

BZA #2012-0008
724 Timber Branch Drive
Board of Zoning Appeals
July 12, 2012 Hearing

Appeal Documents

- Appeal Application
 - Supporting Materials Submitted with Application
 - Additional Materials Submitted on June 26, 2012
 - Supplement to Appeal Application Submitted on June 28, 2012
 - Additional Materials Submitted on June 29, 2012



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 SVP 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 Agent

Name Jonathan Clark TR

Address 7227 Auburn Street

Annandale, Va. 22003

Daytime Phone 703 994-7174

Email Address junc@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

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?

SEE 01 P9A

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
4/15/12
 Date

Jonathan Clark
 Signature

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.

A
2

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 the 12-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

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 *[Signature]*

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.

Lined writing area for response.

↑

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 an 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' lots 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

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

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

2/17

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

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 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'

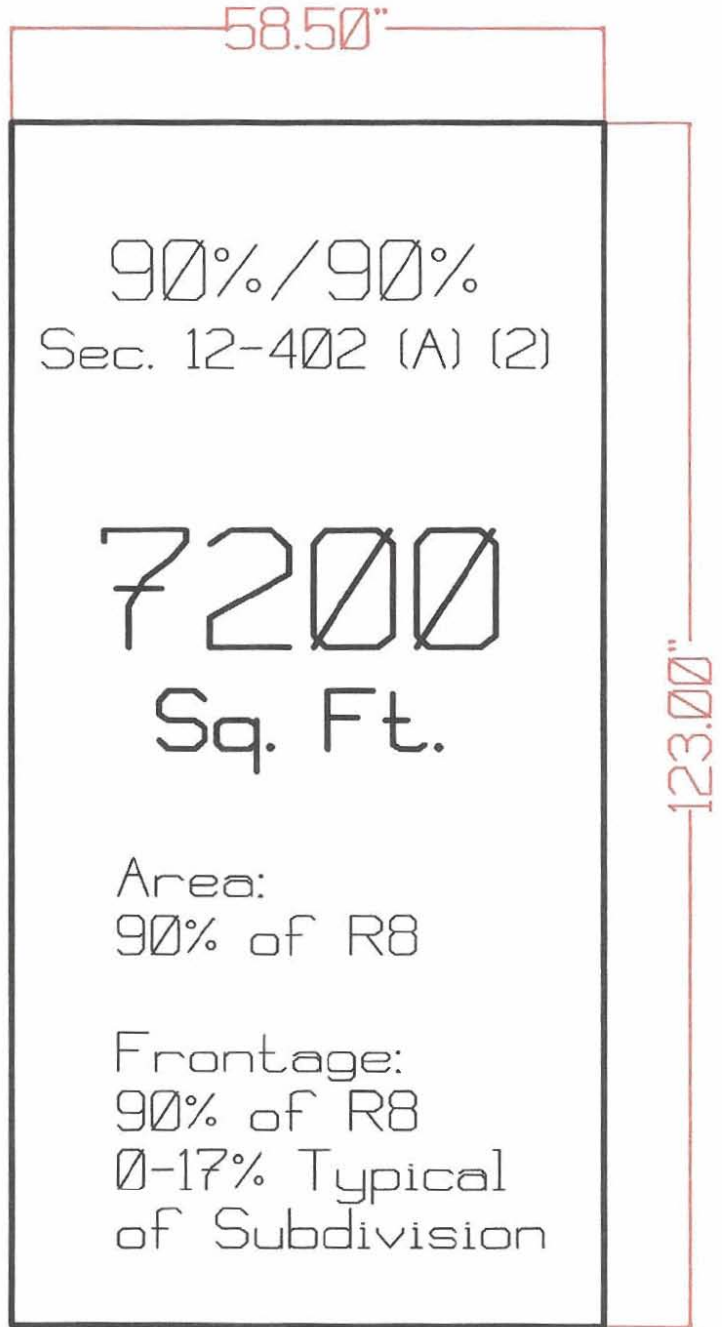
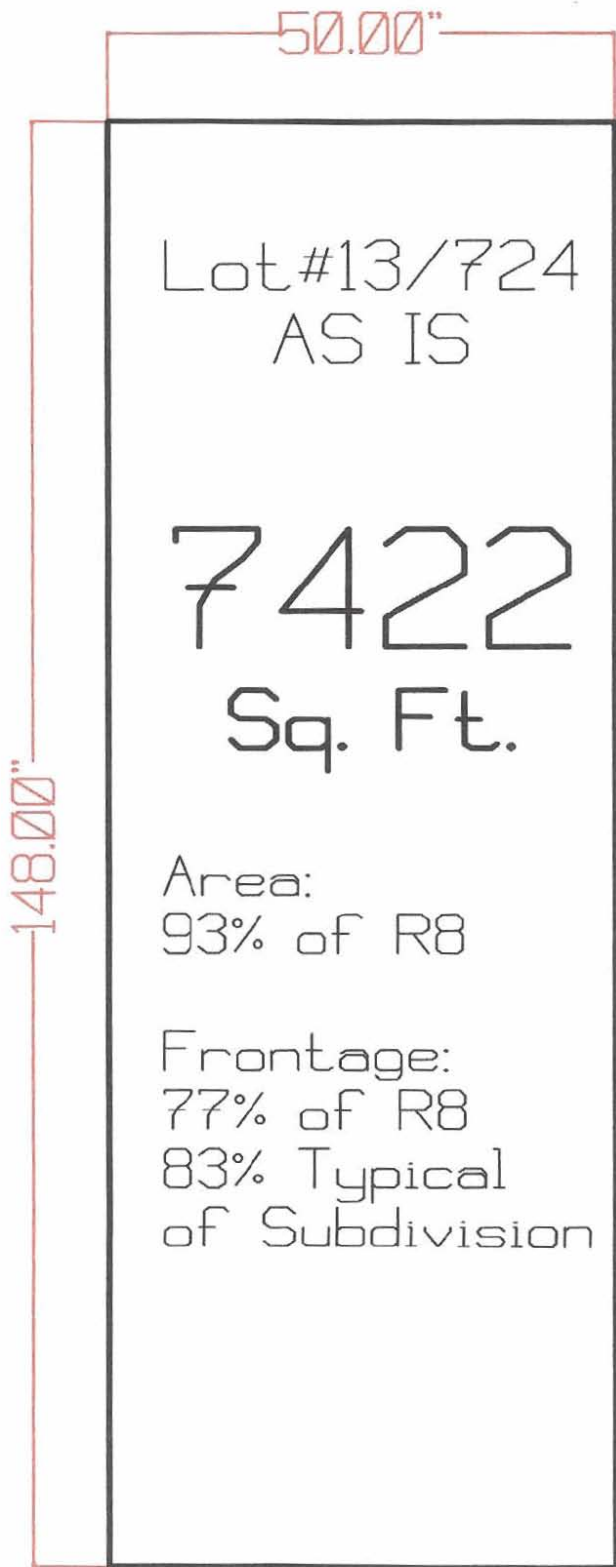
Permeability – old driveway impermeable could be replaced by new modern standards. This could end up being a LEED certifiable, if not actually LEED certified, home with the removal of the two car garage and extensive concrete driveway. With an SUP, the City would be in a position to guide Steve's Kulinski's 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.

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

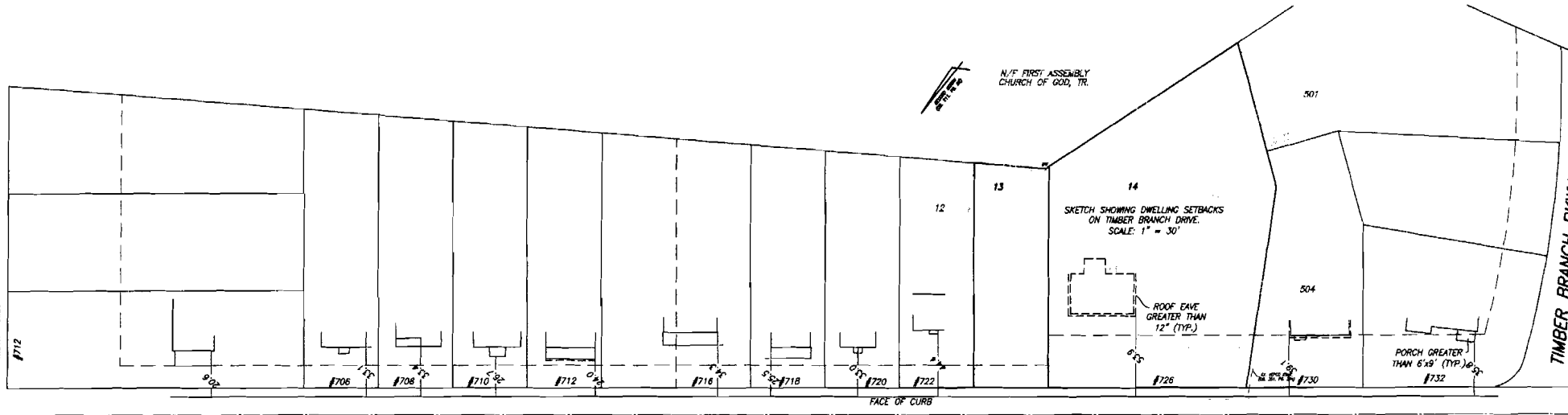
ⁱ Full text of Deputy Director Ross's remarks:

"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 an 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.





W. BRADDOCK ROAD
WIDTH VARIES



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.)

PORCH GREATER
THAN 6'0" (TYP.)

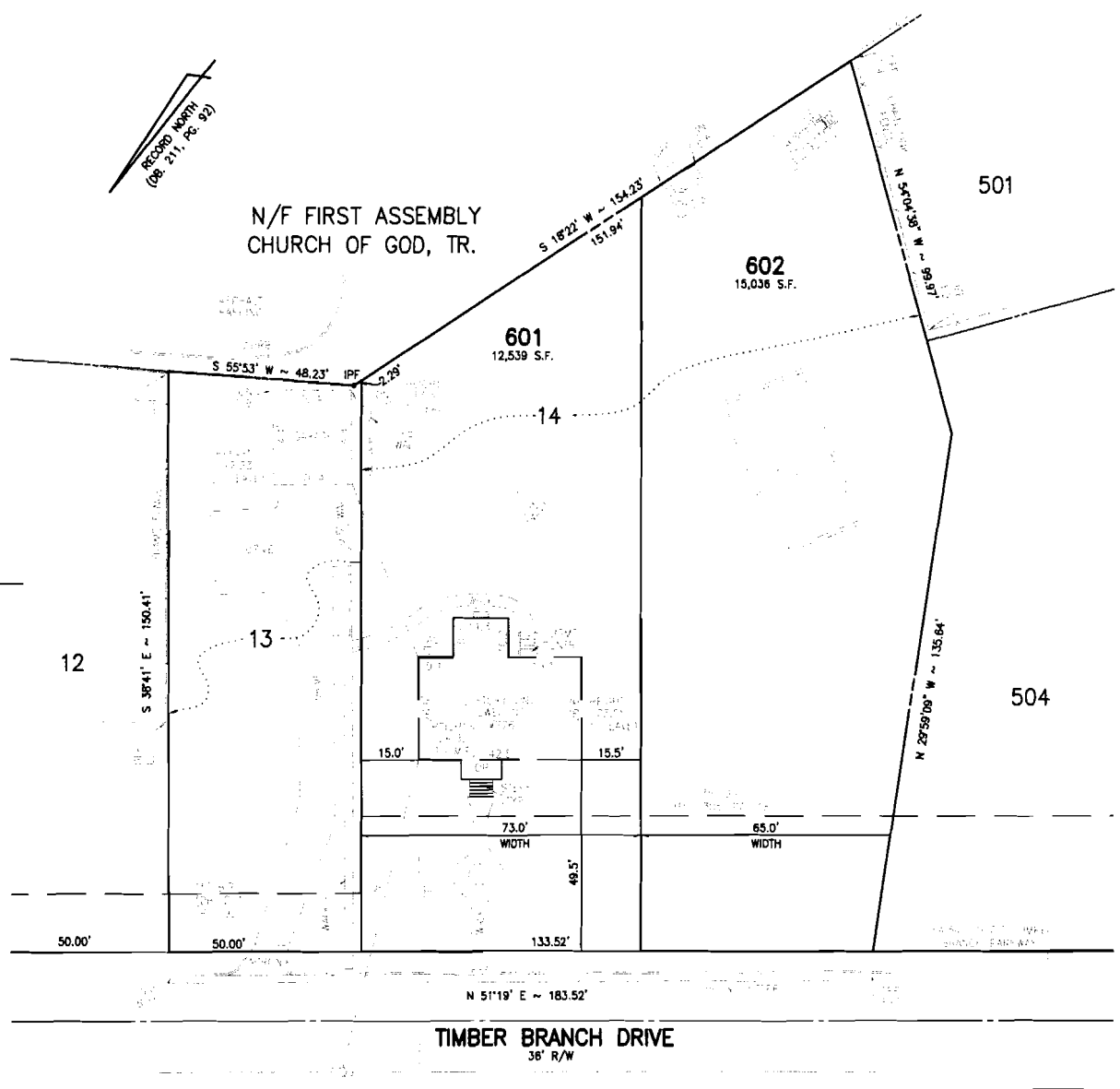
FACE OF CURB

TIMBER BRANCH DRIVE
30' R/W

TIMBER BRANCH DRIVE

RECORD NORTH
(DB. 211, PG. 92)

N/F FIRST ASSEMBLY
CHURCH OF GOD, TR.



GENERAL NOTES

1. TAX ASSESSMENT MAP # 042.D1-03-18 (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 ALBURN 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.

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

RFP IELDS, P.C. & ASSOCIATES
A PROFESSIONAL CORPORATION

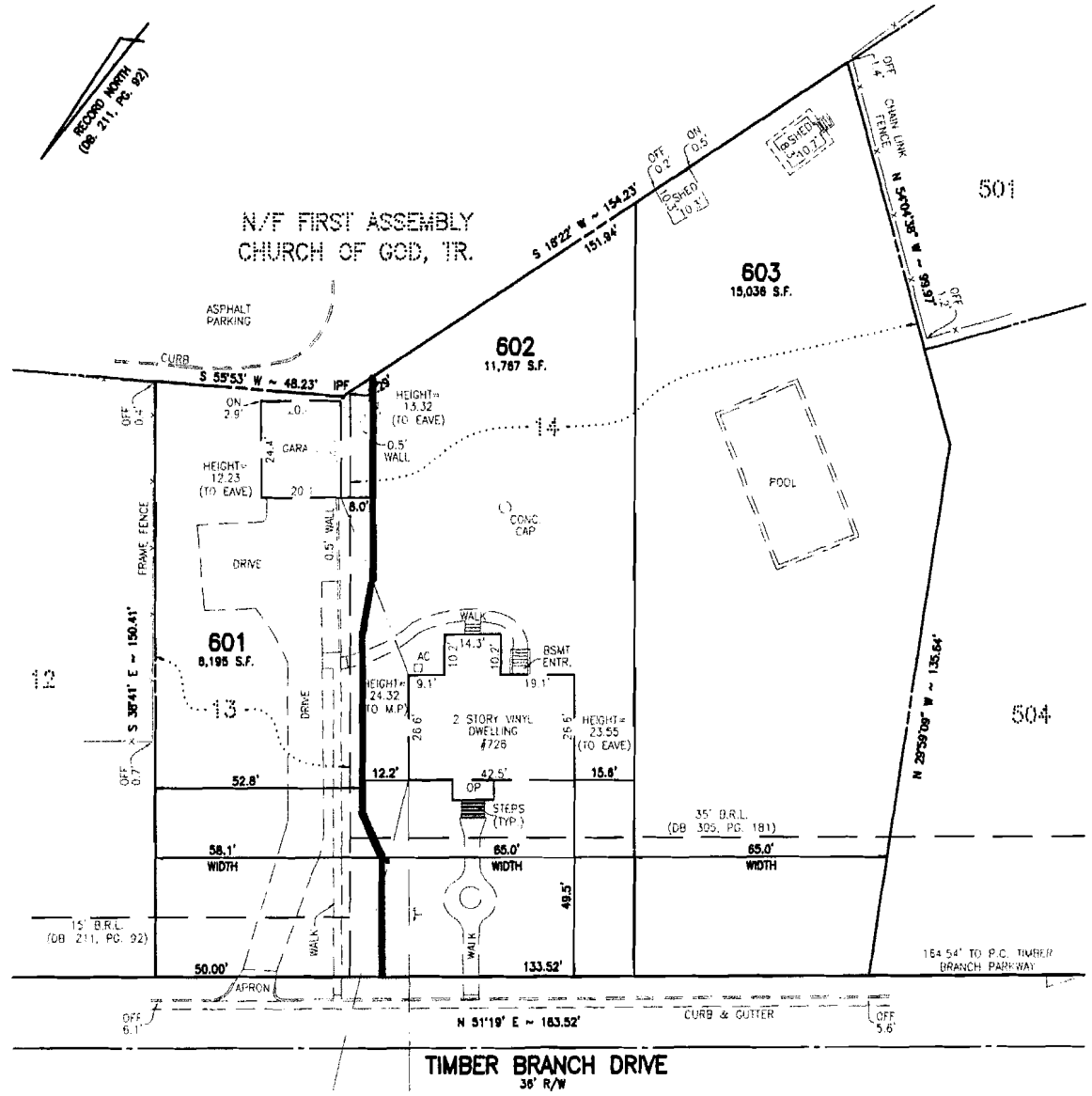
SKETCH PLAN
SCHEME "D"
SUBD. OF LOT 14, BLOCK 1, SECTION 1
BRADDOCK HEIGHTS
(DB. 211, PG. 92, ARLINGTON COUNTY; DB. 305, PG. 181)
CITY OF ALEXANDRIA, VIRGINIA
SCALE: 1" = 20' DATE: FEBRUARY 10, 2012

FILE NO. 10-106
SHEET 1 OF 1
DRAWN BY: J.C.
CHECKED BY: R.J.K.

13

RECORD MAP
(DB 211, PG. 92)

N/F FIRST ASSEMBLY
CHURCH OF GOD, TR.



GENERAL NOTES

1. TAX ASSESSMENT MAP # 042.01-03-17 (LOT 13)
042.01-03-18 (LOT 14)
2. R-8
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7227 AUBURN STREET
ANNANDALE, VA 22003
(DB. 1876, PG. 851)
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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.

