Amended Proposed Proffer Statement null, void and of no effect.

COUNT VIII - Amended Proposed Proffer Statement Wrongly Uses Lots in Commercial District to Allow Numerous Duplexes

50. The purported zoning amendment set forth in Count I only applies to residential districts.

51. There are 24 building lots (with 21 current houses) in Phase I of Edinburg Square, all of which are in a commercial zone, and not in the residential district that the 37 lots of Phase II (purportedly resubdivided into 53 lots) are zoned.

52. These 24 building lots, therefore, cannot be used for the 50% ratio that the amendments set forth in Count I proposed.

53. Using these 24 building lots is unlawful, unwarranted, arbitrary, capricious, unreasonable and void.

WHEREFORE, Appellant prays that this Court declare the aforesaid Amended Proposed Proffer Statement null, void and of no effect.

COUNT IX - Spot Zoning Illegal

54. Paragraphs 1 through 53 are incorporated herein.

55. The purpose of the Proposed Amended Proffer Statement approved by the Edinburg Town Council is solely to serve the private interests of G. B. Foltz. It is, therefore, an arbitrary and capricious exercise of legislative power, constituting illegal spot zoning, and should be declared void.

WHEREFORE, Appellant prays that this Court declare the aforesaid Amended Proposed Proffer Statement null, void and of no effect.

COUNT X - \$72,000 Paid and Accepted by Town for Duplexes Before Lawful Approval Process

56. Paragraphs 1 through 55 are incorporated herein.

57. The Town convinced Gary Foltz to pay \$72,000 for tap fees for the duplexes before they were even approved. Long before September 16, 2014, the Council of the Town of Edinburg had improperly approved duplexes. This is yet another reason why the subsequent action by the

Town Council was unlawful, unwarranted, arbitrary, capricious, unreasonable and void, and should be declared void.

WHEREFORE, Appellant prays that this Court declare the aforesaid Amended Proposed Proffer Statement null, void and of no effect.

COUNT X - Motion of Town Council Not Properly Passed

58. Paragraphs 1 through 57 are incorporated herein.

59. The minutes at Exhibit 5 make clear that the approval was conditioned upon a positive response from the Town Attorney.

60. A legislative body has no authority to pass a motion conditioned upon “a positive response” from the Town Attorney. The Town Attorney is to provide advice to a town prior to their action. Their action cannot be based upon a subsequent act of the Town Attorney.

61. Regardless, the response from the Town Attorney was not positive. It was contingent upon whether or not “all applicable procedural and notice requirements have been met.”

62. Counts I through IX above make clear that not all applicable procedural requirements were met.

63. There is nothing in the minutes indicating that the notice requirements of Virginia Code § 15.2-2302 were met.

64. Accordingly, the Proposed Amended Proffer Statement was not ever properly or finally approved by the Edinburg Town Council and is, therefore, null and void.

WHEREFORE, Appellant prays that this Court declare the aforesaid Amended Proposed Proffer Statement null, void and of no effect.

APPEAL FROM ADOPTION OF ORDINANCE PURPORTEDLY RE-SUBDIVIDING EDINBURG SQUARE SUBDIVISION

COUNT XI - Violations Set Forth in Any of the Aforesaid Counts Invalidates Resubdivision

65. Paragraphs 1 through 64 are incorporated herein.

66. The approved final subdivision plat for Edinburg Square was recorded in the Office of the Clerk of this Court in Deed Book 1484, Page 0954.

67. Pursuant to Virginia Code § 15.2-2261(F), "An approved final subdivision plat that has been recorded, from which any part of the property subdivided has been conveyed to third parties (other than to the developer or local jurisdiction), shall remain valid for an indefinite period of time

unless and until any portion of the property is subject to a vacation action as set forth in §§ 15.2-2270 through 15.2-2278.”

68. As contemplated by Virginia Code § 15.2-2272(2), part of the property has been conveyed to third parties, including Appellant herein.

69. Appellant appeared at the meeting for the purpose of objecting to the adoption of the ordinance.

70. This is an appeal from the adoption of the ordinance vacating 28 of the lots, filed within thirty days.

71. The two actions of the Edinburg Town Council contested in Counts I through X are both necessary prerequisites to the approval of the resubdivision set forth in paragraph 3(C) of Exhibit 1.

72. Complainant, the owner of a lot shown on the plat in Deed Book 1484, Page 0954, which also shows the lots purportedly resubdivided, will be irreparably damaged by the resubdivision into 44 duplexes immediately behind the home he bought in 2013, when the record as set forth above makes clear that no more than 28 single family homes, harmonious with the rest of the subdivision, were to be built. See also paragraphs 7 through 17 above.

WHEREFORE, Appellant prays that this Court nullify the ordinance of vacation and resubdivision.

COUNT XII - Vacation Action Improperly Taken

73. Paragraphs 1 through 72 are incorporated herein.

74. Contrary to Virginia Code § 15.2-2272(2), the notice of the vacation action set forth in paragraph 3(C) of Exhibit 10 did not clearly describe the plat or portion thereof to be vacated. It didn't even mention that it was a resubdivision or a vacation of any lots.

WHEREFORE, Appellant prays that this Court nullify the ordinance of vacation and resubdivision.

Count XIII - Edinburg Square is One Subdivision Which Prohibits this Resubdivision

75. Paragraphs 7 through 45 and 66 through 72 are incorporated herein.

76. In 2011, a successor in title to the original developer, and the immediate predecessor in title to Gary Foltz, conveyed out two of the lots in Phase II, recognizing that they were specifically subject to restrictive covenants in Edinburg Square, Phases I and II. See Deed Book 1530, Page 0934. Mutuality of covenant, accordingly, makes all of the developer's lots subject to both, clearly prohibiting the resubdivision wrongfully approved by the Town of Edinburg set out in Paragraph 3(C) of Exhibit 1.

77. In the town's action regarding the purported resubdivision on September 16, 2014, 44 duplexes were illegally approved, as that would require the ability to have 44 single family houses in the rest of Edinburg Square. That is impossible, as 33 is the most single family homes that can be built in the rest of Edinburg Square.

78. As the Town Council (wrongly) believes that Phase II is a stand alone subdivision which can independently amend its restrictive covenants to allow the re-subdivision, then the approval of 44 duplexes in a subdivision with only 9 single family lots (on which 7 houses are currently built) was even more illegal. As only 50% can be duplexes, the Town Council has approved 35 more than allowed, or almost 400% more than their own purported amended ordinance allows (and over 750% more than the existing ordinance allows). This is unlawful, unwarranted, arbitrary, capricious, unreasonable and void.

79. Regardless, Phase II can't be its own subdivision for purposes of changing the restrictive covenants, but both Phases are the subdivision for determining how many duplexes they are allowed to build.

80. Furthermore, the restrictive covenants prohibit such resubdivision, and have not and cannot be amended to allow resubdivision of the developers' 28 lots. That requires a 3/4 vote of 61 lots, or 46 votes. The developers only have 28 lots.

81. Also, contrary to the requirements of the restrictive covenants and Virginia Code § 55-515.1(F), no officer of the Edinburg Square Owners' Association has certified that any such approval has been given.

82. In the face of clear violations of the Edinburg Square restrictive covenants, approval of the resubdivision by the Edinburg Town Council was unlawful, arbitrary, capricious, and unreasonable, and this Court should declare it null and void.

WHEREFORE, Appellant appeals from the adoption of the ordinance approving the vacation/resubdivision, and prays this Honorable Court declare the vacation/resubdivision purportedly approved by the Edinburg Town Council on September 16, 2014, null, void and of no effect.

TRIAL BY JURY IS DEMANDED.

Respectfully submitted,

---

Bradley G. Pollack  
753 South Main Street  
Woodstock, VA 22664  
540-459-8600  
bgpollack@gmail.com  
540-459-8670 (fax)

## Certificate of Service

I hereby certify that on the 28th day of February, 2016, I transmitted via facsimile a true copy of the foregoing to Robert T. Mitchell, Jr., Esquire, at 540-662-4304.

