

# City of Alexandria, Virginia

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## MEMORANDUM

**DATE:** DECEMBER 3, 2015

**TO:** THE HONORABLE MAYOR AND MEMBERS OF CITY COUNCIL

**FROM:** KARL MORITZ, DIRECTOR OF PLANNING & ZONING

**SUBJECT: 809 & 811 VASSAR ROAD - APPEAL OF PLANNING COMMISSION  
APPROVAL OF SUBDIVISION #2014-0014**

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### **I. Appeal Background**

A group of individuals owning property within 300 feet of 809 and 811 Vassar Road is appealing the November 5, 2015 decision of the Planning Commission to approve a subdivision request at 809 and 811 Vassar Road.

Section 11-1708(D)(1) of the Zoning Ordinance states that an appeal of a Planning Commission decision regarding a subdivision request may be made by “the owners of at least 20 percent of the area of the land within 300 feet of the boundaries of the proposed subdivision.” Section 11-1708(D)(2) further states that any appeal shall be made in writing and filed with the City Clerk within 15 days of the decision of the Commission. When an appeal is filed, the City Council shall schedule one de novo public hearing on the matter and may affirm, reverse, or modify the decision of the Commission. It may also return the matter to the Commission for further consideration. On appeal, the same standards for subdivision review shall be applied as are established for the Commission.

The appellants submitted the subject appeal on November 20, 2015 (see Attachment A), which was within the 15-day window provided for in the Zoning Ordinance. Staff analyzed the property owner signatures and found that 5 lots needed to be disqualified because not all of its owners had signed the appeal as required or the signer’s name did not match the property ownership name on assessment records. However, the disqualification had no practical effect on the outcome of the appeal. Staff determined that the land owned by the qualifying signers represented 30% of the land area within the 300-foot buffer around the site (see Attachment B). Given that this figure exceeds the 20% requirement, the appeal was deemed valid and was scheduled for consideration at the City Council hearing of December 12, 2015.

## **II. Subdivision Request**

The applicants for the subdivision request, Mary and Stephen Hales, proposed to re-subdivide two existing parcels into three lots. The purpose of the subdivision request would be to eventually build one new dwelling on the proposed vacant lot. It would sit between the two proposed lots with existing dwellings. Proposed Lot 625, on which the dwelling at 809 Vassar would remain, would measure 9,891 square feet and have a lot frontage of 59.12 feet and a lot width of 73.9 feet. Proposed Lot 626, the vacant lot in the middle of the project area and the potential site of a new single-family dwelling in the future, would measure 9,452 square feet. It would have a lot frontage of 55.47 feet and a lot width of 66.8 feet. Proposed Lot 627, on which the dwelling at 811 Vassar would remain, would be the largest of the three lots with 14,382 square feet. It would have a lot frontage of 103.98 feet and a lot width of 112.24 feet.

## **III. Subdivision Requirements**

Through decades of case law, the Commonwealth of Virginia has established that the approval of subdivision requests by local government entities is a “ministerial” decision as opposed to a “discretionary” decision. The essential difference between these types of decisions is that, in ministerial decisions, a local government must approve a request if requirements from local ordinances are met, whereas in a discretionary type of case, a local government may decide whether or not to approve a request at its discretion.

In addition to individual zone requirements regarding matters such as lot area, frontage, and width, Section 11-1710 of the Zoning Ordinance includes general requirements for all subdivisions and a lot character requirement. With regard to the matter of lot character, Section 11-1710(B) requires subdivision requests to meet the following standards:

No lot shall be resubdivided in such a manner as to detract from the value of adjacent property. Lots covered by a resubdivision shall be of substantially the same character as to suitability for residential use and structures, lot areas, orientation, street frontage, alignment to streets and restrictions as other land within the subdivision, particularly with respect to similarly situated lots within the adjoining portions of the original subdivision. In determining whether a proposed lot is of substantially the same character for purposes of complying with this provision, the commission shall consider the established neighborhood created by the original subdivision, evidence of which may be shown by:

- (1) Subdivision plat documents, including amendments to the subdivision over time, as well as the development that has occurred within the subdivision; and
- (2) Land in the same general location and zone as the original subdivision with the same features so as to be essentially similar to the original subdivision area.

