

From: Bfade@aol.com
Sent: Monday, October 24, 2011 10:53:54 AM
To: CountyBoard
Subject: WEBSITE COMMENT: Property @ 2615 N. Nottingham St. -- ATTN: countyboard

The following comment has been submitted from the Arlington County Website:

Name : Betty Fadeley

Submitter's E-Mail Address : Bfade@aol.com

Subject : WEBSITE COMMENT: Property @ 2615 N. Nottingham St. -- ATTN: countyboard

Comments : I want to express my concern and distress at the proposal before the county board to build 2 giant houses on the pipestem lot at 2615 N. Nottingham St. I cannot believe that approval would be given to build in such a small space and so close to the other property owners. The side of one house will be 8.6' from my yard, plus the height of both house does not fit into the neighborhood.

Has there been any consideration to how this changes the whole area, what about the water runoff, we all had problems during the last storms, especially those with basements. The builder had indicated that it would be necessary to remove all the trees, most of which are dead, according to him, but they will plant new trees. How long does it take for trees to reach their maturity?

My mother moved into this house in 1968, it was a small quiet area, mostly small single story homes. There have been many changes, and now most of the house around are bigger, and there are only a few that are still single stories, but these 2 house will certainly change everything. I have lived in Arlington all of my life, and I always felt that the county really cared about its residents, but in the last few years it seems to be about more and bigger houses. I ask that in this case that you reject the pipestem variance, which I believe will do harm to our neighborhood.

I would also like to voice my anger at the surveyor, hired by the builder, when he came to my door to explain what he was doing, he indicated that what he was doing was required by the county, only later when I questioned him did he state that he worked for the builder. He also without my permission drove a nail into my drive, which I had just had resealed.

I plan on attending the Nov. meeting, with many of my neighbors, all of whom are opposed to this building.

Thank you.

Betty Fadeley
5826 N. 27 th St.
Arlington, Va.

Thank you.

FA -sav

November 2, 2011

COUNTY BOARD OFFICE
RECEIVED

2011 NOV -7 A 11:45

Arlington County Board
2100 Clarendon Blvd., Suite 300
Arlington, VA 22201

SUBJ: Lot 7-D on North Nottingham St. Use Permit

Dear Members of the Board:

I own property that directly abuts Lot 7-D and I am opposed to having a house built on that property. Lot 7-D is just too small to allow a house to be built. The lot does not meet existing zoning and would require a significant variance from both side lot lines. If the Board grants this Use Permit, it will be the first variance for a pipe stem lot granted since the existing requirements were put into place in 2003, and this would be an awful precedence for Arlington County.

Please do not grant the Use permit for Lot 7-D.

Thank You,



Betty Florence
2621 North Nottingham Street
Arlington, VA 22207

HR/CB

Angela Brackett

FA

From: jivatts@verizon.net
Sent: Wednesday, November 02, 2011 10:12 AM
To: CountyBoard
Subject: WEBSITE COMMENT: 2615 N. Nottingham Street Lot 4 -- ATTN: countyboard

The following comment has been submitted from the Arlington County Website:

Name : Justin Ivatts

Submitter's E-Mail Address : jivatts@verizon.net

Subject : WEBSITE COMMENT: 2615 N. Nottingham Street Lot 4 -- ATTN: countyboard

Comments : Dear County Board Members:

Last night I attended a meeting with Mr. Moore of Arlington Designer Homes ostensibly to discuss the pipestem proposal for Lot 7D, however, the front Lot 4 was also discussed. We have asked Mr. Moore repeatedly about what he proposes to do about drainage as when the house on the other side of us was built our house (2609) suffered huge flooding problems. Repeatedly until yesterday he dodged the question. Yesterday he mentioned filtration trenches that would carry the water from Lot 7D to the road. He said it might pick up SOME of the moisture from Lot 4. We have consulted a civil engineer who said that that answer could mean a number of things and until we can see the actual design of the trench system, we should not accept that answer.

I understand from a neighbor that representatives from Arlington County were at the property this morning and deemed the lot buildable and thus will lift the permit stay that our lawyer had the zoning office impose. I ask that you continue the stay until the drainage issues can be properly laid out as Mr. Moore should not be allowed to do anything for his financial gain that could in due course cause financial hardship to others.

Regards,

Justin and Katrina Ivatts

Thank you.