Bradley G. Pollack

VIRGINIA:

BEFORE THE  
VIRGINIA MANUFACTURED HOUSING BOARD

IN RE: Appeal of Lien Tran and Anh Nguyen  
Appeal No. 15-21

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VIRGINIA:

BEFORE THE  
STATE BUILDING CODE TECHNICAL REVIEW BOARD (REVIEW BOARD)

IN RE: Appeal of Lien Tran and Anh Nguyen  
Appeal No. 15-21

REVIEW BOARD STAFF DOCUMENT

Suggested Statement of Case History and Pertinent Facts

1. In May of 2015, in response to a complaint, the Fairfax County Department of Code Compliance (FCDCC), the County agency responsible for the enforcement of Part III of the Virginia Uniform Statewide Building Code (the 2012 Virginia Maintenance Code, or VMC), conducted an inspection of a detached single-family dwelling at 7101 Carol Lane, in Falls Church, owned by Lien Tran and Anh Nguyen (hereafter referred to as “Tran”)
2. As a result of the inspection, the FCDCC issued a notice of violation on May 29, 2015, under the VMC to Tran for the lack of maintenance of several areas on the outside of the house. The notice cited Sections 304.13 (*Window, skylight and door frames*), 304.2 (*Protective treatment*), and 304.7 (*Roofs and drainage*) of the 2012 VMC.
3. Consequently, Tran filed an appeal of the notice to the Fairfax County Board of Building Code Appeals (County appeals board) which heard the appeal in December of 2015 and ruled to deny the appeal, thus upholding the decision of the FCDCC.
4. Staff corresponded with the parties permitting an opportunity to submit additional documents and then drafted this staff document based upon a review of the appeal documents. This staff document was then distributed to the parties and timeframes were established for the

submittal of objections; corrections or additions to the staff document; the submittal of additional documents for the record; and written arguments to be included in the record of the appeal prepared for the hearing before the Review Board.

5. Subsequent to the distribution of the staff document to the parties, FCDCC issued a new notice of violation<sup>1</sup> to Tran rescinding the May 29, 2015 notice upon which the appeal is based. The FCDCC provided a copy of the new notice to the Office of the Review Board for inclusion in the July 15, 2016 agenda package. Staff then advised the parties of the Review Board's policy and history of ruling an appeal moot when the application of the code, upon which the appeal is based, has been removed<sup>2</sup>.

Suggested Issue for Resolution by the Review Board

1. Whether to rule the appeal moot due to the issuance of the May 27, 2016 notice of violation which rescinded the original notice of violation; and if ruling in the negative,
2. Whether to overturn the decision of the FCDCC and the local appeal board that a violation of VMC Section 304.13 (*Window, skylight and door frames*) still exists;
3. Whether to overturn the decision of the FCDCC and the local appeal board that a violation of VMC Section 304.2 (*Protective treatment*) still exists;
4. Whether to overturn the decision of the FCDCC and the local appeal board that a violation of VMC Section 304.7 (*Roofs and drainage*) still exists.

<sup>1</sup> The new notice of violation issued to Tran on May 27, 2016 was not appealed to the Review Board within the 21 calendar days as required by VMC Section 106.8

<sup>2</sup> Lapinski (Appeal No. 00-2); Miller (Appeal No. 00-11); SNSA, Inc. (Appeal Nos. 11-9 and 11-10)

**REVIEW BOARD APPEAL 15-21**

**COMBINED DOCUMENTS  
SUBMITTED BY BOTH PARTIES**



# County of Fairfax, Virginia

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

DATE: June 29, 2016

TO: J. Robert Allen, Chairman  
State Building Code Technical Review Board

FROM: Elizabeth Perry, Fairfax County Property Maintenance Code Official

SUBJECT: Appeal of Lien K. Tran (Appeal No. 15-12) 7101 Carol Lane

---

It is my position that I cannot take enforcement action on the May 29, 2015 Notice of Violation at issue in the subject appeal, and that the subject appeal is moot, because the May 29, 2015 Notice of Violation has been rescinded. For this reason, but with full respect for the appeal process and the State Building Code Technical Review Board, Department of Code Compliance staff will not be attending the July 15, 2016 hearing. Please accept this memo as my position on the subject matter.

The property at issue is developed with a single family detached structure, part of which is an enclosed patio. In response to a complaint to the Department of Code Compliance, the dwelling was inspected to determine compliance with the Virginia Maintenance Code. Based on that inspection, Fairfax County Department of Code Compliance Investigator Joan Maguire issued a May 29, 2015 Notice of Violation, which is at issue in the subject appeal.

A subsequent inspection on May 3, 2016, revealed that the enclosed patio collapsed. Therefore, some of the violations in the May 29, 2015 Notice of Violation were no longer relevant, and there were additional violations to be cited. Accordingly, Investigator Maguire rescinded the May 29, 2015 Notice of Violation, and reissued a Notice of Violation on May 27, 2016, which is attached.

While not necessarily relevant to the appeal, I note that Department of Code Compliance staff has attempted to maintain contact with the appellant throughout this process. It is my understanding that the appellant is planning to demolish the structure on the subject property and construct a new dwelling on the lot. As of the date of this memo, the most recent contact between Department of Code Compliance staff and the appellant revealed that the structure is no longer occupied.

Attachment: May 27, 2016 Notice of Violation



# County of Fairfax, Virginia

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

## NOTICE OF VIOLATION Virginia Maintenance Code

**DATE OF ISSUANCE:** May 27, 2016

**METHOD OF SERVICE:** OFFICE OF THE SHERIFF

**LEGAL NOTICE ISSUED TO:** Lien K. Tran  
Anh L. Nguyen

**ADDRESS:** 7101 Carol Lane  
Falls Church, VA 22042

**LOCATION OF VIOLATION:** 7101 Carol Lane  
Falls Church, Virginia 22042-3713

**TAX MAP REF:** 0601 16 0010A

**CASE #:** 201502800 **SR #:** 115980

**ISSUING INVESTIGATOR:** Joan Maguire, (703)324-9337

### POTENTIAL CIVIL PENALTIES PURSUANT TO FAIRFAX COUNTY

CODE § 61-7-1(B):	Maintenance Code Violation(s)	First Offense	Each Subsequent Offense
	§VMC304.2	\$ 100.00	\$ 150.00
	§VMC304.4	\$ 100.00	\$ 150.00
	§VMC304.6	\$ 100.00	\$ 150.00
	§VMC304.7	\$ 100.00	\$ 150.00
<b>TOTAL:</b>		<b>\$ 400.00</b>	<b>\$ 600.00</b>

Dear Responsible Party:

This Notice of Violation is to inform you that the Notice of Violation dated May 29, 2015 has been Rescinded and reissued in response to new violations that have occurred on the property.

In accordance with the Virginia Maintenance Code (Part III of the Uniform Statewide Building Code-2012 Edition), an inspection on May 03, 2016 revealed violations as listed below at the referenced location. The cited violations must be corrected within **30 days** from receipt of this notice unless otherwise indicated.

**Department of Code Compliance**  
 12055 Government Center Parkway, Suite 1016  
 Fairfax, Virginia 22035-5508  
 Phone 703-324-1300 Fax 703-653-9459 TTY 711  
[www.fairfaxcounty.gov/code](http://www.fairfaxcounty.gov/code)

Lien K. Tran  
Anh L. Nguyen  
May 27, 2016  
SR 115980  
Page 2

**VIOLATION: PROTECTIVE TREATMENT VMC 304.2.** All exterior surfaces, including but not limited to, doors, door and window frames, cornices, porches, trim, balconies, decks and fences shall be maintained in good condition. Exterior wood surfaces, other than decay-resistant woods, shall be protected from the elements and decay by painting or other protective covering or treatment. Peeling, flaking and chipped paint shall be eliminated and surfaces repainted. All siding and masonry joints as well as those between the building envelope and the perimeter of windows, doors, and skylights shall be maintained weather resistant and water tight. All metal surfaces subject to rust or corrosion shall be coated to inhibit such rust and corrosion and all surfaces with rust or corrosion shall be stabilized and coated to inhibit future rust and corrosion. Oxidation stains shall be removed from exterior surfaces. Surfaces designed for stabilization by oxidation are exempt from this requirement.

**LOCATION:** House

**WORK TO BE PERFORMED:** Repair and paint trim on the house so it is in good repair and is in conformance with VMC304.2.

**VIOLATION: STRUCTURAL MEMBERS VMC 304.4.** All structural members shall be maintained free from deterioration, and shall be capable of safely supporting the imposed dead and live loads.

**LOCATION:** Enclosed Patio in rear of house

**WORK TO BE PERFORMED:** Remove or repair enclosed patio so it is structurally sound, in good repair and conforms with VMC 304.4.

**VIOLATION: EXTERIOR WALLS VMC 304.6.** All exterior walls shall be free from holes, breaks, and loose or rotting materials; and maintained weatherproof and properly surface coated where required to prevent deterioration.

**LOCATION:** Enclosed patio in rear of house

**WORK TO BE PERFORMED:** Repair or replace enclosed patio so it is structurally sound, in good repair and conforms with VMC 304.6.

