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October 1, 2024

Richmond Permit Department /Planning and Zoning
Zoning Administration Office
900 E. Broad St., Room 108
Richmond, VA 23219

Richmond Fire Marshal
201 E Franklin Street
Richmond Va. 23219.

Richmond City Attorney Office
900 East Broad Street, Suite 400
Richmond, VA 23219

**Re: Request for Confirmation and Correction of Potential Outstanding Fire Code
Violations for the Fireplace at the Single Family Dwelling at 615 Maple Ave**

Dear Sir or Madam:

Our law firm represents Paige L. Pruett Revocable Trust, an adjoining homeowner to 615 Maple Avenue ("615 Maple"). I am writing to follow up regarding the status of the required correction of the admitted fire code violation related to the single-family dwelling (SFD) at 615 Maple. Those have been addressed under separate letter (dated 9/30-24) the fire code violations related to the garage at 615 Maple.

As you will recall, 615 Maple completed construction of the SFD, which included a gas fireplace (the "Fireplace") that extended into the side yard setback. The Fireplace was always planned to protrude into the side yard setback. It is undisputed that the enclosed gas Fireplace was not originally constructed with properly fire rated materialsⁱ. Unfortunately, the City issued a CO for the SFD despite Center Creek's failure to use properly fire rated materials. By the time my client identified the issue, other serious violations were known at 615 Maple and City Staff was not permitted to issue a building permit to even allow correction of the admitted Fireplace fire code violation. Despite multiple complaints from my client, despite inspecting the Fireplace and confirming the violation, the City failed to issue a NOV for approximately eight months. Eventually, a SUP (which has been appealed on numerous grounds) was issued. The City then issued a permit authorizing the correction of the Fireplace deficienciesⁱⁱ. My client observed some corrective work done, but we are writing this letter because we do not believe the all the required work needed to fully remediate the violation was done; creating a danger to persons and property.

Specifically, the City confirmed in writing that all materials within the stated distance to the adjoining property line were required to utilize properly fire rated materials. Specifically, the City confirmed in writing that not only did the walls (both sides) have to be properly fire rated, but the soffit, overhang at the roof (which protrudes both to the sides and directly towards the property line), and other materials which protruded into the side yard must also be properly fire rated.

My clients observed some replacement of the exterior wall material. However, my client observed no correction to the soffit, roof overhang or similar adjacent materials (that actually protrude even closer to the property line). The purpose of this letter is to seek confirmation that the fire code violation from the Fireplace was fully corrected. My client, who is in close proximity to 615 Maple, observed at least some of the work done. Based on that limited observation alone, which admittedly may be incomplete, it appeared that 615 Maple corrected only the siding and did not remediate the soffit area—which actually extends the furthest into the side yard setback.

As outlined below, please confirm the status of the remediation and provide documentation demonstrating confirmation by the City of complete correction of the Fireplace fire code violation by 615 Maple. Given the severity of the situation and the history in this matter (including Center Creek admitted submission of the Garage structure despite having known of the fire code violations), it goes without saying that there must be a legitimate, competent independent inspection to confirm complete compliance.

Specifically, please advise:

(1) if there has been a proper and complete review by the City to confirm specifically that the Fireplace has properly fire rated materials in all areas within 5 feet of the setback, including but not limited to the eaves, soffits, and all areas within the required area; provide all associated documentation confirming a proper inspection,

(2) please specifically address when, how and by whom (at the City) the area was inspected and it was confirmed that there had been a complete remediation of the outstanding fire code violations, including but not limited to the confirmation that the eave and soffit material are properly fire rated; and

(3) provide copies of any relevant documentation (inspection reports, pictures, etc). We requested Item #3 through a FOIA request. We also make that request of your departments, via this letter.

We would appreciate a written response within 30 days of receipt. Thank you in advance for your prompt attention to this matter.

Sincerely,



Patrick C. Henry II

PCH/
CC: File



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November 14, 2024

monica.malouf@rva.gov

Monica J. Malouf
Office of the City Attorney
900 East Broad Street, Suite 400
Richmond, Virginia 23219
900 E. Broad Street
Richmond, VA 23219

Re: *Demand for City to Revoke SUP Ordinance No. 2023-283 for 615 Maple Obtaining SUP on False Pretenses*

Dear Ms. Malouf,

As you are aware, our firm represents Paige L. Pruett Revocable Trust, an adjoining homeowner to 615 Maple Avenue. The purpose of this letter is to make the City aware that it issued SUP No. 2023-283 ("SUP") based on clearly false information provided. There is now strong evidence, as outlined below, that the SUP was obtained based on multiple material misrepresentations to the City Council, Planning Commission and City Staff. We request that this letter be shared with your client, the City Council and all its members. Or in the alternative, that you agree that my firm can transmit this directly to the City.

While the City's decision authorizing the SUP has been appealed by the filing of litigation in Richmond City Circuit Court for numerous procedural flaws and issues, the purpose of this letter is to specifically request revocation of the SUP by the City based on the key material misrepresentations made to the City by 615 Maple on which the City clearly relied through the SUP process.

The SUP was granted to 615 Maple Avenue ("615 Maple") to alleviate a material violation (1.9') of the rear yard setback zoning requirement ("Rear Yard Encroachment") that had occurred in the construction of the associated two car garage (the "Garage"). 615 Maple eliminated essentially one-third of the setback required by the City for the R-4 area to protect my client's property. The SUP was not sought until after the Garage had been completely constructed, the House occupied, and the Garage issued a final approval by the City for use by the homeowner.

We have obtained significant new information regarding this matter because my client raised concerns with DPOR regarding the potential actions or inactions of multiple licensed professionals who were engaged on this project. For example, it is now evident that Center Creek commissioned a site plan reflecting the (approximate) Rear Yard Encroachment from the *very beginning*¹,—before construction even commenced. We also now have a direct admission that the “as built” survey was purposefully altered by the surveyor at the direction of Center Creek so as to hide not just the Rear Yard Encroachment, but also a possible additional encroachment from the fireplace (“Fireplace”) on the House.

The City cannot allow a party to knowingly construct an illegal structure, then engage in an extended, multi-pronged cover-up, and then get a special use permit based on what we can only describe as blatant lies—which is what happened in this case. The SUP must be revoked immediately, and 615 Maple required to demolish the Garage.

While some of those DPOR proceedings are still outstanding and may produce further information, certain key information is now known which clearly contradicts the information put forth by 615 Maple and which formed the basis upon which the City granted the SUP. The following are key misrepresentations that have already been identified:

Fundamental Misrepresentation #1—the Rear Yard Encroachment was NOT a “mistake”

615 Maple claimed the Rear Yard Encroachment was a mistake and blamed the surveyor throughout the entire process. Specifically, in the March 2, 2023 Applicant’s Report, 615 Maple claimed as follows (p.2): “Due to conditions in the field, however, the detached garage was unintentionally built within the rear yard setback.” There were no **special conditions** in the field. Further, there is now **clear evidence that the encroachment was planned from the very beginning** for the reason we surmised—because Center Creek’s design was fundamentally flawed and they did not have enough turning radius² between the House and the Garage for vehicles to turn safely. See Attachment 1, p.6.

Here is what actually happened³ as the facts are now known:

- Center Creek entered into a construction agreement with Bushey, which included the construction of both the House and the Garage from the very beginning
- Center Creek filed for the building permit for 615 Maple, but included only the House, because it did not want to be burdened by a LDIS permit⁴ (the inclusion of the Garage would have added the LDIS permit)
- On 12/17/21, before the building permit on the House was even issued, Center Creek directed the surveyor to prepare a site plan that encroached into the rear yard setback to 4.35’ because the lack of turning radius (Attachment 1, p. 6)

- On 12/31/21, the House permit was issued and Center Creek immediately reached out to the surveyor to get the lot staked
- On January 10, 2022, at the direction of Center Creek, the surveyor staked the lot for both the House and the Garage, and directed the surveyor to stake the Garage so to encroach
 - Before coming on site, when the surveyor was asked to stake 615 Maple, the surveyor specifically sought to confirm what was to be staked by email
 - As there was no approved plan that included the Garage, Center Creek HAD to direct the surveyor to mark the Garage in the field and also HAD to specify where to mark it (believed to be consistent with Center Creek's then most recent site plan which planned an encroachment)
 - Center Creek, immediately after directing the staking of the Garage so as to encroach (and without the permit), immediately began excavating the Garage (which also violated the land disturbance limit on the issued permit and silt fence requirements)---the stated reasons for knowingly violating the building permit was because it would be difficult to get the equipment in the area after construction started and in order to manage their drainage system for the House footers
 - Center Creek was stopped by the RLD (but not until after excavation) for exceeding the building permit/violating the land disturbance requirement
- Center Creek paused construction of the Garage at that point but proceeded with a LDIS permit and other permit amendments
- Construction resumed after amending the original permit in late August 2022 and the footers were poured; the surveyor was called back out to "pin the bricks" on 9-1-22; at this point, the Rear Yard Encroachment was "obvious" and quantified by the surveyor, and the cover up began

There was no mistake. Just a plan from the beginning, and an elaborate cover up that included, by admission, at least one^{vi} other licensed party.

Mistake #2—The "Plans" Are not Accurate

The SUP was approved based on the 11-14-22 "as built" that was submitted in the SUP process^{vii}. Recently, through the DPOR investigation, we came into possession of the surveyor's working paper from 11-14-22 which shows that the "as built" was not updated for the actual dimensions of the House or the Garage. Further, the 11-14-22 workpaper also proves that McKnight did not actually quantify the distance to any property line in connection with the as built^{viii}. The SUP was based on the Plans, and the Plans were not accurate.

Mistake #3—The Rear Yard Encroachment is Greater than Disclosed

As noted, in his 11-14-22 visit, McKnight did not measure the distance from the Garage wall to the rear property line (as he already knew of the Rear Yard Encroachment and his workpaper reflected the same). In January of 2023*, before the SUP application, McKnight was asked to return to 615 Maple and complete measurements around the Garage because the parties were trying to determine how much of the neighbors' property would have to be purchased in order to cure the encroachment. See Attachment 2.

Attachment 2 shows that the Rear Yard Encroachment was apparently understated. Not only is this issue demonstrated by his working paper, but it is reinforced by a landscape plan that was being circulated *prior to* McKnight even going onsite on 11-14-22. While the Rear Yard Encroachment was already material, the additional incursion—that close to the property line—is both a technical zoning issue (because the full encroachment was not disclosed) and impactful.

Mistake #4—There are Other Likely Setback Zoning Violations That Were Known or Should have been Known at the Time of the SUP

We also know now that 615 Maple was aware of, and concerned about, the potential Fireplace zoning violation*. In fact, based on the DPOR investigation, Center Creek was concerned enough to cause the surveyor to alter the as built to remove the distance between the Fireplace and property line. This issue was clearly known and never disclosed.

The surveyor was working at the direction of Center Creek and Center Creek is responsible for, and imputed the knowledge of, the surveyor. The January 2023 surveyor workpaper shows that there is likely an additional, distinct encroachment on the side wall of the Garage, particularly when considering that the actual construction dimensions for the Garage are 21.20 by 20.20 (which were still not reflected in the January 2023 workpaper).

Finally, as it is now known that the surveyor failed to update to actual dimensions on the as built for the House raises the possibility of another encroachment along the entire side of the House. The increased dimensions from construction are .32---if even one half of that overage is on the 617 Maple Side, then there is another encroachment.