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

RCF HELD, P. & ASSOCIATES
A PROFESSIONAL CORPORATION

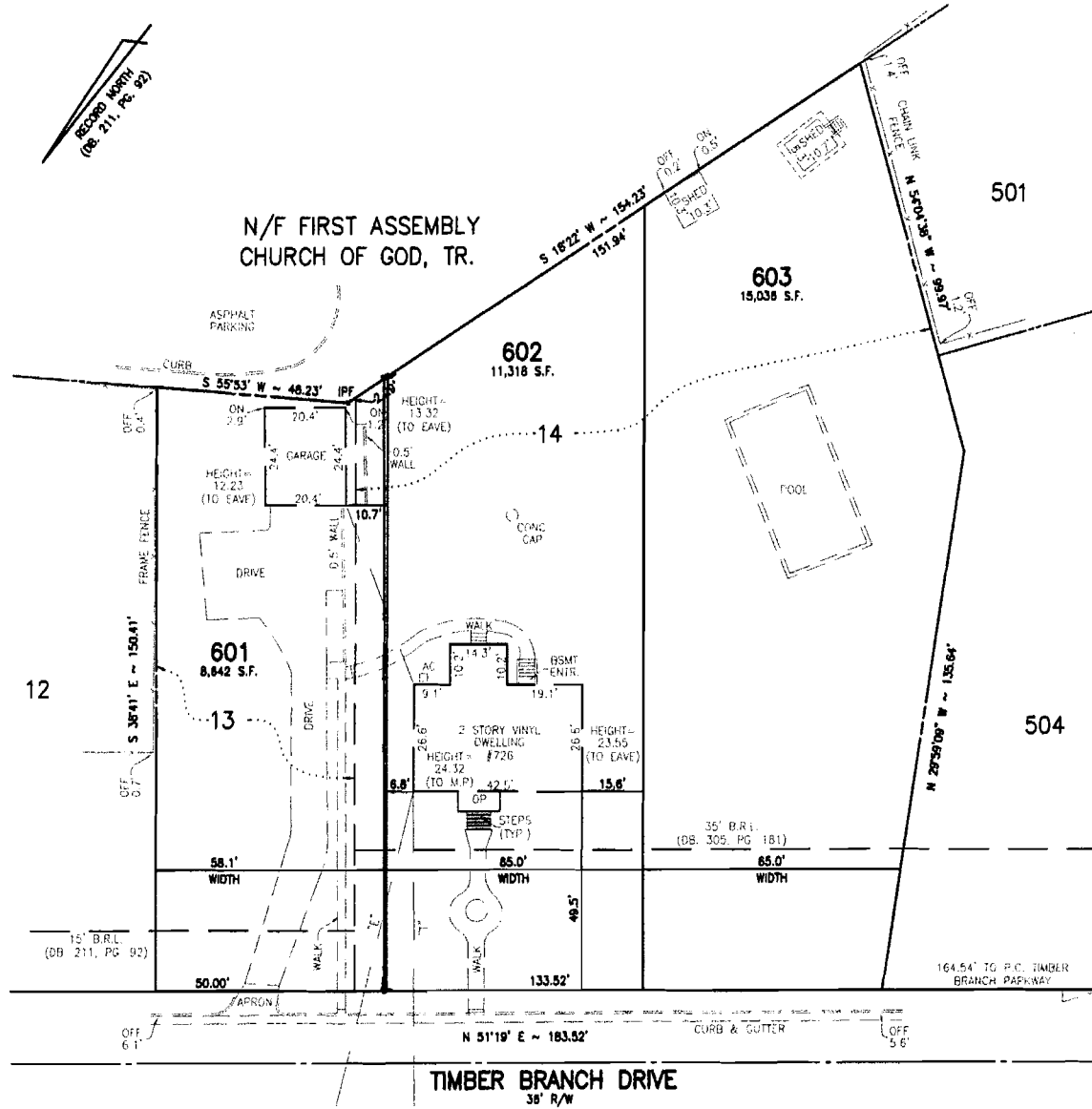
SKETCH PLAN
SCHEME "B"
LOTS 13 & 14, BLOCK 1, SECTION 1
BRADDOCK HEIGHTS
(DB. 211, PG. 92, ARLINGTON COUNTY; DB. 305, PG. 181)
CITY OF ALEXANDRIA, VIRGINIA
SCALE: 1" = 20' DATE: NOVEMBER 18, 2010

FILE NO. 10-106
SHEET 1 OF 1
DRAWN T.G.
CHECKED R.J.K.

14

RECORD MAP
(DB 211, PG. 92)

N/F FIRST ASSEMBLY
CHURCH OF GOD, TR.



GENERAL NOTES

1. TAX ASSESSMENT MAP # 042.01-03-17 (LOT 13)
042.01-03-18 (LOT 14)
2. R-8
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7227 AUBURN STREET
ANNANDALE, VA 22003
(DB. 1875, PG. 851)
5. PLAT SUBJECT TO RESTRICTIONS OF RECORD.
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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.

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

RCF **ELDRIDGE, R. L. & ASSOCIATES**
A PROFESSIONAL CORPORATION

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

FILE NO. 10-106
SHEET 1 OF 1
DRAWN T.C.
CHECKED R.J.K.

15

BZA2012-0008

Additional Materials

Submitted by Appellant: Johnathan Clark

On

June 26, 2012



City of Alexandria, Virginia

Office of Real Estate Assessments
P. O. Box 178 - City Hall
Alexandria, Virginia 22313
(703) 838-4646



January 13, 1995

Via Certified Mail #P 263 716 120

*1/16/95 Special
Mrs. [unclear]
Abundant blue granite
on the lot at
724 [unclear]*

Kenneth W. Clark et ux
724 Timberbranch Drive
Alexandria, VA 22302

Re: 724 Timberbranch Drive (042.00-03-17)

Dear Mr. and Mrs. Clark:

The purpose of this letter is to inform you that the Alexandria Office of Real Estate Assessments is conducting an administrative review of the assessments for vacant residential lots in the City that may be classified as substandard under the City's zoning ordinance. The purpose of conducting the administrative review, which includes the above-mentioned property, is to be certain that the substandard lot conditions that are unique to each lot are accurately reflected in the real property assessments.

A substandard lot is defined as "any lot in the R-20, R-12, R-8, R-5, R-2-5, or RA residence zones, which lot was of record on December 28, 1951, and continuously thereafter, but which has less area or width at the front lot line or front building line than the minimum required for use in the zone where it is situated."¹ Prior to a change in the City's zoning ordinance on May 14, 1974, a vacant lot in any of these residence zones that was of record on December 28, 1951, could have been developed with a single-family dwelling and its accessory buildings.

When City Council adopted the 1974 ordinance the "grandfather clauses," which permitted the use of such lots for single family dwellings as a matter of right, were deleted from the regulations for each affected zone. The zoning ordinance relating to substandard lots was revised again on September 16, 1988, to allow a substandard lot to be developed if it meets

¹Section 12-401, City Zoning Ordinance (Attachment 2).

Kenneth W. Clark et ux
January 13, 1995
Page 2 of 4

certain criteria that enable the owner to file an application for a special use permit (SUP) which must then be approved by City Council. The criteria are:

- o the lot contains at least the lot area, and has at least the lot width at both the front lot line and front building line, as exhibited by more than 50 percent of the developed lots on the block face in which the lot is located; or
- o the lot contains at least 90 percent of the minimum lot area, and 90 percent of the required lot width at both the front lot line and front building line, as required by the zone in which the lot is located.

Real Estate staff is currently reviewing the assessments for 45 lots to determine whether the substandard conditions are in fact reflected in the assessments. Where the vacant land assessments do not adequately reflect the specific substandard lot conditions determined by the Department of Planning & Zoning, the 1991 through 1994 assessments will be considered for revision (current year and three tax assessment years prior, as provided by State tax law). Attachment 1 is a list showing the 45 lots that are being administratively reviewed.

Prior to the undertaking of this administrative review, neither the Department of Planning & Zoning nor the Office of Real Estate Assessments was able to identify the number of substandard lots, including the number of lots that do not meet the criteria stated above. In order to perform the required calculations to identify these properties, tax assessment maps would have to be updated to show subdivided and consolidated land parcels, overlay zoning designations placed on the updated tax assessment maps, zoning classifications shown in the assessment records verified for accuracy by Planning & Zoning staff, and property survey maps carefully reviewed.

During the last two years, substantial progress has been made by Planning & Zoning staff in updating the tax assessment maps, preparing overlay zoning designations, and verifying zoning categories shown on assessment records. Planning & Zoning staff

Kenneth W. Clark et ux
January 13, 1995
Page 3 of 4

also initiated a system of assigning property survey numbers to their map records file and to the assessments records so that the most recent property survey for a particular lot or area of the City could be readily determined.

This past summer, Real Estate staff reviewed the lot sizes and street front widths for each of the 711 vacant lots in the City that were primarily zoned for residential purposes. From these 711 lots, Real Estate staff asked the Department of Planning and Zoning to determine the substandard lot conditions for 45 lots where the land assessments did not appear to reflect substandard lot conditions. The determinations by Planning & Zoning staff for the 45 lots are as follows:

- o 22 vacant residential lots cannot be developed because application for special use permits to develop the lots for single family homes cannot be filed. These 22 lots include six lots that are ineligible under Section 12-400 because they are located in the RB or RM residence zones.
- o 17 vacant residential lots are substandard, but meet the criteria for filing an application for a SUP to develop the property in question as a single family home or permitted accessory use.
- o 6 vacant residential lots had been substandard, but were given approval for development under the SUP process.

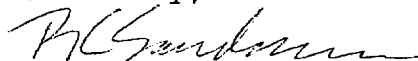
Planning & Zoning staff are currently in the process of determining the status of an additional 175 potentially substandard lots which already reflect lower assessed values because of substandard lot conditions. In all cases where substandard lot conditions are confirmed by Planning & Zoning staff, Real Estate staff will verify that such conditions are accurately reflected in the land assessments. When it is found that a lot is not substandard, or that the lot can be developed upon application and approval of a SUP, the current and three prior year assessments will be considered for revisions which will reflect the actual substandard conditions, if any exist.

Kenneth W. Clark et ux
January 13, 1995
Page 4 of 4

If you have any questions, concerns or comments related to this administrative review, please communicate them to me by January 30. By receiving your comments by this date we will be able to complete any assessment revisions for these 45 lots by our planned completion date of February 17.

Please call me directly at 703/838-3895, at your convenience.

Sincerely,



Richard L. Sanderson
Director

Attachments

- 1- Copy of Section 12-400 of City Zoning Ordinance
- 2- List of 45 Substandard Lots



City of Alexandria, Virginia

Office of Real Estate Assessments

P. O. Box 178 - City Hall

Alexandria, Virginia 22313

(703) 838-4646

March 20, 1995



Kenneth W. Clark et ux
724 Timberbranch Drive
Alexandria, VA 22302

Re: 724 Timberbranch Dr (#42.00-03-17)

Dear Mr. Clark:

The purpose of this letter is to inform you that the Alexandria Office of Real Estate Assessments has completed the first phase of a comprehensive administrative review of the 1991 through 1994 real property assessments for vacant residentially-zoned lots in the City that may not meet minimum zoning requirements for development.

Last December I sent you a letter informing you that the Office of Real Estate Assessments would undertake this comprehensive review, which included the above-mentioned property, to be certain that the substandard lot conditions unique to each lot were accurately reflected in the assessments.

The Department of Planning & Zoning has determined that your substandard lot cannot be developed because it does not meet the criteria set forth in Sections 12-402 (A)(1) and 4-402 (A)(2) of the City's Zoning Ordinance. As such, the 1991 through 1994 land assessments have been revised to reflect this condition. Unfortunately, State tax law only provides for correction of an erroneous assessment for the current tax assessment year (1994) and three years prior (1991, 1992 and 1993). In the case of this administrative review, 1994 has been used as the current tax assessment year because the review process was initiated in 1994. This is consistent with past practice when an administrative review was initiated later in the calendar year and not completed until the following year. The 1995 real property assessment for your lot reflects the finding of this administrative review, as will future assessments.

Kenneth W. Clark, et ux
March 20, 1995
Page 2 of 3

Enclosed you will find revised Notices of Assessment for any of the tax years 1991, 1992, 1993 and 1994 during which you owned the property. Tax adjustments have been sent to the City of Alexandria Department of Finance so that real estate taxes that were overpaid for applicable tax years can be credited toward the 1995 first-half real estate tax or refunded, if requested.

The general findings and conclusions of the first phase of the comprehensive review are as follows:

- * For 11 of the 45 lots reviewed, the assessments were unchanged because (a) six had already been granted a special use permit (SUP) to develop the lot; (b) four had assessed values that already reflected the substandard lot conditions; and (c) one lot was zoned RM and, therefore, could be developed because it meets the criteria for development under Section 3-1108 of the Zoning Ordinance.
- * For 15 of the 45 lots, the assessments were reduced 60 percent, on average, to reflect the fact that a SUP could not be applied for in order to develop the lot.
- * For 2 of the 45 lots, the assessments were reduced an average of 44 percent to reflect the fact that, although the lots could not be developed because they did not meet the criteria set forth in Section 3-1108 of the Zoning Ordinance related to RM-zoned property, they retain value related to the accessory uses for the adjacent homes that are on small lots also.
- * For the remaining 17 lots, the assessments were reduced 15 percent, on average, to reflect the fact that an application for a SUP could be made. The 15 percent negative adjustment is made to acknowledge the risk associated with the possibility of not getting SUP approval to develop the lot.

A status report related to this first phase of the administrative review is being sent to the Mayor and Members of City Council. A copy of the report will be available upon request.

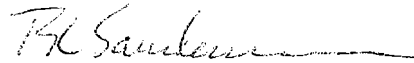
The last phase of the review, scheduled for completion on June 30, concerns the review of 175 vacant residential lots that are potentially substandard which already reflect lower assessments because of these conditions.

Kenneth W. Clark, et ux
March 20, 1995
Page 3 of 3

If you wish to discuss the specific reasons why your lot did not meet the criteria of the City's Zoning Ordinance, please call Tod Chernikoff, Urban Planner, with the Department of Planning and Zoning, at 703/838-4688.

If you have any questions concerning the revised assessment, please contact Barbara Allen, Senior Appraiser in the Office of Real Estate Assessments, at 703/838-3894. To discuss the real estate tax credit or refund, please call Finance/Treasury Division Chief David Clark at 703/838-4779.

Sincerely,



Richard L. Sanderson
Director

Attachments: 1 - Copy of Section 12-400 of City Zoning Ordinance
2 - List of 45 Substandard Lots

Enclosures: 1994, 1993, 1992 and 1991 Revised Notices of Assessment

cc: David Clark, Division Chief
Finance/Treasury

Sec. 12-400 Substandard residential lots.

The following regulations apply to substandard residential lots where the lack of conformity existed prior to June 24, 1992.

12-401

Any lot in the R-20, R-12, R-8, R-5, R-2-5 or RA residence zones, which lot was of record on December 28, 1951, and continuously thereafter, but which lot has less area or less width at the front lot line or front building line than the minimum required for use in the zone where it is situated (referred to hereafter in this section as a substandard lot), may be developed only with a single-family dwelling and its accessory buildings, subject to the following provisions:

- (A) No person has at any time from and after May 14, 1974, contemporaneously held any present or future freehold estate, except as trustee only, or an equitable interest of like quantum, in the substandard lot and in any contiguous land; and
- (B) A special use permit is granted under the provisions of section 11-500; and
- (C) City council, upon consideration of the special use permit, finds that the proposed development will not unreasonably impair an adequate supply of light and air to adjacent property, will not diminish or impair the established property values in the surrounding areas, and will be compatible with the existing neighborhood character.

12-402

Notwithstanding the provisions of section 12-401, a substandard lot which complied with the provisions of this ordinance or other prior law in effect on the date such lot was recorded, and which has continuously been of record since such date, may be developed only with a single-family dwelling and its accessory buildings, subject to the following provisions:

- (A) No person has, at any time from and after September 16, 1988, held any present or future freehold estate, except as trustee only, or any equitable interest of like quantum, or held any interest as

NONCOMPLIANCE AND NONCONFORMITY

§ 12-400

contract purchaser, in the substandard lot and in any contiguous undeveloped or unimproved lot of record; and

- (1) The substandard lot contains at least the lot area, and has at least the lot width at both the front lot line and front building line, as exhibited by more than 50 percent of the developed lots on the block face in which the substandard lot is located; or
 - (2) The substandard lot contains at least 90 percent of the minimum lot area, and 90 percent of the required lot width at both the front lot line and front building line, as required by the zone in which the substandard lot is located; and
- (B) A special use permit is granted under the provisions of section 11-500; and
- (C) City council, upon consideration of the special use permit, finds that the proposed development will not unreasonably impair an adequate supply of light and air to adjacent property, will not diminish or impair the established property value in the surrounding areas, and will be compatible with the existing neighborhood character.
- (D) Where the location of a substandard lot is such that the minimum number of lots or the minimum length of street frontage herein specified for a block face as defined in this ordinance is not present, the director may designate an appropriate block face for such substandard lot, if any there be, without regard to intersecting streets, subject to city council approval as part of the special use permit granted pursuant to this section 12-402. Where the street frontage, on either side of a street, within a block face contains more than 30 lots or is greater than 1,200 feet in length, as measured along the front lot lines, the director shall designate an appropriate block face comprised of the closest and most appropriate 30 lots or 1,200 feet lot frontage, whichever is less, on each side of the street, subject to city council approval as part of the special use permit granted pursuant to this section 12-402.

12-403

Nothing in this section 12-400 shall be deemed to authorize city council to approve a special use permit under the provisions of this section for a development which would exceed the maximum floor area ratio, density or height regulations of the zone or zones in which such development is located, or the maximum floor area ratio, density or height regulations otherwise provided in this ordinance.

§ 12-400

ALEXANDRIA ZONING ORDINANCE

12-404

In approving a special use permit under this section for a substandard lot meeting the requirements of section 12-401 or 12-402, city council may modify the minimum yard, coverage or other minimum requirements imposed by this ordinance, for the zone or zones in which the lot is located, or otherwise applicable to the lot or the development thereof, if the council determines that such a modification is necessary or desirable to develop the lot in conformity with the approved special use permit, and that such modification will not be detrimental to the public health, safety and general welfare.