- (3) No resubdivision shall be approved which results in the creation or the continuation of a lot, building or structure which does not comply with the provisions of this ordinance, unless the commission expressly authorizes a variation pursuant to section 11-1713 of this ordinance.

#### **IV. Recommendation and Initial Approval**

##### **Review History:**

The Planning Commission heard this application at its May 5, 2015 public hearing and recommended approval based on the staff analysis that included measuring and evaluating comparable lots. Staff evaluated several lots in the entire Clover Subdivision and placed special emphasis on evaluating six lots fronting on Vassar Place and two lots fronting on Crown View Drive because of their positioning on the outside portion of sharply-curved street frontages, just like the subject site. It conducted a quantitative analysis of those lots and found them to have similar measurements to the proposed lots by finding that the proposed lots came close in measurement to the eight similarly-situated lots in the area of comparison.

That approval was appealed to City Council, which heard the appeal on June 13, 2015. By a 4-3 vote, this application was remanded back to the Planning Commission for reconsideration. The Commission's instructions from City Council were to re-review the subdivision on the basis of the comparable lots, but the lots fronting on Vassar Place should not be included in the analysis of similarly situated lots. Also, similarly-situated lots should be those on streets that share similar characteristics with the street where the subject properties are located. Council also instructed the Commission that the area of comparison should be a smaller area that includes properties in closer proximity to the subject properties. The Planning Commission heard the case a second time on November 5, 2015. By a vote of 6 to 1, the Planning Commission approved the subdivision, but that approval has again been appealed.

##### **Site History:**

The Clover subdivision was created by Rozier Beech's company, RJ Beech, Inc., through multiple plat filings during a period from the 1940s through the 1960s. While the neighborhood was being developed, each section of the subdivision was platted and assigned lot numbers leaving un-platted sections mixed between platted sections until the neighborhood was fully developed.

809 Vassar Road was first created as a lot in 1959 as a part of Clover Subdivision Section 11. It originally was a smaller lot with 10,350 square feet. Its dwelling was built in 1960. At that time there was an un-platted area to its northwest. That parcel was platted in 1961, and the lot at 809 Vassar Road was also enlarged. 811 Vassar Road was created by this 1961 plat and consisted of the entire remaining area that had been un-platted. There appears to have been an intention for the subject property to have originally contained three lots based on information provided by longtime neighborhood residents, and this appears likely based on the configurations of these early plat filings. When the lots were finally created as they are now, however, only two large lots were platted. The dwelling at 811 Vassar Road was built in 1962.

### Planning Commission Approval:

All three proposed lots meet the quantitative standards of the R-8 zone. The Planning Commission, based on the staff analysis, found that all of the proposed lots also meet the lot character requirements of the Zoning Ordinance. The analysis of a subdivision request typically involves several variables based on a neighborhood's context. Alexandria also has a subdivision requirement that the proposed lots be of substantially the same character as the surrounding neighborhood, defined as the original subdivision, based on six characteristics: suitability for residential use and structures, lot areas, orientation, street frontage, alignment to streets, and restrictions as other land within the subdivision. The term "character" means the aggregate of features and traits that form the apparent individual nature of some person or thing.

Throughout the past decade, the application of detailed mathematical analysis in subdivision reviews has been the exception, not the norm. Most often staff has relied on a general evaluation of the proposed lots including a comparison to the rest of the subdivision to make sure the proposed lots are of similar character to the existing surrounding lots. Since 2011, there have been approximately 20 subdivision reviews. Of these, only four had a review process for frontage and size that included a detailed level of quantitative analysis. For the vast majority of recent subdivisions, proposed lot characteristics were evaluated primarily on the basis of qualitative factors and neighborhood observation. In four of the more recent subdivisions, staff started using more mathematically-based analysis methods to help the Planning Commission to evaluate lot character. Each method is consistently based on the guidance in the zoning ordinance; what differs in the individual cases is the selection of the area of comparison and of the "similarly-situated lots" to which the proposed lots will be compared. Since the ordinance has been crafted to account for the unique character of each neighborhood and the variations in character of lots within that neighborhood, aspects of the analysis of individual subdivision cases will also vary to a degree. For example, neighborhoods platted in the 1700s are different than more recently platted neighborhoods that may have a more formal arrangement.

