SHANNON & WRIGHT LLP

May 23, 2024

To: Planning Commission, City of Alexandria
From: Minturn Wright, on behalf of neighbors on Upland Place,
South View Terrace, and Hilltop Terrace
Re: Response to application for subdivision SUB 2024-0003, 635 Upland Place (second application, as revised to 5/16/24)

Introduction

The would-be builder of new houses on the lot at 635 Upland Place, with the consent of the lot's owner, has applied for a subdivision of the house lot into two lots (application p. 3[1]). This application is a revision of the February 2024 application, itself a re-working of a 2022 application for subdivision of the same land (p. 7). Although a re-working of the earlier effort, which involved an application for a special use permit, the current application actually seems to say less than its predecessor. In short, there are quite a few problems with this application and the project of which it is a part.

Completeness of the application

The front page of the application form states that the application was signed by Catharine Puskar, who is identified as the applicant's "Attorney/Agent" (application p. 3). Page 5 identifies the agent in the same way, as does p. 6. Nevertheless, the "agent" section (p. 4), which asks if the applicant is represented "by an authorized agent, such as an attorney" and if so, asks for a city business license, is brushed off with a "N/A". No city business license is provided for any entity: not the applicant, the owner, or the agent. This application, despite being a repeat submission, is facially incomplete and should be denied on that basis.

Size of houses

The "Conceptual Layout" shows a house on proposed Lot 505 with a footprint of some 1,513 square feet, not including porches, deck, or any garage (no garage is depicted, but it strains credulity that a large new house in the Washington, D.C., metropolitan area would be built without one, with space for at least two cars). Assuming a house with at least two floors (typical), that gives a floor space of at least 3,026 square feet (not counting any basement)—enough to qualify for "McMansion" status.[2] The applicant's representatives have substantially confirmed the large sizes of the houses proposed.

[1] All references to the current application use the page numbers printed at the bottoms of the pages on the copy downloaded from the city's website, which are not consecutive from 1.

[2] Numerous sources define a McMansion as having at least 3,000 square feet, *e.g.*, Lisa Smith, "McMansion: A Closer Look at the Big House Trend", *Investopedia*, Mar. 31, 2024; https://www.investopedia.com/articles/pf/07/mcmansion.asp, citing Trulia, "Are McMansions Falling Out of Favor?". See also "Defining a McMansion, Trait

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The house on proposed Lot 506 is larger: about 1,800 square feet of footprint, again exclusive of porch, deck, or any garage. Two floors of such a house would have at least 3,600 square feet, not counting any basement. A house two floors (plus a roof large enough to cover such a house) high would dwarf the 1-1½ story houses nearby.

While the City has indeed expressed an interest in increasing its housing stock, as the application notes (p. 8), it is hard to believe that a couple of McMansions on a dead-end street stub, away from principal boulevards, are what the city has in mind.[3] The $2 million-range prices the applicant has mentioned would be far out of reach of the "affordable" housing market.

Parking

The application appears to ask (in the accompanying Conceptual Layout) that the city establish a no-parking zone on the stub end of Upland Place, apparently to protect the applicant's street frontage and access. It is interesting that this requested no-parking zone extends along nearly the entire street frontage of 623 Upland Place, the adjoining parcel on Upland. The applicant seeks to force its neighbors to give up the street parking in front of their own house so that the applicant can build two houses on its own land. Unsurprisingly, it offers no account of what the neighbors think of this proposal, or what will happen whenever they—or the residents of the proposed houses—host a party.

Zoning Ordinance Section 11-1713

The application seeks to justify a variation from the zoning requirements by arguing that, *inter alia*, the "lot frontage and lot width requirements" would create "a substantial injustice" if the applicant was not given a pass to violate them (application p. 7). It gives very few details as to how this "injustice" would be wrought upon it, other than to say they preclude a two-lot subdivision, and provides no citations for its factual claims. The treatment of lot width is particularly nebulous.

The Zoning Ordinance's definition of "substantial injustice" is that there would be "an unreasonable burden on the development" of the land in question "which outweighs the land use or land development purposes served by the specific zoning provision" in question (ZO § 11-1713(B)). The same section goes on to provide that an applicant has the burden of establishing **each** of the elements required for a variation (ZO § 11-1713(C)). Here, the applicant does not come close.