Forward email to Pam Locke

HHR/ICB Attach 278175

From: jivatts@verizon.net
Sent: Monday, October 24, 2011 7:12:28 PM
To: CountyBoard
Subject: WEBSITE COMMENT: 2615 N. Nottingham Street 22207 -- ATTN: countyboard

The following comment has been submitted from the Arlington County Website:

Name : Justin Ivatts

Submitter's E-Mail Address : jivatts@verizon.net

Subject : WEBSITE COMMENT: 2615 N. Nottingham Street 22207 -- ATTN: countyboard

Comments : Dear Board Members,

I am emailing in further opposition to the proposed two houses (one pipestem) that Arlington Designer Homes are applying for change of use to build on the 2615 N. Nottingham Street plot. I live directly next door at 2609 N. Nottingham Street. Firstly, this unusual infill is not inkeeping with the character of the community. We are a quiet residential street with entirely 1950s and older homes. The usual mitigation measures (shrubs etc.) don't help screen a giant house with 8/10 foot set backs. This will also bring increased traffic/parking with two giant houses.

Secondly, there has been no attempt by the builder to mitigate any concerns raised by us or our neighbors. A concrete example would be water runoff leading to the flooding of our basement (this happened when the house on the other side of us was built on 26th street). The builder brushed us off without offering any solutions to how he would make sure that didn't happen. Another example would be when we raise the problem of rats that any building site generates and he claims he had never seen a rat in Arlington County. We are not engineers, hydrologists, landscapers etc, and yet the builder and the representative from the county zoning office at his last meeting with us seemed to expect us to come up with the proposals rather than the builder.

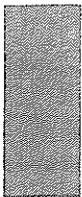
Thirdly, we and many of our neighbors received a letter from the builder today, which hardly constituted a letter, it was one line long, saying that he would be demolishing the 2615 house. No further information such as dates etc. This hardly smacks of professionalism, although it does smack of the level of professionalist I have come to expect from Mr. Moore. I also have a 3 1/2 year old child so I hope that Mr. Moore will take proper precautions in fencing the area off and not leave a large hole in the ground for an inquisitive boy to go exploring in. Of course we will watch him, but that level of danger should still not be available to him.

We do intend to attend the board meetings on November 19th and 29th and will speak then. I hope given the level of neighborhood opposition to both these houses the county board, as our elected officials, will not give Mr. Moore what he wants. We know he will argue that he has now invested a lot of money in this land, but he did that knowing the situation, so he only has himself to blame.

Regards,

Justin Ivatts

Thank you.



CHRONIS, LLC

FA

COUNTY BOARD OFFICE
RECEIVED

2011 OCT 31 10:13

ARISTOTELIS A. CHRONIS
1145 N. VERNON ST.
ARLINGTON, VA 22201
TEL: 703.888.0353
FAX: 703.888.0363
achronis@chronislaw.com

October 27, 2011

VIA HAND DELIVERY:

Samia Byrd
Arlington County, Dept. of Community Planning, Housing and Development
Planning Division
2100 Clarendon Boulevard, Room 700
Arlington, Virginia 22201

RE: Use Permit Application – N. Nottingham Street, Lot 7-D (RPC #01-075-020)
Buildability Determination

Dear Ms. Byrd:

Per my prior correspondence to the County Board and your office dated September 20, 2011, this law firm represents several concerned neighbors surrounding the above-referenced Property which is the subject of a pending Use Permit Application currently set for review on the County Board's November 2011 agenda. I am sending this correspondence at my client's direction and on their behalf. Per my comments to the County Board during the public hearing of this matter on October 18, 2011, my review of the use permit application as well as my own research has led me to believe that the above-referenced Lot 7-D is an unbuildable lot not eligible for this pipe-stem use permit process and therefore this application may not even be appropriately before the County Board at this time. With this in mind, the following is a more detailed explanation of this conclusion that should assist you in revisiting this issue, as the Board's comments that evening seemed to indicate that revisiting the buildability determination would be appropriate prior to the next public hearing on this matter.

Having reviewed the application it seems that the conclusion that Lot 7-D is a buildable lot has been reached via a July 14, 2010 Zoning Determination issued by the Deputy Zoning Administrator at the time to Paul Stroh, the prior owner of the Subject Property. (Please be aware that the Property was recently sold to the Developer, Arlington Designer Homes, Inc., after its initial submission that listed the Strohs as the Owners in the Disclosure Statement.) The Zoning Determination indicates that Lot 7-D was recorded in 1969 which was after enactment of the Zoning Ordinance. It further indicates that the lot does not meet the width requirement for an "R-6" lot which requires a minimum average width of sixty (60) feet. (From reviewing the plat, the lot appears to be approximately 49 feet wide.) The Determination finally provides that, "Although the lot was recorded after the effective date of the Zoning Ordinance, the Zoning Administrator at the time determined that it was permitted because the resubdivision did not affect the width of the lot. Therefore it is my determination that the Lot 7-D is a buildable lot." This conclusion reached by the Zoning Administrator at the time is specious at best as it runs