Mistake #5 --- the Garage was NOT otherwise compliant with Code

The SUP application submitted by Baker Development on behalf of 615 Maple specifically certified on p. 2 that "In all other respects, the underlying zoning for the Property is met." and that (on p.6) that "The detached accessory garage was constructed pursuant to the Building Permit issued on October 26th, 2022..." In fact, the garage was not constructed in accordance with the issued permit (which was admitted in part and drove the need for the SUP) but also there were a number of issues that were not disclosed in addition to the newly discovered zoning/potential

zoning issues above. The other violations^{xi} known or suspected at the time of the SUP application include the following:

- Fire Code violation for the Garage
 - The City issued a NOV for this violation, and it has been at least partially abated^{xii}
 - We believe, however, that it may not have been fully abated
 - Part of the Garage may be within 3 feet of the property line, which would impose additional requirements
 - Further, we believe that, because of the proximity of the Garage to the House, that there was a greater fire code violation than originally surfaced
- Fire Code Violation for the House Fireplace
 - The City issued a NOV for the Fireplace, and it has been partially abated
 - We believe, however, that it may not have been fully abated
- Height Violation for the Garage; 12 foot to Midpoint Requirement
 - The Garage materially exceeded the height for a structure located in the rear yard
 - Per Sec. 30-680.1 and 30-1220.19, an accessory building the rear yard may not exceed 12 feet to the midpoint of the roof
 - This issue was not noticed in the SUP, raised by the City, or otherwise; my client, on her own, discovered the issue in September of 2023
 - Baker, by email dated September 19, 2023, confirmed that the height is 18.38' if measured to the dormer (MORE THAN SIX FEET TOO TALL) or 15.02' if measured to the midpoint of the main roof (MORE THAN THREE FEET TOO TALL)
 - Baker by email dated 9/19/23 stated: "With regard to the applicable 12' height requirement specified in Sec. 30-6801.1, as we discussed Friday, we understand it is not met."
 - Baker and 615 Maple may have known of this violation, but no one else did--- because it was not noticed in the SUP request, disclosed to the public or explained to staff (see Watson's report).
- Height Violation: Absolute Maximum of 20 feet
 - The Garage was subject to an absolute height requirement of 20'
 - Watson's Staff Report p.3 reported a height of 18.7' per plan; Mr. Watson's stated height (who admitted to *never visiting* the site to prepare his report) was not correct
 - While Mr. Watson did not seem to understand the concern, someone else from the City did ask Baker to confirm the structure was less than 20 feet after my client questioned it
 - the City, however, allowed 615 Maple to assess the height itself which it claimed at 19.83' (contrary to Watson's report but supposedly below the maximum)

November 14, 2024

Page 6

- However, the City blindly relied on the information provided by 615 Maple which was obtained from the surveyor
- This same surveyor has now admitted to altering and falsifying even stamped and sealed documents at 615 Maple's request---so, calculations from the same surveyor on this project should not be trusted; in looking at his working paper, the measurements do not make sense, and it appears that the height is exceeded
- Zoning Violations for encroachments into side/rear yard for House and Garage
- George Wooddall raised a Code issue related to the Garage Openings, that did not appear to be explored
- Placement of the Light Fixture creates a violation of Sec. 30-670

The point of the SUP process is to make an extraordinary exception for a structure. The SUP was granted on clearly false pretenses and cannot be allowed to stand.

Part of the required SUP process is for a direct notice to the affected neighbors which explains the exact nature of the exception sought. A SUP is specifically limited to what is noticed and reviewed ---basically, after City Council, through a public process and after much deliberation, developed the requirements for an area like R-4, City Council is then creating a completely different zoning scheme for one single lot by exception to the detriment of all other lots in that area. Because that is such an extraordinary request---which places a particularly clear burden on the adjoining property owners---the exception is by design specific and is only supposed to be requested, much less granted, to cure a narrow defect. The public was misled just as the City was misled---It was told the Rear Yard Encroachment was a big, but limited mistake, that was the fault of the surveyor and not any fault of the builder. The defects at 615 Maple were numerous and massive and even the ones known about at the time were not fully disclosed and/or vetted. Given the materially false pretenses on which the SUP was obtained, it cannot be allowed to stand.

We appreciate that it is difficult to cause a completed structure to be demolished—but that is part of the manipulation here that cannot be allowed. And frankly, it is less difficult than the continual ongoing damage to which the neighbors have been subjected because of the entitlement and greed of 615 Maple. We look forward to the City's swift action on this matter.

Sincerely,



Patrick C. Henry II

PCH/
Enclosure

ⁱ Note that based on the already issued DPOR Consent Order related to the surveyor, we know that the 12-17-21 site plan referenced herein exists, but the request to DPOR under FOIA remains outstanding.

ⁱⁱ Even with 615 Maple taking TWO FEET in the rear yard setback, there is still not adequate turning radius. This project was approved under the TPP program, and it is not clear whether the designated TPP party (Stevenson Consulting) or the City was responsible for, and completely failed to identify, this clear safety issue. The distance between the House and Garage is not even as long as Bushey's (regular sized) SUV. Another contributing factor is that it appears that there was no licensed architect who prepared the Garage plans.

ⁱⁱⁱ Note this is the select, relevant information. The misconduct of the parties crossed virtually every aspect of this process, and other violations and issues have been uncovered in the process. But this communication is focused on this one relevant factual point of whether or not the marking in the field so as to encroach was a mistake.

^{iv} Based on a witness summary from DPOR and a direct comment of the surveyor to my client.

^v DPOR Case--Characterization by Bendel, an employee of surveyor, who went on site to pin the bricks on 9-1-22 immediately after the concrete footers were poured.

^{vi} There is an ongoing DPOR investigation into the engineer and his reports, which were clearly false and/or backdated.

^{vii} Reminder, the version of the "as built" that was submitted for the SUP differed materially from what the parties had submitted to obtain the CO for the House which was issued on or about 11/16/22. Had the "as built" submitted in connection with the SUP been submitted in the CO process, City Staff could not have legally issued the CO.

^{viii} To make matters worse, and as set forth in another communication, it now appears that there are other potential zoning violations on the lot.

^{ix} Note that this step occurred BEFORE the parties sought final inspection on the Garage and filed the SUP application.

^x Note that Donald Drummond, in assessing the NOV for the fire code violation on the Fireplace in October 2023—just before Planning Commission and too late to impact Staff's report—noted the Fireplace as a potential zoning violation.

^{xi} In addition to the issue of the information upon which the City relied to issue the SUP there is a distinct but related issue that the SUP required a broad compliance with all laws generally, and zoning specifically. So, not only would any violation be an issue in that it improperly induced the City to issue the SUP, but any violation would be a violation of the SUP itself.

^{xii} There is a separate communication to the City which outlines our concerns about whether or not the fire code violations have been fully abated.



IN THE
COMMONWEALTH OF VIRGINIA
BOARD FOR ARCHITECTS, PROFESSIONAL ENGINEERS, LAND
SURVEYORS, CERTIFIED INTERIOR DESIGNERS AND LANDSCAPE
ARCHITECTS

Re: James Earl McKnight
North Chesterfield, VA 23235

File Number 2024-01143
License Number 0403001928

CONSENT ORDER

Respondent James Earl McKnight ("McKnight") recognizes and acknowledges being subject to and bound by the Regulations of the Board for Architects, Professional Engineers, Land Surveyors, Certified Interior Designers and Landscape Architects ("Board"), as well as by all other applicable Virginia laws.

McKnight knowingly and voluntarily waives any proceedings for this matter under the Administrative Process Act, §§ 2.2-4019, 2.2-4020, and 2.2-4021 of the 1950 Code of Virginia, as amended.

Board's Regulations provides:

18 VAC 10-20-790. Sanctions.

A license, certificate, or registration shall not be sanctioned unless a majority of the eligible voting members of the entire board vote for the action. The board may discipline or sanction any regulant if the board finds that:

7. The regulant violates any standard of practice and conduct as defined in this chapter;
8. The regulant violates or induces others to violate any provision of Chapters 7 (§ 13.1-542.1 et seq.) and 13 (§ 13.1-1100 et seq.) of Title 13.1 or Chapters 1 (§ 54.1-100 et seq.) through 4 (§ 54.1-400 et seq.) of Title 54.1 of the Code of Virginia, or any other statute applicable to the practice of the professions regulated by this chapter;

§ 54.1-201. Powers and duties of regulatory boards.

- A. The powers and duties of regulatory boards shall be as follows:

7. To place a regulant on probation or revoke, suspend or fail to renew a certificate or license for just causes as enumerated in regulations of the board. Conditions of probation may include, but not be limited to the successful completion of remedial education or examination.

§ 54.1-202. Monetary penalty; delegation to Director of authority enter consent agreements.

- A. Any person licensed or certified by a regulatory board who violates any statute or regulation pertaining to that regulatory board who is not criminally prosecuted shall be subject to the monetary penalty provided in this section. If a regulatory board determines that a respondent is guilty of the violation complained of, the board shall determine the amount of the monetary penalty for the violation, which shall not exceed \$2,500 for each violation. The penalty may be sued for and recovered in the name of the Commonwealth.
- B. Any regulatory board within the Department of Professional and Occupational Regulation may adopt a resolution delegating to the Director the authority to enter into consent agreements on behalf of the regulatory board with regulants of the board. Such resolution shall specify the types of violations to which the delegation applies and the maximum monetary penalty that may be imposed in a consent agreement for each regulatory violation. No delegation of authority pursuant to this subsection shall provide for a monetary penalty over \$2,500 per regulatory violation.

The Report of Findings, which contains the facts regarding the regulatory and/or statutory issues in this matter, is incorporated with the Consent Order.

By signing this Consent Order, McKnight acknowledges an understanding of the charges and admits to the violation(s) of the Counts as outlined in the Report of Findings. McKnight consents to the following term(s):

Count 1:	18 VAC 10-20-790.4	\$ 1,000.00
Count 2:	18 VAC 10-20-380.C.6	\$ 500.00
SUB-TOTAL (MONETARY PENALTIES)		\$ 1,500.00
BOARD COSTS		\$ 150.00
TOTAL		\$ 1,650.00

Any monetary penalties, costs, and/or sanctions are to be paid/performed within thirty days of the effective date of this Consent Order unless otherwise specified above. McKnight acknowledges any monetary penalty and/or costs as a debt to

the Commonwealth and agrees that in the event of a default, or the return of a check for insufficient funds, McKnight will be responsible for all reasonable administrative costs, collection fees, or attorney's fees incurred in the collection of any funds due. This Consent Order is a final order under the provisions of Va. Code § 2.2-4023.

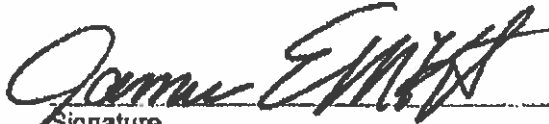
FAILURE TO PAY THE TOTAL AMOUNT DUE UNDER THIS ORDER BY THE DUE DATE MAY CAUSE THE MATTER TO BE SENT FOR COLLECTION AND THE IMPOSITION OF INTEREST AND ADMINISTRATIVE, COLLECTION, OR ATTORNEY'S FEES. INTEREST CALCULATED AT THE JUDGMENT RATE ON THE UNPAID BALANCE OF THE TOTAL AMOUNT DUE UNDER THIS ORDER SHALL BEGIN TO ACCRUE SIXTY (60) DAYS AFTER THE RESPONDENT IS OUT OF COMPLIANCE WITH THE TERMS OF THE ORDER. IF IMPOSED, ATTORNEY'S FEES SHALL BE IN THE AMOUNT OF 30% OF THE AMOUNT DUE ON THE DATE THE MATTER IS SENT FOR COLLECTION.

McKnight acknowledges that failure to pay any monetary penalty or costs and/or to comply with all terms of this Order within the noted time period shall result in the suspension, unless otherwise specified above, of McKnight's license until such time as there is compliance with all terms of this Order. James Earl McKnight understands the right to have this license action considered in an informal conference pursuant to the Administrative Process Act §§ 2.2-4019 and 2.2-4021 of the 1950 Code of Virginia, as amended, but knowingly and voluntarily waives any rights to the proceeding and hereby waives any further proceedings under the Administrative Process Act §§ 2.2-4020 and 2.2-4021 of the 1950 Code of Virginia, as amended.

The effective date of this Order shall be the date of execution by the Board.

SEEN AND AGREED TO:

The undersigned represents and affirms that he/she has the authority to legally bind James Earl McKnight, to this Consent Order. The Individual, by his/her signature below, acknowledges he/she read the Consent Order, understands it, and agrees that James Earl McKnight, shall be bound by its terms and conditions.


Signature


6-27-2024
Date

JAMES E. MCKNIGHT / OWNER
Printed Name and Title

SO ORDERED:

Entered this 21st day of August, 2024.

