

City of Richmond

Department of Planning and Development Review

Land Use Administration

900 East Broad St; Suite 511

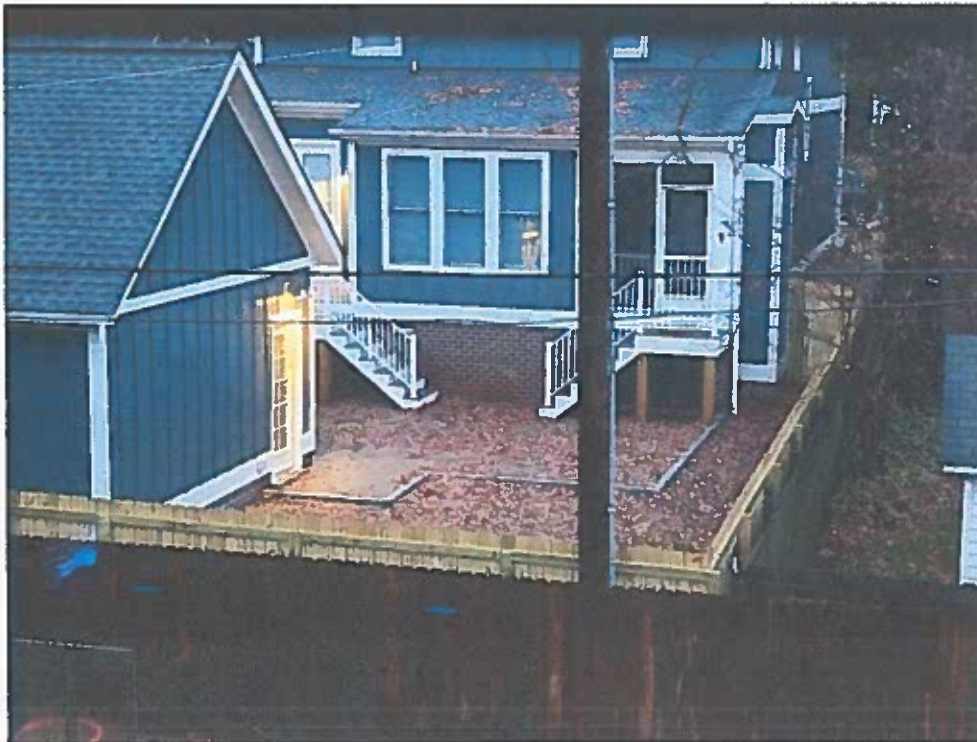
Richmond, VA 23219

July 25, 2023

Re: Response to Special Use Request; 615 Maple Avenue, Richmond, VA; SUP-126088-2023

To Whom It May Concern:

The purpose of this communication is to oppose SUP-126088-2023 with respect to the admitted and egregious encroachment by 615 Maple Avenue onto the setback that is required under the Code and memorialized in the permit. The encroachment directly affects the adjoining two properties on Arlie Street (the "Arlie Owners"). Baker Development Resources, on behalf of 615 Maple Avenue, submitted an "Applicant's Report." The following is a response to the Applicant's Report with certain additional information at the end. The encroachment relates to a garage that is 20x21 and 19 feet tall on a lot that is only 6500 sq ft.





Please note the following with respect to the noted sections:

1. **Introduction.** Applicant notes an encroachment of 1.9' in the Applicant's Report. The notated survey provided to the Arlie Owners shows a TWO FOOT encroachment across a distance of approximately TWENTY-FIVE feet crossing two property lines related to 612 Arlie Street and 614 Arlie Street (collectively, the "Arlie Owners"). While the rear and side yard requirement in the Code is 6.0 feet per the Code, the applicable permit (BLDR-109959-2022) included the following language under "Zoning" "6.1' provided rear and side yards." *See Attachment #1; 11-14-22 Survey with Encroachment Marked.*
2. **Project Summary.** The Applicants state that they were "aware of applicable zoning requirements" but due to "conditions in the field, the garage was unintentionally constructed approximately 1.9 feet closer to the rear property line than intended."
  - a. See note above regarding the permit requirement. The setback was to be 6.1, which results in a 2 foot encroachment.
  - b. The Applicants make a vague reference to "conditions in the field" as the reason for the failure to comply with applicable permit and zoning requirements.
    - i. There were no special conditions in the field that have been noted or were observed other than the challenges from Applicant's design on such a small lot. Specifically, the necessary turning radius for the garage was a challenge given the size of the primary structure, staircases on the back, patio and overall size of the lot. It is not clear that 615 Maple could have placed the garage in a Code/permit compliant manner and had an appropriate turning radius to access the garage (in addition to other issues).



- ii. In fact, as the encroachment was so significant over such a large area, the encroachment should have been obvious to not just the surveyor, but to all those working in the field, supervising, responsible, or otherwise as well as to the homeowner. As the building was constructed, the workers could barely fit between the already constructed fence and the foundation in order to construct the garage. It is astounding that numerous professionals who visited the site for various inspections could have ignored the obvious encroachment over the months of construction as the garage towered relative to the adjacent fences. Given the size of the encroachment of 2 feet, and the fact that the fence was already constructed, particularly at the corner, where there was compliance to the side, the encroachment was obvious. See picture below.



*Picture at corner of fence on 613 Maple Side; shows dramatic difference between compliant setback and noncompliant that should have been obvious to Applicants.*

- iii. We would ask that through the SUP process, the Applicants are required under oath to provide evidence of the date upon which they became aware that there was or could have been a problem with placement of the garage relative to the property lines and how it came to light. This information is relevant because the builder directly asserted that the encroachment was the result of the mistake of the surveyor. The builder maintained this position even when the Arlie Owners noted that, in the field during actual construction, the workers noted directly to one of the Arlie Owners/residents that there were issues with making the garage functional because the area needed for a turning radius was lacking. Further, as noted above and demonstrated by the pictures, the encroachment was open and obvious for those on 615 Maple.
- iv. It is undisputed that, at the time the Applicants sought the Certificate of Occupancy for the primary structure, they had actual knowledge of the encroachment. Also, it is important to understand that the Applicants, in a

clearly coordinated effort, sought to, and were allowed to, revise Permit BLDR-095010-2021 to split off the garage from the originally combined permit. By splitting off the garage, the net result was that (1) the Applicants were able to get a Certificate of Occupancy on the primary house under Permit BLDR-095010-2021 despite the known encroachment and (2) avoid certain requirements (once the garage was a separate permit) that allowed occupancy and use of the garage despite the known encroachment (in addition to fire code violation).