Supp. No. 2

12-10.2

Date: December 16, 1994

City of Alexandria, Virginia
Office of Real Estate Assessments
SUBSTANDARD VACANT RESIDENTIAL LOTS

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MAP-BLOCK-LOT	LOCATION ADDRESS	OWNER'S NAME	MAILING ADDRESS
(1)	(2)	(3)	(4)
1 64.03-06-03	215A N. Patrick St.	Carpenter, James H. et ux	4501 Argyle Terrace, NW, Washington, DC 20011
2 75.01-09-03	308 Prince St.	Debruyn, Arie Thys or Sherrie L.	American Embassy, APO AP 965460001
3 64.04-06-03	822 Queen St.	Andross David	824 Queen Street, Alexandria, VA 22314
4 74.04-05-12-04	305A S. Royal St.	Robinson, Jane Washburn	404 Duke Street, Alexandria, VA 22314
5 75.03-07-16	206A Wolfe St.	MacDonald, Wm. R. or Elizabeth H.	420 South Lee Street, Alexandria, VA 22314
6 74.04-07-11	308 Wolfe St.	Cavaney, Byron M., Jr. or Victoria W., Tr.	408 South Lee Street, Alexandria, VA 22314

Total of 6 lots ineligible under City Zoning Ordinance Section 12-400. 1/

7 14.00-10-06	806 Chalfonte Dr.	Wynne, Hal G., Jr. or Cynthia A.	804 Chalfonte Drive, Alexandria, VA 22305
8 23.00-10-24-01	2503 Clay St.	McLain, Ann C.	2507 Clay Street, Alexandria, VA 22302
9 23.00-10-24	2505 Clay St.	McLain, Ann C.	2507 Clay Street, Alexandria, VA 22302
10 10.00-01-27	5445 Fillmore Ave.	Mendizabal, Reynaldo or Graciella	5445 Fillmore Avenue, Alexandria, VA 22311
11 33.00-02-01	2507 Fordham Rd.	Edsall, Hanford M. or May H.	2601 Fordham Road, Alexandria, VA 22302
12 41.00-03-21	1100 Francis Hammond Pk.	Grant, Ralph M. & Lucy M.	1100 Francis Hammond Parkway, Alexandria, VA 22302
13 43.01-09-13	14 E. Nelson Ave.	Corum, Thurman or Gloria E.	12 East Nelson Avenue, Alexandria, VA 22301
14 14.00-09-03	3105 Old Dominion Blvd.	Seward, William R., Jr.	619 Beverly Drive, Alexandria, VA 22305
15 38.00-02-10	1060A Palmer Pl.	Trenga, Anthony J. or Rita M.	1060 Palmer Place, Alexandria, VA 22304
16 32.00-10-30	1023A Quaker La.	Garvin, Chester or Annie	1023 Quaker Lane, Alexandria, VA 22302
17 33.00-05-13	2408 Taylor Ave.	Wilson, Lynn Cawley or Andrew S. 2/	2406 Taylor Avenue, Alexandria, VA 22302
18 33.00-05-12	2410 Taylor Ave.	Carter, Sterrett J. & June C.	2412 Taylor Avenue, Alexandria, VA 22302
19 42.00-03-17	724 Timberbranch Dr.	Clark, Kenneth W. et ux	724 Timberbranch Drive, Alexandria, VA 22302
20 23.00-15-26	2711 Valley Dr.	Flanagan, William J. or Gloria B.	2713 Valley Drive, Alexandria, VA 22302
21 33.00-06-26	414 Virginia Ave.	Jasper, Nathaniel C. et al.	500 Virginia Avenue, Alexandria, VA 22302
22 32.00-06-09	2202 Sroggins Rd.	Blair, Archer R., Jr. or Blanche L. Blair	2200 Scroggins Road, Alexandria, VA 22302

Total of 16 lots that do not meet the criteria for application for special use permit. 3/

(see page 3 for footnotes)

Date: December 16, 1994

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City of Alexandria, Virginia
Office of Real Estate Assessments
SUBSTANDARD VACANT RESIDENTIAL LOTS
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MAP-BLOCK-LOT	LOCATION ADDRESS	OWNER'S NAME	MAILING ADDRESS
(1)	(2)	(3)	(4)
23 43.04-03-16	410 E. Alexandria Ave.	May, Roy C. or Eleanor J.	4550 North Pegram Street, Alexandria, VA 22304
24 62.02-08-12	511 Carlisle Dr.	Ward, Royce F. or Margaret D.	509 Carlisle Drive, Alexandria, VA 22301
25 34.01-10-01	1 E. Del Ray Ave.	Manzer, Elaine C.	3613 Oakland Drive, Alexandria, VA 22310
26 24.04-01-41	13 W. Groves Ave.	Dobson, Cora S.	15 Groves Avenue, Alexandria, VA 22305
27 63.01-10-13	2208 King St.	Johnson, Richard A. et al	203 Park Road, Alexandria, VA 22301
28 35.03-02-10	2014 LaGrande Ave.	Innamorato, Donato et ux	414 East Windsor Avenue, Alexandria, VA 22301
29 43.04-01-01	101 E. Nelson Ave.	Wohler, Brett Alan or Margaret Ann	103 East Nelson Avenue, Alexandria, VA 22301
30 53.04-02-20	12 E. Oak St.	Giordano, James & Mary	14 East Oak Street, Alexandria, VA 22301
31 53.04-05-08	310 E. Oak St.	Yates, Jason A.	10115 View Point Court, Fairfax, VA 22039
32 53.04-05-07	312 E. Oak St.	Yates, Jason A.	10115 View Point Court, Fairfax, VA 22039
33 63.01-11-11	211 Park Rd.	Hampton, Ellen L.	P.O. Box 2185, Alexandria, VA 22301
34 63.01-11-01	315 Park Rd.	Fannon, Anna J.	313 Park Road, Alexandria, VA 22301
35 53.03-03-02	705 Russell Rd.	Horwich, Helen B.	703 Russell Road, Alexandria, VA 22301
36 43.01-07-02	1607 Russell Rd.	Kaufman, Robert J. or Karen F.	1609 Russell Road, Alexandria, VA 22301
37 62.02-02-18	707 South View Ter.	Tothill, William G. or Mary V.	703 South View Terrace, Alexandria, VA 22314
38 33.00-11-09	508 W. Windsor Ave.	Runyan, John C. or Ruth E. Kane	510 West Windsor Avenue, Alexandria, VA 22301
39 24.03-10-13	203 W. Uhler Ter.	Moran, James P.	205 West Uhler Terrace, Alexandria, Va 22301

Total of 17 lots that do meet criteria for application for special use permit. 4/

40 14.00-11-34	912 Enderby Dr.	Crowley, Richard S. or Nancy T.	3121 Savoy Drive, Fairfax, VA 22031
41 10.00-02-13	5221 Fillmore Ave.	Underwood, Donna Jillene	2309 Glendale Terrace, Alexandria, VA 22303
42 34.01-02-11	2206 Russell Rd.	Brown, Leslie H. & Jean M.	2208 Russell Road, Alexandria, VA 22301
43 32.00-05-05.01	1402 W. Braddock Rd.	Von Guggenberg, Alexander M. or Nancy G.	1400 West Braddock Road, Alexandria, VA 22302
44 32.00-05-05.03	1311 Roosevelt St.	Beverly Drive Corporation	813 Crescent Drive, Alexandria, VA 22301
45 32.00-06-06	1302 Roosevelt St.	Roosevelt Street LLC	325 North Henry Street, Alexandria, VA 22314

Total of 6 lots that have received development approval.

Grand total of 45 lots.

(see page 3 for footnotes)

Date: December 16, 1994

City of Alexandria, Virginia
Office of Real Estate Assessments
SUBSTANDARD VACANT RESIDENTIAL LOTS

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MAP-BLOCK-LOT	LOCATION ADDRESS	OWNER'S NAME	MAILING ADDRESS
(1)	(2)	(3)	(4)

Notes:

- 1/ These six lots are located in RB or Rm residence zones. City zoning ordinance section 12-400 allows for the development of a single-family residence in the R-20, R-12, R-8, R-5, R-2-5, or RA residence zones. However, exceptions allowed in Section 3-707 for "RB" zoned lots and Section 3-1108 for "RM" zoned lots will also be reviewed.
- 2/ This lot, at 2808 Taylor Avenue, and the adjacent residence at 2806 Taylor Avenue was owned by Roger Logan Golt, Kay Golt Mason, and Day Golt North until August 31, 1994.
- 3/ These 16 lots do not meet the requirements of sections 12-402 (A) (1) and 12-402 (A) (2) of the City's zoning ordinance, and are, therefore, unable to make application for a special use permit to develop the lots.
- 4/ These 17 lots meet the requirements of sections 12-402 (A) (1) and 12-402 (A) (2) of the City's zoning ordinance, and are, therefore, able to make application for a special use permit to develop the lots.



City of Alexandria, Virginia

Office of Real Estate Assessments

P. O. Box 178 - City Hall

Alexandria, Virginia 22313

(703) 838-4646



March 16, 1995

1994 REVISED
NOTICE OF ASSESSMENT

PROPERTY OWNER: Kenneth W. Clark et ux.
ADDRESS OF PROPERTY: 724 Timberbranch Drive
ASSESSMENT MAP NO.: 42.00-03-17
DATA BANK NO.: 16448000

	LAND	BLDG	TOTAL
PREVIOUS ASSESSED VALUE	82,700	3,500	86,200
REVISED ASSESSED VALUE	45,200	3,500	48,700



City of Alexandria, Virginia

Office of Real Estate Assessments

P. O. Box 178 - City Hall

Alexandria, Virginia 22313

(703) 838-4646



March 16, 1995

1993 REVISED
NOTICE OF ASSESSMENT

PROPERTY OWNER: Kenneth W. Clark et ux.
ADDRESS OF PROPERTY: 724 Timberbranch Drive
ASSESSMENT MAP NO.: 42.00-03-17
DATA BANK NO.: 16448000

	LAND	BLDG	TOTAL
PREVIOUS ASSESSED VALUE	82,700	3,500	86,200
REVISED ASSESSED VALUE	45,200	3,500	48,700



City of Alexandria, Virginia

*Office of Real Estate Assessments
P. O. Box 178 - City Hall
Alexandria, Virginia 22313
(703) 838-4646*



March 16, 1995

1992 REVISED
NOTICE OF ASSESSMENT

PROPERTY OWNER: Kenneth W. Clark et ux.
ADDRESS OF PROPERTY: 724 Timberbranch Drive
ASSESSMENT MAP NO.: 42.00-03-17
DATA BANK NO.: 16448000

	LAND	BLDG	TOTAL
PREVIOUS ASSESSED VALUE	71,900	3,500	75,400
REVISED ASSESSED VALUE	39,300	3,500	42,800



City of Alexandria, Virginia

*Office of Real Estate Assessments
P. O. Box 178 - City Hall
Alexandria, Virginia 22313
(703) 838-4646*



March 16, 1995

1991 REVISED
NOTICE OF ASSESSMENT

PROPERTY OWNER: Kenneth W. Clark
ADDRESS OF PROPERTY: 724 Timberbranch Drive
ASSESSMENT MAP NO.: 42.00-03-17
DATA BANK NO.: 16448000

	LAND	BLDG	TOTAL
PREVIOUS ASSESSED VALUE	71,900	3,500	75,400
REVISED ASSESSED VALUE	39,300	3,500	42,800

BZA2012-0008

Supplement to Appeal Application

Submitted by Appellant's Attorney

On

June 28, 2012

Supplement to Appeal Application BZA 724 Timber Branch Drive, Alexandria VA

Mr. Clark is asking permission to be able to apply for an SUP to build on lot known as 724 Timber Branch Drive Alexandria VA ("Clark Lot"). The Director has denied this permission based upon the mathematical formulas found in Zoning Ordinance ("ZO") 12-402. Mr. Clark respectfully asks for the Director's Decision dated March 15, 2012 to be reversed, based upon the appeal application, with attachments, filed with the BZA on April 15, 2012 and the supplementary and clarifying points set forth below.

Short Background

When the Clarks purchased the Clark Lot on September 8, 1950, it was buildable by right. The deed into Clark indicates that this lot was part Section One of a subdivision known as Braddock Heights which Annah Oakley, the Clark's predecessor in title, acquired by deed dated April 30, 1930. Section One of the Braddock Heights subdivision consisted of lots that were 50' wide. At some point prior to 1974, the Clark Lot entered into a category of R-8 lots that became substandard because, along with all of the other lots in Section One of Braddock Heights, it was not 65 feet wide. These lots were "grandfathered in" and therefore remained buildable because they were "of record" as of December 28, 1951. The Clark Lot has been continuously owned by his parents and later the parents' trust. Mr. Clark, appellant herein, is the trustee of that trust.

In 1974, the eligibility of the Clark Lot to be developed with a single family residence was apparently taken away through the passage of (then) ZO Section 42-25, which rendered the Clark Lot unbuildable because the Clarks also owned a contiguous parcel. Yet from 1950, through 1974 and all the way until receipt of the March 20, 1995 letter from the Assessment office, the Clark family was paying taxes on the Clark Lot as a buildable lot. (See attached 3/20/95 letter to Kenneth Clark from Alexandria Office of Real Estate Assessments, hereafter "March 20, 1995 Letter"). The Clarks had no notice that the Clark Lot was not buildable until the Assessment Office contacted them in December of 1994. In an attachment to the March 20, 1995 letter¹, the Clarks found out that the Clark Lot was one of only 17 substandard lots, and one of only 11 R-8 substandard lots, the Assessment office determined did not meet the ZO 12-402 criteria for application for an SUP.

Apparently, on or about September 16, 1988, approximately 14 years after the 1974 ZO went into effect, a new ZO-- 12-402—had become effective.² It provided that some substandard lots which were owned by persons owning contiguous developed parcels, could be developed after they met either one of two mathematical tests (hereinafter the "50/50 test" and "90/90 test"). Passing one of the two tests would not guarantee an SUP, but would grant the right to apply for one.

¹This same list was apparently attached to the December 16, 1994 letter which first revealed to the Clarks that the Clark Lot had apparently been zoned substandard for more than 20 years.

² The Zoning Ordinance in effect in 1988 was not available for review in the Clerk of Council's office, so this is a best guess gleaned from the ZO language of 12-402 (A) as it exists today.

1. Precedent may exist for an SUP to be issued despite a lot not meeting one of the tests in ZO 12-402.

The March 20 1995 Letter (page 2 of 3) indicates that 6 of the 45 lots the Assessment Office found were substandard had already been granted an SUP. These 6 lots are designated as Lots 40-45 on the list attached to the March 20, 1995 Letter. Current tax records indicate that lots listed as number 42 and 43 have not been developed despite the indication in the March 20, 1995 Letter that an SUP had been issued for them. However, the 4 remaining lots (listed as 40, 41, 44 and 45) had houses built on them between 1991 and 1995 (according to 2012 online tax records). These houses may possibly have been built without complying with the 50/50 or 90/90 tests in Section 12-402. Those SUP applications and calculations were not available to us at the time of filing this BZA Appeal and this supplementary statement; however the Director undoubtedly has access to the 50/50 and the 90/90 test calculations, and we would appreciate demonstration that the tests were met on those 4 lots.

2. The Mathematical Tests in ZO 12-402 are confiscatory as applied to the Clark Lot.

- a. The Clark Lot meets one prong of the 50/50 test and one prong of the 90/90 and therefore Clark should be allowed to apply for an SUP.

According to the Director, the 50/50 test in ZO 12-402 (A) (1) "assesses whether the substandard lot is similar to the other developed lots on the same block." Director's Decision, Page 1. The Clark Lot meets this goal. The Director's Substandard Lot Work Sheet has 22 lots with a Timber Branch Drive address. Coming from West Braddock Road, the first 14 of the first 17³ houses all are built on lots with 50' frontage. The Clark Lot, the 18th lot on the street, also has a 50' frontage. Thus, not only is the first prong of the 50/50 test met in a technical mathematical sense, but in actuality the entire neighborhood to that point was designed have 50' residential lots. Although the Clark Lot is the second smallest of the 18 lots, thus not meeting the second prong of the 50/50 test, all 18 lots up to and including the Clark Lot were, upon information and belief, platted and recorded as Section One of Braddock Heights, and intended to create a uniform neighborhood of 50' lots.

Given the uniformity with which these first 18 contiguous 50' lots on Timber Branch Drive were laid out and developed, if allowed to proceed to the SUP phase, the City Council would have no trouble finding, in accordance with 12-402 (C) that building a modest house on the Clark Lot similar to the neighbors' existing homes "will not unreasonably impair an adequate supply of light and air to adjacent property, will not diminish or impair the established property value in the adjacent property, will not diminish or impair the established property values in the surrounding area, and will be compatible with the existing neighborhood character."

Turning to the second test in ZO 12-402—the so called 90/90 test set forth in 12-402 (A) (2) -- the Director found that the Clark Lot has 93 percent of the 8,000 minimum square footage for R-8. This stands in stark contrast to all other R-8 substandard lots. As Mr. Clark pointed out in an attachment to his original BZA appeal, (attached again hereto for easy reference) of the 17 substandard lots the Assessment Office identified as ineligible for an SUP under 12-402, only 11 lots were R-8 lots and of

³ The other 3 are built on double lots totaling 100' of frontage each.

those 11, only the Clark Lot and 8 others exist as substandard lots today.⁴ The 8 other R-8 lots range in size from 5520 sq. ft. to 6616 sq. ft. and therefore none of them come anywhere close to the required 7200 square feet needed to meet the 90 percent test.

Where the Clark lot fails the 90/90 test is that it lacks the 8.8 feet worth of frontage needed to meet the 90 percent frontage requirement. Yet, under the 50/50 test the Clark Lot frontage of 50' is deemed perfectly compatible with the neighborhood. Further, according to Section 12-404, the City Council in the SUP process would be allowed to consider waiving the minimum lot frontage requirement, thus it could, in the proper case reach the decision that this 8.8 feet deficit in frontage could be waived, given the character of the rest of the neighborhood as discussed above.

As illustrated above and also in the original April 15, 2012 BZA appeal, as a substandard R-8 Lot, the Clark Lot is unique and in a class by itself. We believe it is most likely the only substandard R-8 lot in Alexandria that meets one prong of each of the tests in 12-402 (A) (1) and (2) but fails the other prong of each test.⁵ Under the 50/50 test, the Clark Lot has enough frontage (50 feet) but it is not large enough. Under the 90/90 test, it is sufficiently large but does not have enough frontage. How can a lot be at one and the same time not large enough, sufficiently large, not wide enough and sufficiently wide? Application of a set of tests that reaches such an anomalous result for one single lot (although we are not suggesting it has done so purposely) works an unwarranted financial injustice on the lot owner. Application of the 12-402 (a)(1) and (2) thus constitutes a confiscation of what should by all reasonable standards be a buildable lot.

- b. The Purpose of 12-402 is better served by allowing the Clark Lot to be the subject of an SUP application than to disallow the SUP application.

The purpose of the mathematical tests in 12-402 (A) (1) and (2) is both to provide a relief valve for the harsh confiscation, perhaps amounting to unconstitutional taking, of lots such as the Clark Lot that occurred upon application of the 1974 ZO, and at the same time to prevent the City Council from being inundated with SUP applications for substandard lots which cannot realistically and practically be developed to meet the criteria set forth in 12-402 (C), such as fitting within the "character of the neighborhood." In the year 2012, very few substandard lots remain. Of those identified as R-8 substandard lots in March of 1995, only 8 other lots remain, none of which remotely meets the 90 percent of 8000 square foot requirement. Allowing an SUP to be applied for in the case of the Clark Lot will not open the floodgates of SUP applications. And at the same time, it will achieve the original goal of the 12-402 tests to prevent a harsh economic loss to the lot owner who purchased the lot in good faith as a buildable lot prior to the lot being declared substandard.

For the reasons set forth here and in the original April 15, 2012 BZA appeal, we respectfully request that the BZA declare that the Clark Lot is eligible to proceed to the SUP application stage.

⁴ The lot listed as 20, which is 2711 Valley Drive and the lot listed as 21 which is 414 Virginia Ave. have apparently been combined with contiguous lots.

