

DOCKET ITEM #2

Special Use Permit #2009-0046**29 East Walnut Street – Substandard Lot**

9

 11-21-09

Application	General Data	
Request: Consideration of a request to construct a single-family dwelling on a substandard lot.	Planning Commission Hearing:	November 5, 2009
	City Council Hearing:	November 21, 2009
Address: 29 East Walnut Street	Zone:	R-2-5
Applicant: Mark R. Poskaitis	Small Area Plan:	Potomac West

Staff Recommendation: APPROVAL subject to compliance with all applicable codes and ordinances and the recommended permit conditions found in Section III of this report.

Staff Reviewers: Colleen Rafferty, AICP colleen.rafferty@alexandriava.gov

PLANNING COMMISSION ACTION, NOVEMBER 5, 2009: On a motion by Mr. Dunn, seconded by Ms. Fossum, the Planning Commission voted to recommend approval of the Special Use Permit to construct a single-family dwelling on a substandard lot subject to compliance with all applicable codes, ordinances and staff recommendations. The motion carried on a vote of 6 to 0, with Mr. Wagner absent.

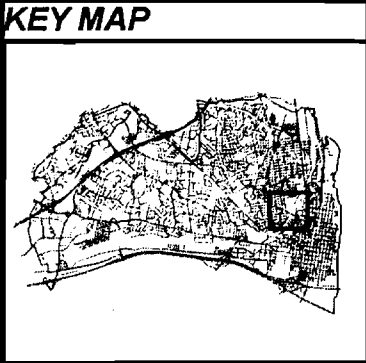
Reason: The Planning Commissioners generally supported the proposal and agreed with the staff analysis.

Speakers:

Mark Poskaitis, applicant.

David Williamson, 22 East Walnut Street, spoke in opposition to the application. Mr. Williamson had questions regarding the substandard lot regulations and tree preservation conditions from the previous Special Use Permit case for the subject property in 2005.

John Timmons, 30 East Maple Street, spoke not to oppose the application but to ensure potential water run-off will be addressed so as not to impact neighbors.



SUP #2009-0046

11/05/09



I. DISCUSSION

REQUEST

The applicant, Mark Poskaitis, requests special use permit approval to develop a single family home on a substandard lot at 29 East Walnut Street. This request is actually to reapprove SUP2005-0019, which allowed precisely the same development as proposed here. The permit has expired for no action.

SITE DESCRIPTION

The subject property is one lot of record with 40 feet of frontage on East Walnut Street, 110 feet of depth and a total lot area of 4,400 square feet. The site is vacant, except for an existing shed that straddles the property line. The site has been used as an extended side yard for the adjacent residence at 31 East Walnut Street. There is an existing curb cut and driveway apron on the subject property. The surrounding area is developed with single family homes.

PROJECT DESCRIPTION

The applicant proposes to develop a single family house on what is now a vacant lot. Two parking spaces will be provided in a tandem configuration.

SUBSTANDARD LOT REGULATIONS

The subject lot was created prior to the enactment of zoning regulations for the R-2-5 zone in the City, and is smaller than the lot requirements of the R-2-5 zone. The R-2-5 regulations and the existing lot dimensions are as follows:

	R-2-5 Requirements	Existing Lot Dimensions
Lot Area:	5,000 sq. ft.	4,400 sq. ft.
Lot Width:	50 ft.	40 ft.

Pursuant to Section 12-402(A)(1) and (B) of the Zoning Ordinance, a substandard lot may be developed with a single family detached dwelling if it contains at least the lot area, and has at least the width at both the front lot line and building line, is at least 50% of the developed lots on the block face where the lot is located, and a special use permit is approved. In this case, 28 of the 30 lots in the block face contain 4,400 square feet or less of lot area and have 40 feet of frontage. The remaining two lots are corner lots and contain more than 4,400 square feet of lot area and more than 40 feet of frontage. The subject lot meets the threshold allowing it to proceed to request a special use permit.

Under Section 12-402 (C) of the Zoning Ordinance, City Council may approve a special use permit for a single family dwelling on a substandard lot if the lot meets the above threshold and if Council finds that the proposed development complies with the following:

- (1) Will not unreasonably impair an adequate supply of light and air to the adjacent property,
- (2) Will not diminish or impair established property values in the surrounding areas, and
- (3) Will be compatible with the existing neighborhood character.

BULK AND OPEN SPACE REGULATIONS

The applicant proposes to develop the property with a single family house (see attached drawings). The proposed house complies with the R-2-5 bulk and open space regulations in the following way:

	R-2-5 Required/Permitted	Proposed
Front Yard Setback:	25 ft	26ft
Side Yard Setback:	7ft	7ft
Rear Yard Setback:	7ft	35ft
FAR:	0.45	0.44
Height:	25 ft or the average height along the front of the building of the residential buildings existing on that block by more than 20 percent.	20 ft

INFILL REGULATIONS

The City recently adopted infill regulations in residentially zoned areas outside of the historic districts to ensure new homes and additions were compatible with existing neighborhoods. These regulations changed the setback requirements, building height, threshold height, and Floor Area Ratio (FAR) requirements as applied to this case.

The application complies with the infill regulations with regard to building height, threshold height, and FAR. The proposed building height of approximately 20 feet is within the average height of the existing residential buildings on the block and under the 25-foot stipulation. The overall FAR restriction of 0.45 has not changed, however the methods for calculating exclusions have, which has impacted the proposal; the applicant complies with FAR under the new calculation methods.

On the other hand, the new house that was approved several years ago does not comply with the required new setback line, which is to be the average setback of the existing houses on the blockface, or 16 feet back from the front property line. In this case, the proposed front yard setback is greater than that of the rest of the block, interrupting the continuous street wall that exists. Based on staff's review of the existing homes on the block, the average prevailing setback is approximately 16 feet. The two homes on either side of the subject property are positioned approximately 20 feet from the street.

PARKING

According to Section 8-200 (A)(1) of the Zoning Ordinance, a single family residential dwelling requires two parking spaces. In this case, the applicant is proposing two surface parking spaces, and proposes that they be tandem. There is an existing curbcut on the property, which will be used to access the proposed driveway and the two tandem parking spaces.

ZONING/MASTER PLAN

The property is located in the R-2-5/Single and two-family zone. The proposed use is consistent with the Potomac West Small Area Plan chapter of the Master Plan which designates the property for residential use.

II. STAFF ANALYSIS

In this case, there are two sets of rules impacting the proposal: the substandard lot requirements and the infill regulations. Staff supports the proposed development of this substandard lot, finding the proposal reasonable and compatible with the houses around it. The size of the property and its frontage are consistent with 28 of the 30 lots on the blockface that are currently occupied by single family houses. The orientation of the building does not unreasonably impair an adequate supply of light and air to the adjacent properties. The design of the house, including the front porch, is compatible with the existing character of the neighborhood.

As to the infill requirements, staff has worked with the applicant to find a solution to the front yard setback issue. To comply with the average prevailing setback on the blockface, the house should be located 10 feet forward of its proposed location. However, if the house is moved to that location, one of the two tandem parking spaces will be lost. Parking is only permitted on the south side of the street on this block of East Walnut, and some homes on the block only have one on-site space. Staff sought a solution to maintain the two space parking proposal in order to assist with the parking on the block.

Under the substandard lot rules, modifications to zoning may be made where required to make the house fit in its location. Section 12-404. Here, staff recommends the front porch depth be increased by four feet and the building is relocated two feet closer to East Walnut Street. The total shift will be six feet and the front setback line will be at 20 feet, a modification of four feet. This solution aligns the proposed house with the two adjacent houses, reduces the required setback under infill by four feet, preserves two parking spaces, and keeps the neighborhood character intact.

In addition to the recommendation regarding the front yard setback, staff recommends that the driveway be constructed of permeable material. Also, because of the importance of the front porch in making the house consistent with existing homes in the area, staff recommends that the front porch remain open.

Finally, staff has not included the SUP Streetscape Improvement Fund condition for street trees and trash cans in this case because this case is more like a development case than the typical SUP case, which involves a business. The City does not require trash infrastructure on residential streets; as to street trees, staff typically adds conditions requiring landscaping and trees where appropriate.

With these conditions, staff recommends **approval** of this special use permit.

III. RECOMMENDED CONDITIONS

Staff recommends approval subject to compliance with all applicable codes and ordinances and the following conditions:

1. The special use permit shall be granted to the applicant only or to any corporation in which the applicant has a controlling interest. (P&Z)
2. The applicant shall provide tandem parking for two vehicles for the house. (P&Z)
3. The driveway and walk surfaces shall have minimal paving and be constructed of mostly permeable elements. (P&Z)
4. The porch shall remain an open porch. Screens, windows, walls, or any other type of enclosure material on the porch shall be prohibited. (P&Z)
5. The size and design of the house shall be consistent with the attached drawings, except that the front porch depth shall be increased by four feet and the building shall be located approximately two feet closer to East Walnut Street to the satisfaction of the Director of Planning and Zoning. Two parking spaces shall be provided. (P&Z)
6. The applicant shall provide a survey conducted by a licensed surveyor or professional engineer to verify the average prevailing setback on the blockface. (P&Z)
7. The applicant shall coordinate all civil and architectural drawings to reflect any changes. (P&Z)
8. A plot plan showing all improvements and alterations to the site must be approved by T&ES and P&Z prior to issuance of a building permit. (T&ES, P&Z)
9. Applicant shall be responsible for repairs to the adjacent City right-of-way if damaged during construction activity. (T&ES)
10. An erosion and sediment control plan must be approved by T&ES prior to any land disturbing activity greater than 2,500 square feet. (T&ES)

11. If construction of the residential unit(s) result in land disturbing activity in excess of 2,500 square feet. The applicant is required to comply with the provisions of Article XIII of the City's Zoning Ordinance for stormwater quality control. (T&ES)
12. City Code Section 8-1-22 requires that roof, surface and sub-surface drains be connected to the public storm sewer system. Where storm sewer is not available applicant must provide a design to mitigate impact of stormwater drainage onto adjacent properties and to the satisfaction of the Director of Transportation & Environmental Services. (T&ES)
13. Address should be clearly marked in the front and back for emergency response purposes. (Police)
14. Prior to the issuance of building permits for the house, the applicant shall remove or relocate the existing shed from the property, in compliance with Code requirements and to the satisfaction of the Director of Planning and Zoning. (P&Z)

STAFF: Barbara Ross, Deputy Director, Department of Planning and Zoning;
Colleen Rafferty, AICP, Urban Planner.

Staff Note: In accordance with section 11-506(c) of the zoning ordinance, construction or operation shall be commenced and diligently and substantially pursued within 18 months of the date of granting of a special use permit by City Council or the special use permit shall become void.

IV. CITY DEPARTMENT COMMENTS

Legend: C - code requirement R - recommendation S - suggestion F - finding

PLANNING & ZONING:

- C-1 The proposed redevelopment of the lots must comply with the following rules of the Residential Infill Ordinance No. 4558.
- a. Submit prevailing setbacks of residential block face of front building façade. The “average” is considered the new required setback for proposed house.
 - b. Submit front door threshold height of residential block face. First floor threshold height shall not exceed the threshold height of existing buildings along the block face by more than 20 percent.
 - c. Height of building cannot exceed 20 percent above average height of block face or 25 feet, whichever is the greater.
- A Special Use Permit may be required if proposed dwelling/addition does not meet requirements.
- C-2 Submit Floor Area Ratio Calculation sheet with next plot plan submission. FAR calculations shall be approved prior to release of plot plan and included with all construction drawings submitted for building permit. Covered porches are counted in allowable floor area. Deductions from floor area may only include basements (less than 4.00’ above grade), mechanical rooms, elevators and stairways per section 2-145 of the zoning ordinance.
- C-3 Submit height of dwelling/addition at the eave and ridge lines and dimensions on all construction drawings submitted for building permits.
- C-4 Indicate all fence heights on plot plan and on all construction drawings submitted for building permits.
- C-5 Indicate location of all HVAC equipment in compliance with applicable setbacks on plot plan and all construction drawings submitted for building permits.
- C-6 Indicate any off-street parking. If providing off-street parking and there is no curb cut, applicant must apply for a curb cut with the Department of Transportation and Environmental Services prior to the release of the grading plan and should be shown on next submission. Percentage of paved area in the required (front, side or rear) yard cannot exceed more than 50% of a required yard.
- C-7 Per section 7-2307, any construction that requires a grading plan, the applicant must provide minimum of 25 percent canopy cover from existing or planted trees.

- C-8 Zoning will require a survey plat confirming building footprint, setbacks, and building height compliance from average existing grade from a licensed surveyor prior to the release of a certificate of occupancy.
- C-9 Zoning will require a certification of Floor Area calculation from a licensed architect or engineer after construction and prior to release of certificate of occupancy.