**VIOLATION: ROOF AND DRAINAGE VMC 304.7.** The roof and flashing shall be sound, tight and not have defects that admit rain. Roof drainage shall be adequate to prevent dampness or deterioration in the walls or interior portion of the structure. Roof drains, gutters and downspouts shall be maintained in good repair and free from obstructions. Roof water shall be discharged in a manner to protect the foundation or slab of buildings and structures from the accumulation of roof drainage.

Lien K. Tran  
Anh L. Nguyen  
May 27, 2016  
SR 115980  
Page 3

**LOCATION:** Enclosed patio and house

**WORK TO BE PERFORMED:** Repair roof on enclosed patio and repair or remove gutters from enclosed patio and entire house.

All repairs, alterations, and/or additions must be made in accordance with applicable laws. Any additional violations that may appear as work progresses will require correction.

Information about obtaining any necessary permits required by other Fairfax County agencies may be obtained by calling (703)222-0801 and requesting the appropriate department. The owner of a building or structure, or the owner's agent or any other person involved in the use of the subject building or structure may appeal a decision of the Code Official concerning the application of the Virginia Maintenance Code to such building or structure and may also appeal a refusal by the Code Official to grant a modification to the provisions of this code pertaining to such building or structure. Applications for appeals shall be submitted in writing to the Fairfax County Board of Building and Fire Prevention Code Appeals within 14 calendar days of the decision being appealed. Appeal application forms may be obtained by contacting:

Fairfax County Board of Building and Fire Prevention Code Appeals  
Attention: Secretary to the Fairfax County Board of Building and Fire Prevention Code Appeals  
Department of Public Works and Environmental Services  
12055 Government Center Parkway, Suite 444  
Fairfax, VA 22035-5504  
Phone: (703)324-1780

Information and forms can also be obtained at:

[http://www.fairfaxcounty.gov/dpwes/publications/codemods\\_appeals.htm](http://www.fairfaxcounty.gov/dpwes/publications/codemods_appeals.htm)

Failure to submit an application for appeal within the time limit established shall constitute acceptance of the Code Official's decision.

The Fairfax County Board of Building and Fire Prevention Code Appeals shall meet within 30 calendar days after the date of receipt of the application for appeal.

A follow-up inspection will be made at the expiration of the time period outlined in this Notice. Failure to comply with the Notice will result in the initiation of appropriate legal action to gain compliance with the Virginia Maintenance Code which can result in court ordered sanctions or civil penalties. Civil penalties may be ordered in the amount of \$100.00 for each violation cited herein for the first violation and \$150.00 for each subsequent violation cited herein per day totaling up to \$4,000.00 in accordance with Fairfax County Code § 61-7-1(B).

Lien K. Tran  
Anh L. Nguyen  
May 27, 2016  
SR 115980  
Page 4

Civil penalties entered by the General District Court shall be paid to the Office of the County Attorney. Investigators may not accept any payments, including those associated with fines and fees.

In accordance with the code, the owner or person to whom this notice of violation has been issued is responsible for contacting me within the time frame established for any re-inspections to assure the violations have been corrected.

If you have any questions, would like to schedule an appointment to meet with an investigator, or schedule a follow up inspection, please contact me directly at (703)324-9337. For any other questions, contact our main office at (703)324-1300.

LEGAL NOTICE ISSUED BY:



Signature

Joan Maguire  
Code Compliance Investigator  
Joan.Maguire@fairfaxcounty.gov

Lien K. Tran  
Anh L. Nguyen  
May 27, 2016  
SR 115980  
Page 5

PERSONAL SERVICE

Being unable to make personal service a copy was delivered in the following manner:

- Delivered to a person found in charge of usual place of business or employment during business hours and giving information of its purport.
- Delivered to family member (not temporary sojourner or guest) age 16 or older at usual place of abode or party named above after giving information its purport. List name, age of recipient, and relation of recipient to party named above.

\_\_\_\_\_

Posted on front door or such other door as appears to be the main entrance of usual place of abode, address listed above (Other authorized recipient not found).

Served on a Secretary of the Commonwealth.

Not found.

J. Hernandez 773  
SERVING OFFICER

5/27/16 Stacey A. Kincaid, Sheriff  
DATE for \_\_\_\_\_  
Fairfax County, VA

PERSONAL SERVICE

Being unable to make personal service a copy was delivered in the following manner:

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\_\_\_\_\_

Posted on front door or such other door as appears to be the main entrance of usual place of abode, address listed above (Other authorized recipient not found).

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Not found.

\_\_\_\_\_

SERVING OFFICER  
for \_\_\_\_\_

DATE

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\_\_\_\_\_

Posted on front door or such other door as appears to be the main entrance of usual place of abode, address listed above (Other authorized recipient not found).

Served on a Secretary of the Commonwealth.

Not found.

\_\_\_\_\_

SERVING OFFICER  
for \_\_\_\_\_

DATE



# County of Fairfax, Virginia

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

## NOTICE OF VIOLATION Virginia Maintenance Code

**DATE OF ISSUANCE:** May 29, 2015

**METHOD OF SERVICE:** OFFICE OF THE SHERIFF

**LEGAL NOTICE ISSUED TO:** Lien K. Tran  
Anh K. Nguyen

**ADDRESS:** 7101 Carol Lane  
Falls Church, VA 22042

**LOCATION OF VIOLATION:** 7101 Carol Lane  
Falls Church, Virginia 22042-3713

**TAX MAP REF:** 0601 16 0010A

**CASE #:** 201502800 **SR #:** 115980

**ISSUING INVESTIGATOR:** Joan Maguire, (703)324-9337

### POTENTIAL CIVIL PENALTIES PURSUANT TO FAIRFAX COUNTY

CODE § 61-7-1(B): Maintenance Code Violation(s)	First Offense	Each Subsequent Offense
§VMC304.13	\$ 100.00	\$ 150.00
§VMC304.2	\$ 100.00	\$ 150.00
§VMC304.7	\$ 100.00	\$ 150.00
<b>TOTAL:</b>	<b>\$ 300.00</b>	<b>\$ 450.00</b>

Dear Responsible Party:

In accordance with the Virginia Maintenance Code (Part III of the Uniform Statewide Building Code-2012 Edition), an inspection on May 19, 2015 revealed violations as listed below at the referenced location. The cited violations must be corrected within **30 days** from receipt of this notice unless otherwise indicated.

**VIOLATION: WINDOW, SKYLIGHT & DOOR FRAMES VMC 304.13.** Every window, skylight, door and frame shall be kept in sound condition and good repair and weather tight.

Department of Code Compliance  
12055 Government Center Parkway, Suite 1016  
Fairfax, Virginia 22035-5508  
Phone 703-324-1300 Fax 703-653-9459 TTY 711  
www.fairfaxcounty.gov/code

**LOCATION:** Back of house

**WORK TO BE PERFORMED:** Repair window so it is structurally sound and in conformance with VMC 304.13.

**VIOLATION: PROTECTIVE TREATMENT VMC 304.2.** All exterior surfaces, including but not limited to, doors, door and window frames, cornices, porches, trim, balconies, decks and fences shall be maintained in good condition. Exterior wood surfaces, other than decay-resistant woods, shall be protected from the elements and decay by painting or other protective covering or treatment. Peeling, flaking and chipped paint shall be eliminated and surfaces repainted. All siding and masonry joints as well as those between the building envelope and the perimeter of windows, doors, and skylights shall be maintained weather resistant and water tight. All metal surfaces subject to rust or corrosion shall be coated to inhibit such rust and corrosion and all surfaces with rust or corrosion shall be stabilized and coated to inhibit future rust and corrosion. Oxidation stains shall be removed from exterior surfaces. Surfaces designed for stabilization by oxidation are exempt from this requirement.

**LOCATION:** House

**WORK TO BE PERFORMED:** Repair and paint trim on the house so it is in good repair and is in conformance with VMC304.2.

**VIOLATION: ROOF AND DRAINAGE VMC 304.7.** The roof and flashing shall be sound, tight and not have defects that admit rain. Roof drainage shall be adequate to prevent dampness or deterioration in the walls or interior portion of the structure. Roof drains, gutters and downspouts shall be maintained in good repair and free from obstructions. Roof water shall be discharged in a manner to protect the foundation or slab of buildings and structures from the accumulation of roof drainage.

**LOCATION:** House

**WORK TO BE PERFORMED:** Remove or repair gutters and downspouts so they are in conformance with VMC304.7.

All repairs, alterations, and/or additions must be made in accordance with applicable laws. Any additional violations that may appear as work progresses will require correction.

