BZA Case # 2012-0008

APPEAL APPLICATION
BOARD OF ZONING APPEALS

APR 16 2012

Identify the order, requirement, decision or determination that is the subject of the appeal. Attach one copy to the application.

Conclusion by the Director that 724 Timber Branch Drive is not eligible for SUP consideration for construction of a new single family dwelling.

On what date was the order, requirement, decision or determination made?

March 15, 2012

***The appeal must be filed within 30 days from the date that the order, requirement, decision or determination was made.**

PART A

1. **Applicant:** [ ] Owner [ ] Contract Purchaser [X] Agent

   Name Jonathan Clark TR

   Address 7227 Auburn Street

   Annandale, Va. 22003

   Daytime Phone 703 994-7174

   Email Address jumnc@verizon.net

2. **Property Location** 724 Timber Branch Dr. Alex. Va.

3. **Assessment Map #** 042.01 **Block** 03 **Lot** 17

   Zone R-8

4. **Legal Property Owner Name** Violet Clark Qual. Per. Res. Trust

   Address 7227 Auburn Street

   Annandale, Va.

BZA Case # 2012-0008

5. **If property owner or applicant is being represented by an authorized agent,** such as an attorney, realtor or other person for which there is a form of compensation, does this agent or the business in which they are employed have a business license to operate in the City of Alexandria, Virginia?

Don't know yet

- ☐ Yes, Provide proof of current City business license.
- ☐ No, Said agent shall be required to obtain a business license prior to filing application.

THE UNDERSIGNED HEREBY ATTESTS that all of the information herein provided including the site plan, building elevations, prospective drawings of the projects, etc., are true, correct and accurate. The undersigned further understands that, should such information be found incorrect, any action taken by the Board based on such information may be invalidated. The undersigned also hereby grants the City of Alexandria permission to post placard notice as required by Article XI, Division A, Section 11-301(B) of the 1992 Alexandria City Zoning Ordinance, on the property which is the subject of this application. The applicant, if other than the property owner, also attests that he/she has obtained permission from the property owner to make this application.

APPLICANT OR AUTHORIZED AGENT:

Jonathan Clark
Print Name

Signature

4/15/12
Date

Pursuant to Section 13-3-2 of the City Code, the use of a document containing false information may constitute a Class 1 misdemeanor and may result in a punishment of a year in jail or $2,500 or both. It may also constitute grounds to revoke the permit applied for with such information.

BZA 2012-0008

See attached

OWNERSHIP AND DISCLOSURE STATEMENT

Use additional sheets if necessary

1. Applicant. State the name, address and percent of ownership of any person or entity owning an interest in the applicant, unless the entity is a corporation or partnership, in which case identify each owner of more than ten percent. The term ownership interest shall include any legal or equitable interest held at the time of the application in the real property which is the subject of the application.

Name	Address	Percent of Ownership
1.		
2.		
3.		

2. Property. State the name, address and percent of ownership of any person or entity owning an interest in the property located at _____(address), unless the entity is a corporation or partnership, in which case identify each owner of more than ten percent. The term ownership interest shall include any legal or equitable interest held at the time of the application in the real property which is the subject of the application.

Name	Address	Percent of Ownership
1.		
2.		
3.		

3. Business or Financial Relationships. Each person or entity indicated above in sections 1 and 2, with an ownership interest in the applicant or in the subject property are require to disclose **any** business or financial relationship, as defined by Section 11-350 of the Zoning Ordinance, existing at the time of this application, or within the12-month period prior to the submission of this application with any member of the Alexandria City Council, Planning Commission, Board of Zoning Appeals or either Boards of Architectural Review. **All fields must be filled out completely. Do not leave blank. (If there are no relationships please indicated each person or entity below and "None" in the corresponding fields)**

Name of person or entity	Relationship as defined by Section 11-350 of the Zoning Ordinance	Member of the Approving Body (i.e. City Council, Planning Commission, etc.)
1.		
2.		
3.		

NOTE: Business or financial relationships of the type described in Sec. 11-350 that arise after the filing of this application and before each public hearing must be disclosed prior to the public hearings.

As the applicant or the applicant's authorized agent, I hereby attest to the best of my ability that the information provided above is true and correct.

_____	_____	_____
Date	Printed Name	Signature

Alexandria City Council
William Euille
Kerry Donley
Frank Fannon IV
Alicia Hughes
Redella "Del" Pepper
Paul Smedberg
Rob Krupicka

Planning Commission
John Komoroske
H. Stewart Dunn, Jr.
Jesse Jennings
Mary Lyman
J. Lawrence Robinson
Eric Wagner
Donna Fossum

Board of Zoning Appeals
Mark Allen
Geoffrey Goodale
John Keegan
Stephen Koenig
David Lantzy
Jennifer Lewis
Eric Zander

Board of Architectural Review
Old and Historic District
Chip Carlin
Oscar Fitzgerald
Thomas Hulfish
Arthur Keleher
Wayne Neale
Peter Smeallie
John Von Senden

Board of Architectural Review
Parker-Gray District
William Conkey
Theresa del Ninno
Robert Duffy
Christina Kelley
Douglas Meick
Philip Moffat

Updated 8/2/2011

Definition of business and financial relationship.