HAAR/CB - copy to Pam
378182

contrary to the language of the Zoning Ordinance itself which states in relevant part at Section 2.D.4. that “a. No parcel of land held under separate ownership...at the time this ordinance became effective, shall be subdivided, resubdivided or reduced in any manner below the minimum lot width and lot area required by this ordinance...” and further states in relevant part, “b. In addition, every lot must meet the required minimum lot width for the applicable zoning district...” The coupling of these two subsections makes the Zoning Ordinance clear that irrespective of whether the resubdivision affected the width of the lot, this lot should not have been allowed as a buildable lot and that the conclusion reached by the Zoning Administrator at the time was erroneous and that incorporating such decision as the sole criteria for the conclusion reached by the July 14, 2010 Zoning Determination makes that determination erroneous as well.

The above-referenced analysis is further bolstered by a September 15, 2009 Zoning Determination issued to Ms. Joann Dale regarding the buildable status of 2651 North Marcey Road (a.k.a. Parcel “O”, Subdivision of Part of Original Lot 3, James Marcey, Sr. and Resubdivision of Parcel B, North Hills”). (See enclosures.) In that case, an “R-10” lot which failed to meet the minimum width requirement for that particular zoning district that was subdivided after the enactment of the Zoning Ordinance was deemed unbuildable by the Zoning Administrator despite the existence of a one-family dwelling on the lot that was constructed in 1948 prior to the enactment of the Zoning Ordinance. That determination cites the above-referenced portions of Zoning Ordinance Section 2.D.4. to reach the opposite but correct conclusion that the lot is unbuildable. The Staff Report dated December 9, 2009 in the Variance Application concerning Parcel “O” specifically finds that although the lots from which Parcel “O” was created did not meet the lot width requirement for “R-10” and were considered legal nonconforming lots because they were created prior to the effective date of the Zoning Ordinance, and although the resubdivision of Parcel “O” did not reduce the width of the lots, Parcel “O” was still held to be unbuildable because the resubdivision created a new lot that did not meet the minimum width requirement for an “R-10” lot. We believe that this correct analysis should be used to deem that Lot 7-D is unbuildable as well for the same reasons.

Despite the July 14, 2010 Zoning Determination, revisiting the issue of buildability is appropriate at this time as such determination is properly subject for reversal under Virginia State Code. There is no protection afforded to this determination under the “60 day rule” set forth in Virginia Code Section 15.2-2311, as its subsection C. specifically exempts, “nondiscretionary errors” from the shield of the 60 day rule. (A determination on buildability is “nondiscretionary” as the Zoning Ordinance clearly sets forth how lots are determined to be buildable.) Further as stated in the Zoning Determination itself, the determination is subject to change by action of the Arlington County Board. (Virginia Code Section 15.2-2311 only protects determinations from reversal or modification by any zoning administrator or other administrator officer, which the County Board is clearly not.)

With this in mind, we ask that Planning Staff and the Zoning Administrator revisit the issue of the buildability of Lot 7-D. Should this review determine correctly that Lot 7-D is not buildable, we would submit that this application is not properly before the County Board as the use permit

Samia Byrd

Arlington County, Department of Community Planning, Housing and Development, Planning Division
Use Permit Application – N. Nottingham Street, Lot 7-D (RPC #01-075-020) – Buildability Determination
October 27, 2011

Page 3

process for existing pipe-stem lots set forth in Section 31.A.16. assumes modifications to a validly created pipe stem lot, and the definition of pipe-stem lot assumes “a residential lot that complies with the minimum requirements for frontage, lot area, lot width, lot depth, and building placement in the zoning and subdivision ordinances...”

In the event that the Zoning Administrator and Planning Staff determine that Lot 7-D is a buildable lot pursuant to the July 14, 2010 Zoning Determination, we still ask that the County Board use its discretion in otherwise denying the current Use Permit application.

Please feel free to contact me if you have any questions or require any additional information. I am copying the Zoning Administrator and the County Board on this correspondence as well to assist in their review of the subject property.

Sincerely,



Aristotelis A. Chronis

cc: Norma Cozart, Acting Zoning Administrator
Christopher Zimmerman, Chairman, Arlington County Board

Enclosures as stated.