TRANSPORTATION & ENVIRONMENTAL SERVICES:

- R-1 The applicant shall contribute \$500 to the SUP Streetscape Improvement Fund for street trees and trash cans. Monetary contribution shall be submitted to the Department of Transportation & Environmental Services, Room 4130, 301 King Street prior to the issuance of the Special Use Permit Certificate. Reference SUP number and condition number on all correspondence. (T&ES, RP&CA)
- R-2 A GRADING PLAN showing all improvements and alterations to the site must be approved by T&ES prior to issuance of a building permit. (T&ES)
- R-3 Applicant shall be responsible for repairs to the adjacent city right-of-way if damaged during construction activity. (T&ES)
- R-4 An erosion and sediment control plan must be approved by T&ES prior to any land disturbing activity greater than 2500 square feet. (T&ES)
- R-5 If construction of the residential unit(s) result in land disturbing activity in excess of 2500 square feet. The applicant is required to comply with the provisions of Article XIII of the City's Zoning Ordinance for stormwater quality control. (T&ES)
- R-6 City Code Section 8-1-22 requires that roof, surface and sub-surface drains be connected to the public storm sewer system. Where storm sewer is not available applicant must provide a design to mitigate impact of stormwater drainage onto adjacent properties and to the satisfaction of the Director of Transportation & Environmental Services. (T&ES)
- C-1 The applicant shall comply with the City of Alexandria's Solid Waste Control, Title 5, Chapter 1, which sets forth the requirements for the recycling of materials (Sec. 5-1-99).
- C-2 The applicant shall comply with the City of Alexandria's Noise Control Code, Title 11, Chapter 5, which sets the maximum permissible noise level as measured at the property line.
- C-3 Roof, surface and sub-surface drains be connected to the public storm sewer system, if available, by continuous underground pipe. Where storm sewer is not available applicant

must provide a design to mitigate impact of stormwater drainage onto adjacent properties and to the satisfaction of the Director of Transportation & Environmental Services. (Sec.8-1-22)

- C-4 All secondary utilities serving this site shall be placed underground. (Sec. 5-3-3)
- C-5 Pay sanitary sewer tap fee prior to release of Grading Plan. (Sec. 5-6-25)
- C-6 Any work within the right-of-way requires a separate permit from T&ES. (Sec. 5-3-61)

CODE ENFORCEMENT:

- C-1 All exterior walls within 5 feet from an interior property line shall have a fire resistance rating of 1 hour, from both sides of the wall. As alternative, a 2 hour fire wall may be provided. This condition is also applicable to skylights within setback distance. Openings in exterior walls between 3 and 5 feet shall not exceed 25% of the area of the entire wall surface (This shall include bay windows). Openings shall not be permitted in exterior walls within 3 feet of an interior lot line.
- C-2 Prior to the issuance of a demolition permit or land disturbance permit, a rodent abatement plan shall be submitted to Code Enforcement that will outline the steps that will taken to prevent the spread of rodents from the construction site to the surrounding community and sewers.
- C-3 Roof drainage systems must be installed so as neither to impact upon, nor cause erosion/damage to adjacent property.
- C-4 A soils report must be submitted with the building permit application.
- C-5 New construction must comply with the 2006 edition of the Uniform Statewide Building Code (USBC).
- C-6 Construction permits are required for this project. Plans shall accompany the permit application that fully details the construction as well as layouts and schematics of the mechanical, electrical, and plumbing systems.
- C-7 Permission from adjacent property owners is required if access to the adjacent properties is required to complete the proposed construction. Otherwise, a plan shall be submitted to demonstrate the construction techniques utilized to keep construction solely on the referenced property.

- C-8 A wall location plat prepared by a land surveyor is required to be submitted to this office prior to requesting any framing inspection.

POLICE DEPARTMENT:

- R-1 The applicant is to contact the Community Relations Unit of the Alexandria Police Department at 703-838-4520 regarding a security assessment for any construction trailer(s) as soon as they are in place.

- F-1 The Police Department has no objections.

PARKS AND RECREATION:

- R-1 The applicant shall contribute \$500 to the SUP Streetscape Improvement Fund for street trees and trash cans. Monetary contribution to be submitted to the Department of Transportation & Environmental Services, Room 4130, 301 King Street prior to the issuance of the Special Use Permit Certificate. Reference SUP number and condition number on all correspondence. (TES, RP&CA)

- F-1 The applicant has removed two trees that were designated to be preserved in the previous SUP application, SUP2005-00019, Condition #3.

- C-1 Property owner shall control weeds along public sidewalks, curb lines and within tree wells which are within 12 feet of the owner's front property line. (City Ord. No. 2698, 6/12/82, Sec. 2; Ord. No. 2878, 11/12/83, Sec. 1)



APPLICATION

Existing Special Use Permit # 2005-09

SPECIAL USE PERMIT

SPECIAL USE PERMIT # 2009-0044

PROPERTY LOCATION: 29 East Walnut Street, Alexandria, VA 22301

TAX MAP REFERENCE: 54.04 09 16 **ZONE:** B-2-5

APPLICANT:

Name: Mark B. Poskaitis

Address: P.O. Box 7469, Alexandria VA 22307

PROPOSED USE: Special Use Permit to construct a single family dwelling on a substandard lot pursuant to Section 12-400 of the Alexandria Zoning Ordinance, 1992, as amended (the "Ordinance")

[**THE UNDERSIGNED**, hereby applies for a Special Use Permit in accordance with the provisions of Article XI, Section 4-11-500 of the 1992 Zoning Ordinance of the City of Alexandria, Virginia.

[**THE UNDERSIGNED**, having obtained permission from the property owner, hereby grants permission to the City of Alexandria staff and Commission Members to visit, inspect, and photograph the building premises, land etc., connected with the application.

[**THE UNDERSIGNED**, having obtained permission from the property owner, hereby grants permission to the City of Alexandria to post placard notice on the property for which this application is requested, pursuant to Article IV, Section 4-1404(D)(7) of the 1992 Zoning Ordinance of the City of Alexandria, Virginia.

[**THE UNDERSIGNED**, hereby attests that all of the information herein provided and specifically including all surveys, drawings, etc., required to be furnished by the applicant are true, correct and accurate to the best of their knowledge and belief. The applicant is hereby notified that any written materials, drawings or illustrations submitted in support of this application and any specific oral representations made to the Director of Planning and Zoning on this application will be binding on the applicant unless those materials or representations are clearly stated to be non-binding or illustrative of general plans and intentions, subject to substantial revision, pursuant to Article XI, Section 11-207(A)(10), of the 1992 Zoning Ordinance of the City of Alexandria, Virginia.

Mark B. Poskaitis
Print Name of Applicant or Agent

[Signature] 7/20/09
Signature Date

P.O. Box 7469, Alexandria VA 22307
Mailing/Street Address

703-930-2519 703-299-9959
Telephone # Fax #

Alexandria VA 22307
City and State Zip Code

mark@gempro.com
Email address

ACTION-PLANNING COMMISSION: _____	DATE: _____
ACTION-CITY COUNCIL: _____	DATE: _____

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PROPERTY OWNER'S AUTHORIZATION

As the property owner of 29 East Walnut Street, Alexandria VA 22301 I hereby
(Property Address)
grant the applicant authorization to apply for the renewal of SUP use as
(use)
described in this application.

Name: Mark B. Poskaitis
Please Print

Phone: 703-930-2519

Address: P.O. Box 7469, Alexandria, VA 22307

Email: mark@gcmpro.com

Signature: 

Date: 7/20/09

1. Floor Plan and Plot Plan. As a part of this application, the applicant is required to submit a floor plan and plot or site plan with the parking layout of the proposed use. The SUP application checklist lists the requirements of the floor and site plans. The Planning Director may waive requirements for plan submission upon receipt of a written request which adequately justifies a waiver.

Required floor plan and plot/site plan attached.

Requesting a waiver. See attached written request.

2. The applicant is the (check one):

Owner

Contract Purchaser

Lessee or

Other: _____ of the subject property.

State the name, address and percent of ownership of any person or entity owning an interest in the applicant or owner, unless the entity is a corporation or partnership, in which case identify each owner of more than ten percent.

All applicants must complete this form. Supplemental forms are required for child care facilities, restaurants, automobile oriented uses and freestanding signs requiring special use permit approval.

1. The applicant is (check one) the Owner | Contract Purchaser
 Lessee or Other: _____ of the subject property.

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.

Mark R. Poskaitis purchased the property for his personal residence. Mark Poskaitis' address is P. O. Box 7469, Alexandria, Virginia 22307.

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

Yes. Provide proof of current City business license

No. The agent shall obtain a business license prior to filing application, if required by the City Code.

2. Submit a floor plan and a plot plan with parking layout of the proposed use. One copy of the plan is required for plans that are 8½" x 14" or smaller. Twenty-four copies are required for larger plans or if the plans cannot be easily reproduced. The planning director may waive requirements for plan submission upon receipt of a written request which adequately justifies a waiver. This requirement does not apply if a Site Plan Package is required.

NARRATIVE DESCRIPTION

3. The applicant shall describe below the nature of the request in detail so that the Planning Commission and City Council can understand the nature of the operation and the use, including such items as the nature of the activity, the number and type of patrons, the number of employees, the hours, how parking is to be provided for employees and patrons, and whether the use will generate any noise. (Attach additional sheets if necessary)

SEE ATTACHED.

NARRATIVE DESCRIPTION:

The Applicant, Mark R. Poskaitis, is the *owner* of 29 East Walnut Street, an unimproved lot on the south side of the unit block of East Walnut Street in Section Four (4) of the Rosemont Subdivision ("Property").

The Property is defined as a substandard lot under the provisions of §12-400 of the Ordinance by virtue of its noncompliance with the lot width and lot area requirements of the R-2-5/Single Family and Two Family zone regulations. Pursuant to §3-500 of the Ordinance, the required lot width at the front building line is forty (40) feet. The lot width of the Property at the front of the building line is fifty (50) feet. The required lot area for lots in the R-2-5 zone regulations is five thousand (5,000) square feet. The Property contains four thousand four hundred (4,400) square feet of land. The lot was created by subdivision in 1913. The Property is identical in size and shape as all lots on the Blockface as defined in the Ordinance and in Section Four (4) of the Rosemont Subdivision. When created, the lot complied with the then applicable zone regulations.

We are applying for a renewal of our approved SUP, with only three changes as follows:

1. Removal of the 14" tree in the front right corner of the property next to 29 E. Walnut driveway. The sap and falling debris from the tree have destroyed the paint coats on vehicles.
2. The 24" tree located on the front right corner of 31 E. Walnut has been removed for an approved curb cut for off-street parking for 31 E. Walnut Street property. This tree was located on the property of 31 E. Walnut Street.
3. Mark Poskaitis is now the property owner, not the purchaser.

8. Describe any potential odors emanating from the proposed use and plans to control them:

It is not anticipated that offensive odors will emanate from the use of the Property as a single family residence.

9. Please provide information regarding trash and litter generated by the use:

A. What type of trash and garbage will be generated by the use?

The type and volume of trash and garbage will be that generally associated with a single family residence.

B. How much trash and garbage will be generated by the use?

The type and volume of trash and garbage will be that generally associated with a single family residence.

C. How often will trash be collected?

Weekly City pick-up of trash and recyclables.

D. How will you prevent littering on the property, streets and nearby properties?

Not Applicable.

10. Will any hazardous materials, as defined by the state or federal government, be handled, stored, or generated on the property?

Yes. No.

If yes, provide the name, monthly quantity, and specific disposal method below:

11. Will any organic compounds, for example paint, ink, lacquer thinner, or cleaning or degreasing solvent, be handled, stored, or generated on the property?

Yes. No

If yes, provide the name, monthly quantity, and specific disposal method below:

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12. What methods are proposed to ensure the safety of residents, employees and patrons?

Not Applicable.

ALCOHOL SALES

13. Will the proposed use include the sale of beer, wine, or mixed drinks?

Yes. No.

If yes, describe alcohol sales below, including if the ABC license will include on-premises and/or off-premises sales. Existing uses must describe their existing alcohol sales and/or service and identify any proposed changes in that aspect of the operation.

PARKING AND ACCESS REQUIREMENTS

14. Please provide information regarding the availability of off-street parking:

A. How many parking spaces are required for the proposed use pursuant to Section 8-200 (A) of the zoning ordinance?

Two (2) parking spaces.

B. How many parking spaces of each type are provided for the proposed use:

 2 Standard spaces - Tandem spaces

 Compact spaces

 Handicapped accessible spaces.

 Other.

C. Where is required parking located? on-site off-site (check one)

The parking spaces will be accessed off East Walnut Street by using the existing curbcut on the Property.

If the required parking will be located off-site, where will it be located:

Not Applicable.

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Pursuant to section 8-200 (C) of the zoning ordinance, commercial and industrial uses may provide off-site parking within 500 feet of the proposed use, provided that the off-site parking is located on land zoned for commercial or industrial uses. All other uses must provide parking on-site, except that off-street parking may be provided within 300 feet of the use with a special use permit.

D. If a reduction in the required parking is requested, pursuant to section 8-100 (A) (4) or (5) of the zoning ordinance, complete the **PARKING REDUCTION SUPPLEMENTAL APPLICATION**.