Section 11-305 of the Zoning Ordinance defines a business or financial relationship as any of the following:

(1) a direct one;
(2) by way of an ownership entity in which the member or a member of his immediate household is a partner, employee, agent or attorney;
(3) through a partner of the member or a member of his immediate household;
(4) through a corporation in which any of them is an officer, director, employee, agent or attorney or holds 10 percent or more of the outstanding bonds or shares of stock of a particular class. In the case of a condominium, this threshold shall apply only if the applicant is the title owner, contract purchaser, or lessee of 10% or more of the units in the condominium;
(5) not as an ordinary customer or depositor relationship with a professional or other service provider, retail establishment, public utility or bank, which relationship shall not be considered a business or financial relationship;
(6) created by the receipt by the member, or by a person, firm, corporation or committee on behalf of the member, of any gift or donation having a value of more than $100, singularly or in the aggregate, during the 12-month period prior to the hearing on the application from the applicant.

BZA 2012-0008

Appeal Application BZA - 724 Timber Branch Drive

Pg 4a

1. Applicant percent ownership

Name	Address	Percent Ownership
Jonathan Clark	7227 Auburn Street Annandale, Va 22003	16.7
Carolyn Clark	7227 Auburn Street Annandale, Va 22003	16.7
Robin Clark	11661 Sunset Loop NE Bainbridge Island, WA 98110	16.7
Angela Clark	11661 Sunset Loop NE Bainbridge Island, WA 98110	16.7
Kevin Clark	126 Warner Street Belchertown, Mass 01007	16.7
Leah Hewitt	126 Warner Street Belchertown, Mass 01007	16.7

2. Property 724 Timber Branch Drive Same as 1 above.
3. Business of or Financial Relationships

Name of Person or Entity	Relationship as defined by Section 11-350 of the Zoning Ordinance	Member of the Approving Body
All	None	Mark Allen
Jonathan Clark	None	Geoffrey Goodale
Carolyn Clark	None	John Keegan
Robin Clark	None	Stephen Koenig
Angela Clark	None	David Lantzy
Kevin Clark	None	Jennifer Lewis
Leah Hewitt	None	Eric Zander

As the applicant's authorized agent. I hereby attest to the best of my ability that the above information provided above is true and correct.

4/16/12 Jonathan Clark TR

See attached

BZA Case # 2012-0008

PART B

1. **Why do you believe the order, requirement, decision or determination is incorrect? Explain the basis for the appeal, beginning in the following space and using additional pages, if necessary.**

2012-0008

Appeal Application- BZA 724 Timber Branch Drive, Alexandria Va.

Part B -1

Why do you believe the order, requirement, decision or determination is incorrect? Explain the basis for the appeal, beginning in the following space and using additional pages, if necessary.

Justification for this appeal and its approval is best described by Deputy Director Barbara Ross: "If we enforce compliance with the zoning, are we asking someone to do the wrong thing in this very special location? And we submit that you would be. Therefore that constitutes and unreasonable restriction. ... It is really important under that standard that you have to go by every time you do variance, that looking at the character of the neighborhood ... whether its Rosemont, or Delray or North Ridge or where ever it is you have to take into account what location you are looking at. ... And so first we look at the zoning ordinance we say ouch this is a new building is that really right. Then we look at the location and we say yikes, we've gotta do the right thing here. .... All of those things go together to say we've gotta do something right here, it's got to be special. It's gotta work for this lot, on this block and the zoning ordinance that applies across the board to every piece of property ... we shouldn't follow here if it screws up a good house. " (7/28/11 BZA hearing)[i]

This lot 724 Timber Branch Drive, lot #13, the lot in question, is one of two lots purchased in good faith by my family in 1950 with the understanding that both lots were buildable into three substantial developed properties. The other lot is lot #14, 726 Timber Branch Drive. It is my understanding that subsequent to the purchase the grandfathering clauses protecting these 'substandard' lots was removed, rendering them unbuildable 'orphan' (without a home) lots. The resulting confiscation was later somewhat ameliorated by Section 12-400 I assume was a 'compromise' to reduce the outrage to a manageable level. I know my parents certainly felt compromised by the City when they got the word that they just lost what in present value is over a quarter of a million dollars.

That both lots were buildable was my parents' understanding and apparently it was the understanding of all 21 lot owners in the same original subdivision with 50 Ft. wide lots and of the architect who placed the house on lot #14 understood that. He anticipated that Lot #13 would be developed as is and Lot #14 could then be easily subdivided by right into two 13,000+ Sq. Ft. R8 lots. The house was in just the right place for this logical scenario. That was the thinking in the 1930 when these 50' lost were laid out as they are. But for #13 that was not to work out as planned. Someone had a better idea, an idea to "screw up a good house," maybe screw up two good houses, the one already built on lot #14 and the one that would never be built on #13.

Because I have only 30 days to file an appeal, and most of that time has been spent unproductively trying to obtain an attorney (3) to file an appeal I must make this short with little information or elaboration. I regret the lack of editing.

Looking at the lot #13 diagram next to the 90/90 diagram we notice that #13 is larger, closer to R8 than the 'acceptable' lot in terms of area. Then if we look at the in terms of the frontage we see that the 90/90 or the R8 frontage typical of only 1 lot in the block face whereas #13 is typical of 14 lots on the

block face. Under the 50 50 rule we could have an 'acceptable' lot even smaller area than the 90/90 area with a 50 foot frontage.

Consider a lot that has more than 90% of area requirement and has the same frontage as 83% of the subdivision. Which lot or lots conform to the spirit of the Code? If a lot passing the area test but with a frontage out of sync with the neighborhood is passable, why not one that has an even greater area and width that is exactly the same as 83% of the original subdivision? By the 50/50 test a lot that has both less than 70% of the required area and less than 70% of the frontage can theoretically pass.