The mathematical analysis has a benefit of providing objective comparative information, but it also implies that the process can be formula-driven, which is not the case. The lot character provision is stated the way it is precisely because it was not possible to develop a mathematical formula to achieve the objective of ensuring that proposed lots are in character for the neighborhood.

Subdivisions since 2011 with no or a minimal amount of mathematical analysis for lot character:

1. 707 W. Glebe in 2011
2. 813 Wolfe Street in 2011
3. 121 South Columbus Street in 2011
4. 724-726 Timber Branch in 2013
5. 100-1002 Pendleton Street in 2013
6. 11 E. Reed in 2013
7. 309 W. Alexandria in 2014
8. 27-29 W. Glendale in 2014

9. 23 W Chapman Street in 2014
10. 114 E. Linden in 2014
11. 310 N. Quaker Lane in 2014
12. 500-502 Gibbon Street in 2014
13. 1101 Janney's Lane in 2014
14. 200 Stovall Street in 2014
15. 0 Prince Street in 2014
16. 310-312 Beverly Drive in 2015

Subdivisions since 2011 with extensive mathematical analysis for lot character:

1. 200-212 Lloyd's Lane in 2014
2. 1905 Commonwealth Avenue in 2014
3. 418 W. Braddock in 2015
4. 809-811 Vassar in 2015

For the November 5, 2015 Planning Commission hearing, staff prepared a revised analysis using a smaller area for comparison in accordance with City Council instructions and eliminated the lots with frontage on Vassar Place from the analysis. The selected area of comparison consists of the Clover Subdivision sections that are adjacent to the sections containing the lots in question and sections that only contain lots that front entirely on Vassar Road or Crown View Drive, which are the two neighborhood streets that share the same curvature characteristic affecting the lots in question. Staff further researched the lots in the comparison area and developed three options for review with each containing sets of lots that are deemed to be similarly situated.

- Option 1: All of the interior lots within the area of comparison (65 lots). This set reflects the Court's guidance in the Seymour decision regarding Alexandria's method of evaluating lot character that interior lots should be compared to interior lots.
- Option 2: A subset of Option 1, consisting of interior lots that have frontage only along the outside edge of Vassar and Crown View, the two similarly curved streets in the study area (25 lots).
- Option 3: Lots on the outside curve of Vassar and Crown View (2 lots). This option was requested by neighbors opposing the subdivision.

Staff recommends Option 1 as the basis for analysis, and the majority of the Planning Commission concurred. In doing so, staff finds that, for lot area, all of the proposed lots are larger than the mean and median lot sizes of the study area and are well within the size range of typical lots in the study area. Proposed lot sizes are 9,452, 9,891, and 14,352 square feet, respectively. For lot frontage and the smallest proposed lot measurement would be 8.11 feet narrower than the range of lot widths for lots in the area of comparison. While this is more than ten percent narrower than the interior lot frontage range, this is largely because these lots are positioned at a relatively sharp bend in their street and have a wedge-like shape, and many of the lots for comparison front on relatively straight sections of street and are rectangular in shape. The proposed lots would have frontage measurements of 55.47 feet, 59.12 feet, and 103.98 feet, respectively,

The Planning Commission members had an extensive discussion at the November 5, 2015 hearing before voting 6-to-1 to approve the subdivision. One member opposed and noted that the Council had concluded the scope of subdivisions considered was too broad and then took the unusual step of returning the case to the Planning Commission for reconsideration. However, in the staff report on this reconsideration, the staff applied standards in again recommending approval whereas under staff standards initially applied in this case, and other standards recommending by staff and adopted by the PC in a July subdivision case, the conclusion would be that this subdivision would not be recommend by staff nor approved by PC. The rest of the members expressed several reasons for voting for approval.