15. Please provide information regarding loading and unloading facilities for the use:

A. How many loading spaces are required for the use, per section 8-200 (B) of the zoning ordinance? **NONE**

B. How many loading spaces are available for the use? **None.**

C. Where are off-street loading facilities located? **Not Applicable.**

D. During what hours of the day do you expect loading/unloading operations to occur?
Not Applicable.

E. How frequently are loading/unloading operations expected to occur, per day or per week, as appropriate?
Not Applicable.

16. Is street access to the subject property adequate or are any street improvements, such as a new turning lane, necessary to minimize impacts on traffic flow?

SITE CHARACTERISTICS

17. Will the proposed uses be located in an existing building? Yes No

Do you propose to construct an addition to the building? Yes No

How large will the addition be? N/A square feet.

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18. What will the total area occupied by the proposed use be?

_____ sq. ft. (existing) + 1938 net sq. ft. = 1938 net sq. ft. (total)

See attached Floor Area and Open Space Computation Sheet.

19. The proposed use is located in: (check one)

a stand alone building a house located in a residential zone a warehouse

a shopping center. Please provide name of the center: _____

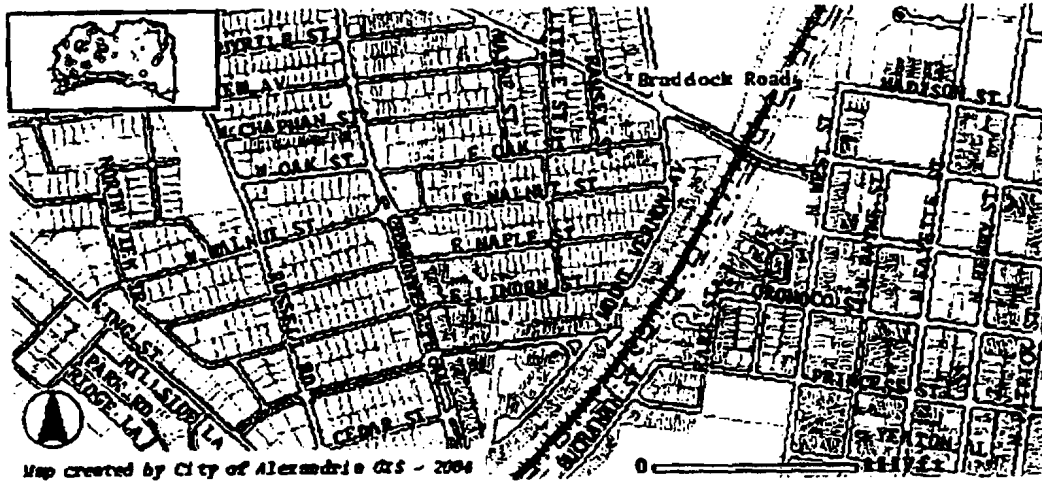
an office building. Please provide name of the building: _____

other, please describe: _____

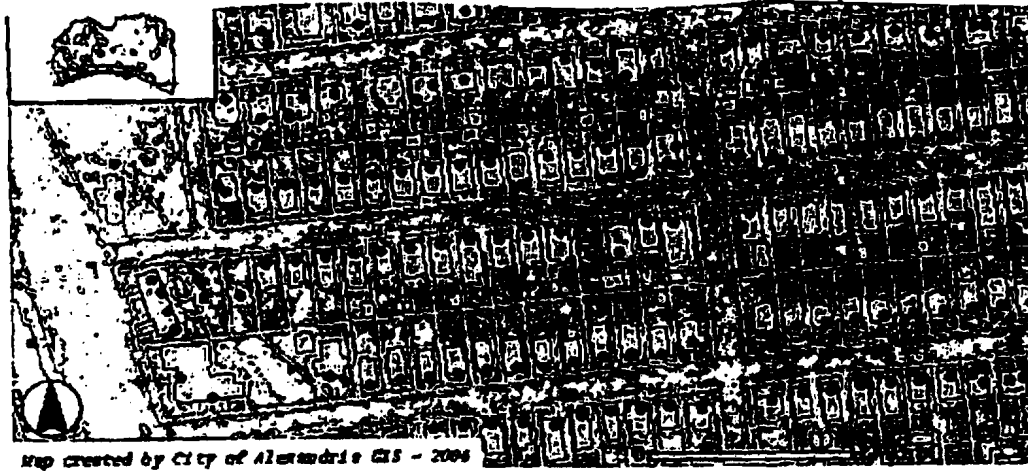
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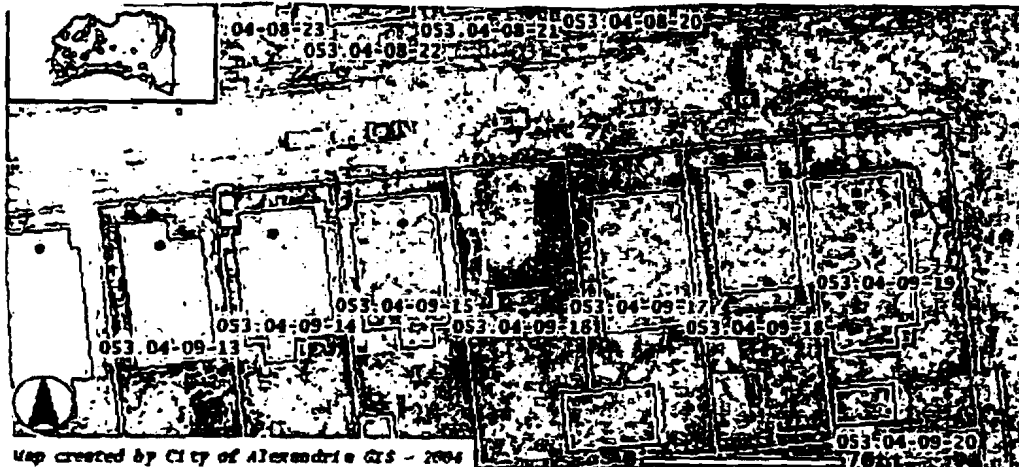
AREA MAP



AERIAL PHOTOGRAPH OF BLOCKFACE



AERIAL PHOTOGRAPH OF 29 EAST WALNUT STREET



1/10/2005



Correct

DEPARTMENT OF PLANNING AND ZONING FLOOR AREA RATIO AND OPEN SPACE CALCULATIONS FOR SINGLE AND TWO-FAMILY RESIDENTIAL OUTSIDE HISTORIC DISTRICTS

A. Property Information

A1. Street Address 29 E. WALNUT Zone R-2-5
 A2. 4,400 x .45 = 1,980
Total Lot Area Floor Area Ratio Allowed by Zone Maximum Allowable Floor Area

B. Existing Gross Floor Area

Existing Gross Area *		Allowable Exclusions	
Basement		Basement**	
First Floor		Stairways**	
Second Floor		Mechanical**	
Third Floor		Porch/ Garage**	5
Porches/ Other		Attic less than 5"	
Total Gross *		Total Exclusions	

B1. Existing Gross Floor Area *
 _____ Sq. Ft.
 B2. Allowable Floor Exclusions**
 _____ Sq. Ft.
 B3. Existing Floor Area minus
 Exclusions _____ Sq. Ft.
 (subtract B2 from B1)

C. Proposed Gross Floor Area (does not include existing area)

Proposed Gross Area*		Allowable Exclusions	
Basement	1,401	Basement**	1,401
First Floor	992	Stairways**	197
Second Floor	1,079	Mechanical**	96
Third Floor		Porch/ Garage**	220
Porches/ Other	408	Attic less than 5"	—
Total Gross *	3,880	Total Exclusions	1,914

C1. Proposed Gross Floor Area *
3,880 Sq. Ft.
 C2. Allowable Floor Exclusions**
1,914 Sq. Ft.
 C3. Proposed Floor Area minus
 Exclusions 1,966 Sq. Ft.
 (subtract C2 from C1)

D. Existing + Proposed Floor Area

D1. Total Floor Area (add B3 and C3) 1,966 Sq. Ft.
 D2. Total Floor Area Allowed by Zone (A2) 1,980 Sq. Ft.

*Gross floor area for residential single and two-family dwellings in the R-20, R-12, R-8, R-5, R-2-5, RB and RA zones (not including properties located within a Historic District) is the sum of all areas under roof on a lot, measured from exterior walls.

**Refer to the zoning ordinance (Section 2-145(A)) and consult with zoning staff for information regarding allowable exclusions. If taking exclusions other than basements, floor plans with excluded areas illustrated must be submitted for review. Sections may also be required for some exclusions.

F. Open Space Calculations Required in RA & RB zones

Existing Open Space	
Required Open Space	
Proposed Open Space	

The undersigned hereby certifies and attests that, to the best of his/her knowledge, the above computations are true and correct.

Signature: [Signature]

Date: 10.23.09

SUP 2009-00

29 E. Walnut, Substandard Lot Calculations

PROPERTY	LOT AREA	FRONTAGE	LOT WIDTH @ FRONT BLD LINE	IS SUBJECT LOT AT LEAST AS LARGE?
R-2-5 ZONING REQUIREMENTS	5000	40	50	-
SUBJECT (29 E. WALNUT)	4400	40	40	-
7 WALNUT	4400	40	40	Y
9	4400	40	40	Y
11	4400	40	40	Y
13	4400	40	40	Y
15	4400	40	40	Y
17	4400	40	40	Y
19	4400	40	40	Y
21	4400	40	40	Y
23	4400	40	40	Y
25	4400	40	40	Y
27	4400	40	40	Y
31	4400	40	40	Y
33	4400	40	40	Y
35 (CORNER)	5500	50	50	N
34 (CORNER)	5000	50	50	N
32	4000	40	40	Y
30	4000	40	40	Y
28	4000	40	40	Y
26	4000	40	40	Y
24	4000	40	40	Y
20	4000	40	40	Y
18	4000	40	40	Y
16	4000	40	40	Y
14	4000	40	40	Y
12	4000	40	40	Y
10	4000	40	40	Y
8	4000	40	40	Y
6	4000	40	40	Y
4	4000	40	40	Y

SUP 2009-0046

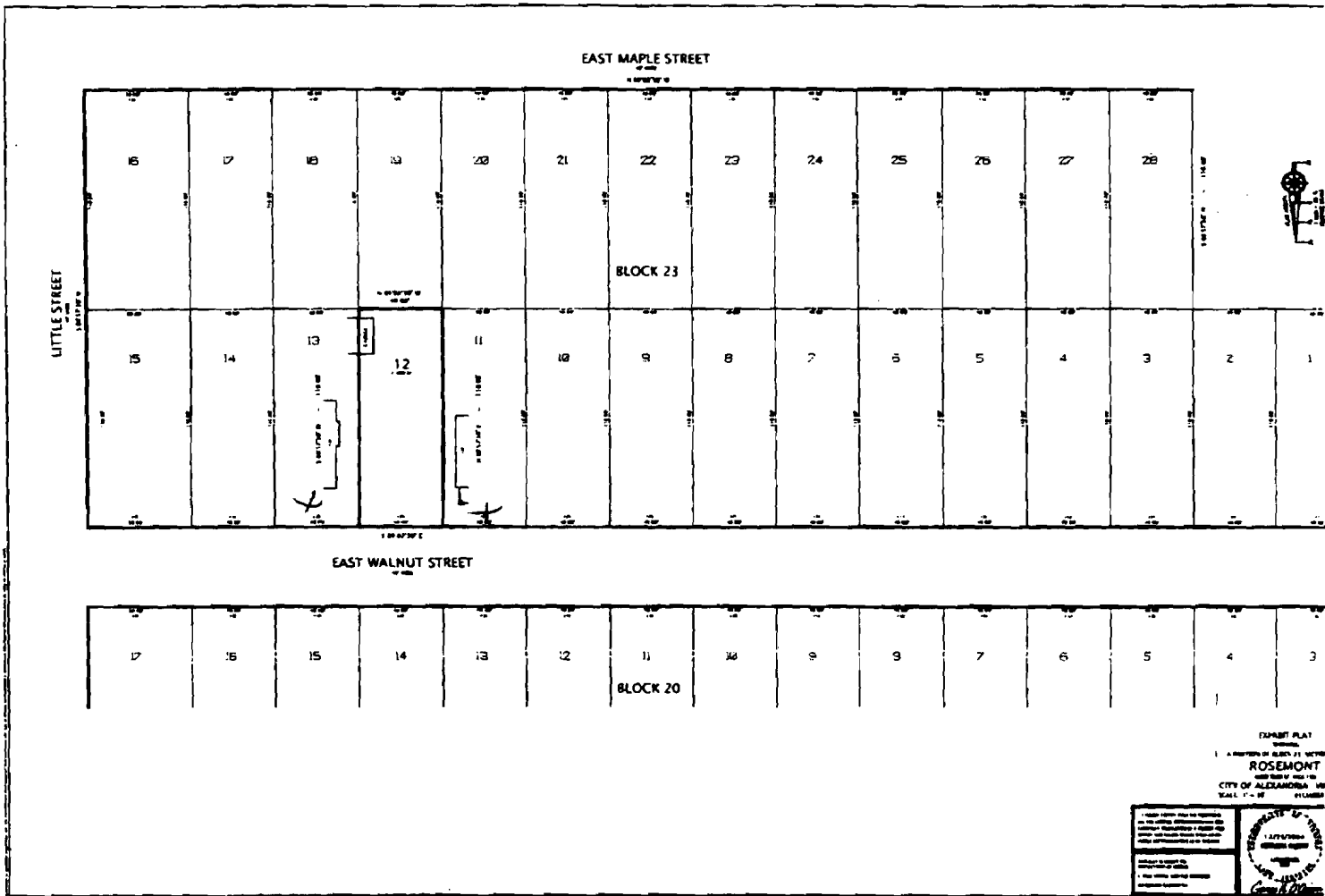
29 E. Walnut, Substandard Lot Calculations

Section 12-402 (A) (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.