⁵ We did not have enough information available to us to apply the 50/50 test to the other substandard R-8 lots, however the Staff has that information available to it should it choose to make the calculations.



City of Alexandria, Virginia

Office of Real Estate Assessments

P. O. Box 178 - City Hall

Alexandria, Virginia 22313

(703) 838-4646

March 20, 1995



Kenneth W. Clark et ux
724 Timberbranch Drive
Alexandria, VA 22302

Re: 724 Timberbranch Dr (#42.00-03-17)

Dear Mr. Clark:

The purpose of this letter is to inform you that the Alexandria Office of Real Estate Assessments has completed the first phase of a comprehensive administrative review of the 1991 through 1994 real property assessments for vacant residentially-zoned lots in the City that may not meet minimum zoning requirements for development.

Last December I sent you a letter informing you that the Office of Real Estate Assessments would undertake this comprehensive review, which included the above-mentioned property, to be certain that the substandard lot conditions unique to each lot were accurately reflected in the assessments.

The Department of Planning & Zoning has determined that your substandard lot cannot be developed because it does not meet the criteria set forth in Sections 12-402 (A)(1) and 4-402 (A)(2) of the City's Zoning Ordinance. As such, the 1991 through 1994 land assessments have been revised to reflect this condition. Unfortunately, State tax law only provides for correction of an erroneous assessment for the current tax assessment year (1994) and three years prior (1991, 1992 and 1993). In the case of this administrative review, 1994 has been used as the current tax assessment year because the review process was initiated in 1994. This is consistent with past practice when an administrative review was initiated later in the calendar year and not completed until the following year. The 1995 real property assessment for your lot reflects the finding of this administrative review, as will future assessments.

Kenneth W. Clark, et ux
March 20, 1995
Page 2 of 3

Enclosed you will find revised Notices of Assessment for any of the tax years 1991, 1992, 1993 and 1994 during which you owned the property. Tax adjustments have been sent to the City of Alexandria Department of Finance so that real estate taxes that were overpaid for applicable tax years can be credited toward the 1995 first-half real estate tax or refunded, if requested.

The general findings and conclusions of the first phase of the comprehensive review are as follows:

- * For 11 of the 45 lots reviewed, the assessments were unchanged because (a) six had already been granted a special use permit (SUP) to develop the lot; (b) four had assessed values that already reflected the substandard lot conditions; and (c) one lot was zoned RM and, therefore, could be developed because it meets the criteria for development under Section 3-1108 of the Zoning Ordinance.
- * For 15 of the 45 lots, the assessments were reduced 60 percent, on average, to reflect the fact that a SUP could not be applied for in order to develop the lot.
- * For 2 of the 45 lots, the assessments were reduced an average of 44 percent to reflect the fact that, although the lots could not be developed because they did not meet the criteria set forth in Section 3-1108 of the Zoning Ordinance related to RM-zoned property, they retain value related to the accessory uses for the adjacent homes that are on small lots also.
- * For the remaining 17 lots, the assessments were reduced 15 percent, on average, to reflect the fact that an application for a SUP could be made. The 15 percent negative adjustment is made to acknowledge the risk associated with the possibility of not getting SUP approval to develop the lot.

A status report related to this first phase of the administrative review is being sent to the Mayor and Members of City Council. A copy of the report will be available upon request.

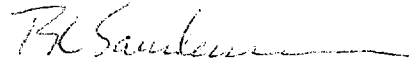
The last phase of the review, scheduled for completion on June 30, concerns the review of 175 vacant residential lots that are potentially substandard which already reflect lower assessments because of these conditions.

Kenneth W. Clark, et ux
March 20, 1995
Page 3 of 3

If you wish to discuss the specific reasons why your lot did not meet the criteria of the City's Zoning Ordinance, please call Tod Chernikoff, Urban Planner, with the Department of Planning and Zoning, at 703/838-4688.

If you have any questions concerning the revised assessment, please contact Barbara Allen, Senior Appraiser in the Office of Real Estate Assessments, at 703/838-3894. To discuss the real estate tax credit or refund, please call Finance/Treasury Division Chief David Clark at 703/838-4779.

Sincerely,



Richard L. Sanderson
Director

Attachments: 1 - Copy of Section 12-400 of City Zoning Ordinance
2 - List of 45 Substandard Lots

Enclosures: 1994, 1993, 1992 and 1991 Revised Notices of Assessment

cc: David Clark, Division Chief
Finance/Treasury

Sec. 12-400 Substandard residential lots.

The following regulations apply to substandard residential lots where the lack of conformity existed prior to June 24, 1992.

12-401 Any lot in the R-20, R-12, R-8, R-5, R-2-5 or RA residence zones, which lot was of record on December 28, 1951, and continuously thereafter, but which lot has less area or less width at the front lot line or front building line than the minimum required for use in the zone where it is situated (referred to hereafter in this section as a substandard lot), may be developed only with a single-family dwelling and its accessory buildings, subject to the following provisions:

- (A) No person has at any time from and after May 14, 1974, contemporaneously held any present or future freehold estate, except as trustee only, or an equitable interest of like quantum, in the substandard lot and in any contiguous land; and
- (B) A special use permit is granted under the provisions of section 11-500; and
- (C) City council, upon consideration of the special use permit, finds that the proposed development will not unreasonably impair an adequate supply of light and air to adjacent property, will not diminish or impair the established property values in the surrounding areas, and will be compatible with the existing neighborhood character.

12-402 Notwithstanding the provisions of section 12-401, a substandard lot which complied with the provisions of this ordinance or other prior law in effect on the date such lot was recorded, and which has continuously been of record since such date, may be developed only with a single-family dwelling and its accessory buildings, subject to the following provisions:

- (A) No person has, at any time from and after September 16, 1988, held any present or future freehold estate, except as trustee only, or any equitable interest of like quantum, or held any interest as

NONCOMPLIANCE AND NONCONFORMITY

§ 12-400

contract purchaser, in the substandard lot and in any contiguous undeveloped or unimproved lot of record; and

- (1) The substandard lot contains at least the lot area, and has at least the lot width at both the front lot line and front building line, as exhibited by more than 50 percent of the developed lots on the block face in which the substandard lot is located; or
 - (2) The substandard lot contains at least 90 percent of the minimum lot area, and 90 percent of the required lot width at both the front lot line and front building line, as required by the zone in which the substandard lot is located; and
- (B) A special use permit is granted under the provisions of section 11-500; and
- (C) City council, upon consideration of the special use permit, finds that the proposed development will not unreasonably impair an adequate supply of light and air to adjacent property, will not diminish or impair the established property value in the surrounding areas, and will be compatible with the existing neighborhood character.
- (D) Where the location of a substandard lot is such that the minimum number of lots or the minimum length of street frontage herein specified for a block face as defined in this ordinance is not present, the director may designate an appropriate block face for such substandard lot, if any there be, without regard to intersecting streets, subject to city council approval as part of the special use permit granted pursuant to this section 12-402. Where the street frontage, on either side of a street, within a block face contains more than 30 lots or is greater than 1,200 feet in length, as measured along the front lot lines, the director shall designate an appropriate block face comprised of the closest and most appropriate 30 lots or 1,200 feet lot frontage, whichever is less, on each side of the street, subject to city council approval as part of the special use permit granted pursuant to this section 12-402.

12-403

Nothing in this section 12-400 shall be deemed to authorize city council to approve a special use permit under the provisions of this section for a development which would exceed the maximum floor area ratio, density or height regulations of the zone or zones in which such development is located, or the maximum floor area ratio, density or height regulations otherwise provided in this ordinance.

§ 12-400

ALEXANDRIA ZONING ORDINANCE

12-404

In approving a special use permit under this section for a substandard lot meeting the requirements of section 12-401 or 12-402, city council may modify the minimum yard, coverage or other minimum requirements imposed by this ordinance, for the zone or zones in which the lot is located, or otherwise applicable to the lot or the development thereof, if the council determines that such a modification is necessary or desirable to develop the lot in conformity with the approved special use permit, and that such modification will not be detrimental to the public health, safety and general welfare.

Date: December 16, 1994

City of Alexandria, Virginia
Office of Real Estate Assessments
SUBSTANDARD VACANT RESIDENTIAL LOTS

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MAP-BLOCK-LOT	LOCATION ADDRESS	OWNER'S NAME	MAILING ADDRESS
(1)	(2)	(3)	(4)
1 64.03-06-03	215A N. Patrick St.	Carpenter, James H. et ux	4501 Argyle Terrace, NW, Washington, DC 20011
2 75.01-09-03	308 Prince St.	Debruyne, Arie Thys or Sherrie L.	American Embassy, APO AP 965460001
3 64.04-06-03	822 Queen St.	Andross David	824 Queen Street, Alexandria, VA 22314
4 74.04-05-12-04	305A S. Royal St.	Robinson, Jane Washburn	404 Duke Street, Alexandria, VA 22314
5 75.03-07-16	206A Wolfe St.	MacDonald, Wm. R. or Elizabeth H.	420 South Lee Street, Alexandria, VA 22314
6 74.04-07-11	308 Wolfe St.	Cavaney, Byron M., Jr. or Victoria W., Tr.	408 South Lee Street, Alexandria, VA 22314
Total of 6 lots ineligible under City Zoning Ordinance Section 12-400. 1/			
7 14.00-10-06	806 Chalfonte Dr.	Wynne, Hal G., Jr. or Cynthia A.	804 Chalfonte Drive, Alexandria, VA 22305
8 23.00-10-24-01	2503 Clay St.	McLain, Ann C.	2507 Clay Street, Alexandria, VA 22302
9 23.00-10-24	2505 Clay St.	McLain, Ann C.	2507 Clay Street, Alexandria, VA 22302
10 10.00-01-27	5445 Fillmore Ave.	Mendizabal, Reynaldo or Graciella	5445 Fillmore Avenue, Alexandria, VA 22311
11 33.00-02-01	2507 Fordham Rd.	Edsall, Hanford M. or May H.	2601 Fordham Road, Alexandria, VA 22302
12 41.00-03-21	1100 Francis Hammond Pk.	Grant, Ralph M. & Lucy M.	1100 Francis Hammond Parkway, Alexandria, VA 22302
13 43.01-09-13	14 E. Nelson Ave.	Corum, Thurman or Gloria E.	12 East Nelson Avenue, Alexandria, VA 22301
14 14.00-09-03	3105 Old Dominion Blvd.	Seward, William R., Jr.	619 Beverly Drive, Alexandria, VA 22305
15 38.00-02-10	1060A Palmer Pl.	Trenga, Anthony J. or Rita M.	1060 Palmer Place, Alexandria, VA 22304
16 32.00-10-30	1023A Quaker La.	Garvin, Chester or Annie	1023 Quaker Lane, Alexandria, VA 22302
17 33.00-05-13	2408 Taylor Ave.	Wilson, Lynn Cawley or Andrew S. 2/	2406 Taylor Avenue, Alexandria, VA 22302
18 33.00-05-12	2410 Taylor Ave.	Carter, Sterrett J. & June C.	2412 Taylor Avenue, Alexandria, VA 22302
19 42.00-03-17	724 Timberbranch Dr.	Clark, Kenneth W. et ux	724 Timberbranch Drive, Alexandria, VA 22302
20 23.00-15-26	2711 Valley Dr.	Flanagan, William J. or Gloria B.	2713 Valley Drive, Alexandria, VA 22302
21 33.00-06-26	414 Virginia Ave.	Jasper, Nathaniel C. et al.	500 Virginia Avenue, Alexandria, VA 22302
22 32.00-06-09	2202 Sroggins Rd.	Blair, Archer R., Jr. or Blanche L. Blair	2200 Scroggins Road, Alexandria, VA 22302

Total of 16 lots that do not meet the criteria for application for special use permit. 3/

(see page 3 for footnotes)

42

Date: December 16, 1994

City of Alexandria, Virginia
Office of Real Estate Assessments
SUBSTANDARD VACANT RESIDENTIAL LOTS

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MAP-BLOCK-LOT	LOCATION ADDRESS	OWNER'S NAME	MAILING ADDRESS
(1)	(2)	(3)	(4)

23	43.04-03-16	410 E. Alexandria Ave.	May, Roy C. or Eleanor J.	4550 North Pegram Street, Alexandria, VA 22304
24	62.02-08-12	511 Carlisle Dr.	Ward, Royce F. or Margaret D.	509 Carlisle Drive, Alexandria, VA 22301
25	34.01-10-01	1 E. Del Ray Ave.	Manzer, Elaine C.	3613 Oakland Drive, Alexandria, VA 22310
26	24.04-01-41	13 W. Groves Ave.	Dobson, Cora S.	15 Groves Avenue, Alexandria, VA 22305
27	63.01-10-13	2208 King St.	Johnson, Richard A. et al	203 Park Road, Alexandria, VA 22301
28	35.03-02-10	2014 LaGrande Ave.	Imamorato, Donato et ux	414 East Windsor Avenue, Alexandria, VA 22301
29	43.04-01-01	101 E. Nelson Ave.	Wohler, Brett Alan or Margaret Ann	103 East Nelson Avenue, Alexandria, VA 22301
30	53.04-02-20	12 E. Oak St.	Giordano, James & Mary	14 East Oak Street, Alexandria, VA 22301
31	53.04-05-08	310 E. Oak St.	Yates, Jason A.	10115 View Point Court, Fairfax, VA 22039
32	53.04-05-07	312 E. Oak St.	Yates, Jason A.	10115 View Point Court, Fairfax, VA 22039
33	63.01-11-11	211 Park Rd.	Hampton, Ellen L.	P.O. Box 2185, Alexandria, VA 22301
34	63.01-11-01	315 Park Rd.	Fannon, Anna J.	313 Park Road, Alexandria, VA 22301
35	53.03-03-02	705 Russell Rd.	Horwich, Helen B.	703 Russell Road, Alexandria, VA 22301
36	43.01-07-02	1607 Russell Rd.	Kaufman, Robert J. or Karen F.	1609 Russell Road, Alexandria, VA 22301
37	62.02-02-18	707 South View Ter.	Tothill, William G. or Mary V.	703 South View Terrace, Alexandria, VA 22314
38	33.00-11-09	508 W. Windsor Ave.	Runyan, John C. or Ruth E. Kane	510 West Windsor Avenue, Alexandria, VA 22301
39	24.03-10-13	203 W. Uhler Ter.	Moran, James P.	205 West Uhler Terrace, Alexandria, VA 22301

Total of 17 lots that do meet criteria for application for special use permit. 4/

40	14.00-11-34	912 Enderby Dr.	Crowley, Richard S. or Nancy T.	3121 Savoy Drive, Fairfax, VA 22031
41	10.00-02-13	5221 Fillmore Ave.	Underwood, Donna Jillene	2309 Glendale Terrace, Alexandria, VA 22303
42	34.01-02-11	2206 Russell Rd.	Brown, Leslie H. & Jean M.	2208 Russell Road, Alexandria, VA 22301
43	32.00-05-05.01	1402 W. Braddock Rd.	Von Guggenberg, Alexander M. or Nancy G.	1400 West Braddock Road, Alexandria, VA 22302
44	32.00-05-05.03	1311 Roosevelt St.	Beverley Drive Corporation	813 Crescent Drive, Alexandria, VA 22301
45	32.00-06-06	1302 Roosevelt St.	Roosevelt Street LLC	325 North Henry Street, Alexandria, VA 22314

Total of 6 lots that have received development approval.

Grand total of 45 lots.

(see page 3 for footnotes)

Date: December 16, 1994

City of Alexandria, Virginia
Office of Real Estate Assessments
SUBSTANDARD VACANT RESIDENTIAL LOTS

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MAP-BLOCK-LOT	LOCATION ADDRESS	OWNER'S NAME	MAILING ADDRESS
(1)	(2)	(3)	(4)

Notes:

- 1/ These six lots are located in RB or Rm residence zones. City zoning ordinance section 12-400 allows for the development of a single-family residence in the R-20, R-12, R-8, R-5, R-2-5, or RA residence zones. However, exceptions allowed in Section 3-707 for "RB" zoned lots and Section 3-1108 for "RM" zoned lots will also be reviewed.
- 2/ This lot, at 2808 Taylor Avenue, and the adjacent residence at 2806 Taylor Avenue was owned by Roger Logan Golt, Kay Golt Mason, and Day Golt North until August 31, 1994.
- 3/ These 16 lots do not meet the requirements of sections 12-402 (A) (1) and 12-402 (A) (2) of the City's zoning ordinance, and are, therefore, unable to make application for a special use permit to develop the lots.
- 4/ These 17 lots meet the requirements of sections 12-402 (A) (1) and 12-402 (A) (2) of the City's zoning ordinance, and are, therefore, able to make application for a special use permit to develop the lots.