The majority of the commissioners stated that the analysis method using Option 1 was most appropriate and provides both the appropriate number of lots for comparison and that the comparison lots are “similarly-situated.” Commissioners also cited the text of the ordinance regarding the evaluation of lot character, noting that it clearly features the phrase ‘substantially similar’ which clearly allows for some variation from quantifiable lots characteristics such as lot frontage.

Commissioners discussed the fact that the ordinance does not require all criteria to be met for a subdivision to be approved. They found that of the six criteria for character evaluation, two of those are quantifiable, frontage and area, but the others are more qualitative: suitability for residential use, restrictions, orientation, and alignment to streets. The majority found that all of the proposed lots met these four characteristics.

Commissioners also considered a quantitative analysis that had been provided by an objecting neighbor. That analysis duplicated the methodology that staff had used for the subdivision application at a different site at 418 Braddock Road. The Commissioners found that for lot area, all of the proposed lots passed the ‘test’ the neighbor had provided, based on the comparable lots in Option 1. For frontage, they found that two of the three proposed lots would not have passed this neighbor’s test, but they would not have significantly failed. Because the statutory requirement stipulates that the proposed lots be of ‘substantially’ the same character as the neighboring lots, the majority of the Commission found that the proposed lots clearly meet or exceed five of the six lot character criteria and come close to meeting the sixth criteria, so the subdivision passes the ‘substantially similar’ test and deserves approval.

Commissioners also pointed out that the site in question had originally been intended for three lots when the Clover Subdivision was originally developed in the early 1960s, and the applicant had provided diagrams showing that the proposed lots would be of very similar shape and configuration to two other wedge-shaped lots in the comparison area. Furthermore, the applicant had presented a diagram comparing a stretch of four lots at the elbow of Crown View Drive to the proposed stretch of four lots at the elbow of Vassar and showed that the four lots on both roads have essentially the same frontage.

The majority of the Commissioners also emphasized that the proposed lots are well above the minimum requirements for their zone, and that this factor should be given great weight because it is a clear, numerical standard. One commissioner also pointed out that both of the existing lots in question are considerably larger than the typical lots in the area, and because of their

unusually large size, it would be possible for uncharacteristically large houses to be built on these existing lots as they are currently configured. Approving the subdivision would bring the lots to a size that would accommodate houses sized typically for the neighborhood.

## **V. Appellants' Concerns**

In addition to the findings provided in the November 5, 2015 staff report and reiterated in this memorandum, staff has also reviewed the appellants' appeal documents and additional comments submitted December 3, 2015. It offers the following response to each of their specific concerns, which have been summarized in italics.

- 1. The appeal document states that this subdivision analysis method fails to provide an objective, replicable and transparent method that can be applied to all subdivision requests. The appeal document states that the neighbors provided a quantitative analysis based on a method previously accepted by the Planning Commission which was rejected by the Planning Commission in favor of a completely qualitative method of determining neighborhood character.*

Because each subdivision is evaluated in a unique neighborhood with different characteristics, and because lot configurations are affected by such factors as street alignment, development history, and topography, a single, 'one size fits all' approach to subdivision analysis is not possible. The Zoning Ordinance requires lot character to be measured by quantitative and qualitative factors, but it is written in a way that requires approving bodies to use judgment in its analysis. The nature of each proposed lot's original subdivision, which constitutes the comparison area, is also unique in each application situation, as there are varying numbers of lots available for comparison and different development histories.