- c. *Project Details.* Applicants described the garage, but omitted some key information. The garage is described as “one and a half stories”. The garage is at the maximum height of 19 feet—well above 1 ½ stories. The garage—looming very close to the adjacent property lines, is a similar height to a number of the *original houses* still on Arlie St. The materials were noted—but the Applicants failed to note that the materials constructed (and passed by the City) actually failed to meet fire code requirements, which was not apparently not known or understood by the builder until the Arlie owners expressed their concerns. It is not clear how the fire code violations were not discovered in the sign off process for the garage. As well, the garage was known to be encroaching by both the builder and the City at the time of “sign off” (a Certificate of Occupancy was not required because of the split of the permit; the Arlie Owners did not understand or believe that the garage could have received a final inspection/sign off with the known issues). The French door that was referenced is not consistent with the plans submitted (among other variances from the submitted plans).



*Picture from Christopher Rd to show size difference between garage and nearby structures.*

- d. ***Findings of Fact*** Several factors are noted in this section. The following is the response by the Arlie Owners to the position taken by the Applicants with respect to each of the factors. The Applicants contend that the SUP would not meet any of the conditions. In fact, the SUP would violate multiple conditions as noted below:

**Be detrimental to the safety, health, morals and general welfare of the community involved.**

The SUP, if granted, would be detrimental to the Arlie owners and the community at large. In addition to the Arlie Owners, other members of the public have expressed opposition to the SUP. The close proximity of such a large imposing structure, that would essentially be used for storage, would present a risk to the safety, health and welfare of nearby properties. Even if the Applicants have now cured the fire code violations (to the minimum standard), any issue with the garage would pose an immediate threat to the adjoining Arlie Owners and other neighbors because of the proximity of the fences and trees, all of which are combustible. There is also a major imposition to the general welfare—such a large structure, which is even more imposing with the failure to meet the setback and given its enormous size for the area, invades the privacy of the Arlie neighbors and hampers their enjoyment of their property. Further, the overly close proximity of such a large structure, that is so (unnecessarily tall) with such a pitched roof (and without any gutters), presents an immediate and ongoing risk to the Arlie Owners from the runoff from the roof (in addition to several other known drainage concerns which Applicants have

failed to address). Drainage issues are a known issue in the area, and 615 Maple by its design has pulled all water from its structures and lot and imposed that run off on the Arlie Owners.



**Tend to create congestion in streets, roads, alleys and other public ways and places in the area involved.**

Not applicable.

**Create hazards from fire, panic or other dangers.**

The accessory structure was initially constructed in violation of the fire code. Even if now corrected to be at the minimum rating, there is no doubt that the presence of such a large structure immediately adjacent to the Arlie Owners—where there is a fence and trees that would be combustible—creates a hazard. In addition, there is a hazard from the water run off from both the accessory structure and the primary structure.



**Tend to overcrowding of land and cause an undue concentration of population.**

See the pictures provided as well as Attachment #1. The accessory garage, particularly with its height, overall size, disproportionate size relative to other buildings, and excessively close proximity to the Arlie Owners, overcrowds the area. The survey (see Attachment #1), though it does not provide the relevant distances, but those can be approximated from the scale and there is very clearly limited space between the garage and primary house.





**Adversely affect or interfere with public or private schools, parks, playgrounds, water supplies, sewage disposal, transportation or other public requirements, conveniences and improvements.**

Not applicable.

**Interfere with adequate light and air.**

Despite the assertion by the Applicants, the proposed structure is NOT of compatible massing and spacing as similar structures in the existing vicinity. As noted above, the accessory structure is on par with other original HOUSES in the area---but not on par with other accessory structures.





*Side view from Christopher Rd to show proportion of Garage.*

- e. **Summary.** Applicants state that the accessory structure was constructed pursuant to the building permit. It was not. Here are several examples: (i) encroachment issue noted above; (ii) approved plans required gutters to mitigate the dramatic run off from the roof, but gutters were not installed (and now have been deferred pending a determination of whether the entire structure must come down); (iii) the overall design was “flipped” so as to put the pedestrian ingress and egress on a side different from what was originally planned; and (iv) despite being shown on the approved plans, the accessory structure was not vented.
- f. **Additional considerations.** Finally, this accessory structure is NOT necessary for the Property owner to fully enjoy their property. The best evidence of this fact was that a garage/accessory structure was not even included in the original permit application. It was added later before being split off as a separate permit. Further, the purpose of a garage is to provide parking. However, the Property owner has an oversized driveway on the side of the house providing ample off street parking. In addition, 615 Maple also added a circular driveway to the front of the house (which is not shown on the survey but presumably meets the required front yard set back in the permit). To summarize, without the garage, 615 Maple has at least 5-7 off street parking options. There is a circular driveway, graveled parking immediately off street (consistent with rest of the area), and a long driveway to the right of the house that could park multiple cars deep before even reaching the garage. Presumably, the property owner added (after construction of the garage, but not appears in the original survey/plans) the circular drive because the garage is positioned awkwardly therefore of limited use to the

Property Owner. The arguably limited benefit of the garage (which is difficult to access and where there is ample off street parking that has been constructed by 615 Maple) is tremendously to the detriment to the Arlie Owners and other community members who will be impacted by this issue and future development if the minimum setbacks have no meaning as proposed by the Applicants.





While this is factually complex with a number of issues of varying degrees out of numerous parts of the process, quite simply, the Arlie Owners and community should not be made to pay for an action (whether mistake or otherwise) by Applicants/615 Maple. This mistake was solely and completely by Applicants/615 Maple, and would take very little to remedy with the demolition of the garage. If they sought, despite the ample off street parking, to construct a compliant structure that would be functional, the Applicants/615 Maple could submit a permit requesting such structure. The cost of the original structure was \$20,000 (see Permit disclosure on cost). To the extent there would be any out-of-pocket costs to demo (and potentially put back if compliant) the garage, those presumably would not be borne by the Property owner given the admission of the mistake "in the field". ***The damage and out of pocket cost to the Arlie Owners, however, is significant.*** The costs and damages arise from several factors, including but not limited to legal fees and costs associated with this process and the attempts to resolve this matter, drainage costs (from the complete failure and continued unwillingness of 615 Maple to address the known drainage issues despite the builder acknowledging responsibility for those for which the garage is a significant exacerbating factor), diminution in property value from the closely placed, oversized structure that is positioned to damage the property of the Arlie Owners, loss of enjoyment/privacy for the Arlie Owners, and risk to safety from the proximate structure.