Consider an R8 lot that has the SUP required 90% of the zone area (7200 sq. ft.) and 90% frontage (58.5'). Consider a lot that has more than 90% of area requirement and has the same frontage as 83% of the subdivision. Which lot or lots conform to the spirit of the Code? If a lot passing the area test but with a frontage out of sync with the neighborhood is passable, why not one that has an even greater area and width that is exactly the same as 83% of the original subdivision? By the 50/50 test a lot that has both less than 70% of the required area and less than 70% of the frontage can theoretically pass.

It constitutes an unreasonable restriction. Confiscation, hardship, spirit of the code, ungreen demolition of a valuable 70+ year old house, defect in tests thresholds, appeals worthy, it works best when all things are considered, revenue, great homes, unlucky orphan finally gets a home, Why does a family have to pay so much in time and money to exercise a property right they paid for over 60 years ago.

Observes the spirit of the ordinance, and insures that and injustice is not done. There are certain circumstances in which the provisions of the zoning ordinance may be varied so long as the spirit of the ordinance is observed. Granting recognizes that accepting the 83% conformance with the rest of the neighborhood as a substitute for the 90% of R8 frontage reflects adherence to the spirit of the code, accomplishing exactly what the code attempts to accomplish with the 50 and 90% tests- consistent and compatible use and avoidance of undue hardship (confiscation?).

Lacking 8.8 feet, the frontage does not satisfy the numerical requirements for an SUP, but its frontage is exceptionally compatible, 83% identical with the original subdivision.

Lot #13 is unique. It is the only R8 lot on the 1994 List of Substandard Vacant Lots that doesn't meet the tests for special use permit that does meet the 90% area requirement and its frontage is equal to over 80% of the original subdivision's frontages. It has 93% of the R8 required area and the frontage is equal to 83% of the original subdivision lots. It is a very compatible lot with great home potential.

The family has owned the property since 1950. Subsequent to that the most important right to build a house there was confiscated by rules of thumb. The price paid in 1950 was the price for a buildable lot?

In attempting to codify the spirit, the ends, the goals of zoning, the means sometimes have become the ends. Whatever the ordinances were trying to achieve with the SUP and the tests, in this case, the

process lost sight of what we should have been trying to accomplish with them i.e. to do the right thing for people every chance we get.

This is also about an existing house, where it is and where it is works best and it works best where it is if we hold with the original assumption that Lot #13 will not become an orphan lot but will have a home of its own as originally planned. Every other lot line scheme gets awkward and ends up in need of questionable variances (see scheme B). The lot line schemes drawn and redrawn in the last year demonstrate this. Scheme D is the only one that simultaneously shows promise for three families, ease of fit and preservation of a fine house.

Buildable Lot #13 is at least a $350,000 property, a potential $900,000+ property, substandard, a $65,000 property, a loss to The City and my family of over $285,000. Unbuildable it is condemned to be an add-on to an oversized property already 3 and ½ times the norm for this block.

The 90/90 and the 50/50 questions don't ask: 'Is there something unique about these property, lot #13 and #14, and this neighborhood that would leave us all be better off if taken into consideration.' The tests don't ask for instance, what are the pros and cons of the result of the conclusions of the 90/90 and 50/50 tests, how does the use of a formula-to-reject outcome differ from the accept outcome? Is the very ungreen fact of a 2400, sq. ft. 70 year old house with oak floors, 9' (check ceiling height) ceilings and plaster walls will be thrown in the dumpster to be replaced with new imported materials a factor not to be considered? How does it draw the lot lines for Lot#13 and the existing house on Lot #14.

Whatever else it does, it totally ignores the fact that whatever the tests applied, this is and has for over 70 years been unmistakably, a 50' frontage neighborhood. 10 50' lots on one side and 11 50' lots on the other side. A 65 foot frontage has almost nothing in common with this neighborhood.

New Block face with SUP for lot #13: 50',50',50',50',65',65',80',85' vs.

Block face with #13 absorbed in #14: 50',50',50',115', 65', 80',85'