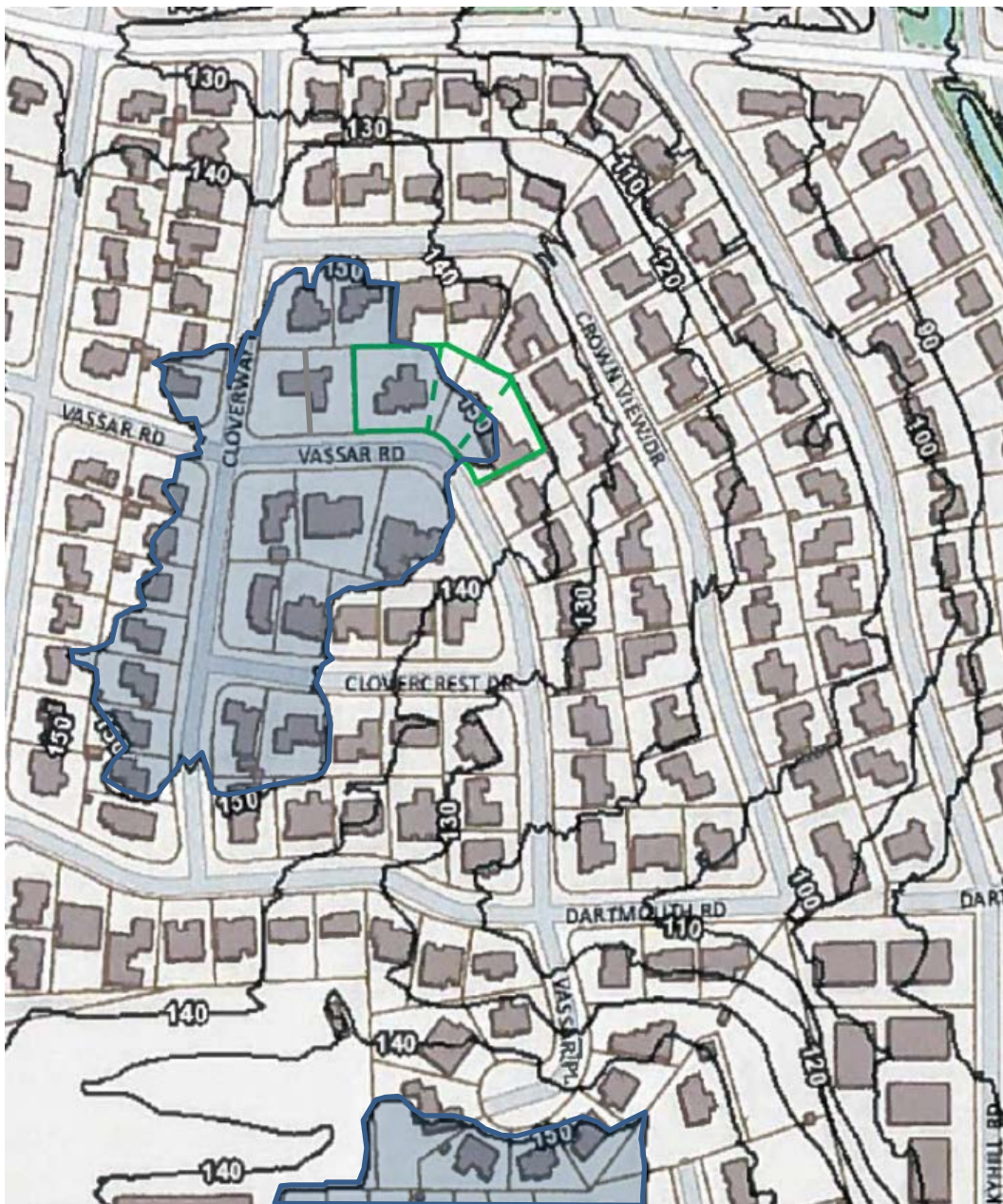
The November 5, 2015 staff analysis provided three different ways to quantitatively measure some of the proposed lot characteristics. These methods are intended provide the Planning Commission and Council with ample information for making judgments as to character. A neighbor provided an additional analysis for the Planning Commission to evaluate. As stated above in the memo, Commissioners did carefully consider that analysis and found that the lots are of substantially the same character as the comparable lots in the neighborhood based on that analysis.