Board for Architects, Professional Engineers, Land Surveyors, Certified Interior Designers and Landscape Architects

BY: 
~~Kishore S. Thota, Secretary~~
Brian P. Wolford, Interim Secretary
EOO

**VIRGINIA DEPARTMENT OF PROFESSIONAL
AND OCCUPATIONAL REGULATION
9960 MAYLAND DRIVE, SUITE 400
RICHMOND, VA 23233**

REPORT OF FINDINGS

BOARD: Board for Architects, Professional Engineers, Land
Surveyors, Certified Interior Designers and Landscape
Architects
DATE: May 28, 2024 (Revised June 24, 2024 – MNC)
FILE NUMBER: 2024-01143
RESPONDENT: James Earl McKnight
LICENSE NUMBER: 0403001926
EXPIRATION: January 31, 2025
SUBMITTED BY: Kevin Hansen
APPROVED BY: Ann Tackett

COMMENTS:

Companion to file number 2024-01137 (Center Creek)

James Earl McKnight ("McKnight") was at all times material to this matter subject to the Board's regulation as an applicant for licensure and/or a licensed land surveyor in Virginia (No. 0403001926).

Based on the analysis and/or investigation of this matter, there is probable cause to believe the respondent has committed the following violation(s) of the Code of Virginia and/or Board's regulation(s):

BACKGROUND:

On November 7, 2023, the Department of Professional and Occupational Regulation ("the Department") received a written complaint from Paige Pruett ("Pruett") and Paul Dorn Jr. ("Dorn") regarding McKnight. (Exh. C-1)

On January 5, 1993, McKnight was licensed as a land surveyor (No. 0403001926). (Exh. I-1)

On September 27, 1994, McKnight & Associates, P. C. ("McKnight & Associates") was registered as a professional land surveying corporation (No. 0405000821). McKnight is the owner and President of McKnight & Associates. (Exh. I-2)

On September 23, 2021, Center Creek Builders LLC ("Center Creek") entered into a Construction Agreement ("construction contract"), in the amount of \$630,600.00, with Kristina Bushey ("Bushey") to construct a single-family dwelling ("dwelling") and detached garage ("garage") at 615 Maple Avenue, Richmond, Virginia 23226 ("subject property").¹ (Exh. I-10 and W-2)

On October 20, 2021, McKnight sealed a plot plan for the proposed construction of the dwelling and garage at the subject property ("McKnight 10/20 plot plan"). The McKnight 10/20 plot plan positioned the garage at 6.1 feet from the rear property line. (Exh. C-4 and R-2)

1. Board Regulation

18 VAC 10-20-790. Sanctions.

A license, certificate, or registration shall not be sanctioned unless a majority of the eligible voting members of the entire board vote for the action. The board may discipline or sanction any regulant if the board finds that:

4. The regulant has committed acts constituting professional incompetence, negligence, or gross negligence.

Historical Notes:

Derived from VR130-01-2 § 12.11, eff. October 18, 1985; amended, Virginia Register Volume 4, Issue 8, eff. March 1, 1988; Volume 6, Issue 20, eff. September 1, 1990; Volume 7, Issue 14, eff. May 8, 1991; Volume 8, Issue 7, eff. February 1, 1992; Volume 10, Issue 15, eff. May 19, 1994; Volume 13, Issue 23, eff. October 1, 1997; Volume 16, Issue 3, eff. December 1, 1999; Volume 23, Issue 1, eff. February 1, 2007; Volume 25, Issue 12, eff. April 1, 2009; Volume 32, Issue 6, eff. January 1, 2016; Volume 37, Issue 24, eff. September 2, 2021; Volume 38, Issue 4, eff. December 1, 2021.

Print Date: December 1, 2021

FACTS:

According to McKnight, on December 17, 2021, "we [McKnight & Associates] produced a revised plot plan showing the proposed garage moved back, from 6.10' to 4.35' from the rear property line, for the purpose of evaluating the feasibility of that garage position in order to increase the turn-around distance between the dwelling and the garage." (Exh. R-1)

¹ On August 2, 2019, Paige Foster Pruett Revocable Trust purchased real property located at 614 Arlie Street, Richmond, Virginia 23226 ("614 Arlie St."). Between June 15, 2021, and December 14, 2023, Dorn and Bentley G. Dorn (the "Dorns") were the owners of real property located at 612 Arlie Street, Richmond, Virginia 23226 ("612 Arlie St."). The Richmond City GIS record shows that the subject property abuts 612 Arlie St. and 614 Arlie St. at the rear property line. (C-1, I-4, I-6, and W-5)

On January 11, 2022, following a footing inspection at the subject property, Klaus Worrell P. E. reported, in part, "[t]he [garage] excavation was performed based on survey stakes at the time of the house footing excavation..." (Exh. W-3)

According to McKnight, on September 1, 2022, McKnight & Associates placed the brick piers for the garage. McKnight said, "it was at this point that the field crew contacted the Principal, (Mr. McKnight), to discuss the discrepancy between the planned rear offset and the existing offset from the footer as poured. It was determined at that time that the field crew would move the planned garage towards the rear line by 2.00', in order to fit it on the footer as poured." (Exh. R-1 and R-3)

On November 14, 2022, McKnight & Associates performed a field survey of the improvements constructed at the subject property. Resultant of the field survey, the garage was found to encroach into the rear yard setback as the rear wall was 4.1 feet from the rear property line rather than 6.1 feet as specified on the McKnight 10/20 plot plan. (Exh. C-2, C-5, R-9, I-5, I-7, and I-11)

- Plat which showed, in part, the dimensions from the side property lines to the principal walls of the dwelling and the dimensions from the rear property line to the rear wall of the garage ("McKnight 11/14 plat 1"). (Exh. C-5 and R-9)
- Plat which depicts, in part, the dwelling and garage; however, omitted from the plat were the dimensions from the side property lines to the principal walls of the dwelling and the dimensions from the rear property line to the rear wall of the garage ("McKnight 11/14 plat 2"). (Exh. C-6)
- Plat which depicts the dwelling with dimensions from the side property lines to the principal walls of the dwelling (McKnight 11/14 plat 3"). The garage is not depicted; however, the plat notes "Future Garage Shown on Separate Permit" and "all improvements not shown." (Exh. C-7)

McKnight certified the following on McKnight 11/14 plat 1, McKnight 11/14 plat 2, and McKnight 11/14 plat 3:

[illegible]

(Exh. C-5, C-6, C-7, and R-8)

During an interview with Investigator Kevin Hansen ("Investigator Hansen"), the Board's agent, McKnight provided the following information:

- McKnight & Associates staked the subject property for excavation as requested by Kamage because Kamage made it appear as if she had "talked to the owners" about the garage location being moved back from the location initially planned.
- When McKnight & Associates was asked to pin the brick points for the garage, McKnight first learned that the garage was "in the wrong place."
- McKnight recalled that when the footings were found to be in the wrong place, Nicholas Morgan ("Morgan"), a land surveyor in-training employed by McKnight & Associates, asked if the pins should be placed so that the garage fit on the footings to which McKnight replied, "no problem."
- McKnight said, "I was asked to do something. I did it. It has consequences."
- "When [Center Creek] was getting a CO [Certificate of Occupancy] for the house", McKnight & Associates was asked to perform a survey of the improvements constructed at the subject property.
- Once McKnight & Associates produced a plat showing the location of the garage, "everyone said, 'we've got a situation.'"
- Scott Gouldman ("Gouldman"), project manager for Center Creek, "asked, do you have to show all improvements?"
- McKnight "did not know why [Gouldman] didn't want to show the garage."
- McKnight told Gouldman that the survey "would have to say, 'not all improvements shown.'"
- McKnight agreed to provide Center Creek with a survey which did not depict the garage because the survey was "not a record plat" and doing so is a "pretty standard practice." (Exh. I-7)

Nate Van Epp, Principal for Center Creek, provided the following information:

...we have no knowledge of any Center Creek employee ordering the surveyor or anyone in the field to make this change. The DPOR complaint makes reference to a past employee named Mo [Kamage] who allegedly ordered the garage location to be changed. This employee had left employment at Center Creek well prior to the construction of the garage in question. Even if [Kamage] had ordered the garage location to be moved, no other employee of the company, including our head of construction, was aware that this had occurred and so the garage was built as staked in full good faith. Even had a Center Creek employee ordered the garage to be moved, our surveyor is responsible for discerning any inconsistencies with the approved site plan, and no such concern was ever expressed.² (Exh. W-4)

During an interview with Investigator Hansen, Morgan provided the following information:

² Van Epp provided the information in a written response to a complaint filed by Pruett and Dorn against Center Creek (docketed as file no. 2024-01137). (Exh. W-4)

- Karnage requested that McKnight & Associates stake the garage "purely as a visual."
- Karnage requested that the garage be staked so that it was "moved back to four feet" from the rear property line.
- Morgan understood that "although [Center Creek] was not building the garage, [Karnage] wanted to see what it looked like."
- McKnight & Associates staked the garage as requested by Karnage.
- Morgan does not know how the stake locations were determined by the survey crew in the field. (Exh. 1-8)

During an interview with Investigator Hansen, Todd Bendel ("Bendel"), an employee of McKnight & Associates, provided the following information:

- While staking the garage for excavation, McKnight & Associates was asked by someone employed by Center Creek to stake the garage where it was later constructed "for feasibility, to see if it would fit."
- Bendel understood that Center Creek "was going to get a variance" to the zoning setbacks.
- During a visit to the subject property to pin the brick points of the garage, Bendel had a file which had the garage located six feet from the rear property line.
- After determining that the brick points were not going to fit on the footings, Bendel informed McKnight.
- After McKnight affirmed that Bendel should set the brick points, Bendel then placed the brick points in locations that were "moved back."
- Bendel said, when the decision was made by McKnight & Associates to move the points back, "we weren't aware if [Center Creek] got a variance." (Exh. 1-9)

McKnight's failure to ensure that the garage was positioned in accordance with the McKnight 10/20 plat plan resulting in an encroachment of the garage into the rear yard setback, and McKnight's application of his seal to the McKnight 11/14 plat 2 which purposely omitted dimensions from the side property lines to the principal walls of the dwelling and the dimensions from the rear property line to the rear wall of the garage, and McKnight's application of his seal to the McKnight 11/14 plat 3 which purposefully omitted a known physical improvement, constitutes professional incompetence, negligence, or gross negligence.

2. Board Regulation

18 VAC 10-20-380. Minimum standards and procedures for surveys determining the location of physical improvements; field procedures; office procedures.

- C. The plat reflecting the work product shall be drawn to scale and shall show the following, unless requested otherwise by the client and so noted on the plat:

6. The closest dimension (to the nearest 0.1 foot or equivalent) from the front property line, side property line, and if pertinent, rear property line to the principal walls of each building. Also, all principal building dimensions (to the nearest 0.1 foot or equivalent).

Historical Notes.

Derived from VR130-01-2 § 5.11, eff. October 18, 1985; amended, Virginia Register Volume 4, Issue 8, eff. March 1, 1988; Volume 6, Issue 20, eff. September 1, 1990; Volume 7, Issue 14, eff. May 8, 1991; Volume 8, Issue 7, eff. February 1, 1992; Volume 10, Issue 15, eff. May 19, 1994; Volume 13, Issue 23, eff. October 1, 1997; Volume 18, Issue 7, eff. March 1, 2002; Volume 23, Issue 1, eff. February 1, 2007; Volume 25, Issue 3, eff. December 1, 2008; Volume 32, Issue 6, eff. January 1, 2016; Volume 37, Issue 24, eff. September 2, 2021.

Print Date: December 1, 2021

FACTS:

In addition to the facts mentioned above:

The McKnight 11/14 plat 2 did not show the dimensions from the side property lines to the principal walls of the dwelling and the dimensions from the rear property line to the principal walls of the garage. (Exh. C-6)

McKnight failed to satisfy the minimum standards and procedures for surveys determining the location of physical improvements.