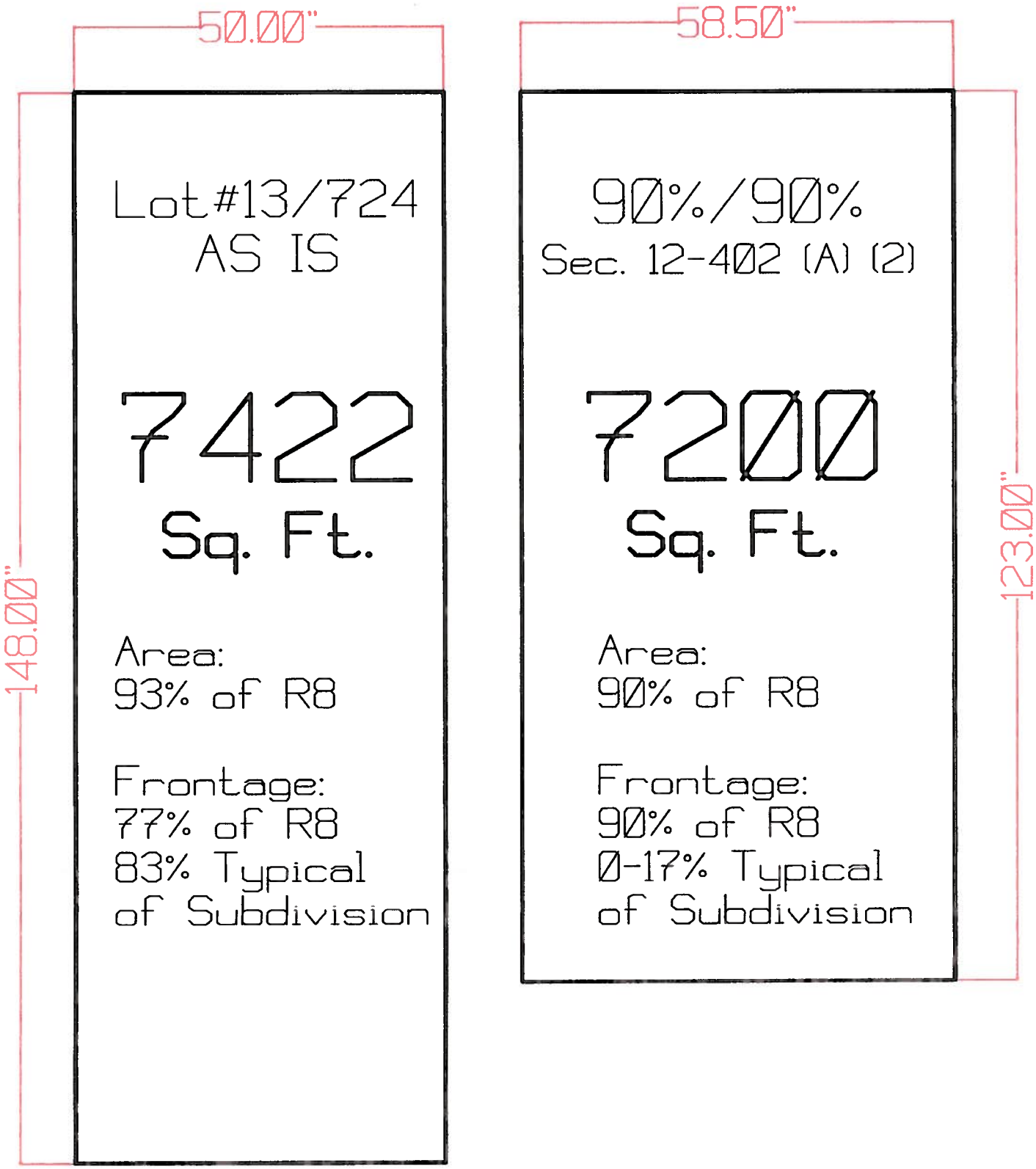
Permeability – old driveway impermeable could be replaced by new modern standards. This could end up being a LEED certifiable, if not actually LEED certified, home with the removal of the two car garage and extensive concrete driveway. With an SUP, the City would be in a position to guide Steve's Kulinski's hand in shaping the interior of this lot, as is, into a perfect up to date, current standards, more sustainable configuration for the community, and a family.

The decision by staff was not a whimsical decision to reject the SUP but a very expert application of the 90/90 and the 50/50 rules. As professionals, they know it is their duty to apply the rules. If the rules are not appropriate in particular circumstances then perhaps others should make that determination.

[1] Full text of Deputy Director Ross's remarks:

"If we enforce compliance with the zoning, are we asking someone to do the wrong thing in this very special location? And we submit that you would be. Therefore that constitutes and unreasonable restriction. This is the most historic block in the city. It is really important under that standard that you have to go by every time you do variance, that looking at the character of the neighborhood as we say in the staff report whether its Rosemont, or Delray or North Ridge or where ever it is you have to take into account what location you are looking at. Here we're on Captains Row. And so first we look at the zoning ordinance we say ouch this is a new building is that really right. Then we look at the location and we say yikes, we've gotta do the right thing here. Then we have the configuration and then we have the configuration of the lot the shallowness, yet there are other shallow lots but mainly we've got long narrow lots. All of those things go together to say we've gotta do something right here, it's got to be special. It's gotta work for this lot, on this block and the zoning ordinance that applies across the board to every piece of property in Old Town typically old buildings, with additions, we shouldn't follow here if it screws up a good house. " (Barbara Ross screw up a good house) It constitutes an unreasonable restriction. Confiscation, hardship, spirit of the code, ungreen demolition of a valuable 70+ year old house, defect in tests thresholds, appeals worthy, it works best when all things are considered, revenue, great homes, unlucky orphan finally gets a home, Why does a family have to pay so much in time and money to exercise a property right they paid for over 60 years ago.