Information about obtaining any necessary permits required by other Fairfax County agencies may be obtained by calling (703)222-0801 and requesting the appropriate department. The owner of a building or structure, or the owner's agent or any other person involved in the use of the subject building or structure may appeal a decision of the Code Official concerning the application of the Virginia Maintenance Code to such building or structure and may also appeal a refusal by the Code Official to grant a modification to the provisions of this code pertaining to such building or structure. Applications for appeals shall be submitted in writing to the Fairfax County Board of Building and Fire

Lien K. Tran  
May 29, 2015  
SR 115980  
Page 3

Prevention Code Appeals within 14 calendar days of the decision being appealed. Appeal application forms may be obtained by contacting:

Fairfax County Board of Building and Fire Prevention Code Appeals  
Attention: Secretary to the Fairfax County Board of Building and Fire Prevention Code Appeals  
Department of Public Works and Environmental Services  
12055 Government Center Parkway, Suite 444  
Fairfax, VA 22035-5504  
Phone: (703)324-1780

Information and forms can also be obtained at:

[http://www.fairfaxcounty.gov/dpwes/publications/codemods\\_appeals.htm](http://www.fairfaxcounty.gov/dpwes/publications/codemods_appeals.htm)

Failure to submit an application for appeal within the time limit established shall constitute acceptance of the Code Official's decision.

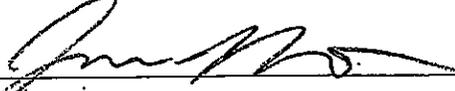
The Fairfax County Board of Building and Fire Prevention Code Appeals shall meet within 30 calendar days after the date of receipt of the application for appeal.

A follow-up inspection will be made at the expiration of the time period outlined in this Notice. Failure to comply with the Notice will result in the initiation of appropriate legal action to gain compliance with the Virginia Maintenance Code which can result in court ordered sanctions or civil penalties. Civil penalties may be ordered in the amount of \$100.00 for each violation cited herein for the first violation and \$150.00 for each subsequent violation cited herein per day totaling up to \$4,000.00 in accordance with Fairfax County Code § 61-7-1(B).

In accordance with the code, the owner or person to whom this notice of violation has been issued is responsible for contacting me within the time frame established for any re-inspections to assure the violations have been corrected.

If you have any questions, would like to schedule an appointment to meet with an investigator, or schedule a follow up inspection, please contact me directly at (703)324-9337. For any other questions, contact our main office at (703)324-1300.

LEGAL NOTICE ISSUED BY:

  
\_\_\_\_\_  
Signature

Joan Maguire  
Code Compliance Investigator  
Joan.Maguire@fairfaxcounty.gov

PERSONAL SERVICE

Being unable to make personal service a copy was delivered in the following manner:

- Delivered to a person found in charge of usual place of business or employment during business hours and giving information of its purport.
- Delivered to family member (not temporary sojourner or guest) age 16 or older at usual place of abode or party named above after giving information its purport. List name, age of recipient, and relation of recipient to party named above.

\_\_\_\_\_

Posted on front door or such other door as appears to be the main entrance of usual place of abode, address listed above (Other authorized recipient not found).

Served on a Secretary of the Commonwealth.

Not found.

\_\_\_\_\_

*J. Silver*  
SERVING OFFICER

5-29-15 DATE for Stacey A. Kincaid, Sheriff  
Fairfax County, VA

PERSONAL SERVICE

Being unable to make personal service a copy was delivered in the following manner:

- Delivered to a person found in charge of usual place of business or employment during business hours and giving information of its purport.
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Not found.

\_\_\_\_\_

SERVING OFFICER  
for \_\_\_\_\_

DATE

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Served on a Secretary of the Commonwealth.

Not found.

\_\_\_\_\_

SERVING OFFICER  
for \_\_\_\_\_

DATE



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Tracking Number: 70142120000310272714

Updated Delivery Day: Monday, June 1, 2015

## Product & Tracking Information

## Available Actions

Postal Product:                      Features:  
   Certified Mail™

DATE & TIME	STATUS OF ITEM	LOCATION
June 4, 2015 , 9:37 am	Delivered	FALLS CHURCH, VA 22042

Your item was delivered at 9:37 am on June 4, 2015 in FALLS CHURCH, VA 22042.

June 1, 2015 , 1:38 pm	Notice Left (No Authorized Recipient Available)	FALLS CHURCH, VA 22042
June 1, 2015 , 8:35 am	Out for Delivery	FAIRFAX, VA 22031
June 1, 2015 , 8:25 am	Sorting Complete	FAIRFAX, VA 22031
June 1, 2015 , 7:04 am	Arrived at Unit	FAIRFAX, VA 22031
May 31, 2015 , 11:58 am	Departed USPS Facility	MERRIFIELD, VA 22081
May 29, 2015 , 9:52 pm	Arrived at USPS Facility	MERRIFIELD, VA 22081

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# County of Fairfax, Virginia

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

## NOTICE OF VIOLATION Virginia Maintenance Code

**DATE OF ISSUANCE:** May 29, 2015

**METHOD OF SERVICE:** CERTIFIED MAIL # 7014 2120 0003 1027 2714

**LEGAL NOTICE ISSUED TO:** Lien K. Tran  
Anh L. Nguyen

**ADDRESS:** 7101 Carol Lane  
Falls Church, VA 22042

**LOCATION OF VIOLATION:** 7101 Carol Lane  
Falls Church, Virginia 22042-3713

**TAX MAP REF:** 0601 16 0010A

**CASE #:** 201502800 **SR #:** 115980

**ISSUING INVESTIGATOR:** Joan Maguire, (703)324-9337

### POTENTIAL CIVIL PENALTIES PURSUANT TO FAIRFAX COUNTY

CODE § 61-7-1(B):	Maintenance Code Violation(s)	First Offense	Each Subsequent Offense
	§VMC304.13	\$ 100.00	\$ 150.00
	§VMC304.2	\$ 100.00	\$ 150.00
	§VMC304.7	\$ 100.00	\$ 150.00
<b>TOTAL:</b>		<b>\$ 300.00</b>	<b>\$ 450.00</b>

Dear Responsible Party:

In accordance with the Virginia Maintenance Code (Part III of the Uniform Statewide Building Code-2012 Edition), an inspection on May 19, 2015 revealed violations as listed below at the referenced location. The cited violations must be corrected within **30 days** from receipt of this notice unless otherwise indicated.

**VIOLATION: WINDOW, SKYLIGHT & DOOR FRAMES VMC 304.13.** Every window, skylight, door and frame shall be kept in sound condition and good repair and weather tight.

Department of Code Compliance  
12055 Government Center Parkway, Suite 1016  
Fairfax, Virginia 22035-5508  
Phone 703-324-1300 Fax 703-653-9459 TTY 711  
www.fairfaxcounty.gov/code

**LOCATION:** Back of house

**WORK TO BE PERFORMED:** Repair window so it is structurally sound and in conformance with VMC 304.13.

**VIOLATION: PROTECTIVE TREATMENT VMC 304.2.** All exterior surfaces, including but not limited to, doors, door and window frames, cornices, porches, trim, balconies, decks and fences shall be maintained in good condition. Exterior wood surfaces, other than decay-resistant woods, shall be protected from the elements and decay by painting or other protective covering or treatment. Peeling, flaking and chipped paint shall be eliminated and surfaces repainted. All siding and masonry joints as well as those between the building envelope and the perimeter of windows, doors, and skylights shall be maintained weather resistant and water tight. All metal surfaces subject to rust or corrosion shall be coated to inhibit such rust and corrosion and all surfaces with rust or corrosion shall be stabilized and coated to inhibit future rust and corrosion. Oxidation stains shall be removed from exterior surfaces. Surfaces designed for stabilization by oxidation are exempt from this requirement.

**LOCATION:** House

**WORK TO BE PERFORMED:** Repair and paint trim on the house so it is in good repair and is in conformance with VMC304.2.

**VIOLATION: ROOF AND DRAINAGE VMC 304.7.** The roof and flashing shall be sound, tight and not have defects that admit rain. Roof drainage shall be adequate to prevent dampness or deterioration in the walls or interior portion of the structure. Roof drains, gutters and downspouts shall be maintained in good repair and free from obstructions. Roof water shall be discharged in a manner to protect the foundation or slab of buildings and structures from the accumulation of roof drainage.

**LOCATION:** House

**WORK TO BE PERFORMED:** Remove or repair gutters and downspouts so they are in conformance with VMC304.7.

All repairs, alterations, and/or additions must be made in accordance with applicable laws. Any additional violations that may appear as work progresses will require correction.