September 15, 2009

Ms. Joann Dale
3616 Ridgeway Terrace
Falls Church, VA 22044

Re: Buildable Status of 2651 North Marcey Road
Parcel "O", Subdivision of Original Lot 3, James Marcey Sr. and
Resubdivision of Parcel B, North Hills

Dear Ms. Dale:

This is in reply to your letter requesting a determination as to the buildable status of the above referenced property. The property is further identified by Real Property Code Number 04011477 in the County's Real Estate Assessment records.

According to Arlington County records, the subject Lot (Parcel "O") is zoned "R-10", One-Family Dwelling Districts, and has an area of 11,045 square feet. The plat submitted with this request indicates that the property is an interior lot with frontage on Marcey Road and is 52.82 feet wide across the front and narrows to 45.61 feet along the rear. County records indicate that the Parcel "O" is improved with a one-family dwelling constructed in 1948. For lots zoned "R-10" the minimum width requirement is 80 feet and the minimum area requirement is 10,000 square feet (Section 6, Subsection.C.1.). The Zoning Ordinance also provides that "... where a lot has less width and less area than required in this subsection and was recorded under one (1) ownership at the time of the adoption of this ordinance, such lot may be occupied by any use permitted in this section."

The Zoning requirements for subdivisions and resubdivisions of land are contained in Section 2 -- General Regulations, Subsection D.1.4 Subdividing, Resubdividing, Parcels of Land and states as follows:

- a. No parcel of land held under separate ownership, with or without buildings, at the time this ordinance became effective, shall be subdivided, resubdivided, or reduced in any manner below the minimum lot width and lot area required by this ordinance except as may be permitted by Subsection 35.E.
- b. In addition, every lot must meet the required minimum lot width for the applicable zoning district at the midpoint of the depth of the portion of the lot used for the calculation of the minimum lot width except as may be permitted by Subsection 35.E. The midpoint lot width shall be measured at right angles to the lot depth line at its midpoint.

Parcel "O" was created by a subdivision recorded on September 2, 1983 in Deed Book 2105, Page 10, entitled "Subdivision of the Property of Bernard E. Marcey, Et UX and Agnes Thelma Marcey, Less and Except Areas for Widening Marcey Road and a Resubdivision of Parcel B, North Hills." The current Zoning Ordinance was adopted on August 10, 1950. Parcel "O" is substandard with regard to minimum width and was created after the adoption of the Zoning Ordinance. Therefore, it is my determination that Parcel "O" is an unbuildable lot. If the existing dwelling is demolished no new building may be constructed on the lot. The existing dwelling may be maintained in accordance with Section 35, Subsection A.2 and 3. The nonconforming use may not be expanded.

This determination applies solely to the referenced property and is not binding upon the County, the Zoning Administrator or any other official with respect to any other property. No person may rely upon this determination with respect to any property other than the referenced property.

Please be advised that any person aggrieved, or any officer, department or agency of Arlington County affected by an order, requirement, decision or determination made by an administrative officer in the administration or enforcement of the provisions of the *Zoning Ordinance* may appeal said decision within thirty days to the Board of Zoning Appeals in strict accordance with Section 15.2-2311 of the *Code of Virginia*. This decision is final and unappealable if not appealed within 30 days.

Sincerely,



Melinda M. Artman
Zoning Administrator

CC: Tony Burnette, Deputy Zoning Administrator
Determination File
Address File



ARLINGTON COUNTY, VIRGINIA

Board of Zoning Appeals Agenda Item
V-10360-09-VA-1
Meeting of December 9, 2009

DATE: December 4, 2009

APPLICANT: John and Christine McManus
LOCATION: 2651 Marcey Road
ZONING: "R-10," One-family Dwelling District
LOT AREA: 11,045 Square Feet
GLUP DESIGNATION: "Low" 1-10 units per acre

SUBJECT: To permit a building lot with a minimum lot width of 53 feet instead of 80 ft as required for an "R-10" building lot, re existing unbuildable lot.

ORDINANCE REQUIREMENTS:

SECTION 6. "R-10" ONE-FAMILY DWELLING DISTRICTS

C. Area Requirements.

1. *Lot Area.* Every lot shall have a minimum average width of eighty (80) feet. The minimum lot area per dwelling unit shall also be ten thousand (10,000) square feet; provided, that where a lot has less width and less area than required in this subsection and was recorded under one (1) ownership at the time of the adoption of this ordinance, such lot may be occupied by any use permitted in this section.

SECTION 2. GENERAL REGULATIONS.