YES (93%)

NO



SUP 2004-0046

POSKAITIS RESIDENCE



SUP #2005-0019
 29 E. WALNUT ST.
 SINGLE FAMILY
 RESIDENCES OF A SUB. LOT

**PRELIMINARY
 PLAN**

REGISTRAR
 FEB 28 2005
 PLANNING & ZONING

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3M
AND ASSOCIATES
ARCHITECTS
 100 WEST 10TH STREET
 ANNE ARBOR, MI 48106
 (734) 769-1000
 FAX (734) 769-1001

POSKAITIS BUNGALOW
 at 29 E. WALNUT STREET, ANN ARBOR, MI

COVER SHEET

DATE	2/22/05
BY	AS NOTED
FOR	
SCALE	
NO. OF SHEETS	1 OF 1

C



JOHN A. MOSE, ARCHITECT, 1000 N. 10TH ST., SUITE 100, DENVER, CO 80202. PHONE: 303.733.1111. FAX: 303.733.1112. WWW: WWW.JAMOSE.COM. ALL RIGHTS RESERVED.

311
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ARCHITECT
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 DENVER, CO 80202
 PHONE: 303.733.1111
 FAX: 303.733.1112
 WWW: WWW.JAMOSE.COM

POSKAITIS RESIDENCE
 1000 N. 10TH ST., SUITE 100, DENVER, CO 80202

PERSPECTIVE VIEW

DATE	SCALE
0-8/11	1/2" = 1'-0"
2/2/08	1/2" = 1'-0"
1/2/08	1/2" = 1'-0"
1/2/08	1/2" = 1'-0"

1

SUP 2009-0046



28

Sup 2009-0046



**JAMES L. BROWN
ARCHITECTURE**
INC.
1000 N. 10TH ST.
SUITE 100
DENVER, CO 80202
303.733.1111

JAMES L. BROWN ARCHITECTURE EXPRESSLY DISCLAIMS ALL LIABILITY FOR ANY AND ALL DAMAGES, INCLUDING, BUT NOT LIMITED TO, CONSEQUENTIAL DAMAGES, ARISING FROM THE USE OF THESE PLANS AND SPECIFICATIONS, WHETHER CAUSED BY THE NEGLIGENCE OF JAMES L. BROWN ARCHITECTURE OR OTHERWISE.

POSKAITIS RESIDENCE
3722 S. 10TH AVE.
DENVER, CO 80202

PERSPECTIVE VIEW

DATE	04/01
SCALE	3/22/08
BY	JLB
CHECKED BY	JLB
DATE	04/01/08

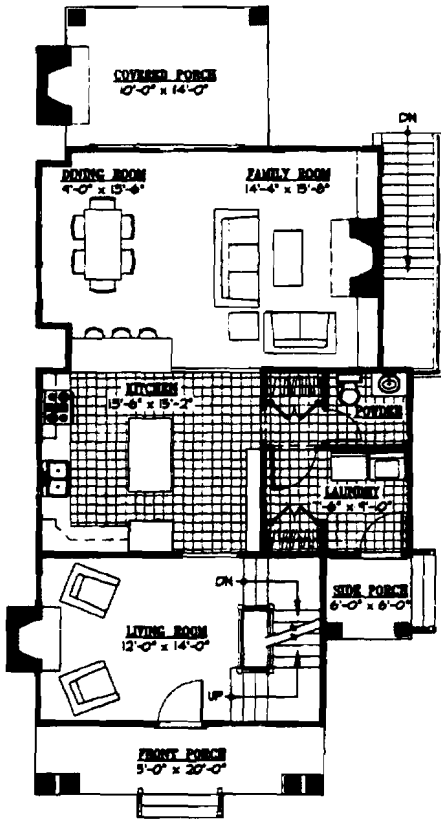
3

29

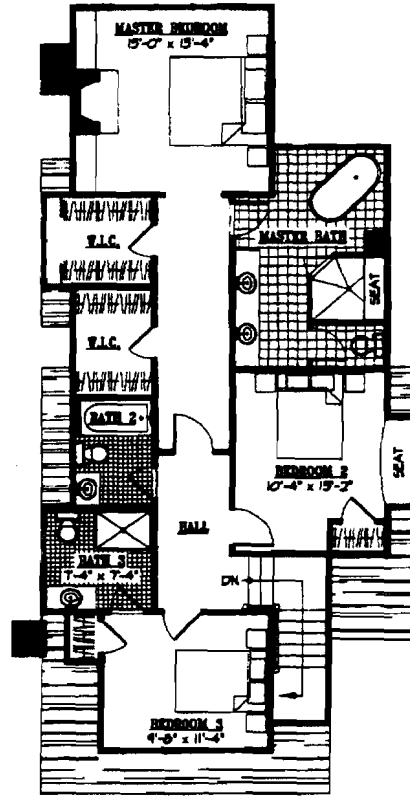
SUP 2009-0046



SUP 2009-0046



1 FIRST FLOOR PLAN
SCALE: NOT TO SCALE



2 SECOND FLOOR PLAN
SCALE: NOT TO SCALE

311

**ALAN S. BENTLEY
AND ASSOCIATES
ARCHITECTS PC**

200 S. JAMES L. BENTLEY
ARLINGTON HEIGHTS, ILL. 60010
TEL: (847) 399-7000
FAX: (847) 399-7001










POSKAITIS RESIDENCE
1000 S. JAMES L. BENTLEY
ARLINGTON HEIGHTS, ILL.

FLOOR PLANS

DATE: 08/07
NO: 2/22/09
SHEET: AS NOTED
PROJECT: POSKAITIS RESIDENCE

5

31

			
10 E. Walnut	12 E. Walnut	14 E. Walnut	16 E. Walnut
			
18 E. Walnut	20 E. Walnut	22 E. Walnut	24 E. Walnut
			
26 E. Walnut	28 E. Walnut	32 E. Walnut	34 E. Walnut

311

ALLEN L. BOGGS AND ASSOCIATES ARCHITECTS













PO BOX 1000
 1000 10th St NW
 Tallahassee, FL 32304


POSKAITIS RESIDENCE
 1000 10th St NW
 Tallahassee, FL

EAST WALNUT STREET NORTH SIDE

6

SUP 2009-0046

															
7 E. Walnut				33 E. Walnut				31 E. Walnut				Lot for 29 E. Walnut			
															
27 E. Walnut				27 E. Walnut				25 E. Walnut				23 E. Walnut			
															
21 E. Walnut				19 E. Walnut				15 & 17 E. Walnut				13 E. Walnut			

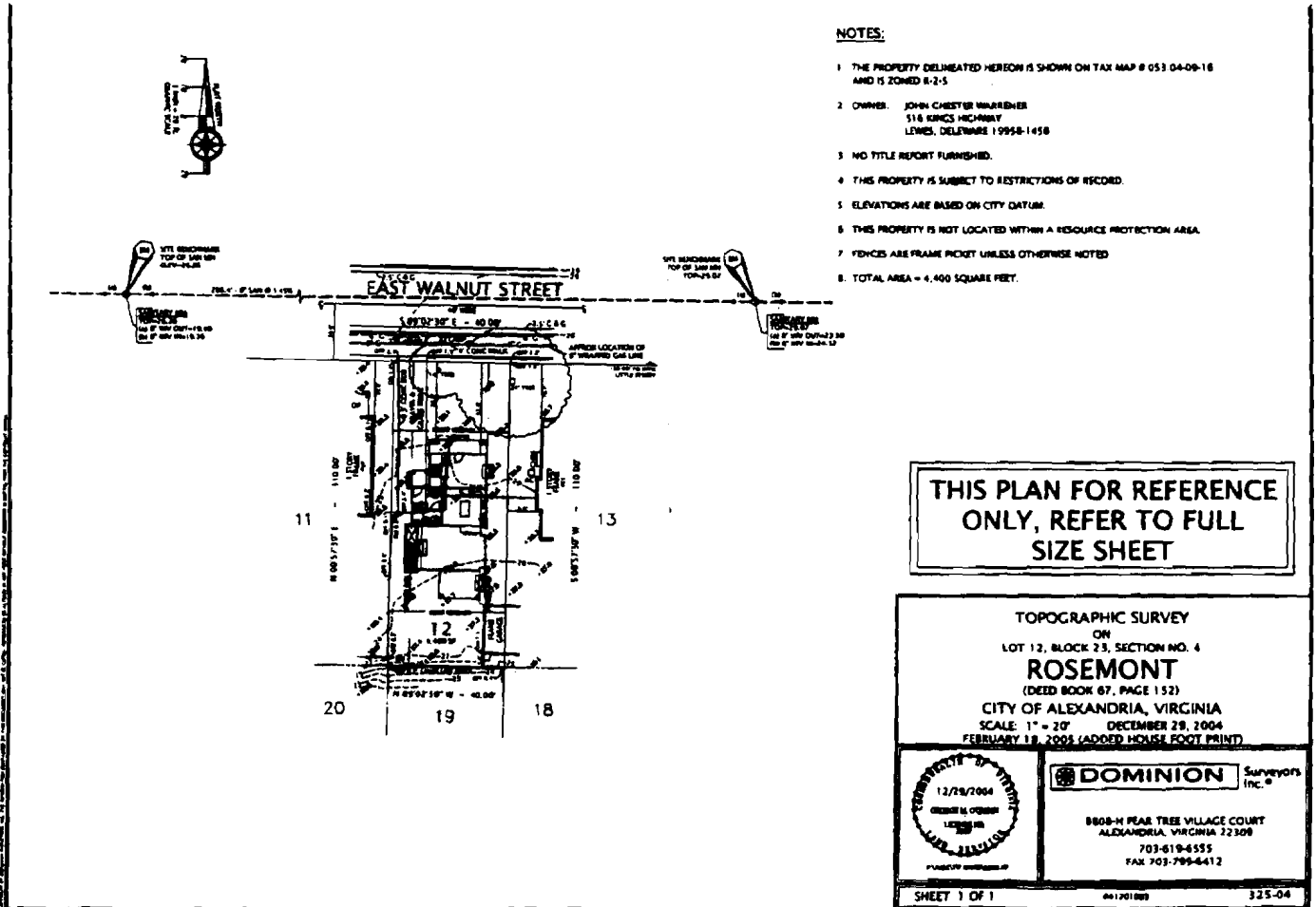

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 TEL: (414) 962-7200
 FAX: (414) 962-7201

POSKAITIS RESIDENCE
 100 WEST 10TH STREET
 SUITE 200
 MILWAUKEE, WI 53233
EAST WALNUT STREET SOUTH SIDE

PLAN NO.	0487
DATE	3/22/08
SCALE	1/4" = 1'-0"
AS NOTED	
BY	JLB
CHECKED	JLB
DATE	

7

SUP 2009-00416



34

Docket Item #2
SUP 2009-0046



Kendra Jacobs /Alex
11/05/2009 03:00 PM

To
cc
bcc
Subject Fw: SUP #2009-0046

Mark Shiner <mark.shiner@yahoo.com>



Mark Shiner
<mark.shiner@yahoo.com>
11/05/2009 02:35 PM

To Colleen.Rafferty@alexandriava.gov
cc mark@gcmpro.com, curlycoat1@verizon.com
Subject SUP #2009-0046

Colleen,

Attached is a statement opposing the SUP application. Please also find a copy of a Virginia case referenced in the statement.

We apologize for not submitting this statement sooner.

We will not be attending the hearing, but rather are submitting a statement with our concerns.

Would you please confirm that this statement will be made part of the record and presented to the Commission prior to consideration of this matter.

Thank you very much for your assistance.

Regards,

Mark Shiner

P.S. We are providing a copy of this statement to the applicant and the other listed opposer.



VA case - zoning merger.doc zoning statement.doc

**Prepared Statement of Mark Shiner and Heather Skeeles-Shiner
(owners of the adjacent property at 27 East Walnut Street)**

**Special Use Permit #2009-0046
Thursday, October 5, 2009
City of Alexandria Planning Commission Hearing**

We are the owners of the adjacent property to the west of the lot in the subject application. We oppose the special use permit for the reasons contained herein.