Information about obtaining any necessary permits required by other Fairfax County agencies may be obtained by calling (703)222-0801 and requesting the appropriate department. The owner of a building or structure, or the owner's agent or any other person involved in the use of the subject building or structure may appeal a decision of the Code Official concerning the application of the Virginia Maintenance Code to such building or structure and may also appeal a refusal by the Code Official to grant a modification to the provisions of this code pertaining to such building or structure. Applications for appeals shall be submitted in writing to the Fairfax County Board of Building and Fire

Lien K. Tran  
May 29, 2015  
SR 115980  
Page 3

Prevention Code Appeals within 14 calendar days of the decision being appealed. Appeal application forms may be obtained by contacting:

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Attention: Secretary to the Fairfax County Board of Building and Fire Prevention Code Appeals  
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Failure to submit an application for appeal within the time limit established shall constitute acceptance of the Code Official's decision.

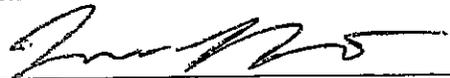
The Fairfax County Board of Building and Fire Prevention Code Appeals shall meet within 30 calendar days after the date of receipt of the application for appeal.

A follow-up inspection will be made at the expiration of the time period outlined in this Notice. Failure to comply with the Notice will result in the initiation of appropriate legal action to gain compliance with the Virginia Maintenance Code which can result in court ordered sanctions or civil penalties. Civil penalties may be ordered in the amount of \$100.00 for each violation cited herein for the first violation and \$150.00 for each subsequent violation cited herein per day totaling up to \$4,000.00 in accordance with Fairfax County Code § 61-7-1(B).

In accordance with the code, the owner or person to whom this notice of violation has been issued is responsible for contacting me within the time frame established for any re-inspections to assure the violations have been corrected.

If you have any questions, would like to schedule an appointment to meet with an investigator, or schedule a follow up inspection, please contact me directly at (703)324-9337. For any other questions, contact our main office at (703)324-1300.

LEGAL NOTICE ISSUED BY:

  
\_\_\_\_\_  
Signature

Joan Maguire  
Code Compliance Investigator  
Joan.Maguire@fairfaxcounty.gov



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Tracking Number: 70142120000310272714

Updated Delivery Day: Monday, June 1, 2015

## Product & Tracking Information

## Available Actions

Postal Product:

Features:  
Certified Mail™

DATE & TIME	STATUS OF ITEM	LOCATION
June 4, 2015, 9:37 am	Delivered	FALLS CHURCH, VA 22042

Your item was delivered at 9:37 am on June 4, 2015 in FALLS CHURCH, VA 22042.

June 1, 2015, 1:38 pm	Notice Left (No Authorized Recipient Available)	FALLS CHURCH, VA 22042
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Received



# Building Code Appeal Request

15.06.04.OAP

JUN - 4 2015

Project Name: \_\_\_\_\_

Project Address: 7101 CAROL LANE, Falls Church VA 22042

Permit or case number: \_\_\_\_\_ Tax map number: \_\_\_\_\_

Applicant Name: LIEN TRAN  Owner  Owner's agent

Address: 7101 Carol Lane

City: Falls Church State: VA ZIP: 22042

Phone: 571 338 3670 Email: alinguyen 7101@gmail.com

See applicant information

Owner Name: LIEN TRAN

Address: 7101 CAROL Lane

City: Falls Church State: VA ZIP: 22042

Phone: 571 338 3670 Email: alinguyen 7101. Gmail.com

Appealing decision made on the date of by  Building Official  Fire Official  Property Maintenance Official rendered on the following date:

Code(s) (IBC, IMC, IPMC, etc.) and year-edition: \_\_\_\_\_

Section(s): \_\_\_\_\_

Describe the code or design deficiency and practical difficulty in complying with the code provision:

Please return the completed form and any supporting documentation to the address or email below.

Chairman, Fairfax County Board of Building Code Appeals  
 12055 Government Center Parkway, Suite 444  
 Fairfax, VA 22035-5504  
 Attention: Secretary to the Board  
[buildingofficial@fairfaxcounty.gov](mailto:buildingofficial@fairfaxcounty.gov)



# County of Fairfax, Virginia

## MEMORANDUM

**DATE:** November 13, 2015

**TO:** Chairman and Members  
Fairfax County Board of Building and Fire Code Appeals

**FROM:** Elizabeth Perry *EP*  
Property Maintenance Code Official  
Department of Code Compliance

Joan Maguire  
Code Compliance Investigator  
Department of Code Compliance

**SUBJECT:** December 9, 2015 Appeal Hearing

**REFERENCE:** Appeal of:  
Lien K. Tran – Owner  
Anh K. Nguyen – Owner  
7101 Carol Lane  
Falls Church, VA 22042-3713

**CODE:** 2012 Virginia Maintenance Code

Staff of the Department of Code Compliance (DCC) respectfully request that the Fairfax County Board of Building and Fire Code Appeals (Board) uphold the decision in the Notice of Violation dated May 29, 2015 that the referenced property is in violation of the following sections of the Virginia Maintenance Code (VMC):

- VMC 304.13 – Window, Skylight & Door Frames
- VMC 304.2 – Protective Treatment
- VMC 304.7 – Roofs and Drainage

### Background Information

In response to a complaint, an inspection of the referenced property was conducted on May 19, 2015.

The referenced property is a detached single family dwelling located on a parcel of land which is sub-divided into two lots. In response to a complaint about the condition of the yard and the

house, an inspection was conducted by DCC Investigator Joan Maguire. During this inspection, Investigator Maguire observed several property maintenance issues regarding the condition of the outside of the house. There was chipped and peeling paint on many outdoor surfaces allowing the wood to rot. There was also a broken window on the back side of the house. The gutters around the entire house were clogged and some were detached from the house. Photos from the inspection are attached.

### **Notice of Violation**

Based on the May 19, 2015 inspection, a Notice of Violation was issued on May 29, 2015 via Office of the Sheriff and Certified Mail (attached) for the following violations of the VMC, along with work to be performed to abate the violations:

- VMC 304.13 – Repairing window in the back of the house so it is structurally sound and in good working condition.
- VMC 304.2 – Repair and paint trim on the entire house so it is in good repair and free of defects.
- VMC 304.7 – Remove or repair gutters and downspouts so they are in good working condition.

### **Appellant Position**

The appellant's appeal application is attached. No justification for the appeal was provided by the appellant. However, the appellant has previously explained the position to staff. This lot, 7101 Carol lane is sub-divided into two parcels, lot10A and lot10B. The homeowners have stated that they are going to be building a new single family dwelling on one lot while still living at the current house which is located on the adjacent lot. Eventually, the owners stated that they are planning on demolishing the current house and building another new single family dwelling in its place.

### **County Position**

Although the property owners expressed an intention to demolish the house, there is no required timeline in which the demolition would take place, nor does the Virginia Maintenance Code require that it be demolished.

The County has worked cooperatively with the property owners to identify reasonable timelines to come into compliance including granting a four (4) month extension. County staff does consider-and often grant-extensions of the prescribed timelines when compliance is being diligently pursued and/or appellants have a defined timeline in which they know they can comply. However, in this case the appellant has not come into compliance with the Notice of Violation, has been given a four (4) month extension, and the appellant does not have a definitive timeline for demolition.

**Recommendation**

The Virginia Maintenance Code has no requirements for demolishing a house; it does require the maintenance of the structure. In order to ensure the structural integrity of the current house if indeed the owners decide not to demolish it, staff recommends the Board uphold the decision of the Code Official without deferrals, and allow staff to proceed with the appropriate enforcement and legal proceedings as authorized in the Uniform Statewide Building Code (USBC).

The property owner should bring the property into compliance with the Virginia Maintenance Code, as directed in the Notice of Violation by either correcting the property maintenance violations to the house within thirty (30) days or applying for and receiving the necessary permits to demolish the current house.

BK 19627 1816

**OWNERS CONSENT AND DEDICATION**

THE PLATTING OR DEDICATION OF THE FOLLOWING DESCRIBED LAND, RAYMONDALE SECTION ONE LOT 10, AND AS DESCRIBED IN THE SURVEYOR'S CERTIFICATE IS WITH THE FREE CONSENT AND IN ACCORDANCE WITH THE DESIRE OF THE UNDERSIGNED OWNER, PROPRIETORS, AND TRUSTEES, IF ANY, THE UNDERSIGNED HEREBY EXPRESSLY CONSENT(S) TO THE PLATTING AND DEDICATION SHOWN HEREON.