D. Regulations in All Districts

4. *Subdividing, Resubdividing, Parcels of Land.*

- a. No parcel of land held under separate ownership, with or without buildings, at the time this ordinance became effective, shall be subdivided, resubdivided, or reduced in any manner below the minimum lot width and lot area required by this ordinance except as may be permitted by Subsection 35.E.
- b. In addition, every lot must meet the required minimum lot width for the applicable zoning district at the midpoint of the depth of the portion of the lot used for the calculation of the minimum lot width except as may be permitted by Subsection 35.E. The midpoint lot width shall be measured at right angles to the lot depth line at its midpoint.

PREVIOUS BZA ACTIONS: None.

BACKGROUND: The subject property, known as Parcel O, Subdivision of Part of Original Lot 3, James Marcey, Sr. and Resubdivision of Parcel B, North Hills (Parcel O). The parcel is zoned

Staff: Tony M. Burnette, Deputy Zoning Administrator, Zoning Administration
V-10360-09-VA-1

"R-10", One-family Dwelling Districts and contains 11,045 square feet of land area and the lot width is 53 feet. This zoning category permits one-family dwellings on lots that are at least 80 feet wide and contain at least 10,000 square feet of land area. The parcel is improved with a one-family dwelling which, according to County records, was constructed in 1948. The parcel has been determined to be an unbuildable lot by the Zoning Administrator which will be discussed in more detail below.

Parcel O is part of what was once two deep and narrow lots (2645 and 2651 Marcey Road) owned by the Marcey family (the Marcey Lots). In 1983 the Marcey Lots were resubdivided to create four new lots (Parcels N, M, O and P). Please see Attachment A to see a copy of a portion of the subdivision plat showing the parcels. The rear portion of the Marcey Lots (Parcels N and P) were sold to the developers of the adjacent 17-unit townhouse style cluster development known as Marcey Creek and is now part of the open space for project. The County Board approved a Site Plan (SP #198) for the project on May 7, 1983. The Zoning Office at that time signed off on the resubdivision. Prior to the resubdivision the Marcey Lots did not meet the lot width requirement for the "R-10" zoning district, but were considered to be legal nonconforming lots because they were created prior to the effective date of the Zoning Ordinance (1950). Although the resubdivision did not reduce the width of the lots, the newly created Parcels O and M did not meet the minimum lot width requirements as required by Section 2. D.b. and Section 6.C of the Arlington County. A new one-family dwelling was constructed on Parcel M in 1997.

On August 12, 2009 Ms. Joann Dale requested a determination regarding the buildable status of Parcel O. The Zoning Administrator determined that the lot is an unbuildable lot because the 1983 resubdivision created a new lot that did not meet the minimum width requirement for an "R-10" lot. Please see the Zoning Administrator's letter (Attachment B) dated September 15, 2009 for a detailed discussion of the basis for the determination. The applicants desire to demolish the existing dwelling and build a new one-family dwelling on the lot. Since the lot is an unbuildable lot, if the existing dwelling is demolished no new dwelling may be constructed on the lot. The applicants have applied for a Variance to permit a building lot with a width of 53 feet instead of 80 feet as required. In addition, the applicants have appealed the determination and the appeal is scheduled for the February 10, 2010 Board of Zoning Appeals. If the variance is approved the appeal will be mooted.

The applicants have submitted drawings for the proposed new dwelling. If the variance is approved the proposed new dwelling could be built by right.

STATE LAW: § 15.2-2309. Powers and duties of boards of zoning appeals.

Boards of zoning appeals shall have the following powers and duties:

2. To authorize upon appeal or original application in specific cases such variance as defined in § 15.2-2201 from the terms of the ordinance as will not be contrary to the public interest, when, owing to special conditions a literal enforcement of the provisions will result in unnecessary hardship; provided that the spirit of the ordinance shall be observed and substantial justice done, as follows:

When a property owner can show that his property was acquired in good faith and where by reason of the exceptional narrowness, shallowness, size or shape of a specific piece of property at the time of the effective date of the ordinance, or where by reason of exceptional topographic conditions or other extraordinary situation or condition of the piece of property, or of the condition, situation, or development of property immediately adjacent thereto, the strict application of the terms of the ordinance would effectively prohibit or unreasonably restrict the utilization of the property or where the board is satisfied, upon the evidence heard by it, that the granting of the variance will alleviate a clearly demonstrable hardship, as distinguished from a special privilege or convenience sought by the applicant, provided that all variances shall be in harmony with the intended spirit and purpose of the ordinance.

No such variance shall be authorized by the board unless it finds:

- a. That the strict application of the ordinance would produce undue hardship relating to the property;
- b. That the hardship is not shared generally by other properties in the same zoning district and the same vicinity; and
- c. That the authorization of the variance will not be of substantial detriment to adjacent property and that the character of the district will not be changed by the granting of the variance.