The Arlie Owners respectfully request that **the SUP be denied**; that the Applicants be required to promptly remove the structure. Any alternative structure could then go through the relevant permitting process to determine functionality, compliance, etc. (i.e. if permitted as a garage, it should have adequate space for a safe turning radius to meet the stated objective and be necessary in addition to two driveways already constructed on the property), meet all applicable code and safety requirements as well as DPU (including the coverage ratio), fire code and all other requirements applicable to health and safety. Thank you for your attention to this matter, and for hearing the concerns of the parties who are DIRECTLY impacted by the requested SUP.

Paige Lester Pruett, Trustee

Paul and Bentley Dorn

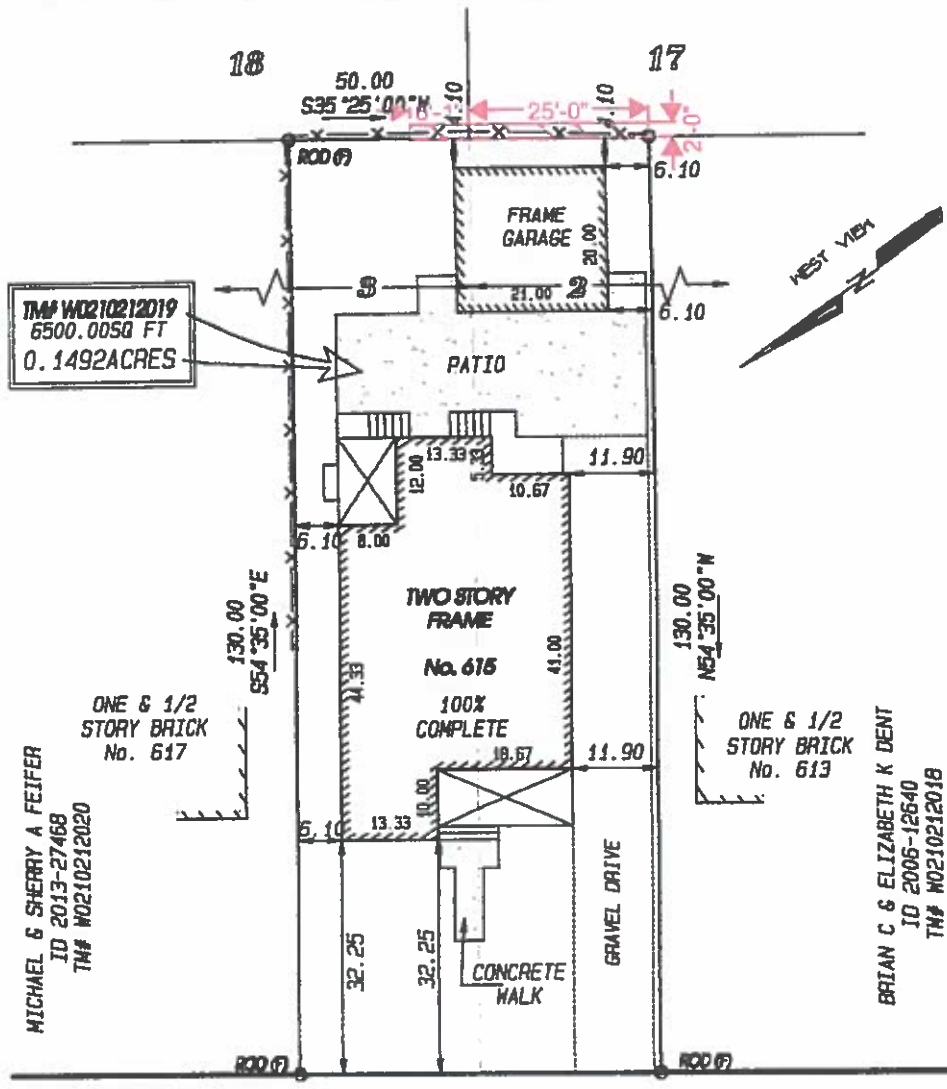
Paige Lester Pruett Revocable Trust

612 Arlie Street

614 Arlie Street

Attachment #1

NOTES: THIS PROPERTY IS LOCATED IN F.E.M.A. FLOOD ZONE "X".  
CURRENT OWNER: KRISTINA L BUSHEY ID2021-56816



105.00 TO THE SOUTH LINE OF SAINT CHRISTOPHERS LANE EXTENDED

50.00 N35°25'00"E CURB & GUTTER

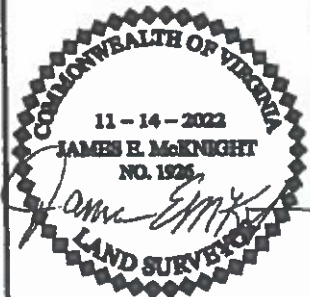
# MAPLE AVENUE

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 ENCRUMPTIONS 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: 89045015FIN

City of Richmond  
Department of Planning and Development Review  
Land Use Administration  
900 East Broad St; Suite 511  
Richmond, VA 23219

September 12, 2023

Re: Supplemental Response to Special Use Request; 615 Maple Avenue, Richmond, VA; SUP-126088-2023; Report of Potential Violation(s) of Height Requirements by Accessory Structure

To Whom It May Concern:

This letter is intended to supplement the response provided July 25, 2023 to oppose SUP-126088-2023 (the "SUP") and also to report other potential violations of City requirements that are not currently within the scope of the SUP. The SUP was filed in an attempt to legitimize an admitted and material encroachment by 615 Maple Avenue onto the setback that is required under the Code and memorialized in the permit which directly and adversely affects the adjoining two properties on Arlie Street (the "Arlie Owners").

We believe that it is highly likely that the encroaching structure also violates the two applicable City Code requirements regarding the height of the building. In fact, an independent licensed surveyor was engaged. While the surveyor could not complete exact calculations because he lacked direct access to the subject property/structure, the surveyor was able to perform calculations *approximating* both the height to the eave and the absolute height of the structure. The approximate field calculations (taken with the submitted plans and visual inspection) appear to support that both applicable height requirements were violated.

The purpose of this letter is to request that the City inspect and determine the height of the encroaching structure for purposes of each distinct regulation in order to determine whether or not this structure violates these additional Code requirements. Once the inspection is complete, please provide copies of all inspection records as well as prior records related to the height of the building, including but not limited to any documentation regarding the height that was relied on in order to obtain the approval to occupy the building/final inspection. Further, it would be helpful to understand the role of the Third Party Program with respect to the review for applicable Code compliance, such as these height requirements.

It is already known that 615 Maple violates the setback along the property lines of the Arlie Owners. This encroachment already places an extreme, daily and ongoing burden to the Arlie Owners. The height of the building, relative to the lot size and particularly given its close proximity to the property lines, is a significant factor that exacerbates the impact of the encroachment.