BY: [Signature] DATE: 01/11/07  
SIGNATURE DATE

BY: [Signature] DATE: 01/11/07  
SIGNATURE DATE

COMMONWEALTH OF VIRGINIA  
COUNTY OF STAFFORD  
I, THE UNDERSIGNED, A NOTARY PUBLIC IN AND FOR THE COMMONWEALTH OF VIRGINIA, COUNTY OF STAFFORD, DO HEREBY CERTIFY THAT THE ABOVE OWNERS, DID PERSONALLY APPEAR BEFORE ME AND ACKNOWLEDGE THE SAME TO BE THE ACT AND DEED OF SAID OWNER.

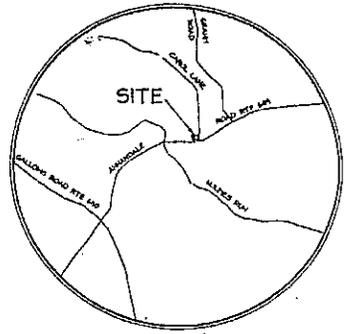
GIVEN UNDER MY HAND AND SEAL THIS 11<sup>TH</sup> DAY JAN OF 2007.

[Signature]  
NOTARY PUBLIC

MY COMMISSION EXPIRES 10/31/09

**GENERAL NOTES:**

- TAX MAP NUMBER FOR THE PROPERTY SHOWN HEREON IS 050-1-16-000 AND IS CURRENTLY ZONED RA. EXISTING ADDRESS: 7101 CAROL LANE.
- COURSES AND DISTANCES SHOWN HEREON ARE THE RESULT OF A RECORDED SUBDIVISION PLAT PREPARED BY J. D. PAYNE DATED JANUARY 15, 1956 DB. 1285 PG 363.
- ALL PROPERTY CORNERS WILL BE SET BY A LICENSED SURVEYOR.
- THIS PROPERTY IS NOT WITHIN A SPECIAL FLOOD HAZARD AREA. ITS WITHIN ZONE 'X' AS PER FLOOD INSURANCE RATE MAP, COMMUNITY PANEL NO. 5155250067D; REV DATE: MARCH 5, 1993.
- NO TITLE REPORT FURNISHED. PROPERTY SUBJECT TO EASEMENTS AND RESTRICTIONS OF RECORD OR OTHERWISE.
- WETLANDS DO NOT EXIST ON THIS LOT.
- IRP-IRON ROD FOUND
- IRP-IRON PIPE FOUND
- IRP-IRON PIPE SET
- OWNER/SUBDIVIDER:  
LIEN K. TRAN AND ANH K. NGUYEN  
7101 CAROL LANE  
FAIRFAX, VIRGINIA
- THIS PLAN IS IN COMPLIANCE WITH THE AMENDED CHESAPEAKE BAY ORDINANCE EFFECTIVE NOVEMBER 10, 2003.
- NO RESOURCE PROTECTION AREAS OR CONSERVATION AREAS EXIST ON THIS LOT; HOWEVER, WATER QUALITY MANAGEMENT AREA(S) (WQMA) ARE BEING GRANTED WITH THIS PLAT.
- NO CLEARING OR GRADING OR ACCESSORY STRUCTURES SHALL BE PERMITTED TO BE LOCATED WITHIN THE WQMA, WITH THE EXCEPTION OF NECESSARY UTILITY CROSSINGS. THE WQMA IS NOT TO BE DISTURBED WITHOUT PRIOR WRITTEN PERMISSION OF THE DIRECTOR OF THE DEPARTMENT OF PUBLIC WORKS AND ENVIRONMENTAL SERVICES.



**VICINITY MAP**  
SCALE: 1" = 200'

**THIS APPROVAL IS NOT A COMMITMENT TO PROVIDE PUBLIC SANITARY SEWER.**

I HEREBY CERTIFY THAT ALL WETLANDS PERMITS REQUIRED BY LAW WILL BE OBTAINED PRIOR TO COMMENCING LAND DISTURBING ACTIVITIES.  
(NOTE: NO WETLANDS EXIST ON THIS PROPERTY.)

SIGNATURE: [Signature]  
OWNER/DEVELOPER: LIEN K. TRAN NAME: OWNER TITLE: TITLE

**AREA TABULATION**

BEFORE SUBDIVISION		
LOT 10	26,441 SF	OR 0.6070 ACRES
AFTER SUBDIVISION		
LOT 10A	19870 SF	OR 0.4545 ACRES
LOT 10B	10907 SF	OR 0.2504 ACRES
R/W DEDICATION	1,964 SF	OR 0.0451 ACRES
TOTAL AREA	26,441 SF	OR 0.6070 ACRES

**APPROVAL BLOCK**

**FINAL PLAT**  
RECEIVED SET OF APPROVAL  
FAIRFAX COUNTY  
SITE REVIEW BRANCH CHECK  
BY: 2/28/07 BY: M. S. [Signature]  
DATE: [Signature]

APPROVED FOR:  
BOARD OF SUPERVISORS  
FAIRFAX COUNTY, VIRGINIA  
DATE: 6/16/07 BY: [Signature]

APPROVED  
COUNTY OF FAIRFAX  
OFFICE OF SITE DEVELOPMENT SERVICES  
SANITARY SEWER SECTION  
DATE: 3-22-07

**SURVEYOR'S CERTIFICATE**

I, SUSAN RENEE BENSON, A DULY LICENSED LAND SURVEYOR IN THE COMMONWEALTH OF VIRGINIA, DO HEREBY CERTIFY THAT I HAVE CAREFULLY REVIEWED THE INFORMATION OF RECORD OF THE PROPERTY DELINEATED BY THIS PLAT AND IS THE PROPERTY ACQUIRED BY LIEN K. TRAN AND ANH K. NGUYEN, AS RECORDED IN DB. 1043 PG. 269, AMONG THE LAND RECORDS OF FAIRFAX COUNTY, VIRGINIA. ALL OF THE REQUIREMENTS OF THE BOARD OF SUPERVISORS AND ORDINANCES OF FAIRFAX COUNTY, VIRGINIA REGARDING THE PLATTING OF SUBDIVISIONS WITHIN THE COUNTY, HAVE BEEN MET.



**GRAPHIC SCALE**



SUBDIVISION PLAT  
LOT 10  
**RAYMONDALE SECTION ONE**  
DB. 1285 PG. 348  
MASON DISTRICT  
FAIRFAX COUNTY, VIRGINIA  
SCALE: 1" = 30' FEB. 16, 2005  
**ODYSSEY ASSOCIATES, INC.**

Land Planning, Land Development Engineering and Surveying  
18270-N MEMORVILLE ROAD (703) 490-8844  
WOODBRIDGE, VA 22192 (703) 490-8888 FAX

4633-RP-002-3

DENSITY COMPUTATIONS.  
 SECTION ONE (DB. 1286 PG. 348) AREA = 7.181 ACRES - 218 ACRES (TO SECTION 3A LOT 63 (DB. 1480 PG. 1) = 6.683 ACRES 6.672 ACRES IN 14 LOTS (INCLUDES RESUB OF LOTS 12 AND 13) 0.241 ACRES IN STREETS 6.433 ACRES TOTAL

SECTION TWO (DB. 1287 PG. 316)  
 5,170 ACRES IN 10 LOTS  
 1,321 ACRES IN STREETS  
 6,491 ACRES TOTAL AREA

SECTION THREE (DB. 1285 PG. 346) ALSO INCLUDES LOT OF OF SECTION 2A (DB. 1554 PG. 141)  
 6,039 ACRES IN 10 LOTS  
 1,281 ACRES IN STREETS  
 7,320 ACRES TOTAL AREA

SECTION 3A (DB. 1480 PG. 1) (INCLUDES AREA FRONT OUTLOT 'A' FROM SECTION 1)  
 1,271 ACRES IN 3 LOTS  
 1,271 ACRES TOTAL AREA

SECTION 4 (DB. 1426 PG. 64)  
 2,864 ACRES IN 14 LOTS  
 1,105 ACRES IN STREETS  
 4,171 ACRES TOTAL AREA

SECTION 5 (DB. 1444 PG. 331)  
 3,207 ACRES IN 14 LOTS  
 1,074 ACRES IN STREETS  
 4,281 ACRES TOTAL AREA (RESUB OF LOTS 90 & 95 IN SECTION 5 (DB. 1563 PG. 241) - 2,235 ACRES IN 4 LOTS 0.274 ACRES IN STREETS 3,023 ACRES TOTAL AREA