We purchased 27 E. Walnut St. in February 2009. As such, our statement is limited to the potential impact development of 29 E. Walnut St. will have on our property and the surrounding homes. We do not have sufficient first hand knowledge to express an opinion regarding any alleged improprieties in the application process.

OBJECTIONS

Support Statement of David Williamson and Leslie Jones

As a preliminary matter, we support the Prepared Statement of David Williamson and Leslie Jones (hereinafter "Williamson-Jones Statement"), to the extent that the statement addresses the merits of the underlying petitions. We neither support nor oppose the comments regarding the integrity of the process in the Williamson-Jones Statement as we lack first hand knowledge of those events.

Lots at 29 E. Walnut St. and 31 E. Walnut Street Have Consolidated (Merged)

- It is our understanding that the lots at 29 E. Walnut St. and 31 E. Walnut St. have been continuously jointly owned since their creation in 1918. During this time, the lots have been treated as a **single lot by the owners of the joint lot.**
 - (1) A very large outbuilding has been constructed across the center boundary of the lots with half of the building on each lot respectively
 - (2) A single fence has enclosed both lots for many years
- Neither lot alone meets current zoning requirements.
- The Supreme Court of Virginia has stated that **"public policy favors the eventual elimination of [zoning] nonconformities to reach compliance with a comprehensive plan."** *Gray v. Zoning Appeals Board of Norfolk*, 65 Va. Cir. 281, 283 (Norfolk Cir. 2004) (citing *City of Chesapeake v. Gardner Enters.*, 253 Va. 243, 248, 482 S.E.2d 812 (1997)) (attached).
- Likewise, Alexandria Code § 12-202 declares that **"it [is] the intent of the city to provide for the eventual elimination of all nonconforming uses."**
- Under Alexandria Code § 12-401(A), Lots 29 and 31 have been held contemporaneously by the same owner

- § 12-401 applies, rather than § 12-402, because the lots have been in existence and owned by the same owner since 1974. § 12-402 only applies to lots that were not held by the same owner until after September 16, 1988. The staff reports erroneously applies § 12-402 under the idea that the current owner purchased the properties after 1988. **§ 12-401 should apply, however, because the prior owner held the both properties contemporaneously prior to 1988.** The interpretation in the staff report would mean that the properties were merged prior to the sale of the properties to the applicant and that this sale then re-subdivided the properties. This result is inconsistent with the goals of the zoning rules.
 - Any different interpretation is in conflict with the public policy goal of reducing all nonconforming uses. Otherwise, there would be a 14 year period (1974 to 1988) when the nonconforming lots would have been barred by the merger of the lots, and then after September 16, 1988, the code would have reverted to allow nonconforming uses. Such a result cannot be in accordance with the goal of reducing nonconforming uses.
 - In any event, even if 12-402 applied, the lots should be considered as 1 larger non-conforming parcel, rather than as 2 separate parcels. If applicant had applied for a special use permit to replace the existing house on Lot 31, with a new house, then § 12-402(A) would have treated Lots 29 and 31 as a single parcel to allow compliance with current zoning rules because lot 29 is undeveloped. It defies logic (and public policy) that the code would require a new structure on Lot 31 to have Lots 29 and 31 merge, but a new structure on Lot 29 would not require a similar treatment of the contiguous lots.
 - The intent of the zoning code is to eliminate non-conforming uses. A non-conforming use can be eliminated by treating Lots 29 and 31 as a single and conforming parcel rather than subdividing them and creating two non-conforming parcels.

Building on Lot 29 will Significantly Increase the Risk of Storm Water Flooding to Adjacent Properties

- It is the understanding of the undersigned, that the odd numbered houses of Walnut Street have issues with storm water flooding.
- In fact, it is the understanding that the house at 25 E. Walnut Street has recently had storm water flooding problems.
- The home at 27 E. Walnut street has a sump-pump in the basement to help alleviate the flooding risk.
- 27 E. Walnut has fortunately not had any recent storm water flooding problems.
- Undoubtedly, the risk of storm water flooding in 27 E. Walnut (and 31 E. Walnut) is greatly reduced by the presence of the large open green space at 29 E. Walnut.

- Covering the existing open grass area with a large foundation at 29 E. Walnut will certainly decrease the available area for draining storm waters along the entirety of the south side of E. Walnut (and likely the north side of E. Maple).
- The undersigned are concerned that **the size of the proposed structure at 29 E. Walnut street will greatly increase the risk of storm water flooding in 27 E. Walnut Street and likely the other houses on the south side of E. Walnut.**
- One consideration in the modern zoning regulations presumably is reducing the risk of storm water flooding by providing adequate ground drainage.

Building on Lot 29 Will Negatively Impact the Light, Air, and Privacy of 27 E. Walnut

- Section 12-400, et seq. only allow a special use permit if it will not “unreasonably impair an adequate supply of light and air to the adjacent property.”
- The proposed house would “dominate” the much smaller house at 27 E. Walnut. The height of the structure, combined with the front setback recommended in the staff report, would block the vast majority of natural light and air flow on the east side of the home at 27 E. Walnut Street. Because the sun rises almost due east of the houses on Walnut Street, the proposed structure on 29 E. Walnut Street would block almost all natural light from entering directly into the home on 27 E. Walnut Street.
- Additionally, the existing home at 27 E. Walnut street has a row of windows running the entire length of the east side of the home. Construction at the front setback proposed in the staff report would cause the home on 29 E. Walnut to line up directly across from these windows on 27 E. Walnut, greatly reducing privacy in the living areas of 27 E. Walnut Street.

RELIEF REQUESTED

We request that the SUP application be denied and the 29 E. Walnut Street and 31 E. Walnut Street lots be deemed consolidated or merged because of the continuous ownership and treatment of these lots as one property since the creation of these lots in 1918 and the negative impact the proposed construction would have on the flooding risk, light, air, and privacy of the resident’s of 27 E. Walnut St. and 31 E. Walnut St.

REQUEST FOR ALTERNATIVE RELIEF

Should the Planning Commission approve the SUP application, at a minimum, we request the following conditions to minimize the detrimental impact on light, air, and privacy and reduce the risk of flooding from storm waters.

1. Require the applicant to build the house with the originally proposed 28 foot front yard setback in the 2005 SUP application. The 2009 staff report recommends

reducing the set-back to 20 feet. We strongly oppose this modification and request a required set-back of 28 feet as originally proposed by the applicant. The additional set-back distance will reduce the negative impact on privacy, light, and air the proposed construction would have on both adjacent properties. Additionally, the increased set-back would allow for greater front yard drainage, which is the area of greatest concern for increased flood risk. David Williamson has indicated to the undersigned that he supports this condition should the SUP be approved.

2. Require that the applicant maintain a porous driveway to between 29 E. Walnut St. and 27 E. Walnut St. Maintaining a porous driveway reduces the risk of storm water flooding to 27 E. Walnut St.



6 of 15 DOCUMENTS

Fong Yuen Gray v. Zoning Appeals Board of the City of Norfolk**Case No. (Law) L04-135****CIRCUIT COURT OF THE CITY OF NORFOLK, VIRGINIA***65 Va. Cir. 281; 2004 Va. Cir. LEXIS 287***July 30, 2004, Decided**

DISPOSITION: Board of Zoning Appeals of the City of Norfolk is affirmed.

termination of the vested right in maintaining a nonconforming lot.

CASE SUMMARY:

OUTCOME: The court affirmed the BZA's ruling.

PROCEDURAL POSTURE: Petitioner buyer was advised by the Norfolk, Virginia, Zoning Administrator that the seller "illegally" conveyed two lots (10 and 11) to the buyer. The buyer appealed this determination to the Board of Zoning Appeals of the City of Norfolk (BZA). The BZA denied the buyer's appeal application, affirming the Zoning Administrator's ruling. The buyer then filed for a writ of certiorari to the court seeking to reverse the BZA's ruling.

LexisNexis(R) Headnotes

OVERVIEW: The administrator found lots 10 and 11 merged with nonconforming lots 12, 13, and 14, and could not be divided without violating Norfolk, Va., Zoning Ordinance § 2-3 (2002). The buyer challenged the BZA's determination on three grounds: (1) the Administrator based his determination on an incorrect interpretation of the Ordinance's definition of "lot"; (2) the buyer had no notice that purchasing lots 10 and 11 was "illegal"; and (3) the Administrator's determination violated the seller's vested right in continuing a nonconforming lot. The court found some evidence that the seller may have allowed lots 10 and 11 to be used as a parking lot for tenants on lots 12, 13, and 14, supporting the definition of "lot" to the merging of adjoining conforming and nonconforming lots with a common owner. Although the buyer had no notice that lots 10 and 11 had merged with lots 12, 13, and 14, the Administrator had the power to enforce the ordinance against any violations after the purchase. *Va. Code Ann. § 15.2-2307*, as a whole, applied to all nonconformities, and the date when adjacent lots fell under common ownership marked the

Environmental Law > Zoning & Land Use > Constitutional Limits

Real Property Law > Zoning & Land Use > Comprehensive Plans

Real Property Law > Zoning & Land Use > Nonconforming Uses

[HN1] In the Commonwealth of Virginia, a landowner has a constitutional right to continue a lawfully established nonconformity. A lawfully established nonconformity will be protected so long as it is not abandoned, discontinued for more than two years, or expanded. However, public policy favors the eventual elimination of nonconformities to reach compliance with a comprehensive plan.

Real Property Law > Zoning & Land Use > Nonconforming Uses

Real Property Law > Zoning & Land Use > Ordinances

[HN2] The Norfolk City Ordinance discusses nonconformities generally in ch. 12: It is the intent of this chapter to permit such nonconformities to continue until they are removed but not to encourage their continuation over time. In any case where the property owner or possessor shall assert the presence of a vested right or legal nonconformity, any doubt or uncertainty, as to fact or law, shall be resolved against the continuation of the nonconformity and in favor of actual compliance with these

regulations. Norfolk, Va., Zoning Ordinance § 12-1 (1999).

Governments > Local Governments > Ordinances & Regulations

Real Property Law > Subdivisions > Local Regulation

Real Property Law > Zoning & Land Use > Ordinances

[HN3] The Norfolk, Virginia, Zoning Ordinance Ordinance defines "lot" in relevant part as: A piece of land identified on a plat of record or in a deed of record and of sufficient area and dimensions to meet district requirements for width, area, use, and coverage, and to provide such yards and open space as are required. A lot may consist of combinations of adjacent individual lots and/or portions of lots so recorded; provided, however, that in no case of division or combination shall any residual lot, portion of lot, or parcel be created which does not meet the requirements of this ordinance and the subdivision regulations of the city. Norfolk, Va., Zoning Ordinance § 2-3 (2002).

Civil Procedure > Appeals > Standards of Review > General Overview

Governments > Local Governments > Ordinances & Regulations

[HN4] The consistent interpretation of an ordinance by those who enforce it deserves great weight.

Real Property Law > Zoning & Land Use > Administrative Procedure

Real Property Law > Zoning & Land Use > Judicial Review

Real Property Law > Zoning & Land Use > Ordinances

[HN5] The standard of review for a petition for writ of certiorari appealing a decision of the board of zoning appeals is established by the Virginia Code, which states: In the case of an appeal from the board of zoning appeals to the circuit court of an order, requirement, decision, or determination of a zoning administrator or other administrative officer in the administration or enforcement of any ordinance or provision of state law, the decision of the board of zoning appeals shall be presumed to be correct. The appealing party may rebut that presumption by proving by a preponderance of the evidence, including the record before the board of zoning appeals, that the board of zoning appeals erred in its decision. Any party may introduce evidence in the proceedings in the court. *Va. Code Ann. § 15.2-2314* (2004).

Evidence > Inferences & Presumptions > Presumption of Regularity

Evidence > Inferences & Presumptions > Presumptions Governments > Local Governments > Administrative Boards

[HN6] The presumption of correctness that attaches to the Norfolk, Virginia, Board of Zoning Appeals' (BZA) ruling is a presumption that the BZA acted reasonably. The BZA's action is reasonable if the matter in issue is fairly debatable. An issue is fairly debatable when the evidence offered in support of the opposing views would lead objective and reasonable persons to reach different conclusions. Where presumptive reasonableness is challenged by probative evidence of unreasonableness, the challenge must be met by some evidence of reasonableness. If evidence of reasonableness is sufficient to make the question fairly debatable, the BZA's ruling must be sustained. If not the BZA's ruling cannot be sustained.

Environmental Law > Zoning & Land Use > Statutory & Equitable Limits

Real Property Law > Zoning & Land Use > Administrative Procedure

Real Property Law > Zoning & Land Use > Ordinances

[HN7] There is no limitation on the timing or means used by a zoning administrator in determining that a zoning ordinance violation exists. Also, the equitable remedies do not apply against the government in the discharge of governmental functions. Thus, a zoning administrator cannot be estopped from enforcing the zoning ordinance because of invalid means or the passage of time since the violation occurred. As long as the zoning administrator makes clear the basis upon which relief is sought when rendering a decision, and when the proof at trial is sufficient, the government is entitled to relief.