#### **20 Foot Height Limit**

We understand that the Code also provides a maximum height of 20 feet for an accessory structure in R-4 pursuant to Sec. 30.680.4. The third party surveyor has approximated the

total height at 20.9', which is consistent with a review of the plans submitted to the City, coupled with the additional height from the foundation (which is evident by simple visual inspection as well as from photographs from reports submitted to the City in connection with construction (*see Worrell engineering report*)). Therefore, we believe the structure exceeds the height permitted by applicable Code, and respectfully request that the City promptly complete an onsite inspection to determine if the structure exceeds 20'. It would be helpful to understand on what basis the City believed the structure was compliant at the time the final inspection was completed.



### **12 Feet Height Limit to Midpoint**

Additionally, as we understand it, per Sec. 30-680.1 and Section 30-1220.19, independent of the maximum height requirement, an accessory building located in the rear yard may not exceed 12 feet in height when considering the vertical distance from mean grade level to the midpoint of the roof. Approximate field calculations (which could not adjust for the mean grade level because of lack of access to the subject property) estimated the ground to eave (on the back side) to be 11.4'. Given the topography of the lot, there is undoubtedly a slope and this may be the highest point to the eave. However, with the absolute height approximating 20.9, the midpoint can be approximated and appears to substantially exceed the 12 foot to the midpoint maximum. This assessment appears to be consistent with the plans that were submitted to the City—which appear to have the midpoint potentially in excess of 13' without consideration of the substantial foundation/elevation above ground level. We request that the City perform field measurements to determine the height taking into account the mean grade level and provide those calculations and determine whether or not the accessory structure is also in violation of this requirement.

Again, we respectfully request that the City promptly inspect the structure to determine whether or not the accessory structure violates either or both of the height requirements (in addition to the known encroachment). As noted above, we request that you provide evidence of the inspection and measurements that are done in response to this request, as well as any documentation related to the height which the City relied on in connection with approving the structure in connection with the final inspection.



As we expect you understand, this issue only deepens our opposition to the SPU and demonstrates the need for the structure to be removed in its entirety.

Thank you in advance.



Paige Lester Pruett

614 Arlie Street

Richmond, VA 23226



Paul Dorn, Jr.

612 Arlie Street

Richmond, VA 23226

Cc: Kristina Bushey (by mail)  
Westhampton Citizens Association (by email)  
Councilman Andreas Addison (by email)  
Baker Development (by email)  
Richmond Zoning ([PDRZoningAdministration@rva.gov](mailto:PDRZoningAdministration@rva.gov))  
Glenn Moore, Esq. (by email)

**From:** Paige Lester [[mailto:paige\\_lester@yahoo.com](mailto:paige_lester@yahoo.com)]

**Sent:** Tuesday, October 3, 2023 10:13 AM

**To:** Watson, David F. - PDR <[David.Watson@rva.gov](mailto:David.Watson@rva.gov)>; [gmoore@meyerbaldwin.com](mailto:gmoore@meyerbaldwin.com); Jr Paul Dorn <[dornpl@gmail.com](mailto:dornpl@gmail.com)>; [pherry@marrs-henry.com](mailto:pherry@marrs-henry.com)

**Subject:** 615 Maple OPPOSITION to SUP

**CAUTION:** This message is from an external sender - Do not open attachments or click links unless you recognize the sender's address and know the content is safe.

Mr. Watson

Thank you for your time on the call this morning.

As you know, we (Dorns and Pruetts) have several concerns and adamantly oppose the SUP. It is unfortunate that there was no avenue for those concerns to be heard or considered prior to Staff making the decision to support the SUP. I know you felt like our conversation was too long as it was, but even in that time period there was not opportunity to share all the concerns.

As per our discussion, I understand that you plan to send the letter to neighbors out "this afternoon" 10/3 (though the letter had not been written yet). These letters will be sent by US mail, but that you will be requesting feedback to be provided to you prior to the Planning Commission meeting.

Please send the list of names ASAP. I have already collected several letters of opposition, and will make sure and share those (we had been requesting and trying to get the list to make sure we were focused in the right area).

Also, please send a copy of the draft ordinance and any communications with the recommendation in support of Staff's position (which you indicated had already been made prior to our conversation, so presumably there is some documentation capturing that recommendation). Please consider this a standing request for anything created in the future (as there did not seem to be any attachments being uploaded in the portal). Please send both whatever has already been prepared, or that you have otherwise shared/exchanged with Baker Development. Also, please send the Staff report as soon as it is available (by your statement, you have made the recommendation already but the Staff report has not yet been drafted).

Thank you in advance.

Paige Lester Pruettt (and Mr. Dorn's email is above)  
804 334 5299

**From:** [Watson, David F. - PDR](#)  
**To:** [Oliver, Alyson E. - PDR](#); [Ebinger, Matthew J. - PDR](#)  
**Subject:** FW: Opposition to Special Use Permit for 615 Maple Avenue  
**Date:** Monday, October 16, 2023 8:51:46 AM

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**From:** Michael Isani [mailto:mfisani@gmail.com]  
**Sent:** Monday, October 16, 2023 8:48 AM  
**To:** PDR Land Use Admin <PDRLandUseAdmin@rva.gov>; Watson, David F. - PDR <David.Watson@rva.gov>; paige\_lester@yahoo.com  
**Subject:** Opposition to Special Use Permit for 615 Maple Avenue

To the Richmond City Planning Commission,

I'm writing to oppose the special use permit that has been requested for 615 Maple Avenue. As a resident of Christopher Lane, it's exciting to see the development and transformation that is occurring in the Westwood neighborhood right now. However, it's disappointing to see some of that development not follow the zoning laws, and then try to ask for forgiveness afterwards.

I'm most worried about the precedent that an after the fact special use permit would set. As more and more of the houses in the neighborhood are knocked down to be completely replaced, what incentive does a homebuilder have to follow the rules? Should they just build and hope that no one notices, and if someone does notice, worst case they'll get a SUP after the fact?

I'm all for the growth and development as long as it follows the rules. If they wanted to build closer to the property line than ideal, then they should have applied for that special use permit before they built, waited to see what the neighborhood feedback was and what the city planning commission said, and then acted on it. To do it after the fact is completely disregarding the process and makes a mockery of our zoning process.

Please deny this special use permit to set a much needed precedent in a fast developing area. All developers should follow the rules and follow the process clearly laid out. Stay within the guidelines or apply for a permit BEFORE any building occurs.