BZA 2012-0008



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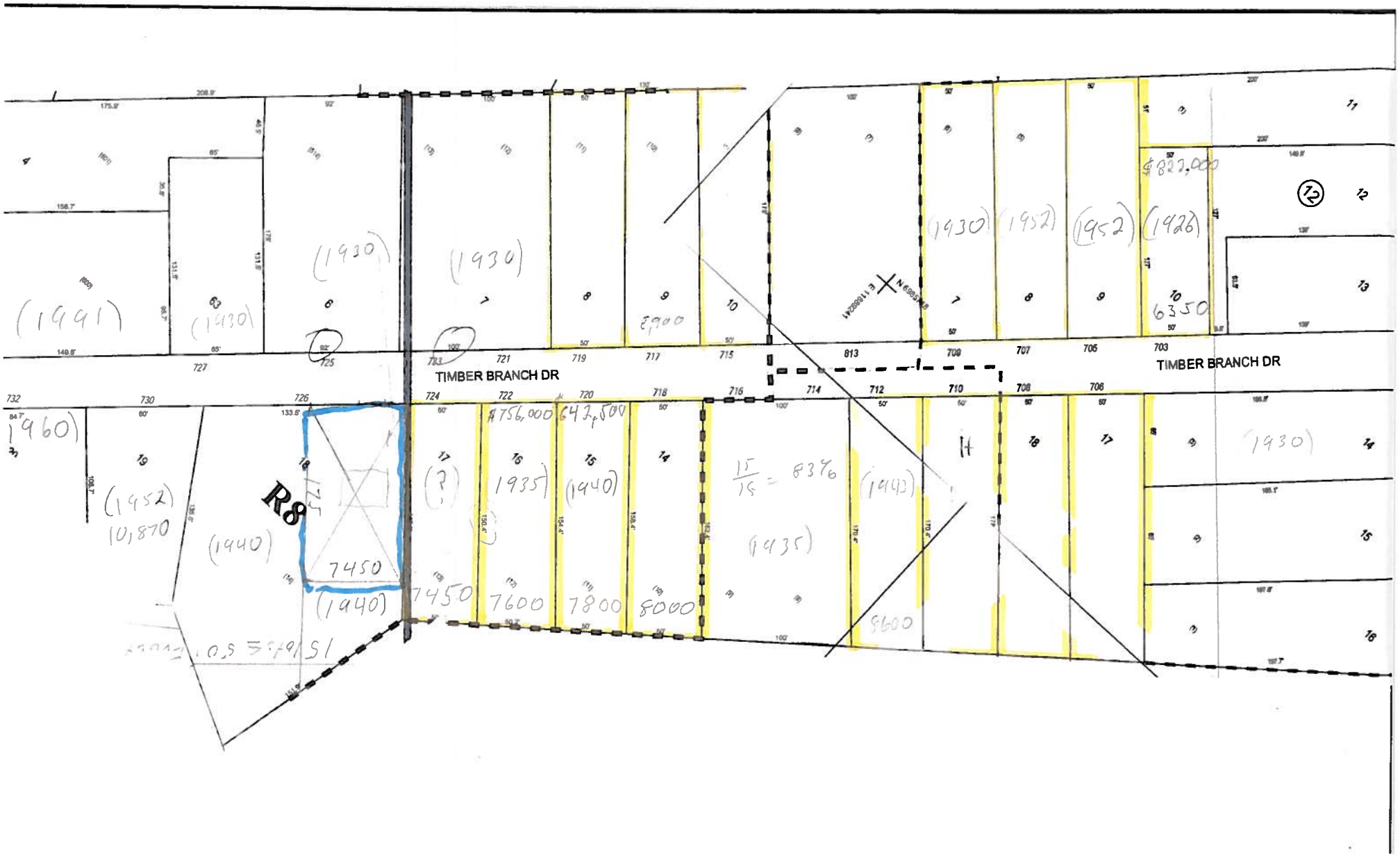
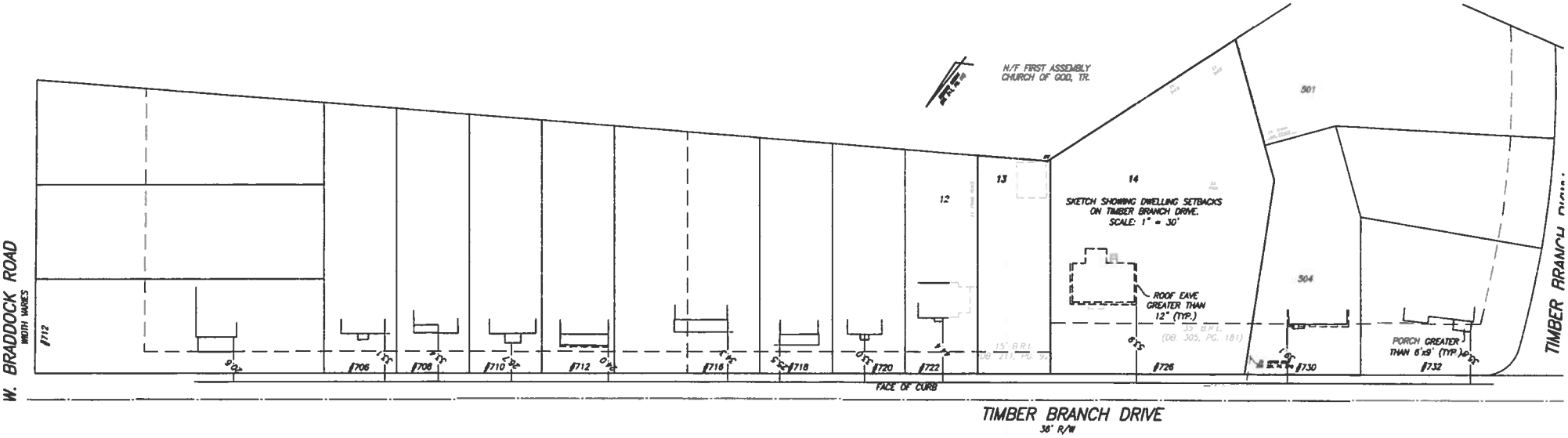
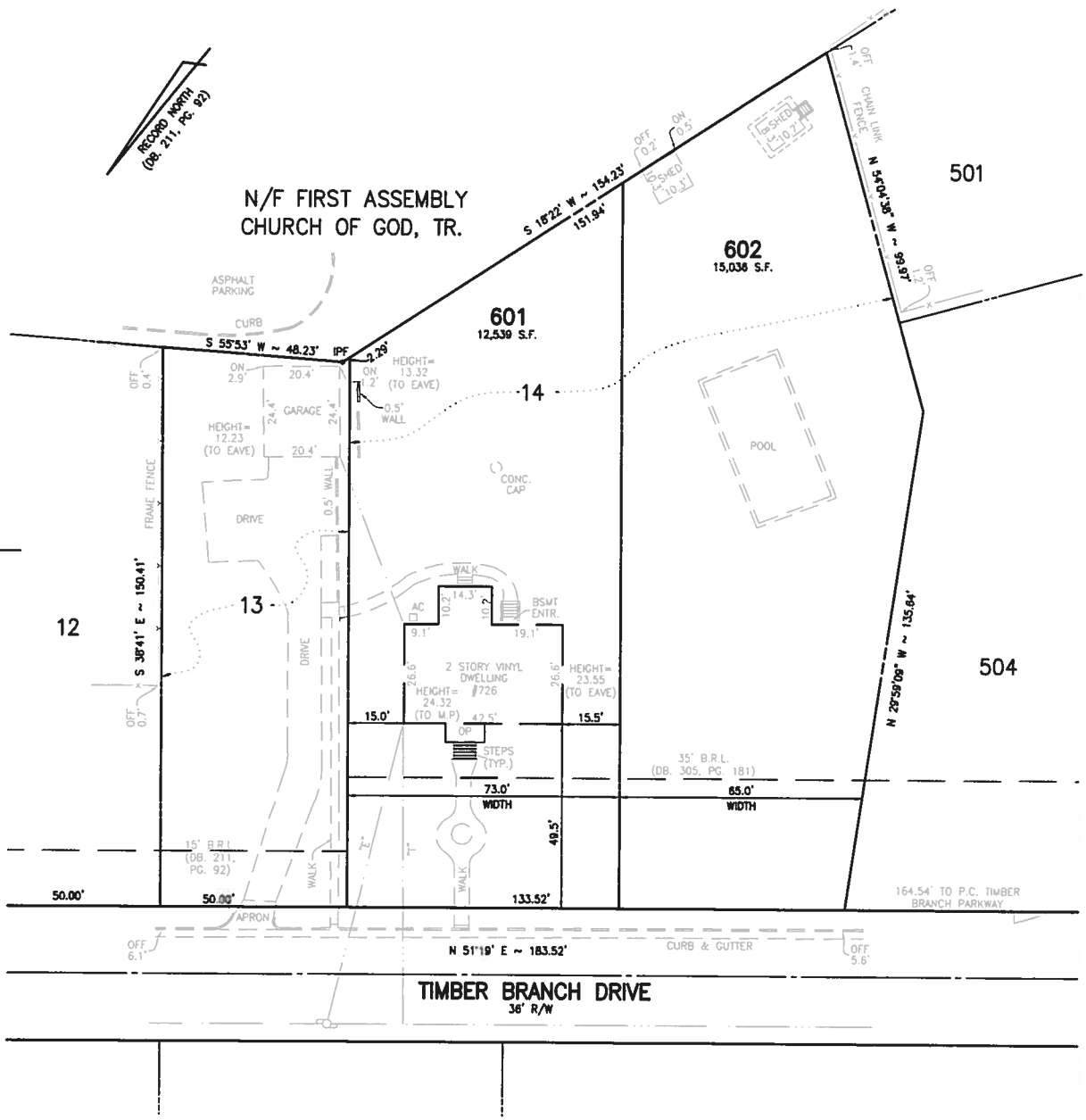