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City of Alexandria, Virginia

Office of Real Estate Assessments

P. O. Box 178 - City Hall

Alexandria, Virginia 22313

(703) 838-4646



March 16, 1995

1994 REVISED
NOTICE OF ASSESSMENT

PROPERTY OWNER: Kenneth W. Clark et ux.
ADDRESS OF PROPERTY: 724 Timberbranch Drive
ASSESSMENT MAP NO.: 42.00-03-17
DATA BANK NO.: 16448000

	LAND	BLDG	TOTAL
PREVIOUS ASSESSED VALUE	82,700	3,500	86,200
REVISED ASSESSED VALUE	45,200	3,500	48,700



City of Alexandria, Virginia

Office of Real Estate Assessments

P. O. Box 178 - City Hall

Alexandria, Virginia 22313

(703) 838-4646



March 16, 1995

1993 REVISED
NOTICE OF ASSESSMENT

PROPERTY OWNER: Kenneth W. Clark et ux.
ADDRESS OF PROPERTY: 724 Timberbranch Drive
ASSESSMENT MAP NO.: 42.00-03-17
DATA BANK NO.: 16448000

	LAND	BLDG	TOTAL
PREVIOUS ASSESSED VALUE	82,700	3,500	86,200
REVISED ASSESSED VALUE	45,200	3,500	48,700



City of Alexandria, Virginia

*Office of Real Estate Assessments
P. O. Box 178 - City Hall
Alexandria, Virginia 22313
(703) 838-4646*



March 16, 1995

1992 REVISED
NOTICE OF ASSESSMENT

PROPERTY OWNER: Kenneth W. Clark et ux.
ADDRESS OF PROPERTY: 724 Timberbranch Drive
ASSESSMENT MAP NO.: 42.00-03-17
DATA BANK NO.: 16448000

	LAND	BLDG	TOTAL
PREVIOUS ASSESSED VALUE	71,900	3,500	75,400
REVISED ASSESSED VALUE	39,300	3,500	42,800



City of Alexandria, Virginia

Office of Real Estate Assessments
P. O. Box 178 - City Hall
Alexandria, Virginia 22313
(703) 838-4646



March 16, 1995

1991 REVISED NOTICE OF ASSESSMENT

PROPERTY OWNER: Kenneth W. Clark
ADDRESS OF PROPERTY: 724 Timberbranch Drive
ASSESSMENT MAP NO.: 42.00-03-17
DATA BANK NO.: 16448000

	LAND	BLDG	TOTAL
PREVIOUS ASSESSED VALUE	71,900	3,500	75,400
REVISED ASSESSED VALUE	39,300	3,500	42,800

Substandard "lots that do not meet the criteria for application for special use permit." 12/16/1994

Number	Map Block Lot	Address	Owner	Mailing Add	Area sq.ft.	Zone	Development	Notes
7	14.00-10-06	806 Chalfonte Dr.	Wynne	804 Chalfonte Dr.	5640	R8	garage?	garage to lot #7?
8	23.00-10-24-01	2503 Clay St.	Mclain	2507 Clay St.	5637	R8	none	
9	23.00-10-24	2505 Clay St.	Mclain	2507 Clay St.	6616	R8	none	
10	10.00-01-27	5445 Filmore Ave.	Mendizabel	5445 Filmore Ave.	11,896	R20	none	Address does not match lot No. Lot 27 is 5447 No house on 5447
11	33.00-02-01	2507 Fordham Rd.	Edsall	2601 Fordham Rd.	5628	R8	none	
12	41.00-03-21	1100 Francis Hammond Pk.	Grant	1100 Francis Hammond Pk.	16,389	R12	Dwelling	house built 2003 on lots 20 and 21
13	43.01-09-13	14 E. Nelson Ave	Corum	12 E. Nelson Ave.	4160	R2-5	none	
14	14.00-09-03	3105 Old Dominion Blvd.	Seward	619 Beverly Dr.	5520	R8	none	
15	38.00-02-10	1060A Palmer Pl.	Trenga	1060 Palmer Pl.	8719	R20	none	
16	32.00-10-30	1023A Quaker La.	Garvin	1023 Quaker La.	4086	R20	not clear	Pipestem lot combined w/lot 29
17	33.00-05-13	2408 Taylor Ave.	Wilson	2406 Taylor Ave.	5750	R8	combined	side yard of lot #14
18	33.00-05-12	2410 Taylor Ave.	Carter	2412 Taylor Ave.	5750	R8	none	
19	42.00-03-17	724 Timber Branch Dr.	Clark	724 Timber Branch Dr.	7422	R-8	none	The only one that meets 90% area but not 90% frontage. It meets 50% Frontage but not 50% area.
20	23.00-15-26	2711 Valley Dr.	Flanagan	2713 Valley Dr.		R-8		Parcel not found probably combined with 2713
21	33.00-06-26	414 Virginia Ave.	Jasper	500 Virginia Ave.		R-8		not found probably combined into Lot 27
22	32.00-06-09	2202 Sroggins Rd.	Blair	2200 Scroggins Rd.	5532	R-8	none	

b7

Substandard R8 "lots that do not meet the criteria for application for special use permit". Developed from information in P&Z letter to Kenneth Clark 12/16/1994 re substandard lots in R-8 zones.

Number	Map Block Lot	Address	Area sq.ft.	Zone	Development	Notes
7	14.00-10-06	806 Chalfonte Dr.	5640	R8	garage?	garage to lot #7?
8	23.00-10-24-01	2503 Clay St.	5637	R8	none	
9	23.00-10-24	2505 Clay St.	6616	R8	none	
11	33.00-02-01	2507 Fordham Rd.	5628	R8	none	
14	14.00-09-03	3105 Old Dominion Blvd.	5520	R8	none	
17	33.00-05-13	2408 Taylor Ave.	5750	R8	combined	side yard of lot #14
18	33.00-05-12	2410 Taylor Ave.	5750	R8	none	
19	42.00-03-17	724 Timber Branch Dr.	7422	R-8	none	The only substandard lot that meets 90% area (but not 90% frontage). It meets 50% Frontage but not 50% area.
20	23.00-15-26	2711 Valley Dr.		R-8		Parcel not found probably combined with 2713
21	33.00-06-26	414 Virginia Ave.		R-8		not found probably combined into Lot 27
22	32.00-06-09	2202 Sroggins Rd.	5532	R-8	none	

BZA2012-0008

Additional Materials

Submitted by Appellant: Johnathan Clark

On

June 29, 2012

Julie Fuerth

From: Barbara Ross
Sent: Friday, June 29, 2012 1:53 PM
To: Julie Fuerth
Subject: FW: 724 TIMBER BRANCH DRIVE / Additional 4 documents to add to the record
Attachments: 726 724 TBD Plat As Is.pdf; 726 TB Dr. Small Lots.pdf; Letter-RJ -Clark-071311 re subdivision.pdf; Lot Areas.jpg

From: Kathleen McDermott [mailto:kmmcd@ix.netcom.com]
Sent: Friday, June 29, 2012 1:12 PM
To: Barbara Ross
Subject: 724 TIMBER BRANCH DRIVE / Additional 4 documents to add to the record

Ms. Ross:

At your suggestion, we have reviewed the online docket which was evidently updated today just prior to Noon.

Below, we have listed four documents which Mr. Clark believes he filed with his April Appeal but which are still not reflected in the Record as of Noon Today. These 4 documents are attached to this email as 3 PDF's and one JPG.

1. **726 724 TBD Plat As Is pdf** (Submitted for completion sake. This is the "State of the property" as purchased in 1950 and as it exists now, as compared to the RC Fields' alternate scenario plats (Schemes B, C, and D which are already in the Record)
2. **726 TB Dr. Small Lots pdf** The Clark Lot is in the center group of lots. This was submitted to demonstrate how many R-8 lots that are within a ¼ mile of the Clark Lot have less than 7422 sq. ft. or have less than 50 ft. frontage, or both.
3. **Letter RJ- Clark 071311 re subdivision pdf** This letter shows that application for the SUP was one of the scenarios discussed by RJ Keller and explains RC Fields alternate scenario plats (Schemes B, C, and D which are already in the Record and discussed in the original April 15, 2012 appeal submission)
4. **Lt Areas jpg** This illustrates the point Mr. Clark made in his original appeal that you can have a lot with 58.5 frontage and 7200 sq. ft., which is smaller than his, and it wouldn't fit within the this particular neighborhood as well as his larger lot with 50' frontage

Please add them to the record. If you do not feel you can add them at this stage, can you give me a call and we can discuss? Thank you so much for your assistance on this and for your consideration of Mr. Clark's case.

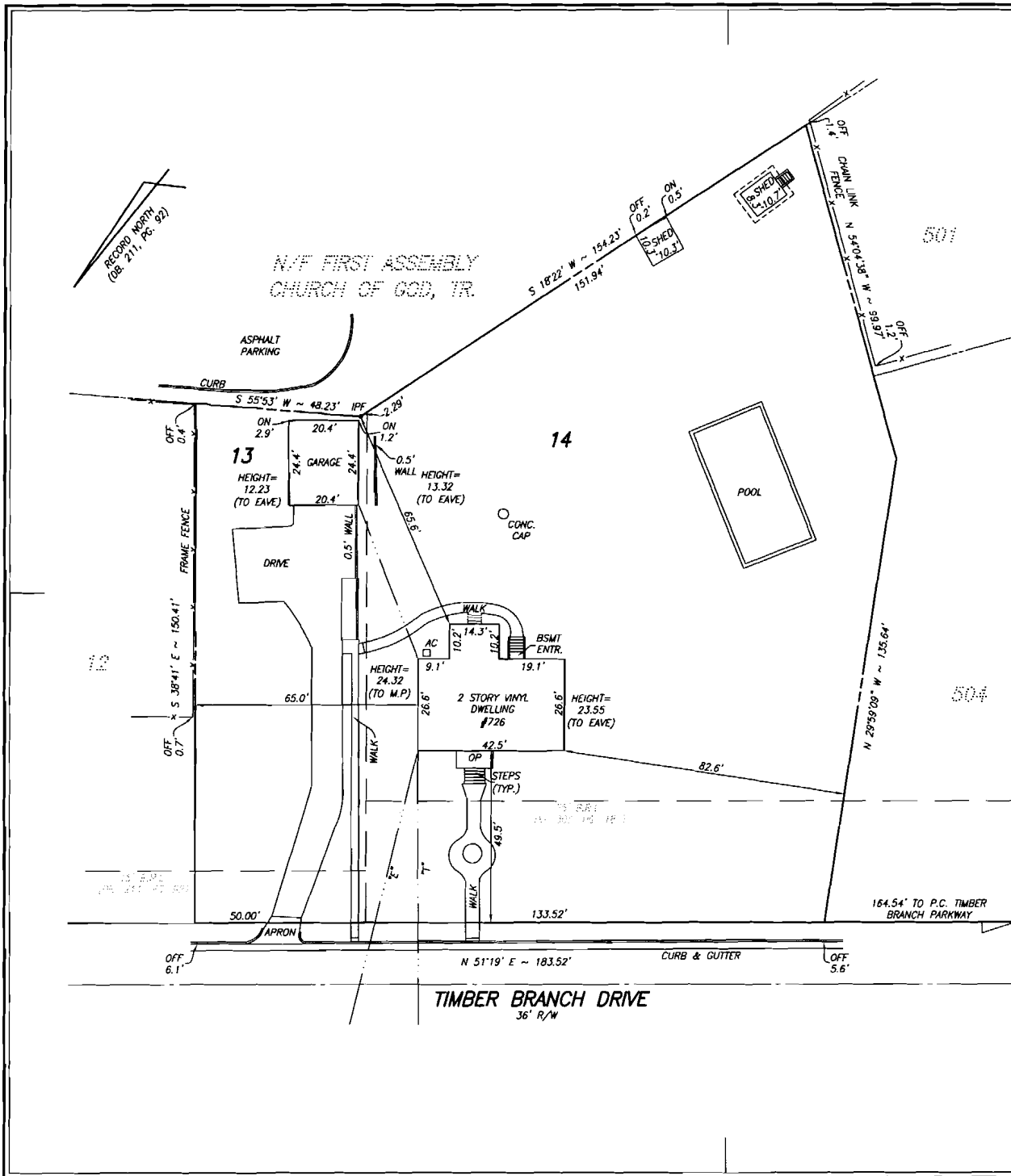
Thanks.
Kathleen

Kathleen M. McDermott, Esq.
P.O. Box 127
4306 Evergreen Lane
Suite 104
Annandale, VA 22003

(703) 658-5095 (office)

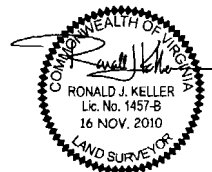
(703) 256-8229 (fax)

The information contained in this e-mail message may be privileged, confidential and protected from disclosure. If you are not the intended recipient, any dissemination, distribution, or copying is prohibited. If you think that you have received this e-mail message in error, please notify the sender by e-mail.



GENERAL NOTES

1. TAX ASSESSMENT MAP # 042.01-03-17 (LOT 13)
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.

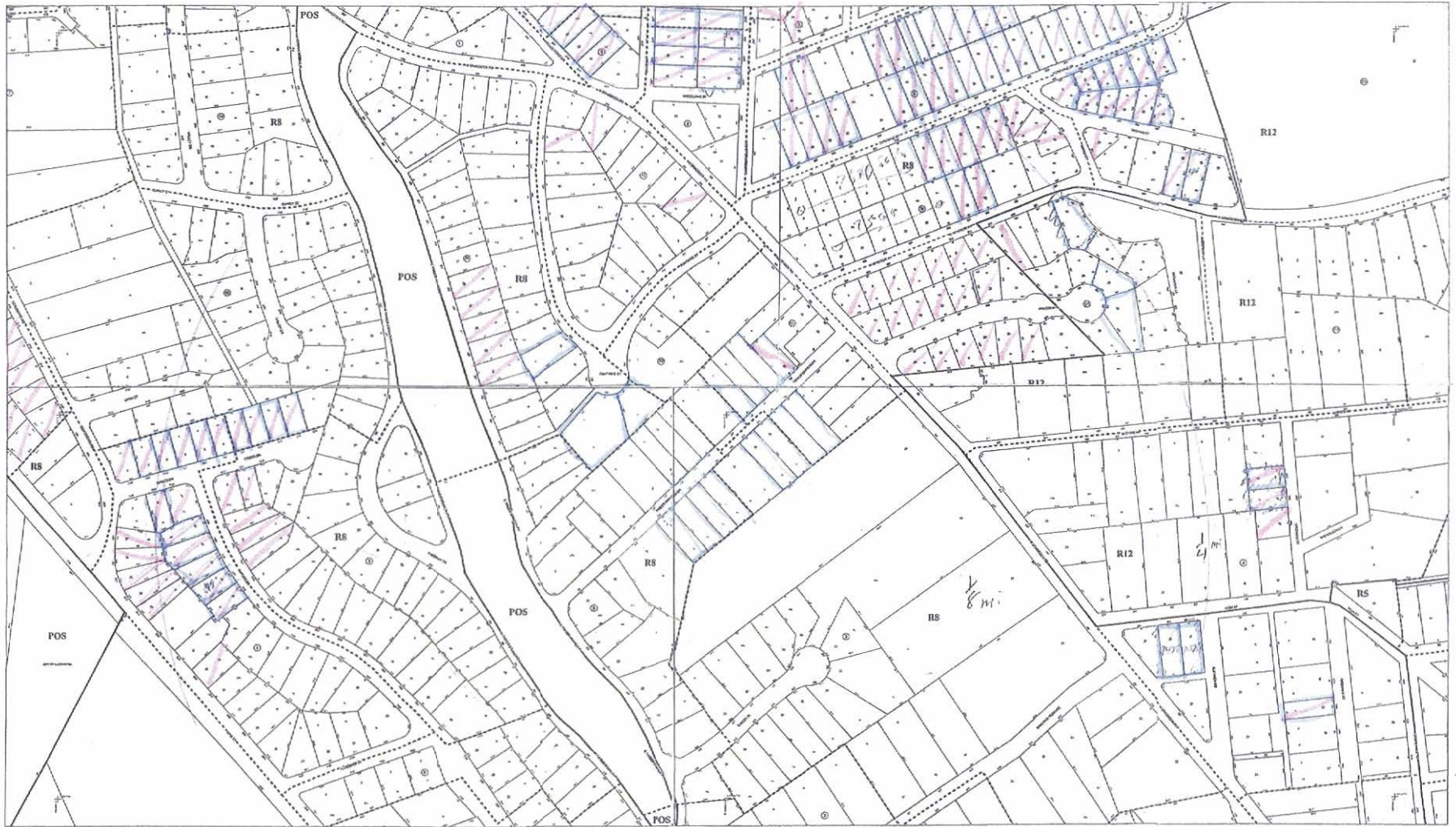


PLAT
SHOWING
PHYSICAL IMPROVEMENT SURVEY
LOTS 13 & 14, BLOCK 1, SECTION 1
BRADDOCK HEIGHTS
(D.B. 211, PG. 92, ARLINGTON COUNTY; DB. 305, PG. 181)
CITY OF ALEXANDRIA, VIRGINIA
SCALE: 1" = 20' DATE: NOVEMBER 16, 2010

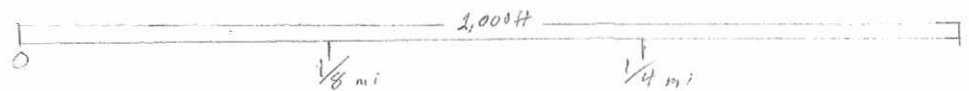
● LAND SURVEYING ● SITE PLANNING ● SUBDIVISION DESIGN
730 S. Washington St. Alexandria, Virginia 22314 (703) 549-6422

RCF FIELD, JR. & ASSOCIATES
A PROFESSIONAL CORPORATION

FILE NO. 10-106
SHEET 1 OF 1
COMP. T.G.
DRAWN T.G.
CHECKED R.J.K.



≤ 7422 Sq. Ft. lot size. Approximately 90 within ¼ mile.
 ≤ 50 Foot frontage. Approximately 60 within ¼ mile.



12 July 2011

Mr. Jonathan Clark
7227 Auburn Street
Annandale, Virginia 22003-5819

Re: 724-726 Timber Branch Drive, Alexandria, Virginia
Lots 13 and 14, Block 1 Section 1, Braddock Heights

Dear Jon:

We have had an opportunity to review and assess your property located at 724-726 Timber Branch Drive in Alexandria. As you know, we have discussed the development potential of your lots with the Planning and Zoning staff at the City of Alexandria and there are a couple of different scenarios that are viable. Some of the options are less time consuming than others but they all offer an opportunity to redevelop the property.

For background, Lot 13 was created with Section 1 of the Braddock Heights Subdivision in 1924 and Lot 14 was created from some of the remaining undeveloped land in Section 1 of Braddock Heights in 1950. Lot 13 has an area of approximately 7,422 square feet and is 50 feet wide at the right-of-way line. Lot 14 has an area of approximately 27,575 square feet and is 133.52 feet wide at the right-of-way line. The existing house is situated on Lot 14 and the existing detached garage and driveway is located on Lot 13. The lots are presently zoned R8 (residential) in the City of Alexandria. Lot 13 would be considered a substandard lot due to its lack of lot area (8,000 square feet required) and lack of width (65 feet required) based on current City of Alexandria zoning requirements. However, due to the nature of the original subdivision and context to surrounding properties, this lot could be developed as it is with a new single family dwelling if a Special Use Permit is obtained.

One option for development would simply cut out another parcel from Lot 14 to the right of the existing house. This would be a conventional subdivision with no modifications or variances required from the City of Alexandria. The existing house and garage can remain as is. It is possible to subdivide parcel 14 now and meet all the zoning requirements for a two lot subdivision and, at a later date, come in with a Special Use Permit request to redevelop Lot 13 with a single family home.

Another scheme would to create three (3) new lots altogether. The existing house and the area to the right of the house would be conventional lots in the R8 Zone. The property lines between Lots 13 and 14 would be adjusted to provide more area and width. The new Lot 13 where the garage is located would be substandard and require variations or modifications. The lot area will be greater than the 8,000 square feet required. The only variance would be for lot width which will be only 58.1 feet, where 65' is required. The right sideyard on the existing house would be set at 12.2 feet to meet the zoning setback requirement and preserve the existing structure. I spoke to City staff and they indicated that as long as we were (1) over the 8,000 sq. ft. lot area minimum and (2) keep within the character of the neighborhood, they feel a variation request was supportable. In my opinion both are achievable. We can get the 8,000 sq. ft. and the

majority of the neighborhood was developed from the original platted lots that are 50' wide. Our substandard lot would actually be a little wider than at least 14 other lots on the street.

In a scenario where three (3) new lots are created in the subdivision process, there is a requirement to submit a site plan as part of the development process. This type of plan would go through the public hearing process the same as a two lot subdivision but, after the hearings, a detailed construction plan would need to be submitted and approved. This would add some additional time and cost to the final subdivision plan process. The timing to get the plan through the public hearing process will be about the same as if you did a regular subdivision.

