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September 24, 2014

**VIA Hand Delivery**

Susan Blackburn  
Zoning Administrator  
County of Stafford  
P.O. Box 339  
Stafford, VA 22554

Re: Request for Zoning Administrator's Determination with respect to Stafford County  
Tax Map Parcel 54J 1J1 6A

Dear Ms. Blackburn:

The purpose of this letter is to request a Zoning Administrator Determination as to whether Stafford County Tax Map Parcel 54J 1J1 6A constitutes a buildable lot upon which a single family detached dwelling may be constructed. This request is made on behalf of Michael H. Littlefield, owner of an adjacent parcel (Stafford County Tax Map Parcel 54J 1J1 6). The parcel that is the subject of this request, Stafford County Tax Map Parcel 54J 1J1 6A, is identified as "Lot 6B" on the 1953 plat recorded at Deed Book 82, Page 225 of the Stafford County land records, and referred to hereinafter as "Lot 6B." It is my understanding that your office recently conducted a zoning review that determined Lot 6B to be a lawful nonconforming lot; that you recommended issuance of a building permit for Lot 6B; and that said building permit was issued by the County on September 9, 2014.

My review of the Stafford County land records indicates that Lot 6B was created in 1953 when the developer of the Ferry Farm subdivision divided Lot 6, with half of the lot (6A) conveyed to the owner of Lot 5 and the other half of the lot (6B) conveyed to the owner of Lot 7. Neither of the two half lots have ever met the minimum lot width requirement of 80 feet; Lot 6A, owned by Mr. Littlefield, is 46.8 feet wide and Lot 6B is 42.4 feet wide.<sup>1</sup>

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<sup>1</sup> The exact width of each lot is further complicated by a recorded boundary survey, which shows the width of Lot 6B to be 40.19 feet. This survey was dated August 29, 2014 recorded and sealed by Michael Flynn of Merestone Land Surveying PLLC. It was recorded at Instrument Number 140005972 by the builder who obtained the building permit for Lot 6B.

The 1953 deed first conveying Lot 6B, recorded at Deed Book 82, Page 223, references restrictive covenants running with the land recorded at Deed Book 60, Pages 401 through 405 among the Stafford County land records ("Restrictive Covenants"). At the time of conveyance of Lot 6B, the subdivision of Lot 6 expressly violated the Restrictive Covenants, specifically Covenant 4, which states "[t]he lots in this subdivision shall not be subdivided in any manner . . . ." In addition to the covenant violation by the original subdivision of Lot 6, the Restrictive Covenants also prevented the lot owners from constructing residences on Lots 6A and 6B because Covenant 2 required a 15 foot setback to the side property lines. With a 42 foot wide lot in the case of Lot 6B and 15 foot side lot line setbacks, any structure could be no more than twelve feet wide, which effectively rendered Lot 6B unbuildable. Lot 6B has been treated as unbuildable by government entities such as the Stafford County Commissioner of the Revenue, notwithstanding the fact that the Restrictive Covenants expired in 1980.

It appears the County has recently decided that Lot 6B is a buildable lot, as some form of nonconformity, and a twenty foot wide residence can be constructed thereon. Assuming the foregoing to be accurate, I believe this decision to be erroneous for the reasons stated below.

A "Nonconforming Lot" is defined at Article XV of the Zoning Ordinance, Section 28-275, as "[a] lawful nonconforming lot or parcel which does not meet the requirements for minimum lot width or area, or both . . . ." It is well established that a nonconforming use, including a nonconforming lot, must have been lawful at the time the use was commenced. If a use were unlawful at its commencement, it is not eligible for nonconforming status. Further, a nonconformity cannot be expanded beyond the original use established.

Zoning regulations may be inconsistent with covenants and the County has no responsibility for enforcing covenants. However, at the time of the creation of Lot 6B Stafford County did not have a subdivision or zoning ordinance. The development of the Ferry Farm subdivision was specifically governed by State law, which permitted localities to adopt a subdivision ordinance but did not require they do so, and by the Restrictive Covenants recorded when the subdivision was established. Lot 6B was created in contravention of the Restrictive Covenants which expressly prohibited the subdivision of Lot 6. Further, the Restrictive Covenants rendered residential construction on the half lots impracticable, if not impossible, since any structure on Lot 6B could be no more than twelve feet wide due to the side property line setbacks established in the Restrictive Covenants. The County acknowledged these restrictions by deeming Lot 6B unbuildable for assessment and tax purposes for sixty years. The only arguable use created by the subdivision of Lot 6 was to add land to the adjacent Lots 5 and 7.