Thank you,  
Michael Isani  
5816 Christopher Lane

**From:** [Watson, David F. - PDR](#)  
**To:** [Oliver, Alyson E. - PDR](#); [Ebinger, Matthew J. - PDR](#)  
**Subject:** FW: Opposition to SUP 126088-2023  
**Date:** Monday, October 16, 2023 8:52:22 AM  
**Attachments:** [Scanned\\_20231016-0844.pdf](#)

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**From:** Paul Dorn, Jr [mailto:dornpl@gmail.com]  
**Sent:** Monday, October 16, 2023 8:49 AM  
**To:** Paige Lester <paige\_lester@yahoo.com>  
**Cc:** Watson, David F. - PDR <David.Watson@rva.gov>; PDR Zoning Administration <PDRZoningAdministration@rva.gov>; Ebinger, Matthew J. - PDR <Matthew.Ebinger@rva.gov>; Gmoore <gmoore@meyerbaldwin.com>; Patrick Henry <phenry@marrs-henry.com>  
**Subject:** Re: Opposition to SUP 126088-2023

Attached is my signed opposition letter.

Paul Dorn  
804-690-9899

On Sun, Oct 15, 2023 at 11:14 PM Paige Lester <[paige\\_lester@yahoo.com](mailto:paige_lester@yahoo.com)> wrote:

Good evening.

First, attached are the detailed written comments for Mr. Dorn and myself.

As noted, we have prepared the comments jointly, but will speak individually at the meeting tomorrow.

The legal names are on the attached; we are representing ourselves individually (for the record, I am a licensed attorney, but do not practice in this area); to my knowledge, there is no economic or professional affiliation/impact for either of us.

I am also attaching the objections from various neighbors that we have collected--- in addition, some neighbors may be providing their comments directly to you. As well, I understand that you have already received the comments from Westhampton. Please note that the objection for 5805 Christopher is attached here, but was not referenced in our comments out of a mere oversight.

We both plan to appear in person. If you need any additional information please let me know.

Thanks  
Paige Pruett  
804 334 5299

**From:**

Paul & Bentley Dorn  
612 Arlie St.  
Richmond, VA 23226

**OPPOSITION TO SUP – 126088-2023 related to 615 Maple Ave**

**To Whom It May Concern:**

**The purpose of this letter is to OPPOSE SUP- 126088-2023.**

Paul L. Dorn Jr

**Signature**

Paul L. Dorn Jr

**Name (Print)**

Bentley Dorn

Bentley Dorn

## OPPOSITION TO PROPOSED SUP – 126088-2023

Ladies and Gentlemen:

The proposed SUP-126088-2023 should be DENIED for the reasons as set forth below. This issue arose because, as more fully set forth below, Kristina Bushey (“Bushey”), the owner of 615 Maple Avenue, sought and obtained a permit for an accessory structure (the “Garage”) in connection with the construction of her house at 615 Maple Ave (the “House”). Then, through a factually complex series of events, and either directly or through her agents, including but not limited to Center Creek Builders and Baker Development, as well as their employees, agents, subcontractors and the like, including Joseph McKnight (surveyor) (collectively, the “Developer Parties”), actually and to our understanding, knowingly constructed the Garage in violation of the approved permit, as well as multiple zoning or other requirements.

The Garage in question is very large—it is a 21x20 two car garage. It takes up more than one half of the usable yard (between the setbacks). Contrary to what was approved in the permitting, the structure was placed 4.1 feet, instead of 6.1 feet, from the rear property line.<sup>1</sup> In addition to violating the rear yard setback, the Garage, though only one story, significantly exceeds the allowed height for a structure in the rear setback (by approximately three to five feet depending on the roof line used, which values were provided by Developer Parties). Note that the (one story) structure is an absolute height of approximately 20 feet tall.

For reference, the reasons have been separated into Substantive Issues, Issues of Fairness, and Procedural Issues.

### **Substantive Issues**

#### **1. There is significant opposition from neighbors and Westhamptom Citizens Association.**

While the Arlie Owners are most directly negatively impacted, and have tried to communicate our concerns, there is broad concern and opposition as evidenced by the response from neighbors. The concerned voice of the citizens should not be ignored. We have attached copies of opposition from the following homeowners:

614 Arlie St

612 Arlie St

607 Maple Ave

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<sup>1</sup> While proponents of SUP-126088-2023 will attempt to minimize the impact of these violations, we implore you to not accept such an invitation. These ordinances and laws were put in place to protect owners like us, and these violations have real impacts.

5809 Guthrie Ave

607 Arlie St

606 Arlie St

5812 Christopher Lane

608 Arlie St

604 Arlie St

614 Maple Ave

705 Maple Ave

609 Arlie St

5814 Christopher Lane

In addition, we believe the City has received written opposition from Westhampton Citizens Association. In addition, the City may have received directly from others calls or letters stating opposition.

**2. Undeniably, the Garage is too close to the rear property line by a material distance**

The Garage was constructed too close, by a material distance, to the rear property line in violation of the permit requirements and applicable law. The Garage is 4.1' from the rear property line, but based on the approved plans through the permitting process was supposed to be 6.1' from the rear property line. After failing to construct the Garage in the correct location, the Developer Parties contend that the Garage is only 1.9' too close because the zoning requirements require 6.0', but we would contend that the Garage is 2.0' too close because once the Developer Parties committed to 6.1' in the permitting process, they should be held to that distance.

This Garage was required to obtain a permit because of its large size---at 420 sq ft it was well over the 150 sq ft threshold, which means a permit is required as we understand it. Since the permit was required, and the Developer Parties committed to 6.1' in the permitting process, the Developer Parties should be, in our view under 13VAC5-63-110.5, held to what was represented by them in order to obtain the permit. What is reviewed and submitted in the permit process must have meaning---if the parties are allowed to simply ignore what they submit for permitting, such practices will undoubtedly be abused.

Whether the encroachment was 1.9' or 2.0' feet---the encroachment is material distance---this is not an imperceptible encroachment of two inches, this was an obvious, notable encroachment of

two feet. Two feet is a material distance that significantly impairs the use, enjoyment, and value of the neighboring properties. Not only should the encroachment have been obvious—as otherwise described herein it was known to the Developer Parties from very early in the process but, based on what we have understood some of the Developer Parties to say themselves, they proceeded to complete construction of the noncompliant Garage despite actual knowledge of the permit and zoning violations. The decision to continue building, with full knowledge of the impropriety can not be allowed. Effectively, the Developer Parties proceeded under a belief and expectation that they can violate the law and have the City bail them out later when we as the adjacent homeowners would not. It is our sincere hope that this type of malfeasance will not be tolerated.