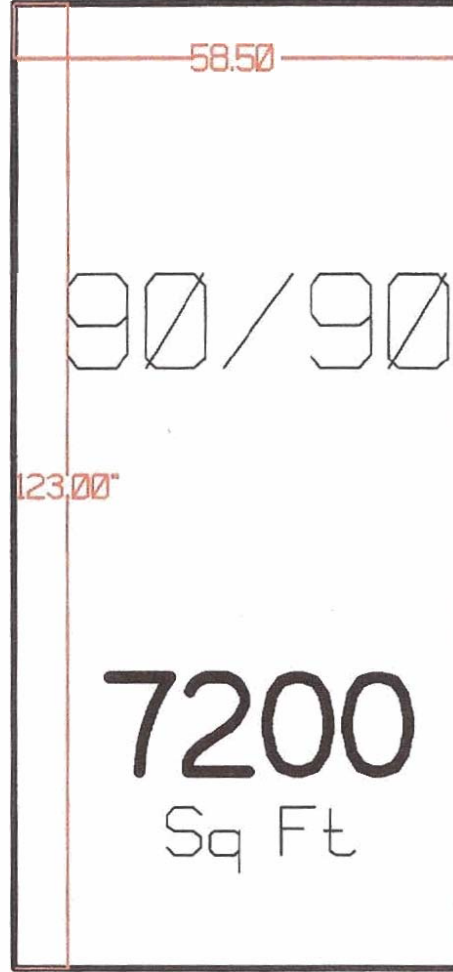
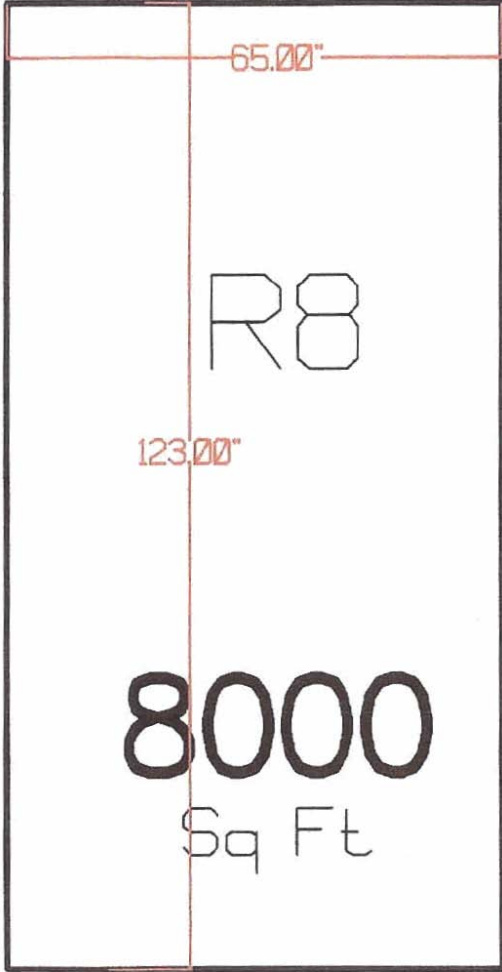
As aforementioned, we can still create three lots and keep it as a regular subdivision. To do this a Special Use Permit would be obtained to build on the existing smaller lot (Lot 13) the way it is now with no lot line adjustment. The larger lot (Lot 14) would simply be cut in two which would net three lots and no site plan would be required. Again, this may just depend on what you want to do with the property

I hope this is helpful to you in assessing the property. Please do not hesitate to contact me if you have any questions or if you require any additional information.

Sincerely;
R.C. Fields, Jr. and Associates, P.C.

A handwritten signature in black ink that reads "R.J. Keller". The signature is written in a cursive style and is followed by a long horizontal line that extends across the width of the signature.

R.J. Keller, L.S.
Senior Project Manager



BZA #2012-0008
724 Timber Branch Drive
Board of Zoning Appeals
July 12, 2012 Hearing

Staff Report Responding to Appeal

- City's Staff Report with Attachments
 - Attachment A
 - Attachment B
 - Attachment C
 - Attachment D
 - Attachment E
 - Attachment F

Docket Item #1
BZA Case #2012-0008

Board of Zoning Appeals
July 12, 2012

Address: 724 Timber Branch Drive
Zone: R-8/Residential Zone
Appellant: Jonathan Clark, Trustee, by Kathleen McDermott, Attorney
Issue: Determination by Director

Summary of Case on Appeal

This case concerns the substandard lot provisions of the Zoning Ordinance as applied to an undeveloped residential lot owned by the appellant's family. After several meetings and discussions with staff regarding the rules for substandard lot development, Mr. Clark asked for an official determination that the lot did not meet those requirements. On March 15, 2012, the Director wrote Mr. Clark explaining how the substandard lot rules apply and determining that in this case the lot is not eligible to request SUP approval to develop a single family house. (Determination, Exhibit A) Mr. Clark's appeal does not appear to challenge the application by the Director of the zoning rules. Instead, appellant argues that the substandard lot regulations are not fair as applied to the subject property and asks the BZA to determine that the rules should not be applied as written in this situation.

Background

History of the subject property

The subject property, 724 Timber Branch Drive, is a single lot which, together with the adjacent lot at 726 Timber Branch Drive, has long been the property on which appellant's family home was located. The Braddock Heights subdivision, created in 1924, when the land was part of Arlington County, divided land into lots beginning at Braddock Road on the east with lot 1 and running west through Lot 13 (the subject property here) on both sides of Timber Branch Road. The land to the west of lot 13 was part of what was shown as "Undeveloped area, 4.152 acres" on the original plat and extended down and along what is today Timber Branch Parkway. (Original subdivision attached as Exhibit B) The "undeveloped area" was later subdivided into a series of lots, with the land adjacent to Lot 13 becoming Lot 14. (See Exhibits C and D)

The Clark family purchased Lots 13 and 14 in 1950. The large house on the property appears to have been built prior to 1941. The house and accessory uses still exist as they were used by the Clark family for sixty years. Specifically, 726 Timber Branch (Lot 14) contains the main house and a swimming pool. 724 Timber Branch (Lot 13) contains the driveway and garage for the main house. (See layout of property on Exhibit E.)

Since the death of appellant's parents, their estate seeks to sell 724 Timber Branch as a developable lot. The zoning rules, however, do not permit the lot to be developed.

History of the substandard lot regulations

At time of original subdivision, in 1924, the property was not zoned. When it was annexed from Arlington in 1930, the land was zoned A, Residential. That zone allowed a single family house on a 5,000 square foot lot with a minimum lot width of 50 feet. In 1951, the land was rezoned to R8 and the requirements in the zone have not changed since that time. The R8 zone required 8,000 square feet of land for each single family home. In addition, each lot was required to have a lot width at the building line ("lot width") of 65 feet and a lot width at the front lot line ("lot frontage") of 40 feet. The subject property at this point became substandard in that it did not meet the new zoning requirements for a single family house. The 1951 ordinance included a grandfather clause, however, permitting all lots subdivided prior to 1951 to be developed with a single family home even if the lot did not meet the new R-8 regulations.

In 1974, in reaction to neighborhood concerns, the grandfather clause that pertained to R-8 land – and the other single family zones – was repealed by City Council. In order to limit development and ensure new homes complied with modern standards, Council adopted a new law including the first substandard lot rules for the City. Specifically, after 1974, a substandard lot could be developed only if it had been a lot of record as of 1951, if a special use permit was approved, and only if the substandard lot owner did not at any time after 1974 also own any adjacent land. Thus, the 1974 amendment effectively forced the consolidation of a substandard lot with any adjacent lot in common ownership. In such cases, the value of the land would theoretically be recouped by its use as part of the adjacent property. Since the two lots in question here were then and subsequently in common ownership, Lot 13 stopped being developable, either "by right" or by SUP in 1974, and has been used as part of the family home, specifically for its garage and driveway, since that time. While not being able to develop it separately was indeed a major limitation on the use of the lot, that result was precisely the intent of the legislation adopted by Council in 1974.

In 1989, the substandard lot regulations were amended to loosen the strictures of the 1974 rule to some extent and to make additional lots eligible for development with SUP approval. The new rule was the result of the work over several years by City staff working with a committee of neighborhood representatives, and included the development of different alternatives, research of similar rules in other jurisdictions, and several hearings at both the Planning Commission and City Council.

Under Section 12-400 of the zoning ordinance (then section 7-6-44), the clear prohibition on development of all lots held in common ownership with adjacent property was removed. The new law excluded from development only those lots in common ownership with adjacent *undeveloped* land. If the adjacent commonly owned site was developed, as here, then the substandard lot became potentially developable. By opening up development of such lots, Council allowed many more lots to be considered for development than under prior regulations. Instead of the ownership of adjacent property being the principal guide to the right to build, the emphasis in the new regulations was on the proposed building lot's compatibility with nearby

developed lots, as well as with the zoning rules for the zone. The new substandard lot regulations provided a mathematical formula for determining those lots which, while not meeting the zoning requirements, are nevertheless potential building sites in that they are either compatible with nearby developed lots or very close to what the zoning requires. The 1989 amendment continues in force today and is the provision of the ordinance that forms the basis of this appeal. (Section 12-400 is attached as Exhibit F)

The city's records reveal no attempt to build a separate house on Lot 13 between its original subdivision in 1924 and now. The property has been taxed as vacant but undevelopable land since 1994. Its current assessment of approximately \$60,000 represents the amount of value the lot adds to the adjacent large parcel with the main Clark residence, assessed at \$850,000 for land and buildings.

The Director's determination was reasonable and correct and should be upheld

This case appeals the Director's conclusion that 724 Timber Branch Drive is not eligible for SUP consideration for construction of a new single family dwelling. It thus raises the question of whether the Director's determination was correct under the substandard lot rules of the zoning ordinance. Given the assertions of the appellant, the BZA is being asked to answer two questions:

1. Did the Director correctly apply the eligibility criteria of section 12-402 to the subject property?
2. Do any provisions of section 12-400 permit the Director to apply equitable considerations in making her determination about whether this substandard lot may apply for an SUP?

(1) The Director applied section 12-402 of the zoning ordinance correctly.

The appellant requested a determination from the Director regarding whether the undeveloped lot at 724 Timber Branch Drive is eligible for Special Use Permit approval to build a new single-family dwelling. A lot in the R-8 zone requires a minimum lot size of 8,000 square feet, a lot frontage of 40 feet, and a lot width of 65 feet. The lot at 724 Timber Branch Drive is substandard as a zoning matter because it has a lot size of only 7,450 square feet and a lot width of only 50 feet.

Section 12-400 of the Zoning Ordinance is a complex provision that outlines a two-step process on the path to potential development of a substandard lot. See section 12-402.¹ The second step is the SUP application and consideration by the Planning Commission and City Council, including standards for the SUP approval and potential modifications of zoning rules. See sections 12-402(C), 12-403, and 12-404.

¹ Section 12-401 of the ordinance repeats the substandard lot rules that had existed prior to the revisions adopted in 1989. The substance of the 1989 substandard lot rules is found at section 12-402 et seq.

The first step defines the threshold criteria that must be met in order to even be eligible to proceed with an SUP application for development. Section 12-402(A). The eligibility criteria are stated as two alternative tests, and each test has multiple prongs. The eligibility tests ask:

- (1) Whether the substandard lot is similar to the other developed lots on the same block;
and
- (2) whether the size, width and frontage of the substandard lot, when compared to the minimum zone requirements for lot area, width and frontage, is so close as to warrant proceeding to the SUP process.

All components of each test must be met to meet the criteria of the test. If either test is met, an SUP application may be filed. If neither is met, then an application may not be filed.

Existing Development Test (50%)

Section 12-402(A)(1) provides the first eligibility test and requires comparing the substandard lot to existing development in the area, but in a very specific, prescribed way. Specifically, it requires a substandard lot to have at least the lot area, width and frontage exhibited by more than 50% of the developed lots along the same block face. "Block face" is a term of art, defined at Section 2-122 of the Zoning Ordinance to mean "the street frontage on both sides of a street located between two intersecting streets..." Certain exceptions to the definition exist where the traditional block face is exceptionally short or long, but neither circumstance applies in this case. The block face used here therefore includes the 26 properties on both sides of Timber Branch Drive between Braddock Road and East Timber Branch Parkway. See worksheet attached to the Director's determination letter, Exhibit A, for list of lots considered for comparison purposes.

As shown in that worksheet, 15 of the 26 other properties on the appropriate block face, or approximately 58%, have at least the lot frontage exhibited by the subject property (50 feet). However, only one of them (4%) has at least its lot area of 7,450 square feet. The subject property is thus the second-smallest on the block in terms of lot area. As a result, it does not meet this eligibility test since it does not have at least the lot area of a majority of properties on the block face.

Zoning Test (90%)

In the second eligibility test, under Section 12-402(A)(2), a lot must have at least 90% of the lot area and lot frontage required for the R-8 zone to be eligible for Special Use Permit consideration. Although the subject property has 93% of the 8,000 square-foot minimum lot area for the R-8 zone, it has only 77% of the 65-foot minimum lot width required for R-8. The property therefore does not pass this second test since it has less than 90% of the minimum lot width required for the zone.²

² This sentence, as it appeared in the Director's March 15 determination letter, includes an incorrect use of words. Specifically, the word "lot frontage" was used when "lot width" was intended. The same is true on the worksheet attached to the letter. The measurements and conclusions remain accurate as to lot width analysis; the 50' frontage of the lot meets the 40 foot lot frontage requirement of the R8 zone. The mistake in terminology does not change the conclusions or the determination that the lot does not meet the tests of section 12-402. The worksheet that is attached to Exhibit A here shows the corrected terminology.

Based on the mathematical criteria of section 12-402, as explained above and itemized in the worksheet attached to her determination, the Director found that neither of the two eligibility tests for proceeding with an SUP could be met. She therefore informed the appellant that 724 Timber Branch Drive was not eligible to apply for an SUP and development approval. It is significant that neither the applicant nor his attorney has questioned the Director's mathematical findings under section 12-402. The appeal application specifically states that, "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."

The role of the BZA is to decide whether the Director correctly and reasonably applied the zoning rules, here the provisions of section 12-400. In this case she did, and should be upheld.

2. The Director does not have the discretion to modify the substandard lot rules or to apply equitable considerations to her decision.

The appellant argues that, although city staff applied the criteria of section 12-400 accurately and professionally to 724 Timber Branch, the BZA should step in and alter the Director's determination as a matter of fairness. To support this outcome, the appellant cites a series of points and, in a late-filed supplement, his attorney adds to the list. Staff addresses each of these points below, even though none are appropriately used to alter the correct and reasonable decision by the Director. Each attempts to find an equitable rationale to vary the terms of the ordinance. However, neither the Director nor the BZA have discretion to modify the substandard rules or to apply equitable considerations in applying this provision of the ordinance.

Variance standards

The appellant quotes staff's remarks in the 122 Prince Street *variance* case, where staff and the BZA concluded that a variance was justified in that case because strict compliance with zoning constituted an unreasonable restriction on the property. On the other hand, the current case is an appeal of a determination of the Director, not a variance case. Questions of hardship, uniqueness and equity are not appropriate here. In fact, section 12-405 of the zoning ordinance, which is part of the substandard lot provisions, expressly prohibits a substandard lot owner from pursuing a variance from the BZA. It states:

[T]he remedy and procedure provided in this section 12-400 shall be [the] exclusive remedy and procedure for the use and development of substandard lots in the zones herein designated, and any use or development of such lots in a manner not herein provided for and authorized shall be conclusively presumed to be contrary to the public interest and contrary to the intended spirit and purpose of this ordinance.

Comparison to other lots

As to the substandard lot mathematical tests, the appellant cites different, hypothetical scenarios that might meet the test but would be, according to the appellant, less desirable. And because the lot is very close to meeting the legislatively required tests, appellant argues that a different mathematical calculation would be wiser, at least in this case. Specifically, appellant argues because the lot width is the same as 83% of the other developed lots on the block, or because it

meets one prong of each eligibility test, it is unique and should be permitted to apply for an SUP. However, neither the Director nor the BZA have the power to change the zoning rules or to substitute their wisdom for that of the City Council who legislatively adopted the zoning rules.

Appellant's attorney compares the subject lot with both other developed lots on the block, and with other substandard lots on the list sent to the appellant from Real Estate Assessments in 1995. As to nearby homes on the block, she excludes lots and homes that are not on Timber Branch Drive and houses built on double lots. However, the zoning ordinance definition of "blockface," which is a necessary legal component of the analysis, does not allow the excluded lots to be ignored. They are part of the existing development in the neighborhood against which the subject lot is required to be compared. While part of the block is similar to the subject property, other lots in the blockface are not. The early platted lots on the block were simply all built prior to the imposition of modern zoning. In any event, the lot is smaller than the great majority (96%) of properly compared sites, and that in itself disqualifies it for eligibility under the current substandard zoning rules.

When appellant's attorney discusses other substandard lots in the city ineligible to apply for SUP approval as of 1994, she excludes those combined as part of contiguous lots, even though that is exactly the situation of the Clark lot for many years. In fact, our review of the 16 properties ineligible to proceed with an SUP in 1994 shows that all are owned and used by adjacent owners, whether formally consolidated or not. She suggests that there are very few substandard lots left in the City. On the contrary, the Department of Planning and Zoning has processed many SUP cases over the last 20+ years for consideration by the Planning Commission and City Council and continues to do so. They are often contentious and opposed by neighbors, and staff works with applicants to modify their footprints, mass and designs to be compatible with the neighborhood.³

Forced tear down of family home

The appellant cites the location of the existing house on Lot 14 as showing an intent that an additional house would be built on Lot 13. According to the appellant if Lot 13 cannot be developed separately, then in order to maximize the value of the family land, the entire site (Lots 13 and 14) will have to be subdivided and that will require removal of the existing house. While some alternatives require the removal of the existing house, others do not; further, although retaining the older home may be desirable, such considerations are outside the scope of the BZA's function on appeal.

Real estate taxes

Appellant's attorney raises the history of property taxes on the property, which has been assessed as undevelopable since 1994, with a reduction in taxes applied back to 1991. According to the applicant, the BZA should take into consideration the fact that 724 Timber Branch Drive was

³ Appellant invites staff to research a list of cases identified in 1994, suggesting that the rules were not properly applied. First, the list does not say that the lots in the category were approved by SUP. Second, as to the six lots (# 40-45) with prior development approval, two are undeveloped, two were developed under section 12-400 appropriately applied and by Council-approved SUPs, one was a "tear down" to which the substandard lot rules did not apply prior to 2008, and one does not appear to be substandard. None have been developed without compliance with all applicable rules.

assessed at a higher rate between 1974 and 1991, even though it could not be developed during that time. But property taxes are not a consideration listed in the ordinance for determining eligibility for the SUP process. Further, there are a variety of historical facts that can be applied in a number of ways. For instance, the applicant did not challenge the application of the substandard lot rules when it learned of them in 1995. Instead, it has enjoyed paying a low assessment for the last 20 years. And the property owners never sought to develop the site for the 50 year period when development was allowed, from 1924 to 1974.