In no respect could Lot 6B be considered a lawful building lot at the time of its creation in violation of the Restrictive Covenants. Neither the County nor the State had specific standards in place when Lots 6A and 6B were created to determine the lawfulness of the subdivision. However, the Restrictive Covenants prohibited the subdivision and, until now, the County has acknowledged that a residence could not be built on Lot 6B. Lot 6B could not be used in any manner other than adding land to the adjacent lot under the Restrictive Covenants. To permit a

residence to be constructed on Lot 6B today is an unauthorized expansion of the original use of the Lot and the use established for over the past sixty years.

The subdivision of Lot 6 in 1953 had no lawful basis. Lot 6B had no utility as a building lot and could not have been used for anything other than a complement to abutting lots. Stafford County has sanctioned this use based on its own tax treatment of Lot B. When the Restrictive Covenants expired in 1980, Covenant 4 arguably did not apply to Lot 6B. However, Lot 6B did not become lawful in 1980, because Lot 6B did not meet the requirements of the Stafford County zoning or subdivision ordinances for a residential building lot in 1980. At no time would the County's zoning or subdivision ordinances have recognized Lot 6B as a residential building lot.

The 1973 Subdivision Ordinance was in effect when the Restrictive Covenants expired in 1980. Sec. 22-28 addressed what was referred to as "Sub-standard Subdivision," or a subdivision such as Ferry Farm that was recorded prior to the adoption of the County's subdivision ordinance and was not in conformity with the current ordinance. The 1973 Subdivision Ordinance provided for redevelopment of any portion of the subdivision, such as Lot 6B, but only upon the consent of all lot owners, or a smaller group of contiguous landowners. In the latter case, certain requirements had to be met, including a requirement that the resubdivision be in full conformity with this ordinance.<sup>2</sup> I have found no evidence that such a resubdivision occurred.

Further, it does not appear that Lot 6B could have qualified for such a "resubdivision." In 1980, and continuing through today, the applicable zoning ordinance for R-1 zoning required minimum 80 foot wide lots. Sec. 22-29 of the 1973 Subdivision Ordinance required the lot sizes to comply with the zoning ordinance in effect at the time of subdivision. The 1973 Subdivision Ordinance did not permit lot remnants such as Lot 6B.<sup>3</sup>

Lot 6B does not meet the requirements for a nonconforming lot since it was not a nonconforming lot at the time of its creation in 1953 or at any time since. Lot 6B has no nonconforming status and at no time could Lot 6B be considered a "lawful" building lot.

On behalf of Mr. Littlefield, I request that you review the previous finding with respect to Lot 6B and render a determination that Lot 6B is not a legally nonconforming building lot exempt from the Zoning Ordinance. I have enclosed the executed application form for the

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<sup>2</sup> Section 22-28 of Stafford County's 1973 Subdivision Ordinance provides: "Sub-Standard Subdivisions – A subdivision recorded and/or developed prior to the adoption of, and not in conformity with, this ordinance may be subdivided and re-developed in whole or part of a portion thereof at the option of the owner of all the lots to be resubdivided, or at the option of the owner of any group of contiguous lots therein as the case may be but only under the following conditions: (1) the re-subdivision shall result in improvement of the general area of the lot layout and street connection; (2) and the re-subdivision shall be in full conformity with the provisions of this ordinance."

<sup>3</sup> Sec. 22-34 of Stafford County's 1973 Subdivision Ordinance reads: "Remnants or Outlots - All remnants of lots or outlots below the minimum size remaining after subdividing a tract must be added to adjacent lots rather than allowed to remain as unbuildable parcels."

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Zoning Administration Determination, a check in the amount of \$447.33 for the filing fee, and a list of adjoining property owners.

Yours very truly,

A handwritten signature in black ink, appearing to read 'H. Clark Leming', with a long horizontal line extending to the right.

H. Clark Leming

Enclosures

cc: Keith Dayton  
Jeff Harvey  
Michael Littlefield