Attachment 2

McKnight Working Paper 11-14-22 "As Built"



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November 14, 2024

monica.malouf@rva.gov

Monica J. Malouf
Office of the City Attorney
900 East Broad Street, Suite 400
Richmond, Virginia 23219
900 E. Broad Street
Richmond, VA 23219

Re: *Demand for City to Revoke SUP Ordinance No. 2023-283 Because of 615 Maple's
Violation of Express SUP Conditions*

Dear Ms. Malouf,

As you are aware, our firm represents Paige L. Pruett Revocable Trust, an adjoining homeowner to 615 Maple Avenue. The purpose of this letter is to demand the City revoke SUP No. 2023-283 (the "SUP") for 615 Maple's failure to follow the required SUP conditions. The two car garage ("Garage") at 615 Maple Avenue ("615 Maple") was completely constructed, but was portrayed as 4.1' from the rear property line despite minimum zoning of 6.0' and approved plans of 6.1' (the "Rear Yard Encroachment"). The SUP was grantedⁱⁱ to 615 Maple to provide relief for the Rear Yard Encroachment. The SUP contained a number of express conditions. Multiple of those conditions have been and/or continue to be violated as outline below (and supported by pictures in Attachment 1).

I respectfully request that this letter be provided to: The City Council and its members, the Richmond Inspections department and Planning and Development Review. Or in the alternative, please confirm that I have your permission to send to them directly.

Section 5(e) of the SUP expressly provides as follows: "The privileges granted by this ordinance may be revoked pursuant to the provisions of sections 30-1050.7 through 30-1050.11 of the Code of the City of Richmond (2020), as amended, and all future amendments to such laws. Failure to comply with the terms and conditions of this ordinance shall constitute a violation of section 30-1080 of the Code of the City of Richmond (2020), as amended, and all future amendments to such law, or any other applicable laws or regulations."

The SUP “Plans” that Were Approved Are Not Accurate

The SUP was approved based on the 11-14-22 “as built” that was submittedⁱⁱⁱ. Recently, through the DPOR investigation, we came into possession of the surveyor’s working paper (Attachment 2) which shows that the actual dimensions of both the Garage and House were not included in the original “as built” or the “Plans” themselves.

On the workpaper, there was a notation of the dimensions of both the House and Garage that are not reflected in the Plans. Further, the worksheet shows that 615 Maple did not even bother to measure the distance to the property lines—presumably out of fear of finding more issues—much less reflect that information in the Plans. Quite simply, the “Plans” as submitted by 615 Maple were inaccurate as to essentially every single dimension of the House and Garage and likely each dimension to the adjoining property line. The information had been obtained, and was withheld.

So, the “Plans” that were submitted and approved as part of the SUP were and continue to be false which itself is a fatal failure for the SUP. Further, depending on the impact of those additional values, as outlined below, there may be additional zoning violations (which in turn is a SUP violation).

Section 3b: Mechanical Equipment Not Properly Screened

Per the express provisions of Section 3b of the SUP, any mechanical equipment is required to be screened from ROW. 615 Maple is in current, ongoing violation of this express SUP provision and had been since the SUP was approved. See Attachment 1 for recent pictures.

Section 4: Inadequate Drainage

Section 4 contained certain Supplemental Terms and Conditions. Section (a) specifically provided for grading and drainage plans. 615 Maple *completed* the entire redevelopment of 615 Maple including the construction of the House and Garage with, by Center Creek’s own admission, absolutely no drainage plan^{iv}.

As noted, Center Creek completed the redevelopment of 615 Maple with NO drainage plan at all (except so as to harm the neighbors). The drainage mitigation plan that was presented to my client during the pendency of the SUP was flatly rejected by my client because it was deemed by her expert that Center Creek’s plan would actually *do more damage* to my client’s property.

Section 4(b) requires specifically that “The Owner at its sole cost and expense, shall provide and maintain at all times adequate facilities for the drainage of storm or surface water from the Property so as not to adversely affect or damage any other property or public streets and the use thereof.” 615 Maple has FAILED to meet this condition—in fact everything about 615 Maple’s design was designed to adversely affect the neighbors.

The design and every action by Center Creek in this process demonstrates not only a lack of a satisfactory plan, but a clear demonstrated process by which 615 Maple has intentionally put every drop of water from 615 Maple onto 614 Arlie (and 612 Arlie). 615 Maple exceeded the land disturbance

requirements, failed to install silt fences and other mitigation measures during construction, engaged in unpermitted construction so it could implement a system that put all water from the House footers onto 614 Arlie, failed to include the gutters on the Garage itself despite the steep roof and proximity to the neighbors, and piped ALL water from the house to within feet of 614 Arlie through the gutter system. These deliberate steps show not only a complete disregard for 615 Maple's impact on the neighbors, but an intent by design and execution to protect 615 Maple from even the impact of its own water (which is not insignificant given its lot coverage) by harming the neighboring properties.

614 Arlie has experienced dramatically increased water from 615 Maple that has been pushed onto the 614 Arlie's property. 614 Arlie has experienced increased use of its sump pump from the water flowing below 614 Arlie. 615 Maple is also adversely affecting public streets because the excess water is being pushed onto the sidewalk on Arlie on both sides of the property as shown by the pictures. See pictures in Attachment 1.

615 Maple is in knowing violation of the SUP conditions related to drainage.

Section 5: Violation of Various other Laws/Codes and/or Zoning Requirements

Section 5 provides additional conditions which are described as "General Terms and Conditions" which include the following in (b): "The Owner shall be bound by, shall observe and shall comply with all other laws, ordinances, rules and regulations applicable to the Property, except as otherwise expressly provided in this ordinance."

- **Fire Code Violations**

We have communicated in detail to the City that we do not believe that the fire code violations for either the Garage or Fireplace (located on the House) have been completely remediated. That communication (Attachment 3) explains that we believe the known fire code violations were not fully remediated essentially because only the walls appeared to be remediated, not the soffit, eave or the like. In addition, the letter outlines that we believe the Garage may have been subject to stricter requirements because some part may fall within 3 feet of the property line or more generally because the detached accessory structure is within 50 feet of habitable space.

- **Outdoor Light Violation**

615 Maple originally planned the Garage with the pedestrian egress on the opposite side. After initial work on the foundation, Center Creek moved the pedestrian egress to the opposite side. Given the height of the Garage and the intentional design, the Garage violates Sec. 30-670. 615 Maple was made aware of this violation, and the daily, ongoing nuisance, and made no effort to correct or mitigate it.

- **Other Potential Garage Code Violations**

In reviewing internal correspondence made available through FOIA and/or DPOR process, there was reference to a concern raised by City Staff (G. Woodall) that was not addressed in connection with the SUP process which related to whether or not the garage door (or other) opening was permitted at all.

In addition, there is a clearly a safety issue (and likely code issues) with the lack of distance between the House and Garage which causes a lack of turning radius^{vi}.

Finally, the zoning violations, which are called out separately in the SUP conditions, are outlined below.

Clearly, there are multiple violations and/or potential violations, which any of such other violation is a breach of the express SUP condition.

Zoning Violations: Height and Other Possible Encroachments

Further, Section 4(e) goes on to specifically provide that "In all other respects, the use of the Property shall be in accordance with underlying zoning regulations." 615 Maple has various actual and/or potential code and zoning violations.

The zoning violations include the following:

A. Height to Midpoint

The Garage exceeds the height allowed to the midpoint of the roof. 615 Maple ADMITTED to this significant exceedance, but not until discovered by my client immediately before the Planning Commission meeting. The exceedance is 5 to 8 FEET, depending upon which roof line is considered. This height exceedance was not noticed in the SUP application or considered in the process at all.

B. Absolute 20 foot Max Height

Detached accessory structures may not exceed a total of 20 feet. We believe the Garage is greater than 20 feet. The planned height was 19 feet, and there is significant foundation. The surveyor, at one point, supposedly measured the height, but his workpaper does not correspond with the planned height for the various components (and he has already admitted intentionally altering a sealed report at the direction of 615 Maple).

C. Encroachment of Fireplace on House

615 Maple has a fireplace that encroaches into the side yard. 615 Maple was so concerned about that encroachment, the surveyor was directed to remove the distance, so clearly 615 Maple believed it was a zoning violation. When the City finally issued the NOV for the fire code violation, Donald Drummond noted it as a possible zoning violation.

D. Encroachment of Side Wall of Garage into Setback

Based on the surveyor's workpapers from January 2023 (recently obtained in DPOR investigation), which were recently obtained, it now appears that the side wall of the Garage encroaches into the side yard setback.

E. Encroachment of House into Side Yard

Based on the as built work papers, the surveyor failed to update each and every dimension of the "as built". The result of this failure was to understate the lateral width of the House by .32. If even half of this enlargement extends toward 617 Maple, then there is a side yard encroachment along the extent of the House.

F. Understated the Rear Yard Encroachment

It also appears from the combination of workpapers (recently obtained) that the Rear Yard Encroachment may actually understate the encroachment which was the topic of the SUP. Recall that the actual construction of the Garage was 21.20 x 20.20 (exceeding the planned 21 x 20).

Based on the foregoing, 615 Maple is in direct, ongoing violation of the SUP Conditions. The SUP must be revoked and the nonconforming Garage be demolished.

Sincerely,



Patrick C. Henry II

PCH/

Enclosure

ⁱ Note, that as communicated separately, there is some question as to whether or not the actual encroachment is greater.

ⁱⁱ Note that the granting of the SUP was itself also appealed for various procedural and substantive reasons; that action is pending.

ⁱⁱⁱ Reminder, the version of the "as built" that was submitted for the SUP differed materially from what the parties had submitted to obtain the CO for the House which was issued on or about 11/16/22. Had the "as built" submitted in connection with the SUP been submitted in the CO process, City Staff could not have legally issued the CO.

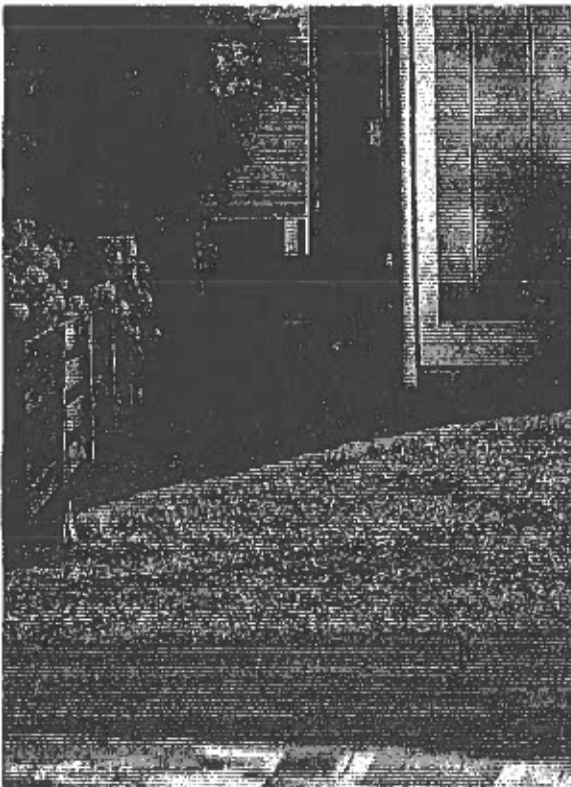
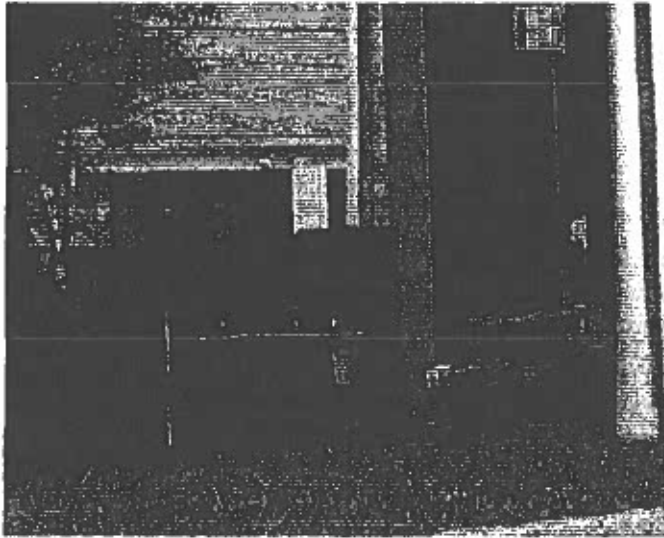
^{iv} In this context, we mean a drainage plan that meets the legal obligation of 615 Maple to not trespass onto the neighboring property. The only plan 615 Maple had was a plan to pipe all water from 615 Maple and direct it at 614 Arlie. For instance, the parties admitted that part of the reason 615 Maple engaged in unauthorized construction by excavating the footers of the Garage without a permit was to facilitate the drainage "system" that took the water from the House footers, to the Garage footers, and then out a pipe directed at 614 Arlie.