Based on these points, the appellant argues that the substandard lot rules are not good ones if they do not allow consideration of “pros and cons” of allowing development of Lot 13. But the appeal procedure before the BZA is not one which allows considerations of matters outside the question of the Director’s application of the zoning ordinance rules. The appellant admits that those rules were applied by the Director accurately in this case. Here, even though the lot is close to meeting the threshold eligibility requirements to proceed with an SUP application, it is simply not close enough. The law prescribes specific criteria for the process and the lot does not meet them. Although the appellant contends that the substandard lot rules, as applied here, work in an arbitrary way, they do not. They work precisely as they were designed to work. The current policy, adopted in 1989 permitted more development than under prior substandard lot rules, but modified the rules to ensure a carefully calibrated and sensitive look at each potentially developable lot. The fact that the appellant’s lot falls on the wrong side of the criteria is the result of a mathematical calculation which is part of the City’s stated policy for substandard lots. The BZA simply does not have the power to alter the language or criteria of the zoning ordinance rules in an appeal because doing so is the province of the legislature, not the BZA.

While staff understands the appellant’s concerns, the points raised here are not actually relevant to the question of whether the Director reasonably applied the zoning rules to the subject property. They also misconstrue the role of the BZA on an appeal from a Director’s zoning ordinance determination. Very simply, neither the Director nor the BZA is empowered to take equitable matters into consideration where the legislature has stated its clear policy in express rules and requirements in the zoning ordinance. While there may be other avenues for such arguments, they are inappropriate in an appeal before the BZA.

Standard of Review

The Alexandria zoning ordinance gives the authority to the Director of Planning and Zoning to administer the zoning ordinance. Section 11-101. Among other duties, the Director of Planning and Zoning is tasked with “Interpret[ing] the provisions of this ordinance to ensure that its intent is carried out;” Section 11-102(F).

The Virginia Supreme Court has clearly indicated that “A consistent administrative construction of an ordinance by officials charged with its enforcement is entitled to great weight.” *The Lamar Company, LLC v. Board of Zoning Appeals, City of Lynchburg*, 270 Va. 540, 547, 620 S.E.2d 753, 757 (2005) quoting *Masterson v. Board of Zoning Appeals*, 233 Va. 37, 44, 353 S.E. 2d 727, 733 (1987). Deference to the interpretation of the person charged with administering the zoning ordinance whose role and expertise it is to provide the relationship between the zoning

ordinance text and the local governments plan for zoning is essential in order to have a uniform application of the ordinance. See *Lamar* at p. 547. See Also *Trustees of Christ and St. Luke's Episcopal Church v. Board of Zoning Appeals of the City of Norfolk*, 273 Va. 375, 382, 641 S.E. 2d 104, 107 (2007). The Board of Zoning appeals should only reverse the Director's decision if "the board determines that the decision is contrary to the plain meaning of the ordinance and the legislative intent expressed therein". *Higgs v. Kirkbride*, 258 Va. 567, 575, 522 S.E.2d 861, 865 (1999).

Additionally, under settled principles of administrative law, the interpretation given a legislative enactment by public officials charged with its administration and enforcement is entitled to be given significant weight by the courts. See *Payton v. Williams*, 145 S.E.2d 147 (1965). In Virginia, it is settled law that a presumption of correctness attaches to the actions of state and local officials. See *Hladys v. Commonwealth*, 366 S.E.2d 98 (1988). Such actions are presumed to be valid and will not be disturbed by a court absent clear proof that the action is unreasonable, arbitrary, and bears no reasonable relation to the public health, safety, morals or general welfare. See *County of Lancaster v. Cowardin*, 391 S.E.2d 267, 269 (Va. 1990); *Board of Supervisors of Fairfax County v. Robertson*, 266 Va. 525 (2003)(discussing the presumption of reasonableness attached to the Board's legislative acts).

Taking these two principles together, therefore, means the Board of Zoning Appeals should apply deference to the decision of the Director of Planning and Zoning in order to continue the necessary consistency in the application of the zoning ordinance, unless the Board determines that the Director's decision was contrary to the plain meaning of the ordinance and was made without reasonable basis.

Conclusion

For the above reasons, the Director respectfully requests that the Board of Zoning Appeals deny the appeal and uphold the Director's determination

Attachments

- A. Determination letter, March 15, 2012, with corrected worksheet.
- B. Original subdivision, Braddock Heights, 1924.
- C. Subdivision of "undeveloped land," creating Lots 14 and 15, 1950.
- D. Subdivision of Lot 15, 1952.
- E. Layout of Clark residence on Lots 13 and 14.
- F. Section 12-400 of the zoning ordinance (substandard lot provisions).



DEPARTMENT OF PLANNING AND ZONING

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March 15, 2012

Mr. Jonathan Clark
7227 Auburn Lane
Annandale, Virginia 22003

Re: 724 Timber Branch Drive

Dear Mr. Clark:

You have requested a determination regarding whether the undeveloped lot that you own as a trustee at 724 Timber Branch Drive is eligible for Special Use Permit approval to build a new single-family dwelling. A lot in the R-8 zone requires a minimum lot size of 8,000 square feet and a lot width of 65 feet. The lot at 724 Timber Branch Drive is substandard as a zoning matter because it has a lot size of only 7,450 square feet and a lot width of only 50 feet.

Section 12-400 of the Zoning Ordinance regulates the development of substandard lots. Specifically, section 12-402(A) establishes threshold criteria to be met in order to proceed with an SUP application for development. The criteria are stated as two alternative tests. If either test is met, an SUP application may be filed. If neither is met, then an application may not be filed.

Section 12-402(A)(1) provides the first eligibility test, which assesses whether the substandard lot is similar to the other developed lots on the same block. Specifically, it requires a substandard lot to have at least the lot area, width and frontage exhibited by more than 50% of the developed lots along the same block face. The term "block face" is defined at Section 2-122 of the Zoning Ordinance to mean "the street frontage on both sides of a street located between two intersecting streets..." Certain exceptions to the definition exist where the traditional block face is exceptionally short or long, but neither circumstance applies in this case. The block face used here therefore includes the 26 properties on both sides of Timber Branch Drive between Braddock Road and East Timber Branch Parkway. See attached worksheet.

As shown in the enclosed table, 15 of the 26 other properties on the appropriate block face, or approximately 58%, have at least the lot frontage exhibited by the subject property (50 feet). However, only one of them (4%) has at least its lot area of 7,450 square feet. Your property, which is the second-smallest on the block in terms of lot area, therefore does not meet this eligibility test since it does not have at least the lot area of a majority of properties on the block

face. Staff did not consider the question of lot width along the block face because it was unnecessary in this instance given that your property already did not meet the lot area requirement.

In the second eligibility test, Section 12-402(A)(2) compares the size of the lot to the minimum zone requirements for lot area, width and frontage and allows an application if the two are very close. Specifically, a lot must have at least 90% of the lot area and lot frontage required for the R-8 zone to be eligible for Special Use Permit consideration. Although your property has 93% of the 8,000 square-foot minimum lot area for the R-8 zone, it has only 77% of the 65-foot minimum lot frontage required for R-8. The property therefore does not pass this second test since it has less than 90% of the minimum lot frontage required for the zone.

We conclude that you are not eligible for Special Use Permit consideration to construct a new single-family dwelling at 724 Timber Branch Drive because your property meets neither eligibility test stipulated in the Zoning Ordinance.

Please do not hesitate to contact us if you have any further questions regarding this matter or wish to discuss alternative plans you may have for your property on Timber Branch Drive.

Sincerely,



Faroll Hamer
Director

You may have the right to appeal this decision within thirty days in accordance with 15.2-2311 of the Code of Virginia. The decision shall be final and unappealable if not appealed within thirty days.

Attachment: Substandard Lot Worksheet

Substandard Lot Worksheet for 724 Timber Branch Drive

Part 1: Comparison to Other Lots on Block Face (Section 12-402(A)(1))

	Address	Street	Lot Size	Lot Frontage
1	712	West Braddock Rd.	13,880	198.5
2	714	West Braddock Rd.	8,872	139
3	716	West Braddock Rd.	10,195	9.8
4	703	Timber Branch Dr.	6,350	50
5	705	Timber Branch Dr.	8,900	50
6	706	Timber Branch Dr.	9,216	50
7	707	Timber Branch Dr.	8,900	50
8	708	Timber Branch Dr.	9,016	50
9	709	Timber Branch Dr.	8,900	50
10	710	Timber Branch Dr.	8,800	50
11	712	Timber Branch Dr.	8,600	50
12	713	Timber Branch Dr.	17,800	100
13	715	Timber Branch Dr.	8,900	50
14	716	Timber Branch Dr.	16,600	100
15	717	Timber Branch Dr.	8,900	50
16	718	Timber Branch Dr.	8,000	50
17	719	Timber Branch Dr.	8,900	50
18	720	Timber Branch Dr.	7,800	50
19	722	Timber Branch Dr.	7,600	50
20	723	Timber Branch Dr.	17,800	100
	724	<i>Timber Branch Dr.</i>	<i>7,450</i>	<i>50</i>
21	725	Timber Branch Dr.	16,376	92
22	726	Timber Branch Dr.	27,385	133.5
23	727	Timber Branch Dr.	8,547	65
24	730	Timber Branch Dr.	10,870	80
25	732	Timber Branch Dr.	11,305	100.1
26	711	East Timber Branch Pkwy	16,127	170.5
		<i>Number Equal or Smaller (Indicated by Shaded Boxes)</i>	<i>1</i>	<i>15</i>
		<i>Total Developed Lots in Block Face</i>	<i>26</i>	<i>26</i>
		Percentage Equal or Smaller	4%	58%

Part 2: Comparison to Minimum R-8 Zone Requirements (Section 12-402(A)(2))

Lot Area - 7,450 / 8,000 minimum = 93% => 90% - Meets criteria

Lot Frontage Width - 50 / 65 = 77% = < 90% - Does not meet criteria

← Correction

Barbara Ross

From: Barbara Ross
Sent: Monday, April 02, 2012 11:18 AM
To: 'jnmnc@verizon.net'
Cc: Faroll Hamer
Subject: FW: 724 Timber Branch Dr.

Mr. Clark:

Faroll Hamer asked me to look at the question you raised about section 12-500 of the zoning ordinance and to provide you with an answer.

The provisions of section 12-500, which exempt grandfathered properties from the provisions of section 12-400 (noncomplying, nonconforming, substandard lots, etc), are designed to clarify that there are some properties which carry grandfathered status, and therefore are not subject to the special treatment and restrictions imposed by, for example, the substandard lot provisions. You contend that your property, Lot #13 on Timber Branch Rd, is grandfathered and therefore does not have to abide by the substandard lot provisions. Unfortunately, we disagree with the conclusion in your email. While the language of section 12-500 seems broad, there are specific reasons why it cannot be read as you do. First, your reading of the section would resurrect grandfathered status for all of the small undeveloped lots in the single family and two family zones. However, as explained in the Real Estate Assessment Office's letter included in your email, your property and others in the single family/two family zones grandfathering status ended in 1974. Therefore, when Section 12-500 was adopted in 1992, there was no longer grandfathering that attached to your lot on Timber Branch Drive.

In addition, if the grandfathering of all of the single family lots in the single family and two family zones continued past 1974, then there would have been no need for the substandard lot provisions of section 12-400 which were adopted in the late 1980s and readopted as part of the 1992 ordinance, of which section 12-500 was a part. Those provisions distinguish between lots which do and do not meet the substandard lot criteria that allow an owner to pursue SUP approval for a new house. If the lots were grandfathered and single family homes could be built, there would be no need for and no way to apply the substandard lot provisions.

It is our firm opinion that section 12-500 did not intend to and did not confer grandfathering status previously rescinded. Therefore, the provisions of section 12-400 regarding substandard lots do apply and our prior letter outlining how your property does not meet the test in 12-400 allowing a property owner to apply for substandard lot development.

From: Jon Clark [<mailto:jnmnc@verizon.net>]
Sent: Monday, March 26, 2012 11:05 AM
To: Faroll Hamer
Subject: 724 Timber Branch Dr.

Faroll Hamer
Director
Department of Planning and Zoning
City of Alexandria, Virginia

I received your letter of March 15, 2012 indicating that the undeveloped lot at 724 Timber Branch Drive is not eligible for Special Permit consideration to construct a new single family dwelling. I thank you for your response and note that I am preparing an appeal.

At this time I would like to request your help in resolving a question as to whether an SUP was ever the correct question. My understanding is that an SUP is not required because there existed the right to develop before 1951, which right was grandfathered, and section 12-500 states that in this case section XII is irrelevant and that the property is subject only to the original grandfathering provisions which continued development by right for vacant lots of record on December 28, 1951.

Sec. 12-500 - Uses or structures grandfathered under prior law.

Any use, building or structure which was grandfathered under the provisions of prior law shall not be subject to the provisions of this Article XII, but shall continue to be subject to such grandfathering provisions.

In a Letter dated January 13, 1995 from the Alexandria Office of Real Estate Assessments:

Re: 724 Timberbranch Drive (042.00-03-17)

Dear Mr. and Mrs. Clark:

The purpose of this letter is to inform you that the Alexandria Office of Real Estate Assessments is conducting an administrative review of the assessments for vacant residential lots in the City that may be classified as substandard under the City's zoning ordinance. The purpose of conducting the administrative review, which includes the above-mentioned property, is to be certain that the substandard lot conditions that are unique to each lot are accurately reflected in the real property assessments.

A substandard lot is defined as "any lot in the R-20, R-12, R-8, R-5, R-2-5, or RA residence zones, which lot was of record on December 28, 1951, and continuously thereafter, but which has less area or width at the front lot line or front building line than the minimum required for use in the zone where it is situated." Prior to a change in the City's zoning ordinance on May 14, 1974, a vacant lot in any of these residence zones that was of record on December 28, 1951, could have been developed with a single-family dwelling and its accessory buildings.

When city Council adopted the 1974 ordinance the "grandfather clauses," which permitted the use of such lots for single family dwellings as a matter of right, were deleted from the regulations for each affected zone. The zoning ordinance relating to substandard lots was revised again on September 16, 1988, to allow a substandard lot to be developed if it meets...

To me this means that because Lot #13 was of record on December 28, 1951, I can assume it was grandfathered in and the words "Any use, building or structure which was grandfathered under the provisions of prior law shall not be subject to the provisions of this Article XII, but shall continue to be subject

to such grandfathering provisions." means that such grandfathering provisions prevail over any prior exclusion of the grandfathering provisions, and that I should be permitted to develop this lot with a single-family dwelling as a matter of right.

If I am in error on this please help me to understand my mistake.

Jon Clark
703 994 7174 Cel
703 941 1612 Off

Jon Clark
Clark Mechanical LLC
703 994 7174 Cel
703 941 1612 Off

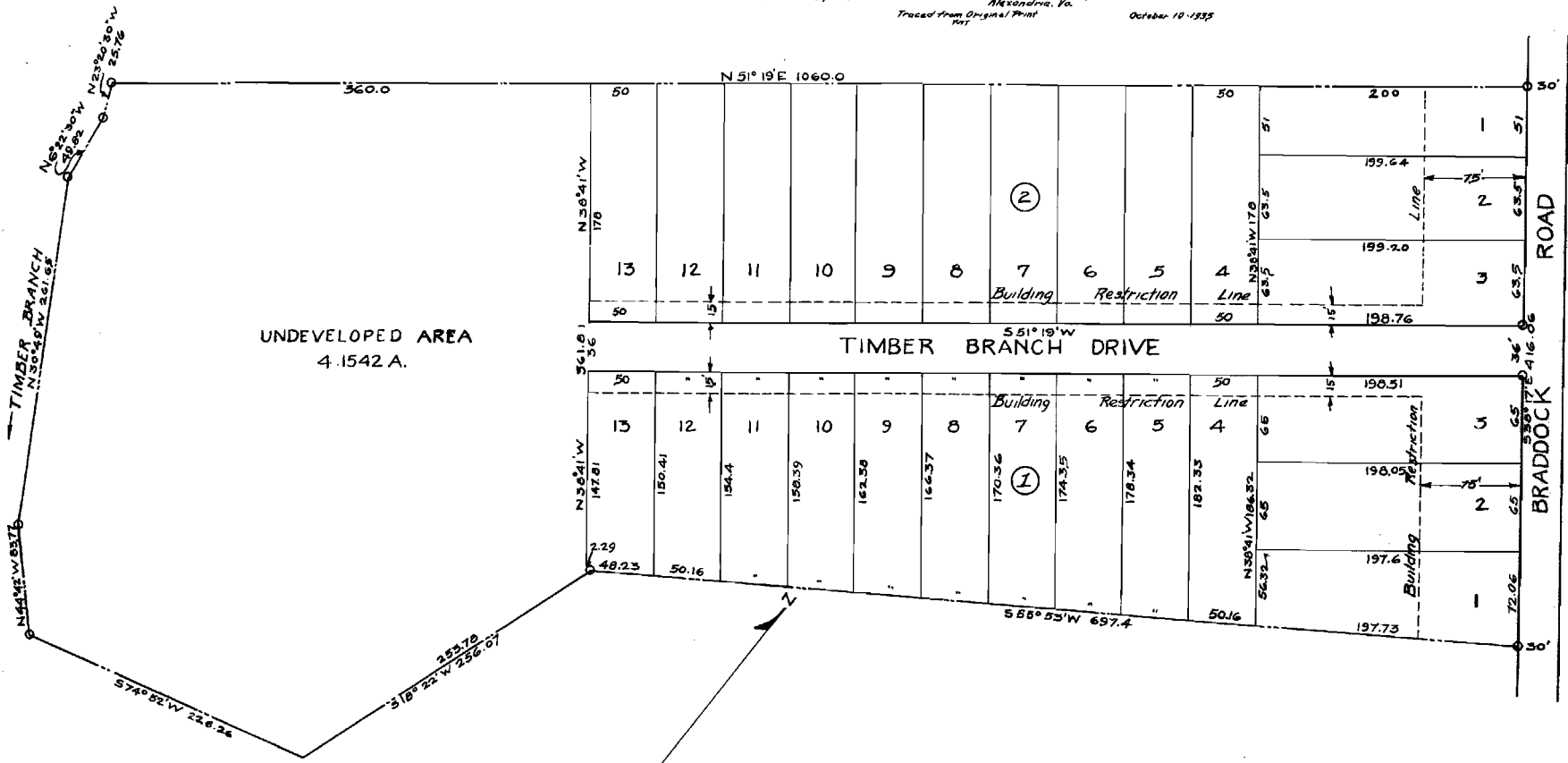
SECTION ONE OF THE SUBDIVISION OF BRADDOCK HEIGHTS

ARLINGTON COUNTY, VA
AUGUST 1924

SCALE: 1"=50'

G.E. GARRETT
CIVIL ENGINEER
POTOMAC, VA.

Office of City Engineer
Alexandria, Va.
Traced from Original Print
1917
October 10, 1935



UNDEVELOPED AREA
4.1542 A.