**3. The height of the Garage also significantly exceeds the applicable zoning limitation for the height of a structure in the rear setback, which magnifies the encroachment, and vice versa, from our perspective.**

A structure located in the rear setback, to our knowledge and understanding, may not exceed 12 feet in height, where height is considered to the midpoint of the roof. Based on the values provided by the Developer Parties (which were prepared by the Surveyor), depending on whether or not the calculation is done from the Garage roof that faces Arlie or the dormer roof (on the other side), the roof exceeds the height allowed for a structure that is located in the rear setback. To our understanding, per Section 30-680.1, the Garage is three to five feet in excess of the 12-foot requirement. Again, this is a matter of FEET, not inches, either value (three feet or five feet) is significant and impactful. These ordinances were designed to protect other property owners, and we are now asking that we not be deprived of that protection.

As we understand it a structure of this height could not be permitted this close to the rear property line even if the structure was less than 150 square feet (and in this case, the structure is 420 square feet). The height rule exists for a very good reason—to protect the neighbors from overwhelming structures being placed too close to the property line. The closer a structure is to a person (or property line), the larger it appears. In this case, the towering height of the Garage, coupled with the material encroachment noted above, particularly given its overall size, serves to magnify the negative impact the structure has on the adjoining properties.

**4. The Special Use Permit application fails on its face as it only seeks to rectify one of the permit/zoning violations.**

The SUP application submitted by the Developer Parties only mentions the proposed use as an “Accessory Detached Garage.” (See Application). In the Applicant’s Report dated March 2, 2023 (the “Report”), the Report submitted by Baker Development on behalf of Bushey, appears only to request relief from the rear yard setback requirement. (p.4).

In discussions with Mr. Baker, we understand their view to be that once the setback issue is corrected or legitimized by the special use permit process, there would be no height requirement that would apply to the Garage. We are not persuaded that this argument is (i) reasonable on its face or (ii) technically correct. We respectfully request that this argument be fully rejected.



This argument is not reasonable on its face to us quite simply because if height did not matter, then the City would not have specified a maximum height for different structures placed on different parts of the lot. Further, those who are judging the structure absolutely need to understand the height of the building as it is a factor that magnifies the negative impact of the structure. For instance, if the building was ten feet tall (and compliant with height requirement of the code), the impact of the building would be different than in this case with the Garage's actual height of approximately 20 feet tall (and several feet over the maximum midpoint). Even though the City measures to the midpoint, and we now understand that there is no independent height limit at 20 feet (at least from a zoning perspective), both measurements are relevant to assess the impact of the Garage to the harmony of the neighborhood. Refer to the pictures, (which may have been cropped or adjusted to fit to the page) (Exhibit D), to see the disproportionate size of the Garage.

Further, we do not agree with Mr. Baker's technical assessment that there is only one requirement. Depending on the structure proposed and the misplacement of a structure, the structure could have been too close, but met the 12 foot requirement, or it could have been permitted and was constructed too high (which, as we understand it, would have required correction or relief from the zoning requirements). Therefore, in our view, in the case at hand, the structure is **BOTH** too close **and** too tall and the Developer Parties failed to seek relief all the potential violations presented by the Garage. Further, unfortunately, it appears from Staff's report that Staff did not appreciate the height requirement for a structure located in the setback (See Section 30-680.1).

In addition to the height limit, which Mr. Baker acknowledged was exceeded but for the technical reason did not have to be legitimized with a special use permit like the encroachment, there are other potential issues. Please refer to the following sections and associated requirements that we believe are not met by the Garage:

- A. Section 30-408.5(3) --- Failure to meet Rear Yard Requirement acknowledged by Developer Parties and a material distance
- B. Section 30-680.1(a) --- Height for accessory structure in rear yard is limited to 12 feet (which would be to the midpoint of the roof)—again exceeded by a significant amount—see discussion above regarding technical argument
- C. Section 30-408.8 --- This section on driveways appears to limit driveways to a width of nine feet within a front yard—based on the Exhibit B, the driveway is 11.9' and extends from the front of 615 Maple up to the access for the Garage (with no side yard shown until the Garage structure—while it is not clear that this is a violation technically of the side yard requirement, it has been identified as one of a number of factors in which Developer Parties did not mitigate drainage impact to the Arlie Owners); also, it is important to recall that Bushey has already used the space reserved for front yard through the permitting process to have a large semi-circle for parking
- D. Compliance with Permit Requirements --- Because this structure exceeded 150 feet, at a size of approx. 420 sq feet, a permit was *required*, as we understand it, the submissions in connection with the permit had to be, and were through the Third Party Program, reviewed for compliance; and once the permit was required, and the plans approved, we

- believe the structure had to be constructed in accordance with not only Code requirements, but any permit requirements (13VAC5-63-100 and Section 30-1010)
- E. Failure to Comply with the Plans Submitted---While we appreciate that there may be scenarios in which deviations to submitted plans are allowed or even required by the City, in this case the Developer Parties failed to follow the plans in several respects, e.g. placement of pedestrian egress (which resulted in (F)), the omission of gutters (which, in connection with other actions of the Developer Parties, creates or exacerbates drainage issues for the Arlie neighbors), and the lack of any apparent venting or air flow which seemed to be contemplated by the plans
  - F. Section 30-670 --- Which appears to impact the placement of lighting on the Garage, which given the Garage's height and the exterior lighting placement shines continuously towards 614 Arlie
  - G. LDIS Permit---we have inquired if the LDIS permit was properly closed out when the Garage was split from the original permit, but have not received a response
  - H. Other---See the discussion below regarding the documentation submitted in support of the Garage permit

**5. There are no mitigating factors that justify such dramatic exception to the law and permit requirements.**

Richmond is an old City, that developed over time, and that may have varying natural topography, historical imperatives, or similar factors that warrant special consideration. However, in this case, in our view, there are absolutely no mitigating factors. In fact, the conduct of the Developer Parties is an aggravating factor from our perspective.

This situation arose from the development of a lot by Center Creek (an established builder) who was or should have been (based on other building in the area) familiar with the zoning requirements. Center Creek, in connection with Bushey, consciously added this Garage despite the initial House plan selected. In fact, the knowledge of the zoning and permit requirements of the Developer Parties is shown, in our opinion, by the procedural steps or actions taken (as described below) to avoid the disclosure and correction of the encroachment once it was discovered by the Developer Parties.

Bushey and the Developer Parties should not be permitted to ignore the rules. They referenced "conditions in the field" (See Applicant's report), but, from our view, there was simply negligence or intentional misconduct on the part of Bushey, Center Creek, or one of their related parties which, instead of being rectified when discovered, was continued to the completion of construction.