TIMBER BRANCH DR
TIMBER BRANCH DR
R8
(1991)
(1930)
(1930)
(1930)
(1930)
(1952)
(1952)
(1926)
(1960)
(1952)
10,870
(1940)
(1940)
7450
(1940)
7450
(?)
(1935)
(1940)
7600
7800
8000
(1935)
(1943)
8600
(1930)
6350
2900
$822,000
$756,000
642,500
15/15 = 83%
0.5 = 21,751


W. BRADDOCK ROAD
WIDTH VARIES
#712
#706
#708
#710
#712
#716
#718
#720
#722
#726
#730
#732
12
13
14
501
504
N/F FIRST ASSEMBLY
CHURCH OF GOD, TR.
SKETCH SHOWING DWELLING SETBACKS
ON TIMBER BRANCH DRIVE.
SCALE: 1" = 30'
ROOF EAVE
GREATER THAN
12" (TYP.)
15' B.R.L.
(DB. 305, PG. 181)
15' B.R.L.
DB. 211, PG. 99
PORCH GREATER
THAN 6'x9' (TYP.)
FACE OF CURB
TIMBER BRANCH DRIVE
38' R/W



GENERAL NOTES

1. TAX ASSESSMENT MAP # 042.01-03-18 (LOT 14)
2. R-8
3. LOT 13 AREA = 7,422 SQ. FT. OR 0.1704 AC.
   LOT 14 AREA = 27,575 SQ. FT. OR 0.6330 AC.
   TOTAL AREA = 34,997 SQ. FT. OR 0.8034 AC.
4. OWNER = JONATHAN CLARK, TR.
   7227 AUBURN STREET
   ANNANDALE, VA 22003
   (DB. 1676, PG. 651)
5. PLAT SUBJECT TO RESTRICTIONS OF RECORD.
6. TITLE REPORT NOT FURNISHED, THUS ALL EASEMENTS MAY NOT BE SHOWN.
7. THE POSITIONS OF THE IMPROVEMENTS SHOWN HEREON HAVE BEEN CAREFULLY ESTABLISHED BY A TRANSIT TAPE SURVEY AND/OR WITH CALIBRATED ELECTRONIC DISTANCE MEASURING EQUIPMENT.