COMMENTS FROM NEIGHBORS: Staff has received several letters from the residents of the adjacent townhouse project, all in opposition to the variance.

MOTION:

The following motion is provided should the Board decide to approve the variance:

I move that the Board of Zoning Appeals adopt the attached Resolution approving Variance V-10360-09-VA-1.

CHRONIS, LLC

FA
COUNTY BOARD OFFICE
RECEIVED
2011 NOV -9
ARISTOTELIS A. CHRONIS
1145 N. VERNON ST.
ARLINGTON, VA 22201
TEL: 703.888.0353
FAX: 703.888.0363
achronis@chronislaw.com

November 8, 2011

VIA HAND DELIVERY:

Christopher Zimmerman, Chairman
Arlington County Board
2100 Clarendon Boulevard, Room 300
Arlington, Virginia 22201

RE: Use Permit Application – N. Nottingham Street, Lot 7-D (RPC #01-075-020)
Neighborhood Opposition – Response to Developer’s Updated Submission

Dear Chairman Zimmerman:

Per my previous correspondence dated September 20, 2011, this law firm represents several concerned neighbors surrounding the above-referenced Property which the subject of a pending Use Permit Application currently set for review on the County Board’s November 2011 agenda. Per the list of represented neighbors on the last page of this correspondence, we have added Betty Florence of 2621 N. Nottingham Street – the other homeowner directly adjacent to the Lot 4 proposed construction, which is currently separated by the “stem” portion of the pipe-stem – as well as David and Joan Biehler of 5819 N. 26th Street to the list of neighbors in opposition to this project. This letter is in response to the Developer’s updated submission to the Planning Staff concerning this application and follows two meetings that the Developer had on-site with the neighbors on October 29th and November 1st to discuss its plans for Lot 4 which fronts the pipe-stem lot and the subject pipe-stem Lot 7-D, both of which have come under its common ownership since the beginning of this Use Permit application process.

Developer’s Failure to Address Neighbors’ Concerns Through Site Revisions or Any Modifications to the Proposed House

The neighbors feel that the Developer has failed to address their concerns about the proposed development on the substandard pipe-stem Lot 7-D particularly in light of the proposed development of Lot 4. Both lots fail to meet the minimum lot width of 60 feet that is required in the Zoning District, with both lots being only approximately 50 feet wide. The Zoning Administrator is currently investigating the buildability of Lot 4 in light of recently issued Demolition and Building Permits for Lot 4 and has placed a hold on the Building Permit during such investigation into the lot’s creation. Simply put, the pipe-stem lot cannot support the proposed house with the proposed 8’ and 10’ side yard setbacks without the house being too large for the lot itself. The height and the length of the house particularly at only 8’ and 10’ from the neighbors’ backyards changes the character of the neighborhood as all the surrounding houses enjoy the privacy afforded by the unobstructed views into their backyards which this

HHR/CB Attach 318182

house would eliminate. The Developer’s response to this concern has not been to reduce the height or massing of the house but rather to propose tree-screening that in the neighbors’ opinion would do nothing to block the view of the proposed house from their properties. Questions posed to the Developer at the November 1st meeting as to the size of the plantings, the expected growth of the trees, and other details regarding the immediate effectiveness of the tree screening were met with incomplete answers by the Developer and a suggestion that per County guidelines the end result of the tree screening years down the road when these trees reached maturity should be the only concern. Questions were also raised regarding whether the placement of the trees itself was even feasible as planting a number of trees so close together within the narrow setbacks may have led to a possibility of these trees not surviving due to such placement. The only other submitted revision was a proposed plan to address drainage concerns by installing pervious pavers and rain tanks near the shared lot line for Lots 7-D and 4. These measures will likely only be to the benefit of those two lots and the neighbors still have concerns about the drainage impact to their lots that developing both of these lots will produce.

Developer’s Additional Submission Fails to Justify How the Proposed Development on Lot 7-D will fit into the Neighborhood and Provides Misleading Statistics That Mischaracterizes the Development in the Neighborhood

From the additional submissions to the Application, it seems that the Developer has spent more time trying to shift the focus away from its proposed development to the neighborhood’s existing by-right development on standard size lots for the R-6 District or to bring in examples of existing or newly-created pipe-stem lots on standard or oversized lots in the surrounding area. These examples are either inaccurate, incomplete, or otherwise mischaracterize the development in the neighborhood.