**6. The Developer Parties, from our perspective, acted in bad faith, and such conduct should not be permitted, much less rewarded as is proposed with this SUP.**

As discussed in detail below, we believe it is fair to say that the Developer Parties acted in bad faith and took steps to avoid compliance with the law. There were several opportunities that we see in the process to disclose, correct or mitigate the noncompliance with the permit and zoning

requirements—yet none of those opportunities were taken. Further, there were intentional submissions made to the City that we believe can only be described as knowingly false at the time they were made and presumably caused the City to be unaware of the zoning and permit violations until the very end of the process. See Section 5 under “Issues of Fairness”.

**7. When considering the express factors for a special use permit, the request should fail; our prior written objection provided some analysis which we have updated below as we have gained a better understanding.**

Per Section 17.11 (as well as the SUP application), several factors are to be considered in connection with a special use permit application. While some of these factors are not directly applicable (in whole or in part) because this special use permit application is not centered on the use of the property (but instead is really centered on a failure to comply with specific zoning requirements), we have provided some information in response to each factor:

Factor	Response
Will not be detrimental to the safety, health, morals and general welfare of the community involved	You can see from the pictures provided in Exhibit D that there is significant crowding caused by the Garage which negatively affects the neighbors (as evidenced by the objections that have been provided); there is a clear safety issue as the Garage was not constructed, and even after nine months, continues to not comply with applicable fire code requirements but is being used by Bushey; the impairment or potential impairment of the property values of the neighbors, in our view, is detrimental to the neighbors individually, as well as the immediate community and all of R-4 for the City to set a precedent that this type of situation; further, the lack of reasonable turning radius between the Garage and House is dangerous
Will not tend to create congestion in streets, roads, alleys and other public ways and places in the area involved	The Garage does not create congestion to the public, as far as we can tell, but it does create great congestion in the area involved—both on the property owned by 615 Maple but also through the tremendous crowding to adjacent lots, particularly with respect to the property of both Arlie owners
Will not create hazards from fire, panic or other dangers	The proximity of such a large structure to other combustible structures (such as fences) is a concern even if the structure complies with applicable fire code—but in this case, the Garage (as well as the House) have (still

	yet to our knowledge) unresolved fire code violations that have been outstanding since construction was completed of each structure; despite the fire code violations, Bushey has continued to use the Garage (and the House); in addition, the Garage itself poses a hazard from the lack of distance between the Garage and the House, coupled with the potential pedestrian/car conflict for those exiting the House into the turning area for the cars exiting the Garage
Will not tend to overcrowding of land and cause an undue concentration of population	Refer to the pictures provided in which you will see that, even for a City lot, this Garage, has resulted, in our view, of a tremendous overcrowding of the back half of the 615 Maple lot; as well, particularly given the imposing height, there is also an overcrowding of the adjacent lots
Will not adversely affect or interfere with public or private schools, parks, playgrounds, water suppliers, sewage disposal, transportation or other public requirements, conveniences and improvements	Not a factor
Will not interfere with adequate light and air	The placement and size of the Garage interferes with natural light because of its height as well as the span it covers across the rear yard of 615 Maple;

### Issues of Fairness

- 1. The SUP for this Garage should not be granted because, as we understand it, a structure of this type and size could not have been approved through the regular permitting process.**

Based on our understanding of 13VAC5-63-100, the Garage, as it was actually constructed, could *not* have been approved through the permitting process (which would have been required for the size of structure) because of the Garage's height and proximity to the rear property line. If our understanding is correct, Bushey and Center Creek should not be permitted, whether this situation arose on account of negligence or intentional action or any combination thereof, to be able to obtain approval for a structure if it could not have been permitted in the first place.

- 2. If this special use permit is granted, the intent of Section 17.11 would be defeated and it would encourage builders to just ignore the law.**

Section 17.11(a) provides that the regulations and restrictions shall be “uniform” and “apply equally to all land, buildings, and structures and to the use...throughout each district.” Our properties are in R-4. If this special use permit is approved, we believe that no other neighbors would be subject to a structure of this size that is this close to the property line, which results in impairment particularly to 612 and 614 Arlie owners that is not seen generally, or if at all, throughout R-4.

How would you feel if you had to comply with the rules---the rules that are supposed to apply to everyone without discrimination---and then the construction around you was not made to comply with those same rules (without any mitigating factors). It is as if the zoning laws that were reviewed and approved by the governing body as reasonable are being thrown out for 615 Maple---and they would get to follow their own set of rules based on what we understand to be, and have otherwise shown to be in specific instances, their mistakes and/or intentional conduct. Ask yourself---would you want this Garage behind your house? Would you want to stand at your fence line and look up at this Garage? If you were looking for a house in the area, and there were only two houses with a structure this size this close to the property line---don't you think you want another house that does not have such an overwhelming structure that is dangerously close that no one else is subjected to? 615 Maple must be brought in line with applicable zoning requirements---otherwise it is the Arlie owners and other neighbors that will suffer---both in terms of enjoyment of property, including safety, as well as property values.

- 3. The Garage, even with the approximately two feet encroachment into the rear yard, provides very limited turning radius for vehicles, which we believe limits its usefulness and creates a safety issue; Bushey modified her front yard to add more off-street parking than the Garage provides so there is no loss of feature that would arise from the demolition of the Garage; and Bushey has notably more off-street parking than most (if not all) houses in the area.**

Even with the approximately two foot encroachment, this Garage is not well-suited to serve the intended purpose as a garage. The Garage, as it currently stands, is very close to the House (and in particular pedestrian/stair egresses). It does not appear, from a common sense perspective, that there is an adequate turning radius for a two car garage considering the close proximity to the House. It is not clear if there is an applicable building code requirement relating to the safe distance and necessary turning radius. We believe the lack of adequate turning radius---even with the TWO FEET encroachment, presents a safety issue that should not be ignored. Supporting our view is that Bushey, after showing a front yard of over 32' feet in the permitting process and obtaining the CO for the House, added a large semi-circle driveway in the front yard. This semi-circle alone appears to be able to park likely up to four cars---easily replacing the difficult if not unusable two spots in the Garage (assuming the Garage could safely park two cars). Effectively, Bushey has already modified her lot to provide more parking than the Garage could even provide in theory, so even with the demolition of the Garage, Bushey would have more than ample off street parking. Further, this semi-circle, with the entrance next to it stopped next to the House, supports more cars than most houses on Maple, *before* one considers the area directly in front of 615 Maple that is graveled. In addition, based on our understanding, the width of the driveway exceeds what is permitted in R-4.