^v Note that we have also observed 612 Arlie recently install a drainage system on its property.

^{vi} There is specific evidence from the DPOR investigation that the lack of turning radius was the reason 615 Maple actually planned to encroach. It is not clear why the design (which was only approved without the encroachment, meaning there was even less distance) was allowed at all, except that it appears that a licensed architect was not used for the Garage which lowered the review. Further, this project was completed under TPP and it is not clear that either the TPP provider or the City considered the safety issue at all. Finally, the site plan omitted the pedestrian egresses from the house, which highlights the safety issues, and which were actually extended to make those egresses even closer to the Garage during construction, without review or approval. The pedestrian egresses were not shown, though, until the "as built".

Attachment 1 to SUP Condition Violation Letter
Pictures (some cropped to remove license plates)

Lack of Mechanical Screen

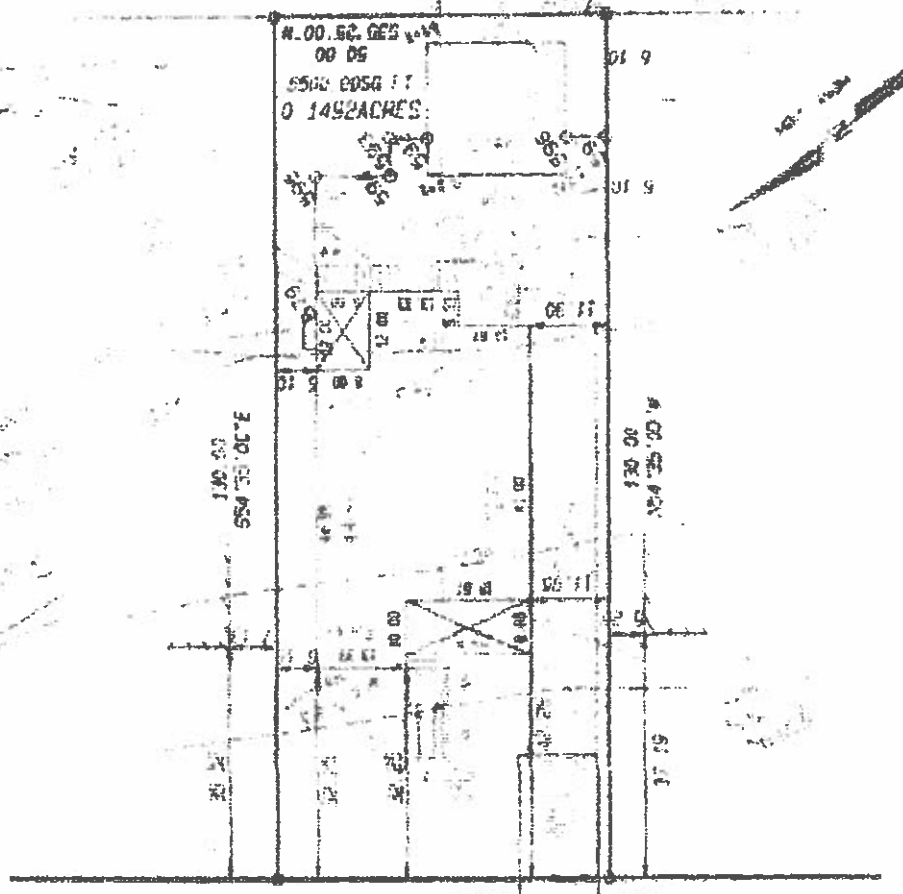


Drainage



Attachment 2

McKnight Working Paper 11-14-22 "As Built"



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Attachment 3
Fire Code Violation Letter



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November 14, 2024

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900 E. Broad Street
Richmond, VA 23219

Re: *615 Maple Zoning Violations*

Dear Ms. Malouf,

As you are aware, our firm represents Paige L. Pruett Revocable Trust, an adjoining homeowner to 615 Maple Avenue. The purpose of this letter is to identify various zoning violations or potential zoning violations associated with 615 Maple Avenue ("615 Maple") that have generally come to light through recently obtained information that was intentionally withheld by 615 Maple. This letter requests the City, through reputable means, investigate and/or address each violation. I respectfully request that this letter be provided to: The City Council and its members, the Richmond Inspections department and Planning and Development Review. Or in the alternative, please confirm that I have your permission to send to them directly.

615 Maple obtained Ordinance No. 2023-283 (the "SUP") to legitimize specifically and only a narrowly described rear yard encroachment of 1.9 feet. The SUP is being appealed on procedural grounds. In addition, 615 Maple is in violation of several SUP conditions, in part because of the violations and/or potential violations outlined below. This communication relates exclusively to additional violations or potential violations that would each require, but have not had, consideration as a SUPⁱ. None of the items outlined below were included in the original SUP application, noticed to the public, considered in the Staff Report, considered at Planning Commission, or approved by City Council.

Garage: Height of Garage to Midpoint Exceeds 12'

The Garage clearly exceeds the permitted height for a structure located in the setback.

- Per Sec. 30-680.1 and 30-1220.19, an accessory building the rear yard may not exceed 12 feet to the midpoint of the roof

- Unfortunately, my client was not aware this requirement (because it was not noticed in the SUP, raised by the City, or otherwise) until into September of 2023
- Baker, by email dated September 19, 2023, confirmed that the height is 18.38' if measured to the dormer (MORE THAN SIX FEET TOO TALL) or 15.02' if measured to the midpoint of the main roof (MORE THAN THREE FEET TOO TALL)
- Even taking the less egregious approach, the structure exceeds the height by 25%
- Baker by email dated 9/19/23 stated: "With regard to the applicable 12' height requirement specified in Sec. 30-6801.1, as we discussed Friday, we understand it is not met."
- Baker and 615 Maple may have known of this violation, but no one else did---because it was not noticed in the SUP request, not noticed in the required communication to the public, and not considered at all by the City
- Watson's Staff Report proves that this issue was not considered by the City---not only is it not addressed in the Report, but the Height was listed as a total height of 18.7 and noted as compliant; Watson's report was the basis for the Planning Commission and City Council determination
- Not only did the decision makers at the City have no idea of this second, massive overage, but the public at large, and really my client (who discovered it on her own way too late in the process), were unaware of this violation
- 615 Maple's exceedance of the 12' to the midpoint requirement is a known and admitted zoning violation that was not legitimized in the SUP process
- This zoning violation is material and incredibly adversely impactful to 614 Arlie

Garage Height: Absolute Height of Garage Exceeds 20'

Richmond City Code, in addition to applying the height to midpoint requirement, also imposes an absolute maximum height requirement at 20. The Garage violates this requirement.

- Watson's Staff Report p.3 reported a height of 18.7' per plan; There is a question of 18.7 v 19 per plan, but there is no question Watson failed to account for the actual constructed height of the structure
- Mr. Watson admitted to *never visiting* the site to prepare his report; if he had visited the site, he would have observe the obvious and dramatic slope
- The dramatic slope of the parcel caused 615 Maple to have to construct a substantial foundation that differed materially in height from front to back
- While the 20' requirement was an absolute height requirement, there is a mean grade calculation that appears to apply
- While Mr. Watson did not seem to understand the concern, there was a question posed by someone else from the City, who did ask Baker to confirm the structure was less than 20 feet
 - a. The threshold issue is that the City blindly relied on the information provided by 615 Maple which was obtained from the surveyor who has now admitted to purposefully altering a stamped report at the direction of Center Creek to hide the rear yard

encroachment (and another encroachment)---that is like asking the fox to go check on the health of hen...

- b. My client, from her side, had another party estimate the height; admittedly, because direct access could not be obtained, the value was only an estimate but it was over 20'
- c. The City allowed 615 Maple to assess the height itself which it claimed at 19.83' (even though this value was submitted and presumably accepted by the City, it demonstrates that this was never meaningfully considered as it took place after Watson's report was finalized)
- d. Further, if you look closely at the worksheet (which 615 Maple did not provide to the City), there are apparent disconnects between the distance attributed to the sections; further, simple visual observation shows the significant height of the foundation in the back
- e. The City must take legitimate steps to independently determine the actual height of the Garage, which based on visual observation combined with planned height, seems likely to violate the 20' requirement

House: Fireplace Encroachment

It is undisputed that the gas Fireplace (which is encased in siding material and not a traditional chimney) is located in the side yard setback, approximately 4 feet from the adjoining property line. The only question is whether or not that clear encroachment is a zoning violation (and whether or not all the fire code issues have been abated).

- Without question, 615 Maple was concerned that it was a zoning violation, and specifically directed the surveyor to remove the distance from the property line—which itself was a clear violation of statute and an indication of known guilt
- Presumably, 615 Maple was directing the surveyor to violate applicable statute because 615 Maple was worried about a bigger problem to them—a zoning violation that would have to be torn out unless 615 Maple could wait for a SUP (and waiting for the SUP would mean that the homeowner (Bushey) could not take possession/get CO issued, which would also likely significantly delay payment to Center Creek)
- Further supporting the reality that the Fireplace is a zoning violation, you need to look no further than the NOV issued by the City itself which cited the potential zoning violation
- Unfortunately, this NOV was not issued until October 2023ⁱⁱ, essentially right before the SUP process and well after the scope of the SUP had been defined and noticed to the public

The Fireplace represents an encroachment into the side yard and should be considered as a zoning violation.

House—Potential Encroachment along 617 Maple

The surveyor when completing the “as built” (as has been admitted and adjudicated by DPOR in connection with a Consent Order) purposefully *altered* the as built survey at the direction of Center Creek. Only with that alteration could 615 Maple obtain the CO for the House.

However, only recently did we learn additional issues with the “as built”. The known alteration of the as built arose from (i) intentionally removing the already constructed and known to be encroaching Garage from the as built, misrepresenting its status, and referencing the user to a separate permit that showed the Garage as compliant when it was known to be materially encroaching and (ii) omitting the distance related to the Fireplace. However, we now know there were other fundamental, critical issues with the “as built”. The other critical issues with the “as built” served to hide from the City (and the public) other issues.

Based on the surveyor’s own worksheet from the date of the “as built” site work, he did not update the dimensions of the structures (either the House or the Garage) based on the values he observed in the field. He also did not measure any distance to any respective property line.

- Now with the ability to see now the actual as built dimensions, it is clear that the House is .32’ WIDER than was shown on the Plans that were repeatedly submitted to the City, including in connection with the SUP.
- Despite the increased width of the structure, there was no adjustment to the distance between the house and *either* side of the property line---which is simply not accurate. There was no adjustment because the surveyor—either by direction (as was the case with the admitted falsifications of the as built) or of his own volition, but acting as an agent for 615 Maple---simply did not measure the distance between any structure and the respective property lines.
- If that *additional .32’ lateral increase beyond what was disclosed on the Plans* as adopted through the SUP is made up on the side with the property line adjoining 617 Maple, which only provided for a 6.1’ setback by the approved permit, but with a minimum of 6.0’ required for zoning, then there is another significant zoning violation across the entire length of the House. If even *only half* of that distance affected the 617 Maple side, then there is still an additional zoning violation essentially across the length of the House.
- While the ongoing DPOR process may or may not provide additional insight into this issue, only an independent assessment from a reliable source can resolve this issue. Needless to say, any encroachment of this nature would be significant.

Garage: Side Yard Encroachment

- As noted above, the “as built” did not reflect the actual dimensions of either structure and the surveyor failed to measure the distance to the property line when completing the “as built”
- Based on the surveyor’s field notes, it is now known that the Garage is both wider and longer (.2’ each way) than was reported on the Plans.
- The lateral increase from construction, taken with the surveyor’s later worksheet (from January 2023, attached) shows a likely Garage side yard encroachment (you can see him literally trying to deduce, or back into, the value already reported)

November 14, 2024

Page 5

- The “as built” process exists for a reason, and that reason is to know the actual construction of a structure---we must know the actual location of the Garage, and if it is encroaching in a second direction
- The cure to a side yard encroachment of the Garage is the same as the appropriate overall cure—demolition of the Garage

Garage: Extent of Rear Yard Encroachment

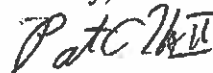
- The disclosed amount of the Rear Yard Encroachment was 1.9’
- Based on (i) the actual construction values; (ii) the January surveyor worksheet, and (iii) an apparent, to scale, landscape design drawing (attached), the Rear Yard Encroachment was likely understated and has not been legitimized by the current SUP

House: Height

- The height of the House should also be confirmed (as it is not clear it was ever determined), particularly given the slope of the lot and substantial foundation.