SKETCH PLAN
SCHEME "D"
SUBD. OF LOT 14, BLOCK 1, SECTION 1

BRADDOCK HEIGHTS

(DB. 211, PG. 92, ARLINGTON COUNTY; DB. 305, PG. 181)

CITY OF ALEXANDRIA, VIRGINIA

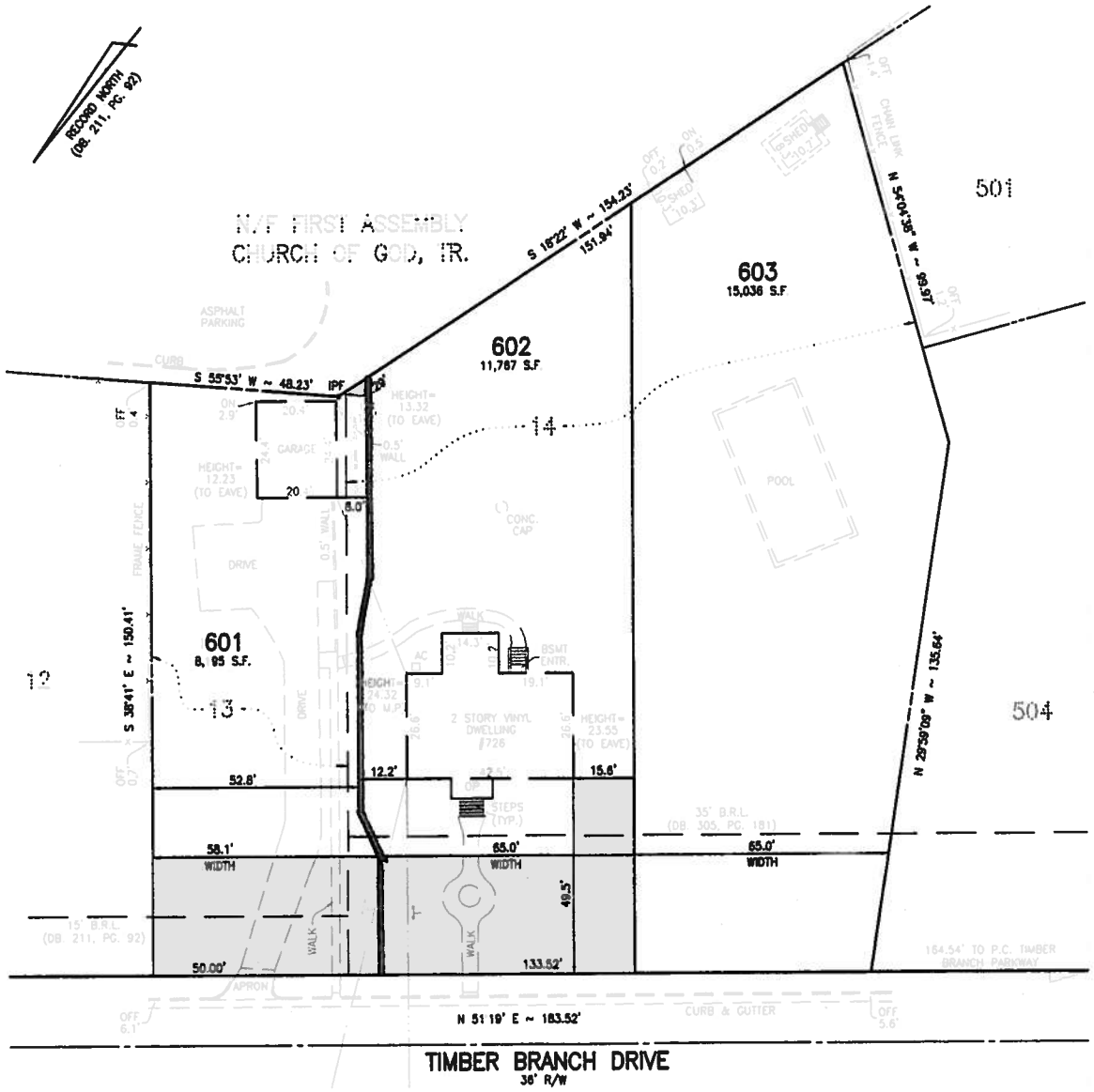
SCALE: 1" = 20' DATE: FEBRUARY 10, 2012

● LAND SURVEYING ● SITE PLANNING ● SUBDIVISION DESIGN
730 S. Washington St. Alexandria, Virginia 22314 (703) 549-6422

RCF FIELDS, JR. & ASSOCIATES
A PROFESSIONAL CORPORATION

COMP.	T.G.
DRAWN	T.G.
CHECKED	R.J.K.

FILE NO. 10-106
SHEET 1 OF 1



GENERAL NOTES

1. TAX ASSESSMENT MAP # 042.01-03-17 (LOT 13)
   042.01-03-18 (LOT 14)
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   LOT 14 AREA = 27,575 SQ. FT. OR 0.6330 AC.
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7. THE POSITIONS OF THE IMPROVEMENTS SHOWN HEREON HAVE BEEN CAREFULLY ESTABLISHED BY A TRANSIT TAPE SURVEY AND/OR WITH CALIBRATED ELECTRONIC DISTANCE MEASURING EQUIPMENT.