TIMBER BRANCH DRIVE

BRADDOCK ROAD

224-1

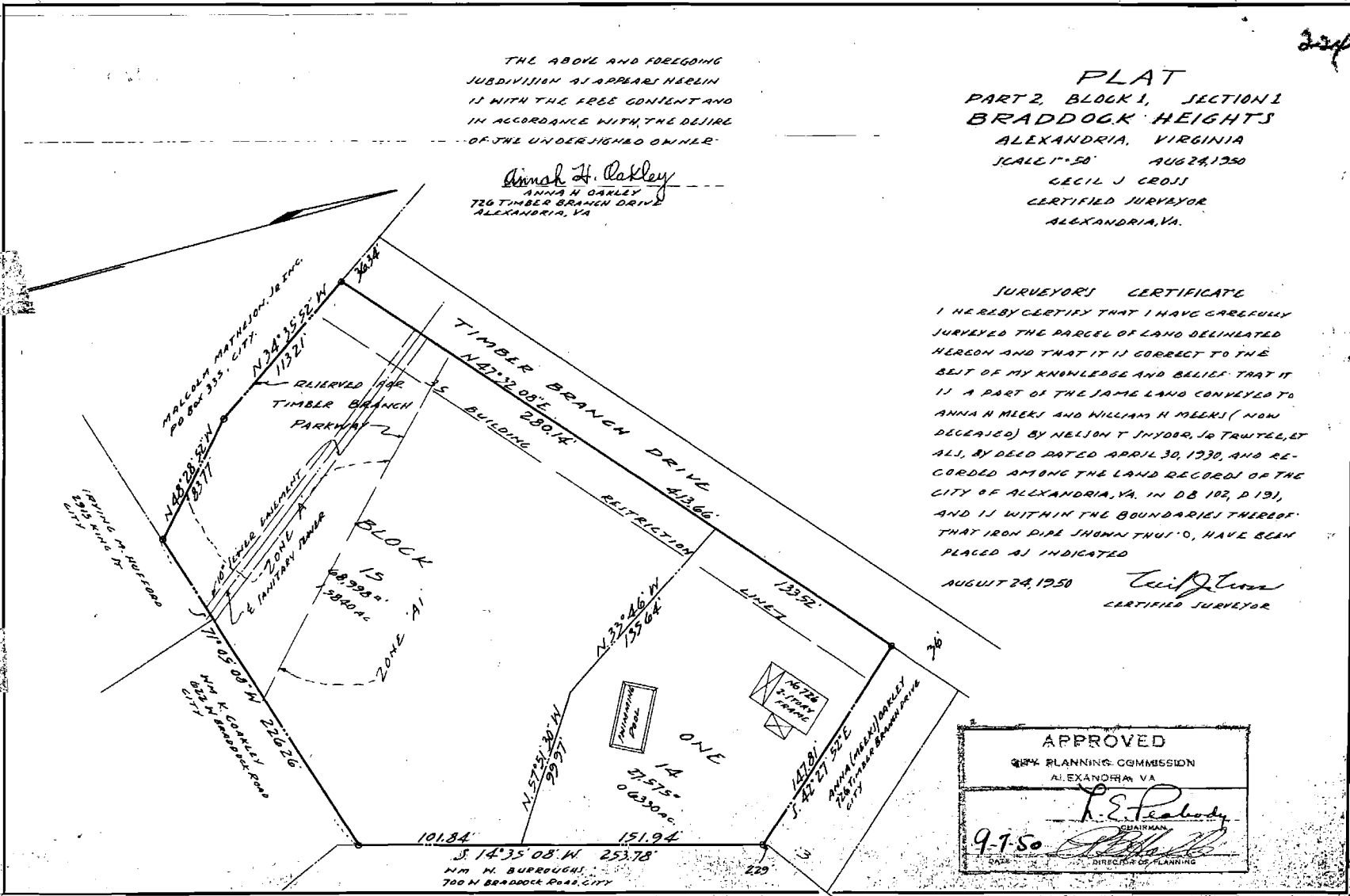
THE ABOVE AND FOREGOING
SUBDIVISION AS APPEARS HEREIN
IS WITH THE FREE CONTENT AND
IN ACCORDANCE WITH THE DESIRE
OF THE UNDER SIGNED OWNER

Anna H. Oakley
ANNA H OAKLEY
726 TIMBER BRANCH DRIVE
ALEXANDRIA, VA

PLAT
PART 2, BLOCK 1, SECTION 1
BRADDOCK HEIGHTS
ALEXANDRIA, VIRGINIA
SCALE 1"=50' AUG 24, 1950
CECIL J. CROSS
CERTIFIED SURVEYOR
ALEXANDRIA, VA.

SURVEYOR'S CERTIFICATE
I HEREBY CERTIFY THAT I HAVE CAREFULLY
SURVEYED THE PARCEL OF LAND DELINEATED
HEREON AND THAT IT IS CORRECT TO THE
BEST OF MY KNOWLEDGE AND BELIEF THAT IT
IS A PART OF THE SAME LAND CONVEYED TO
ANNA H MEERS AND WILLIAM H MEERS (NOW
DECEASED) BY NELSON T SHYDER, JR TRUSTEE, ET
AL, BY DEED DATED APRIL 30, 1930, AND RE-
CORDED AMONG THE LAND RECORDS OF THE
CITY OF ALEXANDRIA, VA. IN DB 102, P 191,
AND IS WITHIN THE BOUNDARIES THEREOF
THAT IRON PIPE STAKES HAVE BEEN
PLACED AS INDICATED

AUGUST 24, 1950 *Cecil J. Cross*
CERTIFIED SURVEYOR



APPROVED
CITY PLANNING COMMISSION
ALEXANDRIA, VA
L. E. Peabody
CHAIRMAN
9-7-50
DATE
DIRECTIONS OF PLANNING

Released 9-12-50

B-305 - P-181

B-3-2

FORM 1

DRAWING NUMBER
B3.2
PLANNING COMMISSION • ALEXANDRIA, VA

Attachment C

SUBDIVISION OF
LOT 15
 PART 2 BLK. 1 SEC. 1
BRADDOCK HEIGHTS
 ALEXANDRIA, VIRGINIA
 ZONED-R8

OWNER'S DEDICATION

I, the Undersigned, owner of the property shown and described herein as a Subdivision of Lot 15, Part 2, Blk 1, Sec. 1, Braddock Heights, Alexandria, Virginia, do of our own free consent, hereby adopt this plan of Subdivision, establish minimum building restriction lines and dedicate the streets to public use.

OWNER:
Anna H. Oakley
 WITNESS:
Margaret Kovich

SURVEYOR'S CERTIFICATE

I hereby certify that I have carefully surveyed the parcel of land delineated herein and that it is correct to the best of my knowledge and belief, that it is a part of the same land conveyed to Anna H. Meekle and William H. Meekle (now deceased) by Nelson T. Snyder, Jr., et al., by deed dated April 30, 1930, and recorded among the Land Records of the City of Alexandria, Virginia, in Deed Book 102 of Page 191, and is within the boundaries thereof that iron pipe shown thus: O, have been placed as indicated.

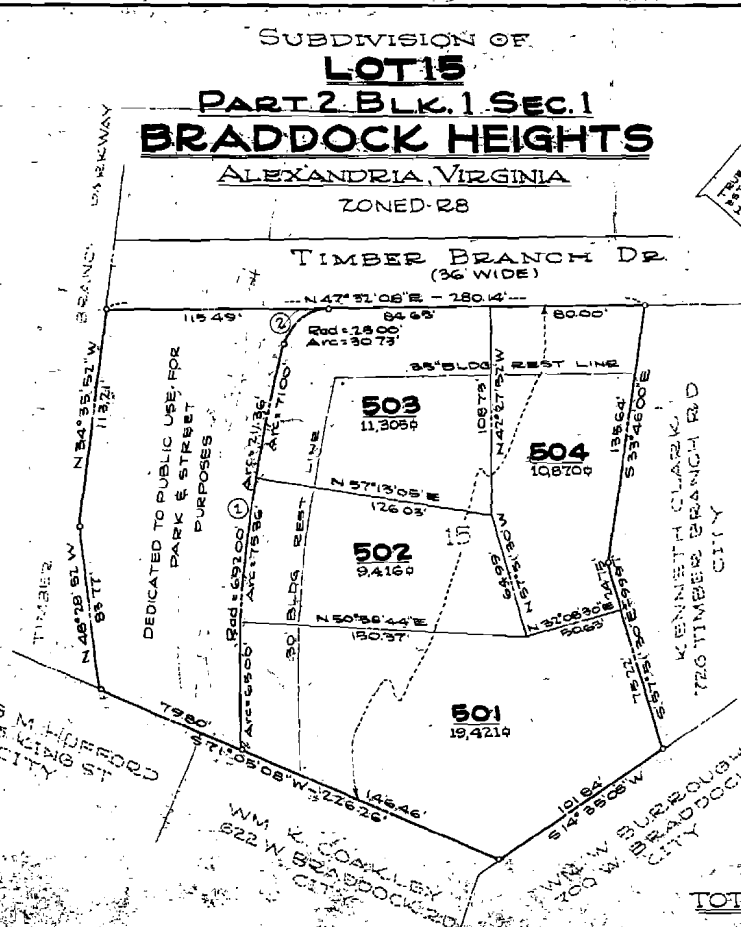
SIGNED: *Edward S. Holland*
 CERTIFIED LAND SURVEYOR

DATE: *January 31, 1952*

OWNER & DEVELOPER
 ANNA H. OAKLEY
 PREIDENTIAL GARDENS
 ALEXANDRIA, VIRGINIA

EDWARD S. HOLLAND
 Professional Civil Engineer
 Certified Land Surveyor
 316 S. Washington St., Alexandria, Va.

Design by <i>C. THOMAS</i>	Date <i>1-30-52</i>	Revisions
Checked by	Date	
Field Bk/Pg	Hard Copy	
Scale	<i>1" = 50'</i>	Job No. <i>14-182</i>



APPROVED
 CITY PLANNING COMMISSION
 ALEXANDRIA, VA.
R. E. Zahrad
 DIRECTOR OF PLANNING
 DATE: *Feb 7, 1952*

FOUR VERIFIABLES

No.	Side	Dist.	ARC	Tang.	Chords	Ch Bearing
1	1621.00	1749.55	211.24	106.81	210.54	S 35° 53' 42" E
2	25.00	74.12	20.13	118.97	2.5014	S 10° 19' 28" W

TOTAL NO. LOTS - 4

B-3-1-F

RELEASED 3/5/52

DB 335 - P 24

1034

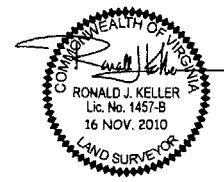
N/F FIRST ASSEMBLY
CHURCH OF GOD, TR.

GENERAL NOTES

1. TAX ASSESSMENT MAP # 042.01-03-17 (LOT 13)
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. 1876, PG. 851)
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.

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

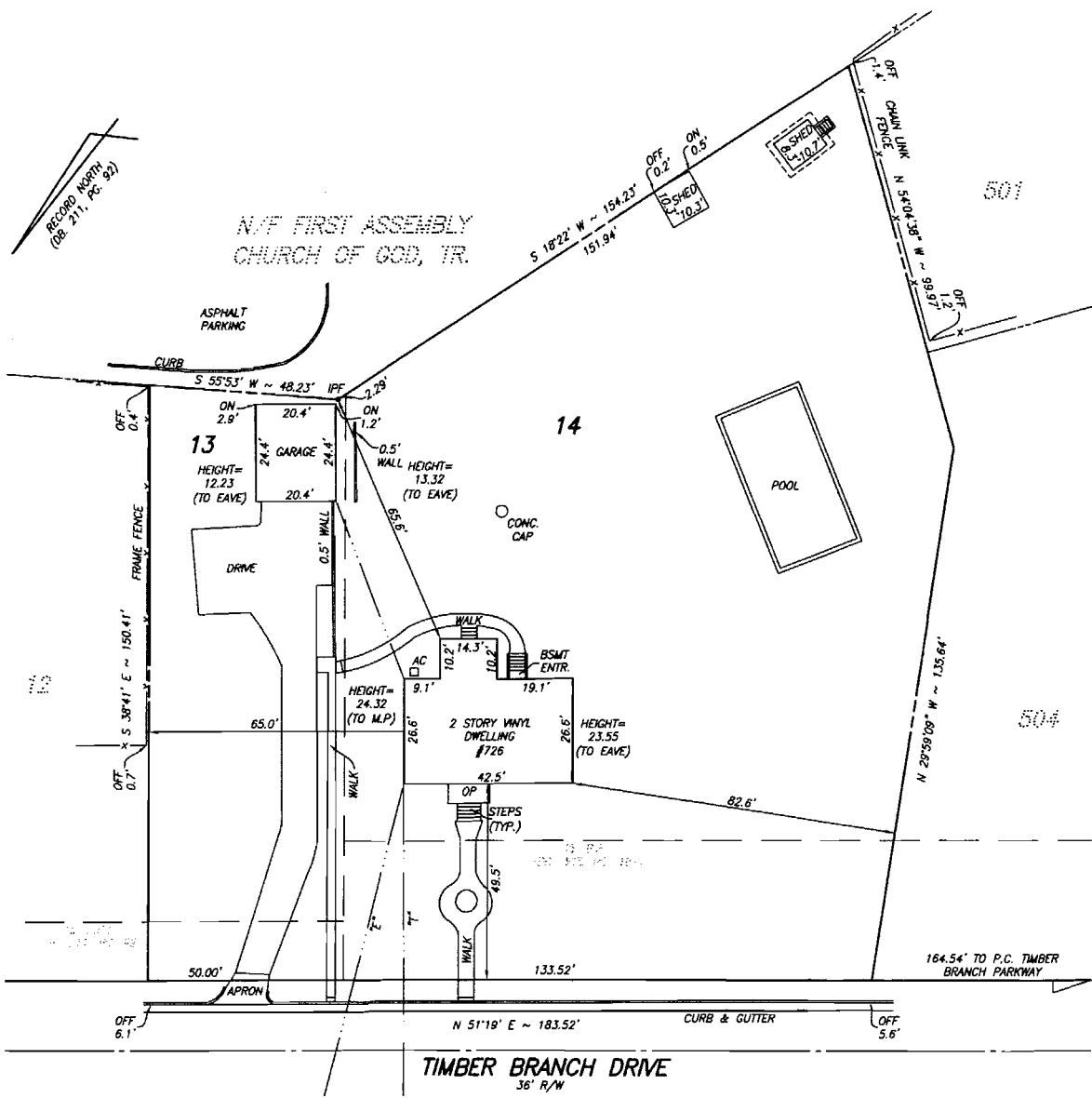
RCF HELDS, P.C. & ASSOCIATES
A PROFESSIONAL CORPORATION



PLAT
SHOWING
PHYSICAL IMPROVEMENT SURVEY
LOTS 13 & 14, BLOCK 1, SECTION 1
BRADDOCK HEIGHTS
(D.B. 211, PG. 92, ARLINGTON COUNTY; DB. 305, PG. 181)
CITY OF ALEXANDRIA, VIRGINIA
SCALE: 1" = 20' DATE: NOVEMBER 16, 2010

FILE NO. 10-106
SHEET 1 OF 1
T.G. DRAWN
T.G. CHECKED
R.J.K.

Attachment E



Sec. 12-400 Substandard residential lots.

The following regulations apply to substandard residential lots where the lack of conformity existed prior to June 24, 1992.

12-401 Any lot in the R-20, R-12, R-8, R-5, R-2-5 or RA residence zones, which lot was of record on December 28, 1951, and continuously thereafter, but which lot has less area or less width at the front lot line or front building line than the minimum required for use in the zone where it is situated (referred to hereafter in this section as a substandard lot), may be developed only with a single-family dwelling and its accessory buildings, subject to the following provisions:

- (A) No person has at any time from and after May 14, 1974, contemporaneously held any present or future freehold estate, except as trustee only, or an equitable interest of like quantum, in the substandard lot and in any contiguous land; and
- (B) A special use permit is granted under the provisions of section 11-500; and
- (C) City council, upon consideration of the special use permit, finds that the proposed development will not unreasonably impair an adequate supply of light and air to adjacent property, will not diminish or impair the established property values in the surrounding areas, and will be compatible with the existing neighborhood character.

12-402 Notwithstanding the provisions of section 12-401, a substandard lot which complied with the provisions of this ordinance or other prior law in effect on the date such lot was recorded, and which has continuously been of record since such date, may be developed only with a single-family dwelling and its accessory buildings, subject to the following provisions:

- (A) No person has, at any time from and after September 16, 1988, held any present or future freehold estate, except as trustee only, or any equitable interest of like quantum, or held any interest as contract purchaser, in the substandard lot and in any contiguous undeveloped or unimproved lot of record; and
 - (1) The substandard lot contains at least the lot area, and has at least the lot width at both the front lot line and front building line, as exhibited by more than 50 percent of the developed lots on the block face in which the substandard lot is located; or
 - (2) The substandard lot contains at least 90 percent of the minimum lot area, and 90 percent of the required lot width at both the front lot line and front building line, as required by the zone in which the substandard lot is located; and
- (B) A special use permit is granted under the provisions of section 11-500; and
- (C) City council, upon consideration of the special use permit, finds that the proposed development will not unreasonably impair an adequate supply of light and air to adjacent property, will not diminish or impair the established property value in the surrounding areas, and will be compatible with the existing neighborhood character.

- (D) Where the location of a substandard lot is such that the minimum number of lots or the minimum length of street frontage herein specified for a block face as defined in this ordinance is not present, the director may designate an appropriate block face for such substandard lot, if any there be, without regard to intersecting streets, subject to city council approval as part of the special use permit granted pursuant to this section 12-402. Where the street frontage, on either side of a street, within a block face contains more than 30 lots or is greater than 1,200 feet in length, as measured along the front lot lines, the director shall designate an appropriate block face comprised of the closest and most appropriate 30 lots or 1,200 feet lot frontage, whichever is less, on each side of the street, subject to city council approval as part of the special use permit granted pursuant to this section 12-402

- 12-403* Nothing in this section 12-400 shall be deemed to authorize city council to approve a special use permit under the provisions of this section for a development which would exceed the maximum floor area ratio, density or height regulations of the zone or zones in which such development is located, or the maximum floor area ratio, density or height regulations otherwise provided in this ordinance.
- 12-404* In approving a special use permit under this section for a substandard lot meeting the requirements of section 12-401 or 12-402, city council may modify the minimum yard, coverage or other minimum requirements imposed by this ordinance, for the zone or zones in which the lot is located, or otherwise applicable to the lot or the development thereof, if the council determines that such a modification is necessary or desirable to develop the lot in conformity with the approved special use permit, and that such modification will not be detrimental to the public health, safety and general welfare.
- 12-405* From and after September 16, 1989, the remedy and procedure provided in this section 12-400 shall be exclusive remedy and procedure for the use and development of substandard lots in the zones herein designated, and any use or development of such lots in a manner not herein provided for and authorized shall be conclusively presumed to be contrary to the public interest and contrary to the intended spirit and purpose of this ordinance.