#1: Size", *Legally Sociable*, Jan. 10, 2017; https://legallysociable.com/2017/01/10/defining-a-mcmansion-trait-1-size/; Brian J. Miller, "Competing Visions of the American Single-Family Home: Defining McMansions in the *New York Times* and *Dallas Morning News*, 2000-2009", *Journal of Urban History*, Vol. 38, No. 6; April 9, 2012; https://journals.sagepub.com/doi/abs/10.1177/0096144211435124.

[3] *E.g.*, City Council meeting of Nov. 28, 2023.

ZO Section 3-405(B) provides that a lot in an R-5 zone must have a "lot width at the building line" of "50 feet". The proposed lots are 67.50 feet wide for most of their length, narrowing as they approach Upland Place. From the Conceptual Layout, it is clear that these proposed lots already are at least 50 feet wide at the foremost point of the proposed houses (the existing lot is, of course, much wider). If, from some hidden flaw, these lots are not 50 feet wide at that point, the houses could easily be moved back a few feet or shrunk slightly to meet the requirement. The existing house on the existing lot easily meets this requirement, as would any reasonable house built in its place. There is no substantial injustice resulting from the width requirement. The argument fails on that ground. The frontage issue will be treated later.

The application's statement of justification also claims, *inter alia*, that "the use and character of the resulting lots" would conform to the surrounding neighborhood, as required by Section 11-1713 of the ZO. It seeks to justify this claim by comparing this land, 635 Upland Place, to "many of the lots in the Frinks subdivision and across South View Terrace" (application p. 8) and claiming that the proposed lots (with their $2 million McMansions) would be "consistent with other lots" in the neighborhood. It arrives at this conclusion by including in its consideration ten lots that do not adjoin this lot, particularly including seven lots that are on a street which this land does not adjoin, and are even on the other side of the street that it does not adjoin (application Exhibit B). Meanwhile, it entirely ignores six lots that this land actually **does** adjoin, each one of them fronting on Upland Place, the same as this lot. It is easy to see why these choices are made: the houses on land that actually adjoins 635 Upland Place are considerably smaller (see table) and more modest (most are 1½ stories) than the McMansions the applicant wants to build. The proposed big, tall houses are entirely out of character for Upland Place.

Address	Lot area (sq. ft.)*	Frontage (ft.)**	House area (sq. ft.) †
623 Upland Place	16,207 (3 legal lots, avg. 5,402 ea.)	80 (taken as one)	2,698
635 Upland Place	43,560‡	22	960 (currently)
703 Upland Place	5,304	74	1,152
707 Upland Place	5,110	63	1,856
711 Upland Place	5,204	63	1,960
715 Upland Place	5,182	62	1,558
719 Upland Place	5,304	62	1,375
Average	*5,289 (not including 635)*	*61*	*1,613*
Proposed Lot 505	22,035	11	3,036
Proposed Lot 506	19,538	11	3,600

* From the city real estate tax database.
** From Tax Map 062.02 (addresses corrected), except No. 635's is from the application; all are to the nearest foot.
† From the tax database, above-grade living area.
‡ This figure, which also appears in the application, is contradicted by the plat (p. 1) accompanying the application, which gives an area of 41,573 square feet.

In addition, the lots at 635 Upland Place, both existing and proposed, are significantly larger than the other legal lots on Upland Place. Compared to its Upland Place neighbors, the existing lot is a whopper, and the proposed lots are whoppers as well. The houses envisioned for these lots are the true whoppers: wildly out of scale for the neighborhood. This is all the more reason **not** to allow the proposed lots to have substandard frontages. The proposed lots and houses are distinctly **<u>in</u>**consistent with the character of their Upland Place neighbors. This prong of the Section 11-1713 test fails. The application should be denied.

The application's Statement of Justification further claims that three "special circumstances" apply to this land to justify the variances sought. These will be treated individually.