We respectfully request that the City promptly assess the various zoning violations so that each can be accurately and correctly identified and addressed. Each violation, on its own, would require consideration as a SUP, but also constitutes a violation of the existing SUP.

Sincerely,



Patrick C. Henry II

PCH/
Enclosure

ⁱ Note as well that not only does each issue require its own SUP, but any of these violations would itself be a violation of the SUP.

ⁱⁱ Even though the NOV was issued in October 2023 (after significant inexplicable delay as the City had formally identified the violation at least 6 months earlier), my client only learned of the NOV later by following up with a FOIA request.

Surveyor Statement and DPOR Consent Order

Notes:

1. Encroachment was Planned from the Beginning/No "Mistake" in the "Field"

- a. 12/17/21 – Surveyor was directed to prepare a site plan before the original permit was even issued (12/31/21)
- b. 12/17/21 plan moved Garage back to 4.35 (encroaching); because there was not sufficient turning radius between the dwelling and garage
- c. Location of House is now actually unclear as well
- d. Surveyor was directed to stake according to the unapproved 12/17/21 plan
- e. Surveyor knew garage was not approved at all (even at 6.1') with the original permit; Staked the garage for a "visual"
- f. Center Creek proceeded to excavate garage without permit, violate land disturbance, etc

2. November 14, 2022 As Built Was Intentionally Altered, Falsified, and is Otherwise Incorrect

- a. Note: This is important because the 11-14-22 as built formed the basis of what was approved by Council (see As Built Attachment)
- b. Surveyor goes to site on 11-14-22
- c. Records increased values for virtually every wall (see As Built Handout)
- d. Does not measure any distance to the property line (front, back, side) on 11-14-22
- e. Despite not measuring, all parties admit encroachment is known at this point; As Built is required for Certificate of Occupancy
- f. Produces initial Plat/As Built; included the garage and distances to property lines (even though were not measured) (see As Built Hand Out)
- g. Center Creek asked for changes to the As Built; Two subsequent As Builts were produced
- h. Third As Built (all produced on 11-14-22) was created and then submitted to get CO on house
 - i. Removed the already constructed, known to be encroaching garage and replaced it with a notation of "Future Garage See Separate Permit"
 1. The Garage Already Existed
 2. The referenced separate permit showed the lot compliant, when parties had actual knowledge of encroachment(s)
 3. Also removed distance between House and Dwelling on account of encroachment by Gas Fireplace into side yard
 4. Falsely certified that there were "no encroachments"
 5. Center Creek submitted the known false As Built to get the CO

3. Pending Consent Order for Additional Professional Misconduct

- a. Numerous Issues, including 2 sealed reports that expressly confirmed compliance with approved site plan despite encroachments (3 reports total)
- b. Numerous other issues

On October 21st, 2021, our Company provided a plot plan for the purpose of obtaining a building permit to our Client (Center Creek Builders), as shown as attached EXHIBIT A. On January 3rd, 2022, a representative for our Client requested that we stake out the planned dwelling for excavation. During the interim, by our records, on December 17th, 2022, we produced a revised plot plan showing the proposed garage moved back, from 6.10' to 4.35' from the rear property line, for the purpose of evaluating the feasibility of that garage position in order to increase the turn-around distance between the dwelling and the garage. Both the employee who would have made this change and the employee who would have requested this change are no longer employed by our Company or the Client company. It is with this proposed configuration that our field crew proceeded to stake the site for excavation, on January 10th, 2022, see attached field notes as EXHIBIT B. Two days later, on January 12th, 2022, we were asked by a representative of our Client to place pins for brick points on the footer as excavated, see attached field notes as EXHIBIT C. Brick points for the proposed garage were not placed at this time. Later, on August 31st, 2022, we were informed by our Client that the footing for the garage had been placed and they were ready for us to place pins for brick points, which our field crew completed on September 01, 2022. It was at this point that the field crew contacted the Principal, (Mr. McKnight), to discuss the discrepancy between the planned rear offset and the existing offset from the footer as poured. It was determined at that time that the field crew would move the planned garage towards the rear line by 2.00', in order to fit it on the footer as poured, see EXHIBIT B.

**IN THE
COMMONWEALTH OF VIRGINIA
BOARD FOR ARCHITECTS, PROFESSIONAL ENGINEERS, LAND
SURVEYORS, CERTIFIED INTERIOR DESIGNERS AND LANDSCAPE
ARCHITECTS**

**Re: James Earl McKnight
North Chesterfield, VA 23235**

**File Number 2024-01143
License Number 0403001926**

CONSENT ORDER

Respondent James Earl McKnight ("McKnight") recognizes and acknowledges being subject to and bound by the Regulations of the Board for Architects, Professional Engineers, Land Surveyors, Certified Interior Designers and Landscape Architects ("Board"), as well as by all other applicable Virginia laws.

McKnight knowingly and voluntarily waives any proceedings for this matter under the Administrative Process Act, §§ 2.2-4019, 2.2-4020, and 2.2-4021 of the 1950 Code of Virginia, as amended.

Board's Regulations provides:

18 VAC 10-20-790. Sanctions.

A license, certificate, or registration shall not be sanctioned unless a majority of the eligible voting members of the entire board vote for the action. The board may discipline or sanction any regulant if the board finds that:

7. The regulant violates any standard of practice and conduct as defined in this chapter;
8. The regulant violates or induces others to violate any provision of Chapters 7 (§ 13.1-542.1 et seq.) and 13 (§ 13.1-1100 et seq.) of Title 13.1 or Chapters 1 (§ 54.1-100 et seq.) through 4 (§ 54.1-400 et seq.) of Title 54.1 of the Code of Virginia, or any other statute applicable to the practice of the professions regulated by this chapter;

§ 54.1-201. Powers and duties of regulatory boards.

- A. The powers and duties of regulatory boards shall be as follows:

7. To place a regulant on probation or revoke, suspend or fail to renew a certificate or license for just causes as enumerated in regulations of the board. Conditions of probation may include, but not be limited to the successful completion of remedial education or examination.

§ 54.1-202. Monetary penalty; delegation to Director of authority enter consent agreements.

- A. Any person licensed or certified by a regulatory board who violates any statute or regulation pertaining to that regulatory board who is not criminally prosecuted shall be subject to the monetary penalty provided in this section. If a regulatory board determines that a respondent is guilty of the violation complained of, the board shall determine the amount of the monetary penalty for the violation, which shall not exceed \$2,500 for each violation. The penalty may be sued for and recovered in the name of the Commonwealth.
- B. Any regulatory board within the Department of Professional and Occupational Regulation may adopt a resolution delegating to the Director the authority to enter into consent agreements on behalf of the regulatory board with regulants of the board. Such resolution shall specify the types of violations to which the delegation applies and the maximum monetary penalty that may be imposed in a consent agreement for each regulatory violation. No delegation of authority pursuant to this subsection shall provide for a monetary penalty over \$2,500 per regulatory violation.

The Report of Findings, which contains the facts regarding the regulatory and/or statutory issues in this matter, is incorporated with the Consent Order.

By signing this Consent Order, McKnight acknowledges an understanding of the charges and admits to the violation(s) of the Counts as outlined in the Report of Findings. McKnight consents to the following term(s):

Count 1:	18 VAC 10-20-790.4	\$ 1,000.00
Count 2:	18 VAC 10-20-380.C.6	\$ 500.00
SUB-TOTAL (MONETARY PENALTIES)		\$ 1,500.00
BOARD COSTS		\$ 150.00
TOTAL		\$ 1,650.00

Any monetary penalties, costs, and/or sanctions are to be paid/performed within thirty days of the effective date of this Consent Order unless otherwise specified above. McKnight acknowledges any monetary penalty and/or costs as a debt to

the Commonwealth and agrees that in the event of a default, or the return of a check for insufficient funds, McKnight will be responsible for all reasonable administrative costs, collection fees, or attorney's fees incurred in the collection of any funds due. This Consent Order is a final order under the provisions of Va. Code § 2.2-4023.

FAILURE TO PAY THE TOTAL AMOUNT DUE UNDER THIS ORDER BY THE DUE DATE MAY CAUSE THE MATTER TO BE SENT FOR COLLECTION AND THE IMPOSITION OF INTEREST AND ADMINISTRATIVE, COLLECTION, OR ATTORNEY'S FEES. INTEREST CALCULATED AT THE JUDGMENT RATE ON THE UNPAID BALANCE OF THE TOTAL AMOUNT DUE UNDER THIS ORDER SHALL BEGIN TO ACCRUE SIXTY (60) DAYS AFTER THE RESPONDENT IS OUT OF COMPLIANCE WITH THE TERMS OF THE ORDER. IF IMPOSED, ATTORNEY'S FEES SHALL BE IN THE AMOUNT OF 30% OF THE AMOUNT DUE ON THE DATE THE MATTER IS SENT FOR COLLECTION.

McKnight acknowledges that failure to pay any monetary penalty or costs and/or to comply with all terms of this Order within the noted time period shall result in the suspension, unless otherwise specified above, of McKnight's license until such time as there is compliance with all terms of this Order. James Earl McKnight understands the right to have this license action considered in an informal conference pursuant to the Administrative Process Act §§ 2.2-4019 and 2.2-4021 of the 1950 Code of Virginia, as amended, but knowingly and voluntarily waives any rights to the proceeding and hereby waives any further proceedings under the Administrative Process Act §§ 2.2-4020 and 2.2-4021 of the 1950 Code of Virginia, as amended.

The effective date of this Order shall be the date of execution by the Board.

SEEN AND AGREED TO:

The undersigned represents and affirms that he/she has the authority to legally bind James Earl McKnight, to this Consent Order. The individual, by his/her signature below, acknowledges he/she read the Consent Order, understands it, and agrees that James Earl McKnight, shall be bound by its terms and conditions.


Signature


6-27-2024
Date

JAMES E. MCKNIGHT / OWNER
Printed Name and Title

SO ORDERED:

Entered this 21st day of August, 2024.

Board for Architects, Professional Engineers, Land Surveyors, Certified Interior Designers and Landscape Architects

BY: 
~~Katherine S. Thota, Secretary~~
Brian P. Wolford, Interim Secretary

EOO

**VIRGINIA DEPARTMENT OF PROFESSIONAL
AND OCCUPATIONAL REGULATION
9960 MAYLAND DRIVE, SUITE 400
RICHMOND, VA 23233**

REPORT OF FINDINGS

BOARD: Board for Architects, Professional Engineers, Land
Surveyors, Certified Interior Designers and Landscape
Architects

DATE: May 28, 2024 (Revised June 24, 2024 – MNC)

FILE NUMBER: 2024-01143

RESPONDENT: James Earl McKnight

LICENSE NUMBER: 0403001926

EXPIRATION: January 31, 2025

SUBMITTED BY: Kevin Hansen

APPROVED BY: Ann Tackett

COMMENTS:

Companion to file number 2024-01137 (Center Creek)

James Earl McKnight ("McKnight") was at all times material to this matter subject to the Board's regulation as an applicant for licensure and/or a licensed land surveyor in Virginia (No. 0403001926).