SECTION 6 (DB. 1494 PG. 320)  
 3,790 ACRES IN 10 LOTS  
 0.726 ACRES IN STREETS  
 4,516 ACRES TOTAL AREA

SECTION 7 (DB. 1546 PG. 249)  
 4,101 ACRES IN 18 LOTS  
 0.932 ACRES IN STREETS  
 5,033 ACRES TOTAL AREA

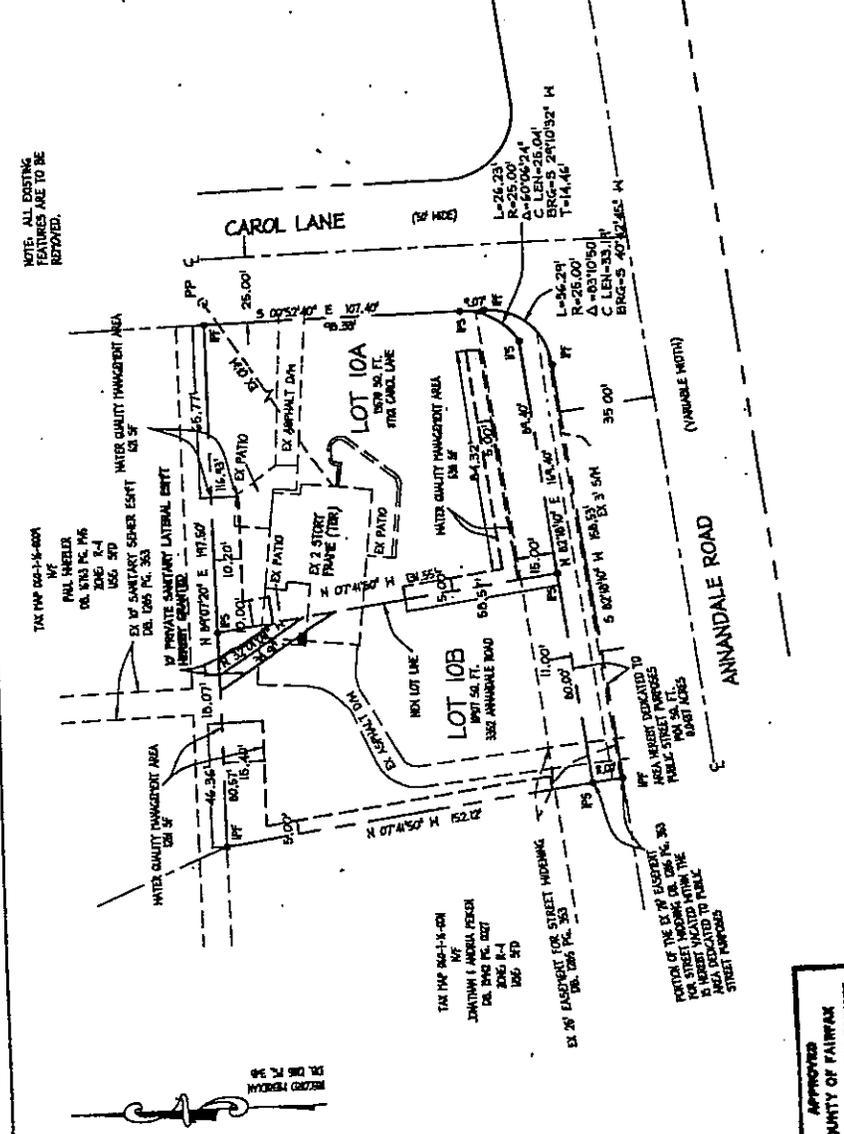
SECTION 8 (DB. 1543 PG. 241)  
 2,286 ACRES + 0.028 ACRES IN 10 LOTS  
 1,048 ACRES IN STREETS  
 3,334 ACRES TOTAL AREA

SECTION 9 (DB. 1543 PG. 241) FOR THE RESUB OF LOT 120 (DB. 1608 PG. 327)  
 2,286 ACRES IN 10 LOTS  
 1,048 ACRES IN STREETS  
 3,334 ACRES TOTAL AREA

BOODER'S ADDITION TO RAYMONDALE (DB. 1927 PG. 554)  
 3,954 ACRES IN 11 LOTS  
 0.550 ACRES IN STREETS  
 4,504 ACRES TOTAL AREA

TOTAL AREA ALL SECTIONS = 51,945 ACRES  
 TOTAL NUMBER OF LOTS (ALL SECTIONS) = 140 LOTS EXISTING  
 TOTAL NUMBER OF LOTS (ALL SECTIONS) PROPOSED = 141 LOTS PROPOSED

ALLOTTED DENSITY = 0.25 AC PER DU OR 4 DU/AC  
 EXISTING SUBDIVISION DENSITY = 51,945 ACRES / 140 LOTS = 371 AC PER DU  
 PROPOSED DENSITY = 51,945 ACRES / 141 DU = 368 AC PER DU OR 2.72 DU/AC



THIS APPROVAL IS NOT A COMMITMENT TO PROVIDE PUBLIC SANITARY SEWER.

COMMITMENT OF PUBLIC WORKS AND UTILITIES SERVICES

APPROVED  
 COUNTY OF FAIRFAX  
 BOARD OF SUPERVISORS  
 10/16/07

APPROVED  
 COUNTY OF FAIRFAX  
 BOARD OF SUPERVISORS  
 10/16/07

SUBDIVISION PLAT  
 LOT 10  
**RAYMONDALE SECTION ONE**  
 DB. 1285 PG. 346  
 MASON DISTRICT  
 FAIRFAX COUNTY, VIRGINIA  
 SCALE: 1" = 30'  
 FEB. 16, 2005  
**ODYSSEY ASSOCIATES, INC.**  
 Land Planning, Land Development Engineering and Surveying  
 14870-B MINNISTILLE ROAD  
 (703) 490-8044  
 (703) 490-8118 FAX



SHEET 2





Case #: 201502800

Address: 7101 Carol La  
Falls Church, VA 22042-3713

Photographer:

  
Joan Maguire, Investigator  
County of Fairfax, Dept. of Code Compliance

1



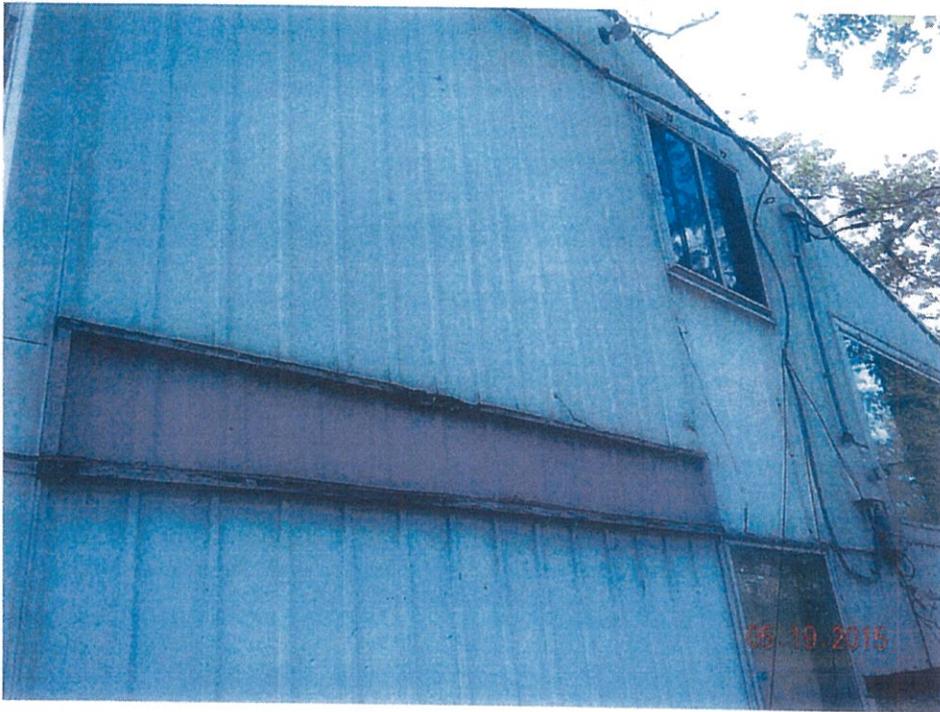
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1



Case #: 201502800

Address: 7101 Carol Ln  
Falls Church, VA 22042-3713

Photographer

  
Joan Maguire, Investigator  
County of Fairfax, Dept. of Code Compliance

Received



# Building Code Appeal Request

15.0604.OAP

JUN - 4 2015

Project Name: \_\_\_\_\_

Project Address: 7101 CAROL LANE, Falls Church VA 22042

Permit or case number: \_\_\_\_\_ Tax map number: \_\_\_\_\_

Applicant Name: LIEN TRAN  Owner  Owner's agent

Address: 7101 Carol Lane

City: Falls Church State: VA ZIP: 22042

Phone: 571 338 3670 Email: aliquyen 7101@gmail.com

See applicant information

Owner Name: LIEN TRAN

Address: 7101 CAROL Lane

City: Falls Church State: VA ZIP: 22042

Phone: 571 338 3670 Email: aliquyen 7101@gmail.com

Appealing decision made on the date of by  Building Official  Fire Official  Property Maintenance Official rendered on the following date:

Code(s) (IBC, IMC, IPMC, etc.) and year-edition: \_\_\_\_\_

Section(s): \_\_\_\_\_

Describe the code or design deficiency and practical difficulty in complying with the code provision:

Please return the completed form and any supporting documentation to the address or email below.