SKETCH PLAN
SCHEME "B"
LOTS 13 & 14, BLOCK 1, SECTION 1

BRADDOCK HEIGHTS

(DB. 211, PG. 92, ARLINGTON COUNTY; DB. 305, PG. 181)

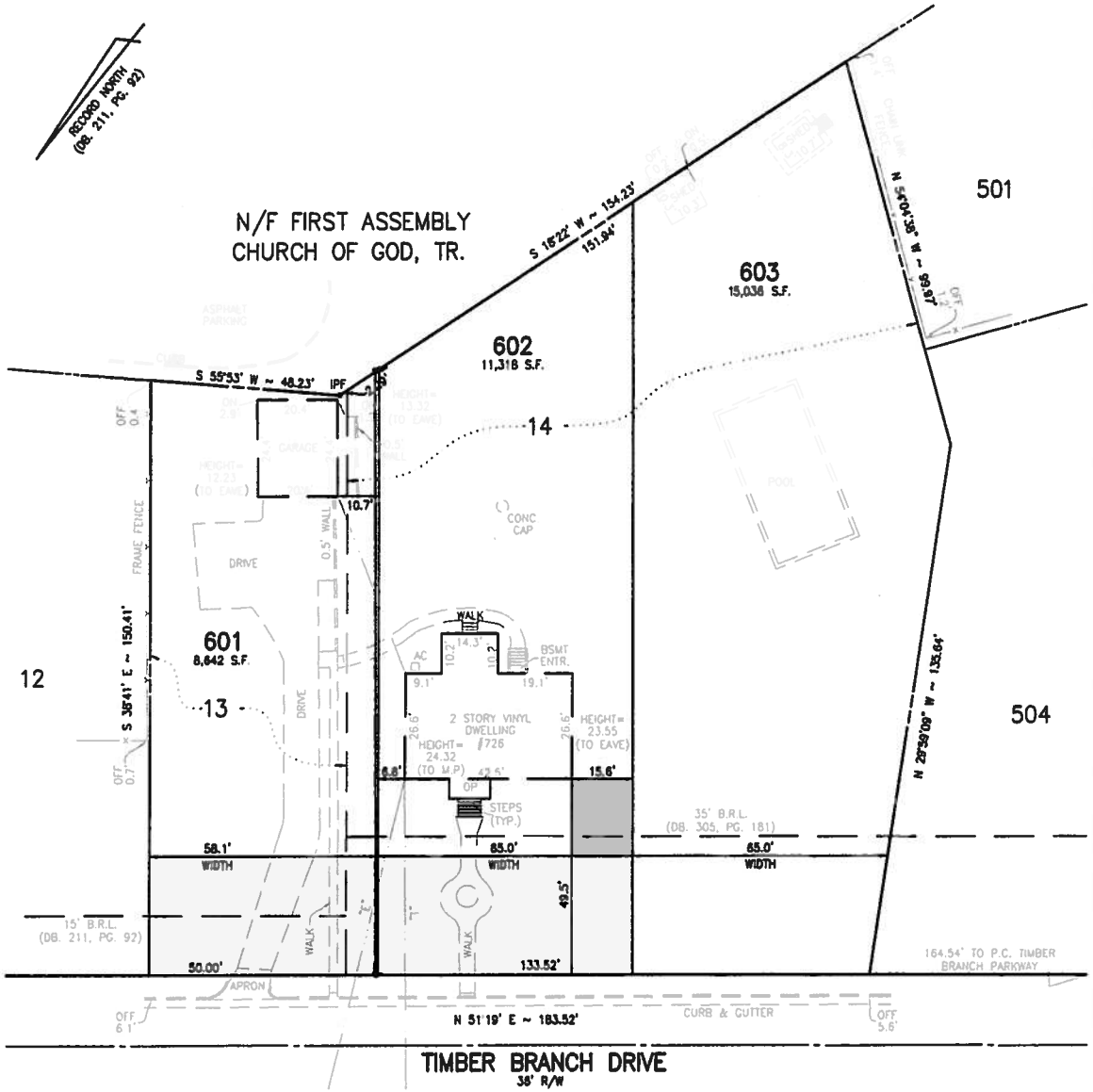
CITY OF ALEXANDRIA, VIRGINIA

SCALE: 1" = 20' DATE: NOVEMBER 18, 2010

RCF FIELDS, P.C. & ASSOCIATES
A PROFESSIONAL CORPORATION
● LAND SURVEYING ● SITE PLANNING ● SUBDIVISION DESIGN
730 S. Washington St. Alexandria, Virginia 22314 (703) 549-6422

COMP.	T.C.
DRAWN	T.C.
CHECKED	R.J.K.

FILE NO. 10-106
SHEET 1 OF 1



GENERAL NOTES

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   TOTAL AREA = 34,997 SQ. FT. OR 0.8034 AC.
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   7227 AUBURN STREET
   ANNANDALE, VA 22003
   (DB. 1876, PG. 651)
5. PLAT SUBJECT TO RESTRICTIONS OF RECORD.
6. TITLE REPORT NOT FURNISHED, THUS ALL EASEMENTS MAY NOT BE SHOWN.
7. THE POSITIONS OF THE IMPROVEMENTS SHOWN HEREON HAVE BEEN CAREFULLY ESTABLISHED BY A TRANSIT TAPE SURVEY AND/OR WITH CALIBRATED ELECTRONIC DISTANCE MEASURING EQUIPMENT.

SKETCH PLAN
SCHEME "C"
LOTS 13 & 14, BLOCK 1, SECTION 1

BRADDOCK HEIGHTS

(DB. 211, PG. 92, ARLINGTON COUNTY; DB. 305, PG. 181)

CITY OF ALEXANDRIA, VIRGINIA

SCALE: 1" = 20' DATE: NOVEMBER 16, 2010

● LAND SURVEYING ● SITE PLANNING ● SUBDIVISION DESIGN
730 S. Washington St. Alexandria, Virginia 22314 (703) 549-6422

RCF FIELDS, JR. & ASSOCIATES
A PROFESSIONAL CORPORATION

COMP.	T.C.
DRAWN	T.C.
CHECKED	R.J.K.

FILE NO. 10-106
SHEET 1 OF 1