On the issue of massing, the Developer’s attempt to characterize the house’s mass of 26.67’ tall as consistent with the average of the houses in the block of 23.92’ tall is misleading as the Developer is including the even taller proposed house on Lot 4 (27.21’ tall) in his calculations. This ignores that the proposed house would be replacing an existing one-story house, which if its measurements were included would significantly reduce the average house mass on the block. (For example, the average of the masses for five smallest houses provided by the Developer in the surrounding block is only 18’ tall.) In many respects the argument is irrelevant because the impact of the massing of even the largest houses in the block is diminished by the fact that these houses have appropriate front and rear yard setbacks and these property owners are not seeking to have their houses placed 8’ and 10’ respectively from many of the backyards in the block.

The Developer similarly attempts to introduce distances of the houses in the block from the proposed Lot 7-D structure to attempt to marginalize the impact of its proposed 8’ and 10’ setbacks. It tries to claim an average distance of 121’ from the proposed Lot 7-D house to the existing houses in the block ignoring that these houses currently enjoy over double the distance

from the existing houses without a house currently being situated at the edge of their backyards in the middle of the block. As mentioned in my September 20, 2011 letter to this Board, the Developer is attempting to benefit from my clients’ decisions to leave significant open space in their backyards to produce the ample privacy that this Board was concerned with in 2003 when it mandated that development on pipe-stem lots leave at least 25’ of setbacks from all sides. Including measurements of typical side-yard to side-yard setbacks is further confusing the issue when per standard zoning regulations neighbors have an expectation of smaller distances between the sides of houses but fully expect a minimum combined 50 feet of setbacks in their backyards when taking into account a 25 foot setback each from the back property lines of abutting properties.

Finally the Developer tries to make the argument that pipe-stem development is not uncommon in the surrounding neighborhood. His inclusion of other pipe-stem lots within 2500’ (almost a half mile radius) of Lot 7-D is also misleading as it fails to address whether these lots are actually developed and whether these lots existed or were developed under the current pipe-stem provisions of the Zoning Ordinance. Further, without lot area or lot width measurements for these lots, Staff and the Board are not afforded a clear picture as to the size of these pipe-stem lots regardless of whether or not they are actually developed. These pipe-stem lot examples do not address the key point that Lot 7-D is not only an undersized pipe-stem for by-right pipe-stem development but an undersized lot by lot width standards for R-6 development in general. By contrast, the Sullivan’s pipe-stem lot just across the street from Lot 7-D is an oversized 17,597 square foot lot, almost three times the size of a standard building lot in the R-6 district. The example provided by the Developer of an approved pipe-stem in 2003 is a 13,998 square foot lot as well; a newly created pipe-stem lot at the time accomplished through a Unified Residential Development process which created multiple lots. Per the Developer and Staff, this current Use Permit would be the first such use permit for a modification of the requirements for development on an existing pipe-stem lot under the current pipe-stem provisions of the Zoning Ordinance. Approving development with 8’ and 10’ setbacks on an undersized lot for the applicable zoning district would set a dangerous precedent and would completely eviscerate the goals of the Board in enacting the pipe-stem provisions of the Zoning Ordinance of allowing for reasonable pipe-stem development on lots large enough to adequately support such development by leaving 25’ setbacks all around.

The Balance of the Developer’s Submission Attempts to Marginalize the Neighborhood’s Opposition to the Proposed Development and Otherwise Attempts to Intimidate the Board with the Threat of a Takings-Based Lawsuit in the Event that it Fails to Grant this Use Permit.

The Developer submitted a handful of letters of support of the project submitted as a pre-printed form letter that curiously mention the neighbors’ support for Lot 4 as the only neighborhood support for this project. Only one letter is submitted from a neighbor whose property directly abuts Lot 7-D, such letter coming from Mr. Stroh, the original owner of Lot 7-D who sold both Lots 7-D and 4 to the Developer. Not surprising, the setback of the Proposed Lot 7-D house to

the Stroh property is not being sought to be modified under this Use Permit application as it exceeds 25 feet. (Similarly the setback from the Proposed Lot 7-D house to Lot 4 also exceeds 25 feet.) Only one other letter of support comes from a property owner within the block as the majority of the letters come from properties on the other side of N. Lexington and N. Nottingham Streets, who would be minimally impacted if at all by the proposed development.