Real Property Law > Zoning & Land Use > Nonconforming Uses

[HN8] See *Va. Code Ann. § 15.2-2307*.

Environmental Law > Zoning & Land Use > Nonconforming Uses

Real Property Law > Zoning & Land Use > Nonconforming Uses

Real Property Law > Zoning & Land Use > Ordinances

[HN9] A nonconforming lot is a lot the area or dimension of which was lawful prior to the adoption or amendment of a zoning ordinance, but which fails to conform to the requirements of the zoning district in which it is located by reasons of such adoption or amendment. *53 Pa. Cons. Stat. § 10107* (2004).

Real Property Law > Zoning & Land Use > Nonconforming Uses

[HN10] The term "nonconforming uses" is often used without consideration as to what aspect of the use of property is nonconforming, and in determining whether an activity is an expansion or change of a nonconforming use, the nature of the nonconformity is important. There are basically four types of nonconformity: (1) nonconforming use -- the use of the land or structure on it is nonconforming (e.g., commercial use in a residential zone); (2) a nonconforming lot -- the lot is undersized, irregularly shaped, has inadequate width or depth or inadequate frontage; (3) nonconforming building or structure -- the structure does not meet the minimum or maximum size requirements, floor area ratio, height or bulk requirements of the existing zoning regulations; (4) nonconformity as to location of structure, i.e., it does not conform with one or more of the setback requirements. These distinctions are important because a particular piece of property may be nonconforming in one of these respects, but conforming as to the others. The prohibition of expansion of nonconforming uses applies only to the aspect of the use or structure which is nonconforming.

Real Property Law > Zoning & Land Use > Nonconforming Uses

[HN11] The different terms for nonconformities are effectively interchangeable, and *Va. Code Ann. § 15.2-2307*, as a whole, applies to all nonconformities.

HEADNOTES

A landowner has a constitutional right to continue a lawfully established land use nonconformity; however, public policy favors the eventual elimination of such nonconformities in order to reach compliance with a comprehensive land use plan.

A zoning administrator cannot be estopped from enforcing the zoning ordinance because of invalid means or the passage of time since the violation occurred.

The different types of and terms for land use nonconformities are interchangeable, and *Va. Code § 15.2-2307* applies to all land use nonconformities.

JUDGES: [**1] BY JUDGE CHARLES E. POSTON.

OPINION BY: CHARLES E. POSTON

OPINION

[*281] BY JUDGE CHARLES E. POSTON

Today, the Court affirms the Board of Zoning Appeals' ruling from which Petitioner Fong Yuen Gray appeals.

Facts

On December 1, 1994, George H. Croft, Jr., purchased Lots 12, 13, and 14, Block 5, Plat of Chesapeake Place, in the West Ocean View section of Norfolk. When Croft purchased those lots, an eight-unit apartment complex existed, and still exists, on them. The apartment complex had been a lawfully established structure on the lots before amendments to the Norfolk Zoning Ordinance in 1992; however, they failed to satisfy the 1992 zoning amendments for zoning district R-12, which required a 100-foot minimum lot width per structure and a minimum lot area of 2,200 square feet per unit for multiple-family dwellings of seven or more units. Norfolk, Va., Zoning Ordinance § 4-12 (2004). Lots 12, 13, and 14 measured a total of 75 feet wide and 150 feet long (11,250 square feet, 1,406.25 square feet per unit). Thus, after the passage of the 1992 zoning amendments, the lots became a lawfully established nonconforming lot.

[*282] On December 18, 1996, Croft purchased vacant Lots 10 and 11 adjacent to [**2] Lots 12, 13, and 14. Lots 10 and 11 measure a total of 50 feet wide and 150 feet long, thus making them suitable for building either a single family home or duplex in compliance with the R-12 zoning district requirements. If all of Croft's lots were viewed as a whole, however, the apartment complex was on a conforming lot because it met the minimum frontage requirements in the R-12 zoning district.

On April 23, 2002, Croft conveyed Lots 12, 13, and 14 to Landmark Property Service, L.L.C., and, on July 15, 2002, he conveyed Lots 10 and 11 to Petitioner Fong Yuen Gray for \$42,000. The Petitioner subsequently listed Lots 10 and 11 for resale with Long and Foster Realty Company, neither of which have ever been developed, as zoned for single-family or duplex use. The Petitioner entered into a contract to sell Lots 10 and 11 for \$151,500. Lots 10 and 11 have never been developed by any party. At all times, Lots 10 and 11 and Lots 12, 13, and 14 have been separately assessed for real estate tax purposes.

On or about August 7, 2003, and prior to closing on the resale contract for Lots 10 and 11, the Petitioner received a letter from Leslie Lynn Garrett, a Norfolk Zoning Enforcement Coordinator, [**3] advising that Croft illegally conveyed Lots 10 and 11. The letter further stated that Lots 10 and 11 "do not constitute a legal buildable site" and "if these lots are sold, the seller will be at risk of legal repercussions from the buyers." On November 12, 2003, David S. Hay, Esquire, attorney for the Petitioner, received a letter from Leonard M. Newcomb, III, the Norfolk Zoning Administrator, advising that Croft "illegally" conveyed Lots 10 and 11 to the

Petitioner. Newcomb relied upon the definition of "lot" in section 2-3 of the Ordinance, which prohibits a division or combination that causes a residual lot to be out of compliance with the Ordinance requirements.

On December 3, 2003, the Petitioner appealed the Zoning Administrator's determination to the Board of Zoning Appeals of the City of Norfolk (BZA). During the BZA's hearing of the appeal on January 15, 2004, Garrett testified to having received information that tenants of the apartment complex on Lots 12, 13, and 14 had allegedly used Lots 10 and 11 for "parking purposes and things of that nature." Two residents testified that the two lots had been used for overflow parking by tenants of the apartment complex on Lots 12, [**4] 13, and 14. One of the residents, who lived across the street from Lots 10 and 11, testified that, on many occasions, he witnessed people parking on Lots 10 and 11 and going directly into the apartment complex on Lots 12, 13, and 14. There was no evidence that Croft authorized this use, nor that he was even aware of his tenants' occasional parking on Lots 10 and 11.

[*283] Newcomb testified that his interpretation of "lot" has been applied consistently for many years in Norfolk in similar cases. He further explained that his interpretation "is the essence of the way zoning works in an older city where you have underlying patterns of lots that are in no case conforming to any of your zoning regulations."

Some BZA members expressed doubts as to how to rule on the Petitioner's application. One BZA member stated, "I feel that this is a very unfortunate incident in procuring property that you can't develop. ... I don't think this is the venue to be taking on such an issue as this. I don't feel that I'm capable of overturning the [Zoning Administrator's] decision." The Chairman of the BZA stated, "This may require someone else to decide this issue." Another BZA member asserted that the evidence [**5] had persuaded him that the Zoning Administrator made the correct determination. The BZA denied the Petitioner's appeal application by a six-to-zero vote, affirming the Zoning Administrator's determination. The Petitioner then filed for a writ of certiorari to the Court seeking to reverse the BZA's ruling.

Discussion

This is a case of first impression in the Commonwealth and the facts presented are troubling. One would have hoped that the City would have addressed this issue with Croft when he sold Lots 12, 13, and 14. Instead, the City intervened after the Petitioner bought Lots 10 and 11; thus the Court's decision will affect those who sold or purchased the lots in good faith. Neither the Norfolk City

Ordinance nor the Virginia Code effectively addresses this situation.

All parties agree that Lots 12, 13, and 14 were a lawfully established nonconformity. [HN1] In the Commonwealth of Virginia, a landowner has a constitutional right to continue a lawfully established nonconformity. *Carolinas Cement Co. v. Zoning Appeals Bd.*, 49 Va. Cir. 463, 475 (1999). A lawfully established nonconformity will be protected so long as it is not abandoned, discontinued for more than [**6] two years, or expanded. *See Knowlton v. Browning-Ferris Indus. of Va., Inc.*, 220 Va. 571, 576, 260 S.E.2d 232 (1979). However, public policy favors the eventual elimination of nonconformities to reach compliance with a comprehensive plan. *City of Chesapeake v. Gardner Enters.*, 253 Va. 243, 248, 482 S.E.2d 812 (1997). [HN2] The Norfolk City Ordinance discusses nonconformities generally in Chapter 12:

It is the intent of this chapter to permit such nonconformities to continue until they are removed but not to encourage their continuation over time. ... In any case where the property owner or [*284] possessor shall assert the presence of a vested right or legal nonconformity, any doubt or uncertainty, as to fact or law, shall be resolved against the continuation of the nonconformity and in favor of actual compliance with these regulations.

Norfolk, Va., Zoning Ordinance § 12-1 (1999). The dual purpose articulated by the Ordinance creates a challenging conflict. *See e.g., Montgomery v. Board of Zoning Appeals of Norfolk*, 45 Va. Cir. 126 (1998).

[HN3] The Ordinance defines "lot" in relevant part as:

[A] piece of land identified on a plat of record or in a deed [**7] of record and of sufficient area and dimensions to meet district requirements for width, area, use, and coverage, and to provide such yards and open space as are required. ... A lot may consist of combinations of adjacent individual lots and/or portions of lots so recorded; *provided, however, that in no case of division or combination shall any residual lot, portion of lot, or parcel be created which does not meet the requirements of this ordinance and the subdivision regulations of the city.*

Norfolk, Va., Zoning Ordinance § 2-3 (2002) (emphasis added). The Zoning Administrator extrapolated his determination from the emphasized portion of the Ordinance and reasoned that since the Ordinance's "mission statement" empowers him to resolve all cases allowing for the exercise of his discretion against perpetuating the nonconformity, the definition of "lot" encompassed subsequently purchased lots. Thus, he determined that because Lots 10 and 11 merged with Lots 12, 13, and 14, they could not be divided without violating the Ordinance. The Zoning Administrator testified that this was his consistent interpretation of the Ordinance, and the BZA relied upon the rule that [HN4] the consistent [**8] interpretation of an ordinance by those who enforce it deserves great weight. *E.g., Commonwealth v. American Radiator & Standard Sanitary Corp.*, 202 Va. 13, 19, 116 S.E.2d 44 (1960).

[HN5] The standard of review for a petition for writ of certiorari appealing a decision of the BZA is established by the Virginia Code, which states:

In the case of an appeal from the board of zoning appeals to the circuit court of an order, requirement, decision, or determination of a zoning administrator or other administrative officer in the administration or enforcement of any ordinance or provision of state law, the decision of the board of zoning appeals shall be presumed to be correct. The appealing party may rebut that presumption by proving by a preponderance of the evidence, including the record [*285] before the board of zoning appeals, that the board of zoning appeals erred in its decision. Any party may introduce evidence in the proceedings in the court.

Va. Code Ann. § 15.2-2314 (2004). [HN6] The presumption of correctness that attached to the BZA's ruling is a presumption that the BZA acted reasonably. *Board of Supervisors v. Robertson*, 266 Va. 525, 532, 587 S.E.2d 570 (2003) [**9] (citing *Board of Supervisors v. McDonald's Corp.*, 261 Va. 583, 590, 544 S.E.2d 334 (2001)). "[The BZA's] action is reasonable if the matter in issue is fairly debatable." *Board of Supervisors v. Lerner*, 221 Va. 30, 34, 267 S.E.2d 100 (1980). "An issue is >fairly debatable when the evidence offered in support of the opposing views would lead objective and reasonable persons to reach different conclusions." *Robertson*, 266 Va. at 532 (quoting *Board of Supervisors v. Williams*, 216 Va. 49, 58, 216 S.E.2d 33 (1975)). "Where presumptive reasonableness is challenged by probative evidence of unreasonableness, the challenge must be met

by some evidence of reasonableness. If evidence of reasonableness is sufficient to make the question fairly debatable, the [BZA's ruling] >must be sustained.' If not ... the [BZA's ruling] cannot be sustained." *Id.* at 533 (citing *Board of Supervisors v. Snell Constr. Corp.*, 214 Va. 655, 659, 202 S.E.2d 889 (1974)).

Petitioner's Contentions

The Petitioner challenges the BZA's determination on three grounds: (1) The Zoning Administrator based his determination on an incorrect interpretation of the Ordinance's definition of [**10] "lot"; (2) the Petitioner had no notice that purchasing Lots 10 and 11 was "illegal"; and (3) the Zoning Administrator's determination violated Croft's vested right in continuing a nonconforming lot.

A. Interpretation of the Term "Lot"

The Petitioner argues that the Zoning Administrator incorrectly applied the Ordinance's definition of "lot" to the merging of adjoining conforming and nonconforming lots with a common owner. Specifically, the Petitioner argues that the Zoning Administrator's interpretation violated state law because no provisions in the Virginia Code allow a municipality to merge lots without a valid, approved, and recorded subdivision plat. While no Virginia authority exists on the issue of merging conforming and nonconforming lots, Connecticut has addressed the issue of merger. *Molic v. Zoning Bd. of Appeals of Redding*, 18 Conn. App. 159, 556 A.2d 1049 (1992), and *Carbone v. Vigliotti*, 222 Conn. 216, 610 A.2d 565 (1992), stand for the rule that contiguous parcels of land may be merged if the owner desires to do so, but [*286] the parcels do not merge by operation of law unless required by specific zoning regulations. While *Molic* [**11] and *Carbone* do not resolve the present matter, they demonstrate how at least one other state has dealt with this question.