"Extremely rugged topography" (ZO §11-1713(A)(1)): the application claims the lot "drops over 10 feet in an 80 foot distance".[4] This is about a 12% grade, which is hardly "extremely rugged" (especially considering that the slope appears to be quite smooth); indeed, in the ambit of urban development, it is at the edge of a "moderate" slope.[5] In addition, this slope occurs in only one place on the 0.954-acre lot. Furthermore, and perhaps more importantly, "extremely rugged topography" is a reason for **less** density, not more, as the danger of erosion, landslide, damage to wetlands, etc., is that much greater. The variation should not be granted.

"Irregularity in the shape of the parcel" (ZO § 11-1713(A)(2)): the application claims that the shape of the parcel prevents conformance with normal frontage requirements. It is curious that the applicant complains at all about the **shape** of the existing lot: it is a relatively normal trapezoid, much like many of its neighbors, and has been since the 1933 subdivision. The lot is not sinuous, or overly long and thin: its 135-foot width allows for an area-to-perimeter ratio of 46.17, pretty close to that of a square of the same area (ratio = 50.97)[6]. If there is a problem with the shape of the proposed lots, the applicant has only itself to blame for drawing the dividing line. The applicant has no business complaining about the shape of these lots. The variation should not be granted.

"Insufficient frontage" (ZO § 11-1713(A)(3)): the application posits that there is not enough street frontage, on a too-narrow street, for the applicant's desires. Once again, today's actors seek to blame their predecessors (and, by implication, the city for allowing the 1933 subdivision and the street)[7] and to use that as justification for variances in the rules: they seek to divide one unconforming lot into two even less conforming lots. While it seems that this lot's non-conformance with the frontage requirements was "grandfathered" when the Zoning

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[4] It appears that this supposedly precipitous drop occurs where the applicant wishes to build a house on its proposed Lot 506, so clearly it is not upsetting those plans.
[5] Ralph W. Kiefer, "Terrain Analysis for Metropolitan Area Planning*", Journal of the Urban Planning Division, Proceedings of the American Society of Civil Engineers*, Dec. 1967.
[6] Put another way, this lot's squareness is 0.91 out of a maximum possible 1.0, or 91%.
[7] Evidently, neither the subdividing landowners nor the city saw fit to have this lot adjoin or front on Valley Lane or South View Terrace, both of which bounded the Frinks tract (see Exhibit B to the application), or to establish easements connecting this lot to either of those public ways. This failure should not be rewarded.

Ordinance was adopted, such a grandfathering only applies as long as the grandfathered condition persists (See ZO § 12-500). The previous subdivisions were performed by the owners of the lot, in full knowledge of what they were doing. The applicant and the present owner, which knew what it was getting into when it bought this land, should not be casting themselves as the victims.

Further as to the frontage issue, the Zoning Ordinance actually addresses the issue of “substandard residential lots” that are not in conformity with lot sizing and similar requirements, which situation existed before June 24, 1992 (ZO § 12-400). As the application admits, the lot at 635 Upland Place has existed since 1933, well before the threshold date.

The Zoning Ordinance’s Article XII (Noncompliance and Nonconformity) provides, in pertinent part, that an R-5 lot (such as this one), which has been in existence since December 28, 1951 (as this one has), and has “width at the front lot line or front building line than the minimum required for use in the zone where it is situated” (defined as “substandard”) “may be developed **only with a single-family dwelling** and its accessory buildings” (ZO § 12-401, emphasis added). The same Code section requires that the substandard lot may not be owned by a person who owns adjacent land, and that a special use permit must be granted, with the City council finding that the proposed construction “will not unreasonably impair an adequate supply of light and air to adjacent property, will not diminish or impair the established property values in the surrounding areas, and will be compatible with the existing neighborhood character.” Unsurprisingly, the application makes no mention of this requirement. The applicant had filed an application for a special use permit, dated February 27, 2024, contemporaneous with an earlier subdivision permit, but withdrew the SUP application, apparently preferring to “divide and conquer” in an effort to maximize profits. The applicant’s pivot to a subdivision-plus-variance request, rather than a SUP, is a procedural gambit that does not address the on-the-ground concerns pertaining to the SUP. The City should not allow such a piecemeal development: the long-established neighborhood would die the “death of a thousand cuts”.