- 2. The appeal document states that the proposed subdivision does not suit the neighborhood because one of the proposed lots is considerably smaller than the other lots near it at the top of the hill on Vassar Road. It is 12.2ft (18.2 percent) and 24.2ft (36.2 percent) smaller in terms of lot width than the two comparables that are deemed similarly situated comparables under both Virginia and Alexandria code.*

Staff does not agree that the lot comparison should be confined to hilltop lots. Nevertheless, staff examined topographic maps of the Clover Subdivision and found that



there are two areas with the highest elevations (150-160 feet). One is centered on Cloverway between Vassar and Clovercrest and includes the proposed lots, some large lots fronting on Vassar Road, and several smaller lots fronting on Vassar Road and Cloverway Drive. The other is centered at the south end of the Clover neighborhood, and includes lots at the cul-de-sac of Vassar Place. Staff discovered that the hilltop area surrounding the proposed lots actually has a wide variety of lot sizes including many of the smallest lots in the Clover Subdivision. It also found that the seemingly large lot at the corner of Clover Way and Vassar Road (401 Cloverway Drive) is actually two lots under the same ownership with a dwelling straddling the common lot line. The interior lot of that pair measures 8,400 square feet, and the corner lot measures 9,239 square feet, and these lots could be individually developed if the existing dwelling was removed. Currently, that combined property has 17,639 square feet.





Because the higher elevations contain a wide variety of lot sizes, staff did not find the hilltop location of some neighborhood lots to be a major character-defining analysis feature.

3. *The appeal document asserts that only method 3 in the new staff report used on Nov. 5 complies with the definition of comparable as used in the Seymour Case in the Virginia Supreme Court because options 1 and 2 includes both rectangular and wedge-shaped lots in the analysis.*

The term situated means positioned or located and is described in the Seymour case as referring to whether a lot is an interior lot or a corner lot. Staff, in using Option 1, used this positioning rationale in preparing its analysis. Staff also provided an evaluation for Planning Commission consideration using the only two wedge-shaped lots in the comparison area. The Planning Commission found that those lot characteristics are substantially similar to the proposed lots, especially when considering that those two lots are considerably larger than the typical lots of the Clover Subdivision. Staff was concerned that using a sample of only two comparable lots would not generate a fair analysis, so staff provided, in addition to the analysis based only on the two wedge-shaped lots, its preferred analysis based on interior street-fronting lots.

4. *The appeal document also suggests that the Planning Commission's November decision sets a dangerous precedent because the majority determined that a subdivision need not fully meet all six criteria in order to be considered "substantially similar."*

Mathematical analyses have only been a feature of four of the last twenty subdivision reviews (20 percent) and were intended to provide additional information for subdivision reviews, not to set new standards. In 80 percent of cases, the Planning Commission relied on qualitative analysis; therefore doing so to any degree in this case would not constitute a precedent.

5. *The appeal document also asserts that the staff deliberately chose not to apply a standard used in the 418 Braddock Road case (and praised by the Planning Commission) because it would have resulted in a denial of the subdivision application.*

Staff's analysis is wholly based on its best professional judgment, the facts of the case, and the standards in the ordinance. The ordinance does not define "substantially similar" and as a result, staff provides decision makers with quantitative analyses to give them an objective sense of how similar, or how "close" the proposed lots would be to the character of existing lots. It was not staff's desire to establish standards outside of the zoning ordinance by providing this analysis, which ultimately has to involve the judgment of decision-makers.

## **VI. Conclusion**

Staff and the Planning Commission find that proposal meets Zoning Ordinance requirements for subdivision approvals and continues to recommend approval based on the information and conclusions contained in the November 5, 2015 staff report and as further supported in this memorandum.

### **Enclosures:**

Attachment A – Appeal Documents

Attachment B – Staff Appeal Map & Analysis

Attachment C – November 5, 2015 Staff Report to Planning Commission

Attachment D – November 5, 2015 Additional Materials