When *Molic* and *Carbone* are applied to the Petitioner's case, they support the Petitioner's argument that Croft never intended for Lots 10 and 11 to be used in conjunction with Lots 12, 13, and 14 and that the lots should not be merged by law. As the Petitioner points out, the lots have always been taxed separately and presently remain separate uses. However, there is some vague evidence in the testimony from the BZA hearing that Croft may have allowed Lots 10 and 11 to be used as a parking lot for tenants of the apartment complex on Lots 12, 13, and 14. Further, the Zoning Administrator is entitled to deference for his experience and consistent interpretation of the Ordinance. There is no authority in Virginia to guide the Court on this question, and, at best, the Connecticut merger rule makes the issue fairly debatable. Because this Court must uphold any fairly debat-

able decision made by the BZA, the Court affirms the BZA's ruling with regard to the Zoning Administrator's interpretation of the word "lot" and its application to Lots 10 and 11 and Lots [**12] 12, 13, and 14. Such an interpretation is indeed reasonable.

B. Notice

Next, the Petitioner argues lack of notice when purchasing Lots 10 and 11 that Croft's ownership of Lots 10 and 11 and Lots 12, 13, and 14 had merged the properties into one lot for purposes of the Zoning Ordinance, thus rendering the Petitioner's purchase "illegal." [HN7] There is no limitation on the timing or means used by a zoning administrator in determining that a zoning ordinance violation exists. *Gwinn v. Alward*, 235 Va. 616, 622, 369 S.E.2d 410, 4 Va. Law Rep. 3139 (1988) (analyzing Va. Code Ann. §§ 15.1-491(d) (superseded by § 15.2-2286), 15.1-499 (superseded by § 15.2-2208)). Also, the equitable remedies do not apply against the government in the discharge of governmental functions. *Dick Kelly Enters. v. City of Norfolk*, 243 Va. 373, 378, 416 S.E.2d 680, 8 Va. Law Rep. 2706 (1992). Thus, a zoning administrator cannot be estopped from enforcing the zoning ordinance because of invalid means or the passage of time since the violation occurred. "As long as the zoning administrator >makes clear the basis upon which relief is sought' when rendering a decision, and when the proof at trial is sufficient, the government is entitled to relief. [**13] " *Id.* at 378-79 (citing *Alward*, 235 Va. at 622).

In *Alward*, the zoning administrator advised the respondent that the property in question violated the zoning ordinance because the site was used for refuse collection and for storing related vehicles. The Board of Supervisors tried to enforce the violation by seeking an injunction in a cross-bill on a [*287] permit application appeal. The respondent had obtained a trash-collection permit for the previous thirty-four years from the county government. In addition, the relevant zoning ordinance took effect six years before the zoning administrator determined that the respondent's property violated the zoning ordinance. The court held that the zoning administrator and Board were entitled to relief against the respondent even though considerable time had passed since the violation's occurrence.

In the case *sub judice*, despite all of the efforts by the Petitioner to perform an exhaustive title search and discover any burdens upon Lots 10 and 11, the Zoning Administrator maintained the power to enforce the Ordinance against any violations inherent in Lots 10 and 11 after the Petitioner's purchase. This conclusion [**14] does not seem fair to the Petitioner, who made a good faith effort to ensure that Lots 10 and 11 were unencumbered. Concluding otherwise, however, would inhibit the

Zoning Administrator's ability to enforce the Ordinance by limiting his enforcement authority to only those violations that a title search could discover or that the property owner discovered or should have discovered before purchasing the property. The Zoning Administrator's authority to enforce the Ordinance directly affects the city's ability to plan effectively. The *Alward* rule also negates any challenge of the BZA and the Zoning Administrator for not noticing this violation before Croft sold Lots 10 and 11 to the Petitioner since only a few months had passed since Croft had sold Lots 12, 13, and 14, much less than the six years allowed in *Alward*. It is indeed most unfortunate that the Petitioner had no notice that Lots 10 and 11 had merged with Lots 12, 13, and 14, but the Zoning Administrator's ability to enforce the Ordinance must be uninhibited.

C. Vested Rights

Finally, the Petitioner argues that Croft had a vested right based in § 15.2-2307 of the Virginia Code in [**15] continuing the nonconforming lot on which the apartment complex stood. The Code states, in relevant part:

[HN8] Nothing in this article shall be construed to authorize the impairment of any vested right. . . .

[Except that a] zoning ordinance may provide that land, buildings, and structures and the uses thereof which do not conform to the zoning prescribed for the district in which they are situated may be continued only so long as the then existing or a more restricted use continues and such use is not discontinued for more than two years, and so long as the buildings or structures are maintained in their then structural condition; and that the uses of [*288] such buildings or structures shall conform to such regulations whenever they are enlarged, extended, reconstructed, or structurally altered. . . .

Va. Code Ann. § 15.2-2307 (2004). The Petitioner contends that a strict statutory analysis indicates that the majority of § 15.2-2307 of the Code is concerned with only nonconforming uses while the first sentence of § 15.2-2307 solely applies to *all* nonconformities. Va. Code Ann. § 15.2-2307 [**16] (2004). Thus, she says, the first sentence protects property owners' vested rights in all types of nonconformities that lawfully existed prior to the enactment of the zoning ordinance. Because no limitations or exceptions are placed upon this sentence's application to nonconforming lots, the Petitioner con-

tends that the logical interpretation of this Code section is that vested rights in nonconforming lots may not be impaired by any means; therefore, one who owns a nonconforming lot may continue that nonconformity indefinitely and the zoning authority may not do anything to impair that vested right.

The BZA responds that the Petitioner's vested rights were terminated by the merging of Lots 10 and 11 and Lots 12, 13, and 14 into one conforming lot. Thus, the Petitioner's vested rights were not infringed by the Zoning Administrator's determination, but rather the vested rights simply terminated with the elimination of the nonconformity. The BZA further argues that Croft could not then divide the one conforming lot such that a residual nonconforming lot remained, even if that nonconforming lot had previously lawfully existed, because the vested rights to continue that nonconforming lot [**17] had terminated.

Again, the Court cannot overrule the BZA's determination unless probative evidence of unreasonableness is presented. The Petitioner tries to meet this burden by arguing that the Zoning Administrator's interpretation of the Norfolk City Ordinance violates *Virginia Code § 15.2-2307*. The BZA's ruling is not patently in conflict with the Virginia Code because the Code does not clearly distinguish between the different types of nonconformities; otherwise the Petitioner's argument might be persuasive. At least one other jurisdiction has made a key distinction between a nonconforming use and a nonconforming lot. A Pennsylvania statute describes [HN9] a nonconforming lot as being "a lot the area or dimension of which was lawful prior to the adoption or amendment of a zoning ordinance, but which fails to conform to the requirements of the zoning district in which it is located by reasons of such adoption or amendment." *53 Pa. Cons. Stat. § 10107* (2004). A nonconforming use, on the other hand, is a use of land or structures thereupon which does not comply with the applicable provisions of the zoning ordinance [*289] where such use [**18] lawfully existed before the enactment of the zoning ordinance. *Id.* One treatise explains:

[HN10] The term "nonconforming uses" is often used without consideration as to what aspect of the use of property is nonconforming, and in determining whether an activity is an expansion or change of a nonconforming use, the nature of the nonconformity is important. There are basically four types of nonconformity: (1) nonconforming use -- the use of the land or structure on it is nonconforming (e.g., commercial use in a residential zone); (2) a nonconforming lot -- the lot is under-

sized, irregularly shaped, has inadequate width or depth or inadequate frontage; (3) nonconforming building or structure -- the structure does not meet the minimum or maximum size requirements, floor area ratio, height or bulk requirements of the existing zoning regulations; (4) nonconformity as to location of structure, i.e., it does not conform with one or more of the setback requirements. These distinctions are important because a particular piece of property may be nonconforming in one of these respects, but conforming as to the others. The prohibition of expansion of nonconforming uses applies only to the aspect [**19] of the use or structure which is nonconforming.

R. Fuller, *Land Use Law and Practice*, § 52.1 (2d ed. 1999). A clearly articulated distinction between the different types of nonconformities has not been made by the Virginia Code or Virginia case law. Thus, the Court concludes that [HN11] the different terms for nonconformities are effectively interchangeable, and that *Va. Code § 15.2-2307*, as a whole, applies to all nonconformities.

The Petitioner further contends that a vested right in a nonconformity may continue indefinitely under her understanding of *Va. Code § 15.2-2307* so long as the nonconformity falls within the purview of the first sentence. However, the statutory intent in recognizing lawfully established nonconformities is that they would eventually be eliminated. *See City of Chesapeake v. Gardner Enters.*, 253 Va. 243, 248, 482 S.E.2d 812 (1997). Thus, the Petitioner's understanding would result in nonconformities that are contrary to public policy and that may exist in perpetuity. The Court can envision many cases, especially in a city as old as Norfolk, where lots, not initially in common ownership but subsequently [**20] merged and established as such for several decades, are now sought to be divided again. In fact, since zoning is a relatively modern concept in American law, all lots existing prior to such practices would possess vested rights in sizing nonconformities regardless of their incarnations over the years. The Court concludes that in cases such as [*290] this, the date when adjacent lots fall under common ownership marks the termination of the vested right in maintaining a nonconforming lot. Otherwise, the very purpose of zoning would be undermined.

Conclusion

The circumstances of the Petitioner's case call to mind the tension between the government's police pow-

ers, the need for comprehensive planning, and the individual's rights in owning private property. Clearly, the nonconforming lot composed of Lots 12, 13, and 14 should be eliminated lawfully in accordance with public policy. Yet, it seems manifestly unjust to deprive the Petitioner of the profits she might have realized by reselling Lots 10 and 11. The Petitioner merely failed to discover the illegality of Croft's sale of Lots 10 and 11 independent of adjoining Lots 12, 13, and 14, a condition

which could only have been discovered [**21] in consultation with the zoning authority and not through normal title search procedures. Nonetheless, the Court cannot depart from the appropriate standard of review for this matter on appeal nor can the Court authorize a situation where a nonconformity might continue indefinitely in violation of public policy. With great reluctance, the Court affirms the BZA's ruling.

9
11-21-09



David Williamson
<curlycoat1@verizon.net>

11/19/2009 02:51 PM

Please respond to
David Williamson
<curlycoat1@verizon.net>

To william.euille@alexandriava.gov, frank.fannon@alexandriava.gov,
kerry.donley@alexandriava.gov, alicia.hughes@alexandriava.gov,
council@krupicka.com, delpepper@aol.com,

cc
bcc

Subject COA Contact Us: City Council Meeting 11-21-09 SUP Docket



Time: [Thu Nov 19, 2009 14:51:35] Message ID: [16934]

Issue Type: Mayor, Vice Mayor, and Council Members
First Name: David
Last Name: Williamson
Street Address: 22 E Walnut Street
City: Alexandria
State: VA
Zip: 22301
Phone: 2022566155
Email Address: curlycoat1@verizon.net
Subject: City Council Meeting 11-21-09 SUP Docket
Comments: Please add to public comment document. Thank you very much.
Attachment: 567804e0f38208cdd84193e816bf9dfa.pdf



567804e0f38208cdd84193e816bf9dfa.pdf

**Prepared Statement of David Williamson and Leslie Jones
(owners of 22 East Walnut Street)**

**Special Use Permit #2009-0046
Saturday, November 21, 2009
City of Alexandria City Council Hearing**

Summary:

- If we are to be an Eco-City, we cannot have developers violate environmental conditions and then ask for re-issuance of the same permit without the conditions.
- In this case, the applicant was granted a SUP in 2005, then breached conditions relating to shade trees and permeable surfaces.
- This is not an of-right project, and therefore reasonable mitigation is both appropriate and required by law.
- It is reasonable to condition the SUP on replacing the lost shade trees to preserve the streetscape. The zoning staff have assumed that the project is subject to the 25 percent canopy infill requirement, but the developer has not committed to this, its not explicit in the proposed permit conditions, and it doesn't address the streetscape if the only trees are at the rear of the property.
- Not only are we losing 3 shade trees, but the City is losing at least 1200 sq ft of open space with the house footprint - replaced with roof and hardscape. Watershed mitigation should address cumulative losses and runoff into the street and Hoofs Run. Simply grading the property to divert stormwater into the street is not the same as watershed management mitigation, and also doesn't address the exacerbation from the new concrete slab on the 31 E Walnut parcel.
- We urge each Council member here tonight to defend the integrity of the zoning process. The Council must make good on promises to imbue City decisionmaking with environmental values.
- Only in this way will Alexandria remain the beautiful City that it is today.
- The permit should be denied or meaningful conditions included.