Chairman, Fairfax County Board of Building Code Appeals  
 12055 Government Center Parkway, Suite 444  
 Fairfax, VA 22035-5504  
 Attention: Secretary to the Board  
[buildingofficial@fairfaxcounty.gov](mailto:buildingofficial@fairfaxcounty.gov)

# FAIRFAX COUNTY, VIRGINIA MEMORANDUM

DATE: November 18, 2015

**TO:** Chairman, Members  
Fairfax County Board of Building Code Appeals

**FROM:** Carla Guerra-Moran  
Secretary to the Board

**SUBJECT:** Board of Appeals Hearing 10:00 a.m., **Wednesday, December 9, 2015, in Room 941 (9th Floor) of the Herryty Building**, 12055 Government Center Parkway, Fairfax, VA 22035.

The following appeals are scheduled to be considered at the above referenced meeting:

- **3813-E South George Mason Drive (151003.0AP)**  
Sirak Belayneh, PE – NOV issued by DCC  
Several violations
- **7101 Carol Lane (150604.0AP)**  
Lien Tran – NOV issued by DCC on May 29, 2015  
2012 VMC (Part III of the VUSBC), Sections 304.13, 304.2, 304.7
- **7907 Yarnwood Court (151006.0AP)**  
Manuel Pereira, Mann Realty, Inc. – NOV issued by FRD on September 17, 2015  
Chapter 62 Code of Fairfax County (Fire Lanes)
- **4613 Randolph Drive (151116.0AP)**  
David Laux – NOV issued by DCC on October 26, 2015 – Unpermitted Construction  
VUSBC 2012, Sections 108.1, 108.2, 110.1, 113.3

**Attachment: Documentation for the appeals listed above.**

cc: Brian Foley, Building Official  
Chris McArtor, Deputy Building Official  
Richard Grace, Building Code Services Manager / Liaison to the Board of Building Code Appeals  
Christopher A. Costa, Assistant County Attorney, Office of the County Attorney  
William D. Hicks, Director, Land Development Services (LDS)  
Paul Shirey, Director, Code Development and Compliance, LDS  
Al Sanchez, Supervising Combination Inspector, LDS  
Melissa Smarr, Code Specialist III, Land Disturbance & Post Occupancy, LDS  
Debbie McMahon, Code Specialist II, Code Services, LDS  
John Zemlan, Senior Engineer Inspector, LDS  
George Hollingsworth, Captain II, Department of Fire and Rescue (FRD)  
Joseph Vacchio, Investigator, FRD  
Elizabeth Perry, Code Authority/Strategic Initiative Manager, Department of Code Compliance (DCC)  
Karen McClellan, Operations Manager, DCC  
Rachael Perrott, Supervisor, DCC  
Susan Epstein, Supervisor, DCC  
Rick Antonowics, Code Compliance Investigator, DCC  
Joan Maguire, Code Compliance Investigator, DCC  
Appellants: Sirak Belayneh, Lien Tran, Manuel Pereira, David Laux

**Fwd: BBCA - December 9 - 7101 Carol Lane**

Anh [alinguyen7101@gmail.com]

**Sent:** Thursday, November 19, 2015 11:37 AM

**To:** TREJO, TATIANA

**Attachments:** Cover Letter.docx (24 KB) ; ATT00001.htm (232 B)

Sent from my iPhone

Begin forwarded message:

**From:** "Guerra-Moran, Carla C." <[Carla.Guerra-Moran@fairfaxcounty.gov](mailto:Carla.Guerra-Moran@fairfaxcounty.gov)>

**Date:** 10:08:15 GMT-5 Ngày 18 tháng 11 năm 2015

**To:** "[alinguyen7101@gmail.com](mailto:alinguyen7101@gmail.com)" <[alinguyen7101@gmail.com](mailto:alinguyen7101@gmail.com)>

**Subject:** BBCA - December 9 - 7101 Carol Lane

Dear Mr. Tran,

Your appeal will be heard on December 9.  
Please see attachment.

Best Regards,  
Carla

**Carla Guerra-Moran**

Secretary to the Board of Building Code Appeals

[Carla.Guerra-Moran@fairfaxcounty.gov](mailto:Carla.Guerra-Moran@fairfaxcounty.gov)

703-324-1780

## RESOLUTION

WHEREAS, the Fairfax County Board of Building Code Appeals (the Board) is duly appointed to resolve disputes arising out of the enforcement of the VMC, 2012 edition.  
and

WHEREAS, an appeal has been timely filed and brought to the attention of the Board, and  
WHEREAS, a hearing has been duly held to consider the aforementioned appeal, and  
WHEREAS, the Board has fully deliberated this matter; now, therefore, be it

RESOLVED, That the matter of

Appeal No. 150604.0AP  
In RE: Lien K. Tran  
Anh K. Nguyen  
7101 Carol Lane  
Falls Church, VA 22042

v. Fairfax County Department of  
Code Compliance

The appeal is hereby denied by a vote of 5-0.

FURTHER, be it known that:

1. This decision is solely for this case and its surrounding circumstances.
2. This decision does not serve as a precedent for any future cases or situations, regardless of how similar they may appear.

Date: 12/11/2015

Signature: 

J. Christopher Fox  
Chairman, Board of Building Code Appeals

Note: Upon receipt of this resolution, any person who was a party to the appeal may appeal to the State Building Code Technical Review Board within twenty-one (21) days of receipt of this resolution. Application forms are available from the Virginia Department of Housing and Community Development, 600 East Main Street, Suite 300, Richmond, VA 23219 or by calling 804-371-7150.

Carla Guerra-Moran hereby certify that this is  
CUSTODIAN  
a true copy of a Fairfax County Department of  
Public Works & Environmental Services record of which  
I am a custodian.

Carla Guerra-Moran  
CUSTODIAN

Brian Foley hereby certify that this is  
SUPERVISOR OF CUSTODIAN  
a true copy of a Fairfax County Department of  
Public Works & Environmental Services record of  
which Carla Guerra-Moran is the custodian and that  
CUSTODIAN  
Carla Guerra-Moran reports to me.

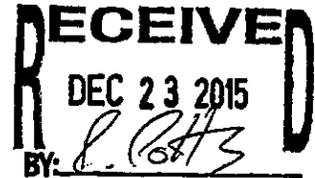
Brian Foley  
SUPERVISOR OF CUSTODIAN

COMMONWEALTH OF VIRGINIA  
DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT  
State Building Codes Office and Office of the State Technical Review Board  
Main Street Centre, 600 E. Main Street, Suite 300, Richmond, Virginia 23219  
Tel: (804) 371-7150, Fax: (804) 371-7092, Email: alan.mcmahan@dhcd.virginia.gov

APPLICATION FOR ADMINISTRATIVE APPEAL

Regulation Serving as Basis of Appeal (check one):

- Uniform Statewide Building Code  
 Statewide Fire Prevention Code  
 Industrialized Building Safety Regulations  
 Amusement Device Regulations



Appealing Party Information (name, address, telephone number and email address):

Opposing Party Information (name, address, telephone number and email address of all other parties):

Additional Information (to be submitted with this application)

- Copy of enforcement decision being appealed  
 Copy of record and decision of local government appeals board (if applicable and available)  
 Statement of specific relief sought

CERTIFICATE OF SERVICE

I hereby certify that on the 23 day of DEC, 2015, a completed copy of this application, including the additional information required above, was either mailed, hand delivered, emailed or sent by facsimile to the Office of the State Technical Review Board and to all opposing parties listed.

**Note:** This application must be received by the Office of the State Technical Review Board within five (5) working days of the date on the above certificate of service for that date to be considered as the filing date of the appeal. If not received within five (5) working days, the date this application is actually received by the Office of the Review Board will be considered to be the filing date.

Signature of Applicant:  

Name of Applicant: LIEN TRAN ANH NGUYEN  
(please print or type)