Based on the analysis and/or investigation of this matter, there is probable cause to believe the respondent has committed the following violation(s) of the Code of Virginia and/or Board's regulation(s):

BACKGROUND:

On November 7, 2023, the Department of Professional and Occupational Regulation ("the Department") received a written complaint from Paige Pruett ("Pruett") and Paul Dorn Jr. ("Dorn") regarding McKnight. (Exh. C-1)

On January 5, 1993, McKnight was licensed as a land surveyor (No. 0403001926). (Exh. I-1)

On September 27, 1994, McKnight & Associates, P. C. ("McKnight & Associates") was registered as a professional land surveying corporation (No. 0405000821). McKnight is the owner and President of McKnight & Associates. (Exh. I-2)

On September 23, 2021, Center Creek Builders LLC ("Center Creek") entered into a Construction Agreement ("construction contract"), in the amount of \$630,600.00, with Kristina Bushey ("Bushey") to construct a single-family dwelling ("dwelling") and detached garage ("garage") at 615 Maple Avenue, Richmond, Virginia 23226 ("subject property").¹ (Exh. I-10 and W-2)

On October 20, 2021, McKnight sealed a plot plan for the proposed construction of the dwelling and garage at the subject property ("McKnight 10/20 plot plan"). The McKnight 10/20 plot plan positioned the garage at 5.1 feet from the rear property line. (Exh. C-4 and R-2)

1. Board Regulation

18 VAC 10-20-790. Sanctions.

A license, certificate, or registration shall not be sanctioned unless a majority of the eligible voting members of the entire board vote for the action. The board may discipline or sanction any regulant if the board finds that:

4. The regulant has committed acts constituting professional incompetence, negligence, or gross negligence.

Historical Notes:

Derived from VR130-01-2 § 12.11, eff. October 18, 1985; amended, Virginia Register Volume 4, Issue 8, eff. March 1, 1988; Volume 6, Issue 20, eff. September 1, 1990; Volume 7, Issue 14, eff. May 8, 1991; Volume 8, Issue 7, eff. February 1, 1992; Volume 10, Issue 15, eff. May 19, 1994; Volume 13, Issue 23, eff. October 1, 1997; Volume 16, Issue 3, eff. December 1, 1999; Volume 23, Issue 1, eff. February 1, 2007; Volume 25, Issue 12, eff. April 1, 2009; Volume 32, Issue 6, eff. January 1, 2016; Volume 37, Issue 24, eff. September 2, 2021; Volume 38, Issue 4, eff. December 1, 2021.

Print Date: December 1, 2021

FACTS:

According to McKnight, on December 17, 2021, "we [McKnight & Associates] produced a revised plot plan showing the proposed garage moved back, from 6.10' to 4.35' from the rear property line, for the purpose of evaluating the feasibility of that garage position in order to increase the turn-around distance between the dwelling and the garage." (Exh. R-1)

¹ On August 2, 2019, Paige Lester Pruett Revocable Trust purchased real property located at 614 Arlie Street, Richmond, Virginia 23226 ("614 Arlie St."). Between June 15, 2021, and December 14, 2023, Dorn and Bentley G. Dorn (the "Dorns") were the owners of real property located at 612 Arlie Street, Richmond, Virginia 23226 ("612 Arlie St."). The Richmond City GIS record shows that the subject property abuts 612 Arlie St. and 614 Arlie St. at the rear property line. (C-1, I-4, I-6, and W-5)

On January 10, 2022, at the request of Mo Karnage ("Karnage"), an employee of Center Creek, McKnight & Associates staked the location of the dwelling and garage for excavation of the footings. (Exh. R-1, R-6, I-7, and I-8)

On January 11, 2022, following a footing inspection at the subject property, Klaus Worrell P. E. reported, in part, "[t]he [garage] excavation was performed based on survey stakes at the time of the house footing excavation..." (Exh. W-3)

According to McKnight, on September 1, 2022, McKnight & Associates placed the brick pins for the garage. McKnight said, "it was at this point that the field crew contacted the Principal, (Mr. McKnight), to discuss the discrepancy between the planned rear offset and the existing offset from the footer as poured. It was determined at that time that the field crew would move the planned garage towards the rear line by 2.00', in order to fit it on the footer as poured." (Exh. R-1 and R-3)

On November 14, 2022, McKnight & Associates performed a field survey of the improvements constructed at the subject property. Resultant of the field survey, the garage was found to encroach into the rear yard setback as the rear wall was 4.1 feet from the rear property line rather than 6.1 feet as specified on the McKnight 10/20 plot plan. (Exh. C-2, C-5, R-9, I-5, I-7, and I-11)

On November 14, 2022, McKnight applied his seal to the following plats:

- Plat which showed, in part, the dimensions from the side property lines to the principal walls of the dwelling and the dimensions from the rear property line to the rear wall of the garage ("McKnight 11/14 plat 1"). (Exh. C-5 and R-9)
- Plat which depicts, in part, the dwelling and garage; however, omitted from the plat were the dimensions from the side property lines to the principal walls of the dwelling and the dimensions from the rear property line to the rear wall of the garage ("McKnight 11/14 plat 2"). (Exh. C-6)
- Plat which depicts the dwelling with dimensions from the side property lines to the principal walls of the dwelling (McKnight 11/14 plat 3). The garage is not depicted; however, the plat notes "Future Garage Shown on Separate Permit" and "all improvements not shown." (Exh. C-7)

McKnight certified the following on McKnight 11/14 plat 1, McKnight 11/14 plat 2, and McKnight 11/14 plat 3:

THIS IS TO CERTIFY THAT ON NOVEMBER 14, 2022, I MADE AN ACCURATE FIELD SURVEY OF THE PROPERTY SHOWN THEREON THAT I HAVE NO ENCROACHMENTS BY ANY OTHERS WITHIN THE PROPERTY LINES AND NO ENCROACHMENTS THEREON. I HAVE NO KNOWLEDGE OF ANY OTHERS WITHIN THE PROPERTY LINES. THIS SURVEY IS MADE FOR THE PURPOSE OF A TITLE REPORT. I AM A PROFESSIONAL ENGINEER AND LAND SURVEYOR. AS A PROFESSIONAL ENGINEER AND LAND SURVEYOR, I AM LICENSED BY THE VIRGINIA STATE BOARD OF PROFESSIONAL ENGINEERS AND LAND SURVEYORS.

(Exh. C-5, C-6, C-7, and R-6)

During an interview with Investigator Kevin Hansen ("Investigator Hansen"), the Board's agent, McKnight provided the following information:

- McKnight & Associates staked the subject property for excavation as requested by Karnage because Karnage made it appear as if she had "talked to the owners" about the garage location being moved back from the location initially planned.
- When McKnight & Associates was asked to pin the brick points for the garage, McKnight first learned that the garage was "in the wrong place."
- McKnight recalled that when the footings were found to be in the wrong place, Nicholas Morgan ("Morgan"), a land surveyor in-training employed by McKnight & Associates, asked if the pins should be placed so that the garage fit on the footings to which McKnight replied, "no problem."
- McKnight said, "I was asked to do something. I did it. It has consequences."
- "When [Center Creek] was getting a CO [Certificate of Occupancy] for the house", McKnight & Associates was asked to perform a survey of the improvements constructed at the subject property.
- Once McKnight & Associates produced a plat showing the location of the garage, "everyone said, 'we've got a situation.'"
- Scott Gouldman ("Gouldman"), project manager for Center Creek, "asked, do you have to show all improvements?"
- McKnight "did not know why [Gouldman] didn't want to show the garage."
- McKnight told Gouldman that the survey "would have to say, 'not all improvements shown.'"
- McKnight agreed to provide Center Creek with a survey which did not depict the garage because the survey was "not a record plat" and doing so is a "pretty standard practice." (Exh. I-7)

Nate Van Epp, Principal for Center Creek, provided the following information:

...we have no knowledge of any Center Creek employee ordering the surveyor or anyone in the field to make this change. The DPOR complaint makes reference to a past employee named Mo [Karnage] who allegedly ordered the garage location to be changed. This employee had left employment at Center Creek well prior to the construction of the garage in question. Even if [Karnage] had ordered the garage location to be moved, no other employee of the company, including our head of construction, was aware that this had occurred and so the garage was built as staked in full good faith. Even had a Center Creek employee ordered the garage to be moved, our surveyor is responsible for discerning any inconsistencies with the approved site plan, and no such concern was ever expressed.² (Exh. W-4)

During an interview with Investigator Hansen, Morgan provided the following information:

² Van Epp provided the information in a written response to a complaint filed by Pruett and Dorn against Center Creek (docketed as file no. 2024-01137). (Exh. W-4)

- Karnage requested that McKnight & Associates stake the garage "purely as a visual."
- Karnage requested that the garage be staked so that it was "moved back to four feet" from the rear property line.
- Morgan understood that "although [Center Creek] was not building the garage, [Karnage] wanted to see what it looked like."
- McKnight & Associates staked the garage as requested by Karnage.
- Morgan does not know how the stake locations were determined by the survey crew in the field. (Exh. 1-8)

During an interview with Investigator Hansen, Todd Bendel ("Bendel"), an employee of McKnight & Associates, provided the following information:

- While staking the garage for excavation, McKnight & Associates was asked by someone employed by Center Creek to stake the garage where it was later constructed "for feasibility, to see if it would fit."
- Bendel understood that Center Creek "was going to get a variance" to the zoning setbacks.
- During a visit to the subject property to pin the brick points of the garage, Bendel had a file which had the garage located six feet from the rear property line.
- After determining that the brick points were not going to fit on the footings, Bendel informed McKnight.
- After McKnight affirmed that Bendel should set the brick points, Bendel then placed the brick points in locations that were "moved back."
- Bendel said, when the decision was made by McKnight & Associates to move the points back, "we weren't aware if [Center Creek] got a variance." (Exh. 1-9)

McKnight's failure to ensure that the garage was positioned in accordance with the McKnight 10/20 plat plan resulting in an encroachment of the garage into the rear yard setback, and McKnight's application of his seal to the McKnight 11/14 plat 2 which purposely omitted dimensions from the side property lines to the principal walls of the dwelling and the dimensions from the rear property line to the rear wall of the garage, and McKnight's application of his seal to the McKnight 11/14 plat 3 which purposefully omitted a known physical improvement, constitutes professional incompetence, negligence, or gross negligence.

2. Board Regulation

18 VAC 10-20-380. Minimum standards and procedures for surveys determining the location of physical improvements; field procedures; office procedures.

- C. The plat reflecting the work product shall be drawn to scale and shall show the following, unless requested otherwise by the client and so noted on the plat:

6. The closest dimension (to the nearest 0.1 foot or equivalent) from the front property line, side property line, and if pertinent, rear property line to the principal walls of each building. Also, all principal building dimensions (to the nearest 0.1 foot or equivalent).

Historical Notes.

Derived from VR130-01-2 § 5.11, eff. October 18, 1985; amended, Virginia Register Volume 4, Issue 8, eff. March 1, 1988; Volume 6, Issue 20, eff. September 1, 1990; Volume 7, Issue 14, eff. May 8, 1991; Volume 8, Issue 7, eff. February 1, 1992; Volume 10, Issue 15, eff. May 19, 1994; Volume 13, Issue 23, eff. October 1, 1997; Volume 18, Issue 7, eff. March 1, 2002; Volume 23, Issue 1, eff. February 1, 2007; Volume 25, Issue 3, eff. December 1, 2008; Volume 32, Issue 6, eff. January 1, 2016; Volume 37, Issue 24, eff. September 2, 2021

Print Date: December 1, 2021

FACTS:

In addition to the facts mentioned above:

The McKnight 11/14 plat 2 did not show the dimensions from the side property lines to the principal walls of the dwelling and the dimensions from the rear property line to the principal walls of the garage. (Exh. C-6)

McKnight failed to satisfy the minimum standards and procedures for surveys determining the location of physical improvements.