Detailed Statement:

- We are owners of neighboring property at 22 E. Walnut in the Rosemont neighborhood.
- We reluctantly speak against the applications; however, this case raises important issues concerning the integrity of the zoning process.
- We want the Commission to know that we contacted the applicant in an effort to resolve our concerns, but were unable to reach any satisfactory resolution.
- This is a re-application for SUP 2005-0019 approved May 3, 2005 with conditions.
- The "re-application" for a Special Use Permit must be denied or conditioned for the following reasons:

- Shade Trees. First, the previous 2005 SUP contained important conditions to preserve shade trees to maintain the streetscape and character of the Rosemont neighborhood.
 - However, the developer/applicant has already breached the conditions by cutting down one of the protected trees, after having destroyed another specimen tree prior to the 2005 SUP.
 - The applicant is now asking that the conditions – which he has already ignored – be waived.
 - If the SUP is granted, the message sent to developers in this City will be: *“if you don’t like a condition of an SUP, violate it with impunity, and game the process by re-applying to the Commission.”*
 - The missing trees leave a gap in the tree canopy along Walnut Street.
 - The application is misleading, in that the applicant suggests that the tree was removed for a curb cut, when in fact, the tree (a magnificent white pine that provided a critical visual complement to a neighborhood with predominantly deciduous trees that do not provide winter color or habitat for birds) was felled well prior to the curb cut.
 - The application is also inaccurate when it states the destroyed tree was on the 31 E Walnut “half” of the property, when in fact the tree straddled both sides and one can still see the bare spot on 29 E Walnut where the tree once stood. Applicant has failed to submit any evidence of his assertion, and in any event, the 2005 SUP condition was blatantly breached, regardless of the tree’s location.
 - The Staff Report notes this violation (F-1 at p. 11), but neither the staff nor Planning Commission adequately addressed the loss of the trees, and imposed no consequence or condition.
 - There is no recommended condition in the staff report addressing shade trees.
 - At the Planning Commission hearing, it was assumed that removal of trees would be mitigated by the 25% tree canopy cover required by new Infill Zoning Regulation 7-2307.
 - However, 7-2307 is conditioned on a grading plan being required. The Zoning Staff did not conclusively determine that a grading plan will be required such that the tree canopy requirement will apply. Moreover, the applicant has not acknowledged applicability of the requirement.
 - In any event, there is no assurance that approval of the grading plan will require shade trees be replaced along the streetscape, consistent with the existing character of the neighborhood.

- Pervious Surface and Run-off. The 2005 SUP also required permeable materials and minimal paved surfaces;
 - However, the developer/applicant recently poured a large concrete slab on the 31 E Walnut side of the property, which will exacerbate flooding and runoff problems in the neighborhood:

- The July 14, 2005 SUP certificate requires the owner to “adhere to the conditions approved by the City Council” subject to revocation.
 - The applicant accepted these conditions and agreed to abide by them.
 - However, the developer/applicant ignored both the letter and spirit of the SUP conditions.
 - Because the applicant has demonstrated a disregard for the permit conditions and the welfare of the City, the application should be denied and the prior SUP revoked.
 - If the SUP is granted, it is appropriate that the permit be conditioned on mitigating the impacts on 29 E. Walnut (the new house and hardscape) as well as the newly created impacts on 31 E Walnut (which is owned by the same builder).
 - Not only is the neighborhood losing 3 shade trees, but the City is losing at least 1200 sq. ft. of open space with the house footprint - replaced with roof and hardscape.
 - Alexandria is being paved over foot-by-foot, causing more runoff and flooding of basements, and more damage to our streams and ecosystems.
 - There is no consideration given in the Staff Report to the cumulative impact of the loss of pervious surface area throughout Rosemont and the City. Watershed mitigation should address cumulative losses and runoff into the street and Hoofs Run.
 - Trees act as natural water filters and slow the movement of storm water, which lowers total runoff volume, soil erosion and flooding. From an economic viewpoint, communities that use this important function of trees and canopy cover spend less money developing additional stormwater management infrastructure. For more information, see <http://www.gfc.state.ga.us/CommunityForests/TreeBenefits.cfm>
 - Zoning Staff has suggested that grading plan approval will consider stormwater run-off issues.
 - Again, if no grading plan is required, what will be the mechanism for the City to ensure that stormwater from the loss of open space is adequately considered and mitigated.
 - Regardless, simply grading the property to divert stormwater into the street is not the same as watershed management mitigation, and also doesn't address the exacerbation caused by the applicant on the 31 E Walnut parcel.
 - There is no indication in the Staff Report that cumulative effects or the larger concern of watershed management was addressed.
- Impacts on Neighbors. The Staff Report and Planning Commission failed to consider numerous impacts to neighbors such as the Shiners, owners of 27 E. Walnut Street, and others. This is no discussion of these factors in the staff report and there was no substantive discussion at the Planning Commission hearing.
 - The proposed “shoehorning” of a large structure on this substandard lot would stress an already closely built area with limited parking.

- The proposed structure will be **twice as large** as its neighbors on either side, and has only 40' of frontage.
 - This structure will **“dominate”** its neighbors contrary to Zoning Ordinance Section 11-504.
 - The project will block **light and air**, contrary to Section 12-400.
 - The project will also exacerbate **parking**, in a neighborhood that is already saturated. Although two tandem parking spaces are proposed, there is no condition ensuring that the spaces will be used rather than parking vehicles on the street.
 - In fact, the applicant is a commercial developer and parks commercial vehicles, construction equipment and dumpsters on the property, which undermines the residential character of the neighborhood.
 - Finally, the project will **impair property values** by crowding the block with oversized structures and inadequate parking, in contravention of Section 12-400. Applicant has submitted to evidence, as required, showing that the development will not degrade property values.
 - In contrast, healthy trees can add up to 15 percent to residential property value, which the Council could require as a permit condition. See <http://www.gfc.state.ga.us/CommunityForests/TreeBenefits.cfm>.
- Suggested mitigation: If the Council were to approve the SUP, it should require (and enforce) the following conditions:
 - The applicant should plant appropriate mature shade trees, which must be cared for.
 - The applicant should mitigate loss of open space, habitat and watershed protection by installing the following, all of which are likely to increase property values:
 - (1) a green roof on the built structure;
 - (2) driveway and walk surfaces with minimal paving and mostly permeable elements;
 - (3) rainwater capture and reuse systems; and
 - (4) a rain garden to manage run-off, including from the recently-installed concrete slab.
 - Design of stormwater management features should be subject to Chesapeake Bay review and input and approval by adjacent property owners.
 - To address parking by adding another family to the block, the residence should be issued only 1 on-street residential parking permit, and the SUP should prohibit parking of commercial vehicles or construction equipment after the structure is completed.
 - The design of the house should address concerns of the neighbors (the Shiners) at 27 E. Walnut Street.



APPLICATION

Existing Special Use Permit # 2005-001

SPECIAL USE PERMIT

SPECIAL USE PERMIT # 2009-0046

PROPERTY LOCATION: 29 East Walnut Street, Alexandria, VA 22301

TAX MAP REFERENCE: 54.04 09 16 ZONE: B-2-5

APPLICANT:

Name: Mark B. Poskaitis

Address: P.O. Box 7469, Alexandria VA 22307

PROPOSED USE: Special Use Permit to construct a single family dwelling on a substandard

lot pursuant to Section 12-400 of the Alexandria Zoning Ordinance, 1992, as amended (the "Ordinance").

[] THE UNDERSIGNED, hereby applies for a Special Use Permit in accordance with the provisions of Article XI, Section 4-11-500 of the 1992 Zoning Ordinance of the City of Alexandria, Virginia.

[] THE UNDERSIGNED, having obtained permission from the property owner, hereby grants permission to the City of Alexandria staff and Commission Members to visit, inspect, and photograph the building premises, land etc., connected with the application.

[] THE UNDERSIGNED, having obtained permission from the property owner, hereby grants permission to the City of Alexandria to post placard notice on the property for which this application is requested, pursuant to Article IV, Section 4-1404(D)(7) of the 1992 Zoning Ordinance of the City of Alexandria, Virginia.

[] THE UNDERSIGNED, hereby attests that all of the information herein provided and specifically including all surveys, drawings, etc., required to be furnished by the applicant are true, correct and accurate to the best of their knowledge and belief. The applicant is hereby notified that any written materials, drawings or illustrations submitted in support of this application and any specific oral representations made to the Director of Planning and Zoning on this application will be binding on the applicant unless those materials or representations are clearly stated to be non-binding or illustrative of general plans and intentions, subject to substantial revision, pursuant to Article XI, Section 11-207(A)(10), of the 1992 Zoning Ordinance of the City of Alexandria, Virginia.

Mark B. Poskaitis
Print Name of Applicant or Agent

[Signature] 7/20/09
Signature Date

P.O. Box 7469, Alexandria VA 22307
Mailing/Street Address

703-930-2519 703-299-9959
Telephone # Fax #

Alexandria VA 22307
City and State Zip Code

mark@gempro.com
Email address

Recommended Approval 6-0 11/5/09
ACTION-PLANNING COMMISSION: DATE:
CC approved PC recommendation w/
ACTION-CITY COUNCIL: amendments 7-0 DATE: 11/21/09
(see attachment)

Donley	"aye"	Hughes	"aye"
Euille	"aye"	Krupicka	"aye"
	Pepper	"aye"	

WHEREUPON, upon motion by Councilman Smedberg, seconded by Vice Mayor Donley and carried unanimously, City Council held the public hearing, received the report and scheduled it for final adoption on November 24, 2009. The voting was as follows:

Smedberg	"aye"	Fannon	"aye"
Donley	"aye"	Hughes	"aye"
Euille	"aye"	Krupicka	"aye"
	Pepper	"aye"	

REPORTS OF BOARDS, COMMISSIONS AND COMMITTEES (continued)

Planning Commission (continued)

9. SPECIAL USE PERMIT #2009-0046
29 EAST WALNUT STREET
SUBSTANDARD LOT CONSTRUCTION

Public Hearing and Consideration for reapproval to construct a single family dwelling on a substandard lot; zoned R-2-5/Single and Two-Family. Applicant: Mark Poskaitis

PLANNING COMMISSION ACTION: Recommend Approval 6-0

(A copy of the Planning Commission report dated November 21, 2009 is on file in the Office of the City Clerk and Clerk of Council, marked Exhibit No. 1 of Item No. 9; 11/21/09, and is incorporated as part of this record by reference.)

Planner Rafferty and Planning and Zoning Deputy Director Ross made a presentation of the report and responded to questions of City Council.

The following persons participated in the public hearing on this item:

(a) Caroline Wedding, 28 E. Maple Street, said her back yard adjoins 29 E. Walnut Street and her back yard is six feet lower and she was concerned about drainage and flooding.

(b) David Williamson, 22 E. Walnut Street, said he is speaking for himself and Leslie Jones, who are neighbors on Walnut Street, and he spoke in opposition to the permit and spoke about the permit application process and to the loss of shade trees, permeable surface and open space, all of which contribute to flooding and pollution problems.

Ms. Ross and Mr. Baier, Director, Transportation and Environmental Services, responded to comments from the speakers.

WHEREUPON, upon motion by Councilwoman Hughes, seconded by Councilman Smedberg and carried unanimously, Council called the question. The voting was as follows:

Hughes	"aye"	Donley	"aye"
Smedberg	"aye"	Fannon	"aye"
Euille	"aye"	Krupicka	"aye"
Pepper		"aye"	

WHEREUPON, upon motion by Councilman Fannon, seconded by Councilwoman Pepper and carried unanimously, City Council closed the public hearing and approved the Planning Commission recommendation, with an amendment on page 6, recommendation #8, the words "plot plan" should read "grading plan." The voting was as follows:

Fannon	"aye"	Donley	"aye"
Pepper	"aye"	Hughes	"aye"
Euille	"aye"	Krupicka	"aye"
Smedberg		"aye"	

10. TEXT AMENDMENT #2009-0005
ADMINISTRATIVE APPROVAL FOR SIGNS IN HISTORIC DISTRICTS
Public Hearing and Consideration of an amendment to the City's Zoning Ordinance to allow administrative approval of some signs in the historic districts.
Staff: Department of Planning and Zoning

PLANNING COMMISSION ACTION: Initiated by Planning Commission 6-0
Recommend Approval 6-0

(A copy of the Planning Commission report dated November 21, 2009 is on file in the Office of the City Clerk and Clerk of Council, marked Exhibit No. 1 of Item No. 10; 11/21/09, and is incorporated as part of this record by reference.)

The following person participated in the public hearing on this item:

(a) M. Catherine Puskar, 2200 Clarendon Blvd., Suite 1300, Arlington, representing the Alexandria Chamber of Commerce, spoke in support of the text amendment, noting that as to the size of the signs, by right under the Zoning Ordinance you can get one square foot of signage per linear foot of frontage, and they suggest that it should be able to be done administratively as well, and they asked that staff be cognizant that when it goes for review before the BAR, that if it is working correctly if they might be able to increase the size of the signs if not to one square linear foot to .75.