The Planning and Zoning Staff comments on an earlier iteration of this application suggested that the Upland Place right of way could be extended into the current lot to allow both of the proposed lots to have adequate frontage, and that a sidewalk could provide pedestrian access. In fact, the City has maintained a paved extension of Upland Place extending approximately 85 feet (judging from the preliminary subdivision plat) onto the lot comprising 635 Upland Place for years. The staff commented that such an extension of Upland Place would be “more appropriate” to this proposal and suggested a revised submission. While the application was resubmitted, it is clear that this suggestion received little or no consideration, despite the existence of the *de facto* street extension. Evidently, the applicant is unwilling to give up even a little of its land area—even if already in use as a street— to comply with long-standing zoning requirements. The lot that comprises 635 Upland Place should continue in its current size, shape, orientation, and frontage. The variation should not be granted.

Mitigation

While it is clear that no justification exists for this subdivision (beyond that the applicant wishes to make more money), the applicant makes a "big ask": that the city and the neighbors allow a significant increase in density, footprint, and height, wholly out of keeping with the neighborhood, give up parking, and suffer a loss of their own house values. If the City allows this subdivision—which the neighbors earnestly hope is not the case—the applicant should be required to provide some consideration to the neighbors to (partially) compensate them, such as planting a heavy buffer of trees and bushes along the southern and eastern boundaries of the original lot to protect the quiet enjoyment of the residents of Upland Place. If the applicant cannot or will not agree to such a consideration, or if the subdivision authorities cannot require it, the application should be denied instead.

Summation

The applicant wishes to tear down a 1940's house, one that is highly consistent with its neighbors in size, construction, and age, and replace it with multiple large houses which would be wholly out of the character of the neighborhood. It claims it faces an "unreasonable burden" in doing this, simply because it cannot build **two** McMansions. In other words, the "unreasonable burden" is merely that the applicant cannot make as much profit as it would like. It could easily build one house on the existing lot, or substantially renovate the one there already, but the profit motive is such that it will not consider such an option. Given the wetland near the middle of this lot, of which the applicant was aware beforehand, this is not an unreasonable burden. The applicant has failed to meet its burden of proof for a zoning variation. The application should be denied.

Thank you. If you have any questions, I would be happy to answer them.

Very truly yours,

Minturn Wright

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May 31, 2024

Planning Commission
City of Alexandria
301 King St.
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Re: Docket Item #8 Zoning Ordinance Subdivision cases are heard by the Planning Commission, placed on the City Council docket for information, and heard by City Council only upon appeal - Subdivision #2024-00003

To Whom It May Concern:

My partner, James Edwards, and I are the new owners of 711 Upland Pl as of this Spring 2024. We have only recently been made aware, following the purchase of our home, of the proposed development of the land adjacent to our property at 735 Upland Pl. Upon reading the proposal, we agree with the concerns that the other neighbors of Upland Pl. have expressed, including, but not limited to, nonconformity of proposed homes, destruction of wetlands and the tree canopy, significant risk of flooding, overcrowding of public street parking, and safety.

From our understanding, a proposal for this land was brought in past and subsequently denied and yet a new proposal for two homes to be built on this single parcel of land is being considered today. It's particularly concerning that this is being considered when the same issues are still present today. We do not feel the need to readdress the issues other neighbors have already brought to the Planning Commission's attention, but want to express our sincere concerns with each of these issues.

After reviewing the staff report regarding SUB-2024-00003, we would like to address the alley in discussion in the application and staff report:

A private alley used to run along the subject property's southern lot line. It was never improved for alley purposes. On January 10, 2024, the Alexandria Circuit Court granted the owners of 707, 711, 715, and 719 Upland Place ownership rights to portions of the alley directly adjacent to each of their properties. These portions of the alley were consolidated with the adjacent lots as shown in Figure 3, below. The courts have not determined the ownership rights of the remaining portion of the alley which runs along 703 Upland Place and the City-owned park.

We respectfully ask what the purpose of this land is to the application under review. As noted above, the court granted ownership rights to the 707, 711, 715 and 719 Upland Place after a full legal review of supporting materials.

Best,
Beth

Elizabeth J. McKie, resident of 711 Upland Pl.