As Built Handout

Three Documents:

1. 11-14-22 Surveyor Workpaper*
2. January 2023 Workpaper focused on Garage and Fence*
3. As Built in Council's Records associated with SUP

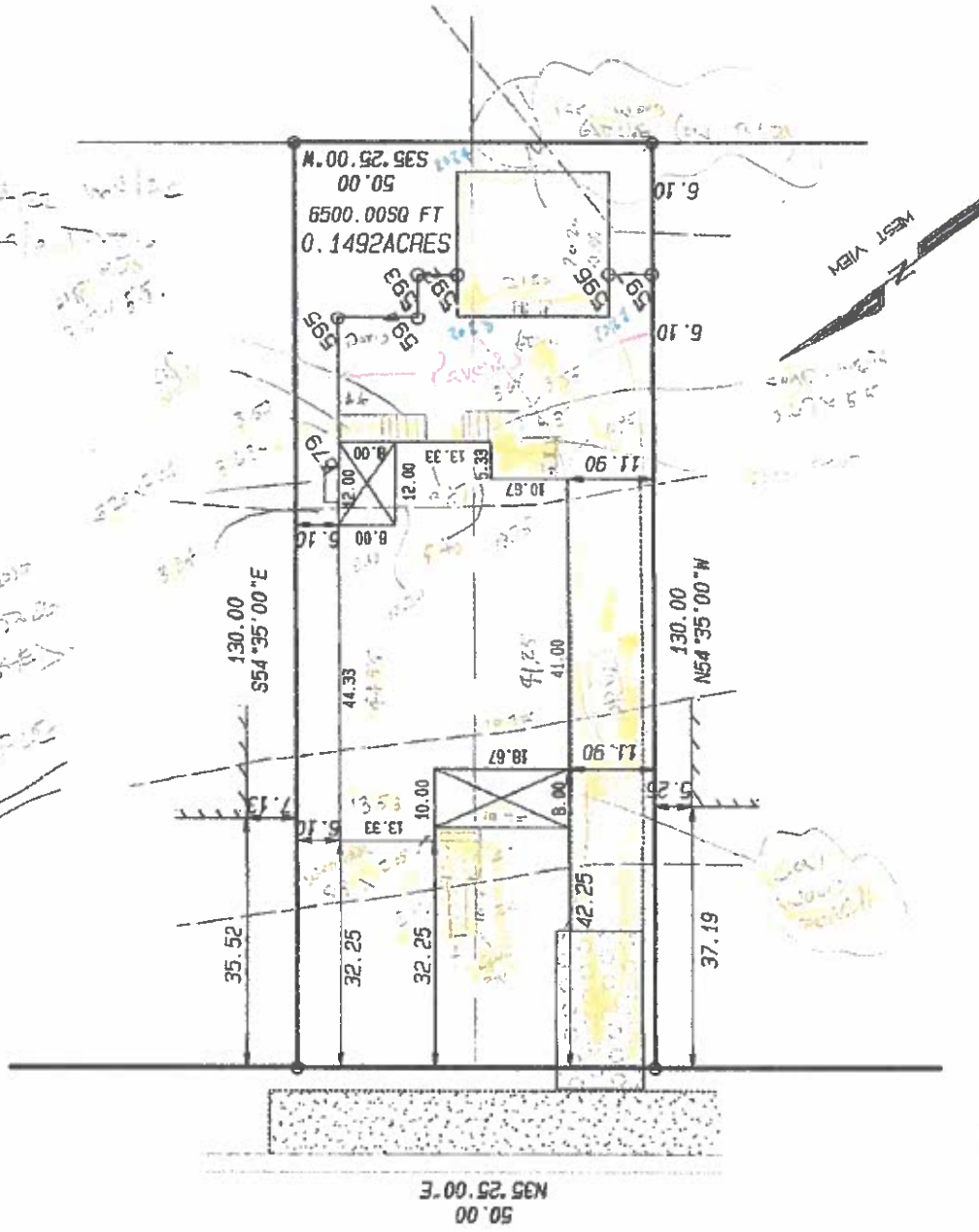
Obtained through DPOR investigation

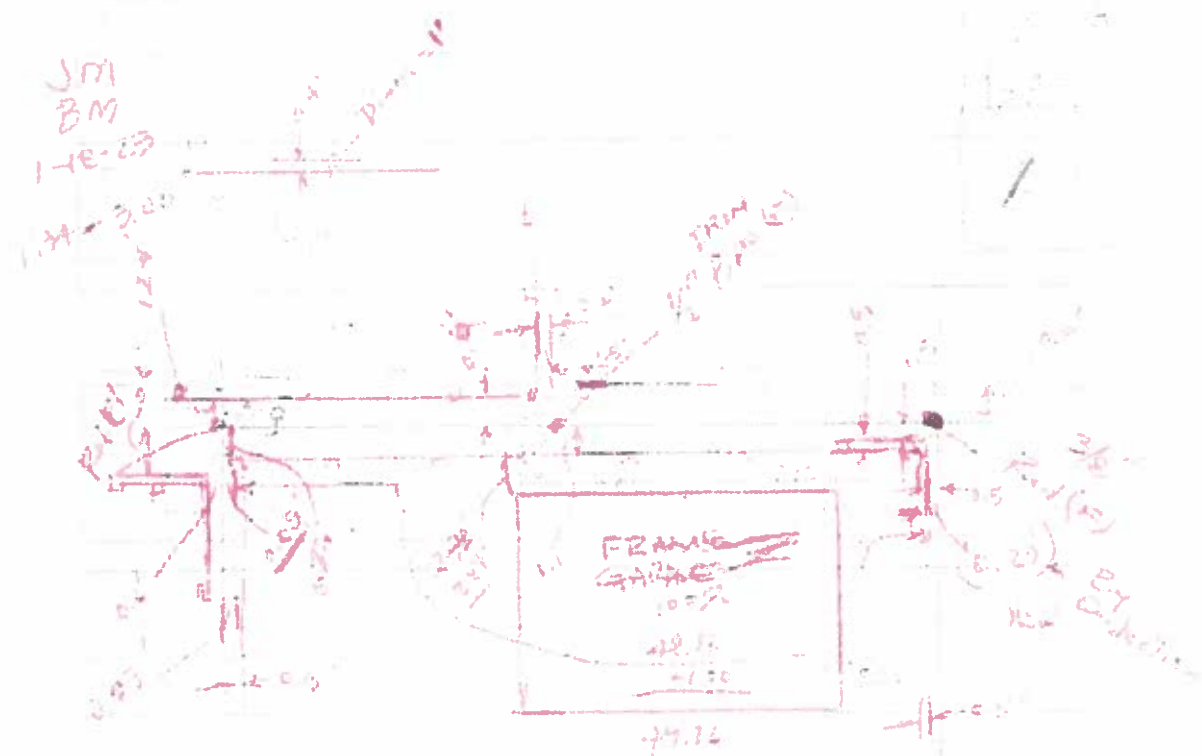
- Select any Handwritten Value on Workpaper and Compare that Value to the corresponding location on the Issued As Built [Hint: The handwritten numbers are all larger in value when comparing]
- Look for measured values between a structure and the adjacent property line (side, front, back) [Hint: Those distances were NOT measured originally even though the structure increased in size, meaning some distances to property lines had to decrease; surveyor went back and measured part of the lot in January but that raises other issues (and was not represented on what was provided on the SUP application even though more current/detailed—so comparing is a challenge).]

11/12/22
11/12/22

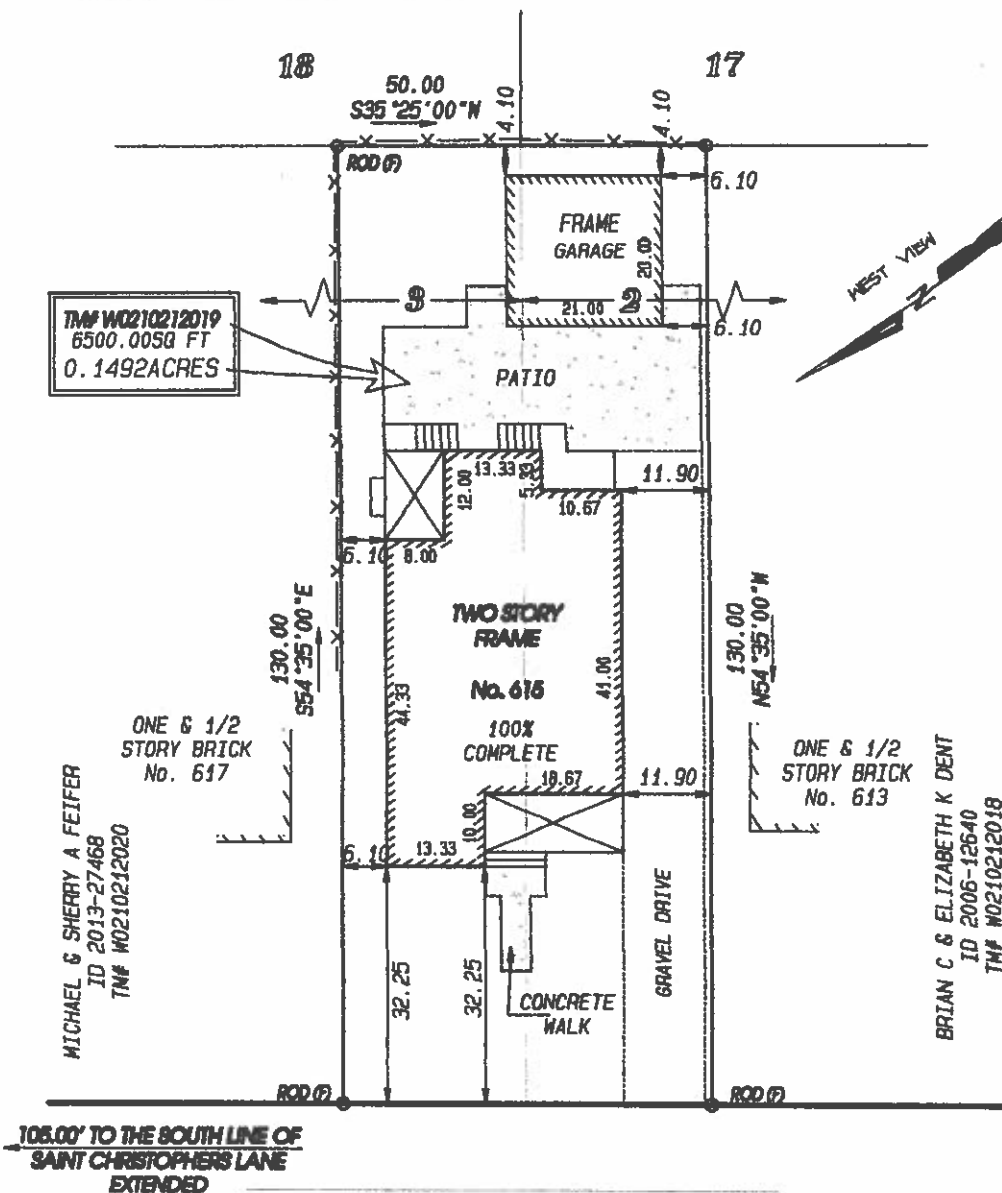
2 5/16" x 1/2" x 1/2"
2 5/16" x 1/2" x 1/2"
No 4 P.S.E.

615 MILE





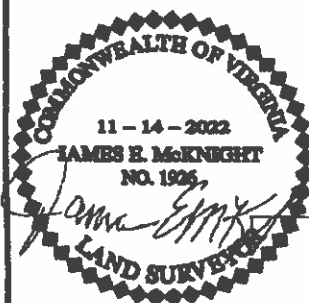
NOTES: THIS PROPERTY IS LOCATED IN F.E.M.A. FLOOD ZONE "X".
CURRENT OWNER: KRISTINA L BUSHEY ID2021-56616



MAPLE AVENUE

60' RW

PLAT SHOWING IMPROVEMENTS ON No. 615
MAPLE AVENUE, IN THE CITY OF
RICHMOND, VIRGINIA.



THIS IS TO CERTIFY THAT ON NOVEMBER 14, 2022, I MADE AN ACCURATE FIELD SURVEY OF THE PREMISES SHOWN HEREON THAT THERE ARE NO ENCROACHMENTS BY IMPROVEMENTS EITHER FROM ADJOINING PREMISES OR FROM SUBJECT PREMISES UPON ADJOINING PREMISES, OTHER THAN AS SHOWN HEREON. THIS SURVEY IS BEING FURNISHED WITHOUT BENEFIT OF A TITLE REPORT. PREMISES SHOWN HEREON IS SUBJECT TO EASEMENTS OF RECORD OR OTHERWISE. TO THE BEST OF MY KNOWLEDGE AND BELIEF, THIS PLAT COMPLIES WITH THE MINIMUM STANDARDS ESTABLISHED BY THE VIRGINIA STATE BOARD OF ARCHITECTS, PROFESSIONAL ENGINEERS, AND LAND SURVEYORS.

SCALE: 1" = 20'



**McKNIGHT
& ASSOCIATES, P.C.**

LAND SURVEYORS PLANNERS

201 TWIN RIDGE LANE
RICHMOND, VIRGINIA 23235
TELEPHONE (804) 320-2646

JOB NUMBER: 88045615FIN