It is also noteworthy that the Developer submits takings case law apparently in an attempt to warn the Board of the consequences of failing to approve this project. The Developer has stated to the Neighbors on several occasions that “litigation” was the alternative if the Board failed to approve development on Lot 7-D. From the neighbors’ perspective, the sensible alternative would be to develop one house on both Lots 7-D and 4, with frontage of this house being on Lot 4, preserving the entirety of Lot 7-D as open space, consistent with the existing development in the neighborhood that has sought to preserve such backyard open space. With both lots under the Developer’s common ownership any takings argument is nullified particularly when the Developer closed on the purchase of both Lots with the outcome of Lot 7-D in question. Given the questionable buildability of Lot 4, the likely best outcome for both of these sites would be combining such lots to allow for one buildable lot. The double-down approach being taken by the Developer in this matter is seen by the neighbors as an attempt to maximize profits at the expense of the property values of the neighborhood without regard to how the placement of two houses on two of the smaller lots in the block will affect such values. By contrast, the lots that about Lot 7-D range from 8,836 square feet to 21,370 square feet, with the Bloomquists’ two lots totaling over 17,000 square feet for one house. To therefore say that not allowing for two houses to be built on Lots 7-D and 4 would be a taking and would otherwise not be in keeping with the existing neighborhood would be simply wrong.

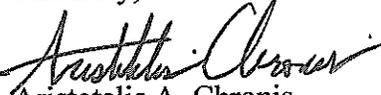
The Neighbors See Development of One House on Lot 4 with the Preservation of Lot 7-D as its Backyard Open Space as a Viable Outcome for Lot 7-D in the Event that Current Zoning Requirements can be met for Development of One House.

With the buildability of Lot 4 not in question due to its undersized lot width of approximately 50 feet wide, the neighbors recognize that perhaps the only viable solution is the combining of both these lots to afford the necessary lot width needed for Lot 4 with the inclusion of the 10’ pipe portion of the Lot 7-D pipe-stem lot to complete the 60 foot minimum lot width needed for Lot 4. This would allow for a wider house to be built fronting N. Nottingham street than is proposed for Lot 4 currently and would allow for a house to be built that preserves Lot 7-D as open space when taking lot coverage requirements into account. The Developer was asked as recently as the November 1st meeting with the neighbors if the Developer would consider simply building one house on Lot 4 and the Developer rejected such proposal.

Given these concerns, these neighbors again ask that the County Board reject the proposed side yard modifications to effectively prevent development of a house on an undersized pipe-stem lot in a neighborhood where such development would be completely out of place. We ask that the

Board consider how the placement of two houses in an area where essentially only one should exist per the overall scheme of the block would adversely affect the property values and the privacy and character of the neighborhood as a whole. We ask that the Board reject the Developer’s attempts to somehow justify the development of a house with 8’ and 10’ setbacks on an undersized pipe-stem lot for the zoning district whose buildability is in question as somehow in keeping with the neighborhood. We finally ask this Board to not be intimidated by the threat of litigation by the Developer and to reject any argument about a taking of property advanced by a Developer who knowingly purchased an undersized pipe-stem lot without any guarantee as to its ultimate buildability at the same time that it purchased another undersized contiguous lot whose buildability should also have been questioned, and who now has the ability to reasonably develop one house on both lots.

Please let me know if you have any questions or require any additional information. My clients are looking forward to the release of the upcoming Staff Report and will provide additional information in the event that the Staff Report ignores the overwhelming sentiment of the neighborhood and otherwise recommends approval of the Use Permit application as currently presented.

Sincerely,

 Aristotelis A. Chronis

Attorney for the below-referenced
 Neighbors in Opposition

Property Owner	Property Address	Proximity to Subject Property/Properties
Michael & Christine Bloomquist	5827 N. 26th St.	Adjacent Property to 10’ setback
Laurie Vikander	2612 N. Lexington St.	Adjacent Property to 10’ setback
James and Lorraine Hendry	5822 N. 27th St.	Adjacent Property to 8’ setback
Betty Fadeley	5826 N. 27th St.	Adjacent Property to 8’ setback
Jeffrey and Barbara Benoit	2612 N. Nottingham St.	Across from Pipe-stem Entrance
Sara and Andrew Sullivan	2622 N. Nottingham St.	Across from Pipe-stem Entrance
Justin A. and Katrina R. Ivatts	2609 N. Nottingham St.	Adjacent to Lot 4 Proposed Construction
Betty Florence	2621 N. Nottingham St.	Adjacent to Lot 4 Proposed Construction/”stem” portion of pipe-stem.
Nancy Wilck and Glen Gulyas	2626 N. Lexington St.	In Block
David & Mary Jane Konstantin	5835 N. 26th St.	In Block
David and Joan Biehler	5819 N. 26th St.	In Block

cc: Samia Byrd, Planning Division, DCPHD
 cc: Norma Cozart, Acting Zoning Administrator