**4. There is a fundamental mismatch, in our view, between the (self-imposed) inconvenience/cost of the Garage to Bushey and the significant damage to the neighbors.**

Bushey and/or the Developer Parties declared the cost of the Garage for permitting purposes at a very modest amount --- \$9,765.00 (Permit # BLDR-109959-2022 and BLDR-119736-2022) and \$20,000 in a separate location on BLDR-109959-2022. Even assuming the greater declared value of \$20,000, the impact particularly to the rear neighbors is far greater in loss of property value and impairment of enjoyment of our property. We would potentially be the only houses (barring another special use permit approving similarly egregious violations with no mitigating factors) in all of R-4 that have a structure this large that is this close to the property. We believe the damage to our property values would be *multiples* of the presumed cost of demolishing the structure. In any equity analysis, it is paramount to remember that Bushey and her agents, the Developer Parties, caused this problem initially and continued the process instead of taking steps to mitigate and comply.

Further, as described below, based on what we have been told, the Developer Parties learned of the encroachment early on in the process, and chose to proceed with the completion of the Garage---making any harm to Bushey self-imposed---whereas the Arlie owners did nothing to cause or exacerbate the issues at hand. We feel like we are being made to pay for the conduct of the Developer Parties. From our perspective, they seek to make others pay for their negligence and/or improper conduct, and are now asking you to help them in these efforts.

**5. In our view, Bushey and the Developer Parties did not act in “good faith”**

Page 4 of the Applicant’s Report states that “The Developer followed the appropriate steps and showed good faith throughout the pursuit of the needed approvals for the construction of the garage.” We wholeheartedly disagree and implore you to thoroughly review their conduct. We take issue with the conduct of the Developer Parties in several respects as outlined below. Before providing that list, it is important to understand the basic timeline.

12/31/21: The Developer Parties initially obtained a permit for the construction of the House (no garage is included)

8/29/22: The permit was revised adding a detached garage to the project scope.

10/19/22: (Per notations on the permit), revisions to the original House permit (which had since added the garage) were received in order to remove the garage from the permit. Note that at this time there had already been substantial construction on the Garage, as evidenced by the inspections and reports related to the Garage (but that are located in the City Portal system as associated with the House permit---presumably because those events occurred while there was still one combined permit).

10/25/22: The House permit was revised to remove the Garage.

10/26/22: A new permit was issued for the Garage alone (there were actually two permits issued, which is administratively unclear), with a note that it accompanied the house at 615 Maple.

11/16/22 (we believe this is the date): Certificate of Occupancy (CO) issued for the House

1/26/23: "Final" inspection on Garage

The following are the circumstances that cause us concern, generally in order of occurrence, not necessarily importance:

- (a) **The Developer Parties placed the Garage two feet too close to the rear property line.** The parties have provided different explanations at different times as to how this first occurred and which party is responsible for the initial mistake/action. Baker's characterization in the Report was that this was the result of unspecified "conditions in the field"; however, there is no unusual topography, malfunctioning of equipment or the like. While accounts we have been provided differ among the Developer Parties, with Center Creek blaming the surveyor and the surveyor contending (in one account) that he was following the instruction of Center Creek upon request from Bushey, there does not seem to be any other explanation than this issue started from the negligence or intentional action of one or more of the Developer Parties (or a party for whom they are responsible). In our minds, negligence or intentional misconduct is not a "condition in the field" that justifies setting aside multiple zoning regulations that exist to protect the public.
- (b) Based on one account from Mr. McKnight, the Developer Parties discovered the issue as early as "squaring up the foundation" of the Garage. But, in any event, by Baker's own statement (in the presence of our attorney, Mr. Moore), the issue with the encroachment of the Garage was the *driver* to splitting the permit—so that means the encroachment was clearly known. It appears that the decision to split the original permit (which combined the House and the Garage) was an intentional strategic maneuver. The revisions to remove the Garage from the original permit were submitted on October 19, 2022, so that is the absolute latest possible date that the Developer Parties knew of the encroachment based on their own statements. By taking the action to split the Garage off of the House permit, the Developer Parties (through their later actions) were able to obtain a Certificate of Occupancy for the House despite the known zoning violations. The splitting of the permit also reduced the review requirements for the Garage (an accessory building would only require a final inspection and not a full CO), which enabled the occupation and use of the Garage by Bushey beginning in January 2023 despite the multiple known issues at that time.
- (c) In order to split the permit, the Developer Parties had to both amend the House permit and request a new permit for the Garage. The Developer Parties actions in that respect also cause us great concern. The documents submitted by the Developer Parties to obtain the Garage Permit are date stamped and available on the City's Online Portal. The documents submitted include the Garage plans as well as a site plan (a version of the 10-

20-21 Survey prepared by Mr. McKnight). The site plan submitted by Developer Parties in support of the separate Garage permit is attached here as Exhibit A. The site plan shows the Garage as a “proposed” structure and shows the structure observing the 6.1’ rear setback. However, the structure was *already well under construction* (as evidenced by the documentation and inspections available in the Portal) and *already at that time actually placed in and known to be placed in a location other than what is shown on the site plan which was encroaching*. As a reminder, Baker’s statement acknowledging this issue as the cause for the permit to be split, effectively in our minds confirms the actual knowledge of the Developer Parties that the information provided to support the permit was inaccurate from the very beginning. If the information supplied to obtain the permit was false from the beginning, as we believe, then the building permit for the Garage must be revoked (which arguably makes the special use application moot) and the structure demolished or made to conform to the submitted and approved plans. Further, if the accurate information had been submitted, we do not believe that the permit could have been issued per 13VAC5-63-110.1.

- (d) The Developer Parties, by their own account, after discovering the error and splitting the permit, continued to construct the Garage in violation of applicable permit authorization, zoning requirements and fire code requirements. If we are correct, not only is this an issue for the Garage permit, but it is an issue as the Developer Parties, as we understand it, are not allowed to construct a building contrary to a duly authorized permit. 13VAC5-63-110.5. The continued construction also arguably demonstrates that Bushey and the Developer Parties never intended to comply with the zoning requirements—again, such actions should not be both rewarded and allowed to punish the adjoining property owners. If the encroachment had been addressed when it was discovered, which was at least as early as mid-October of 2022 (just weeks into construction, assuming construction was not commenced until after authorization under the revised permit on 8/29/22), there was opportunity for compliance and (assuming it was otherwise compliant) the necessary re-work could have been done at a fraction of the cost to Bushey (or the responsible party) and with little to no incremental inconvenience or disruption to the neighbors (who endured a protracted construction process).
- (e) Further, based on the express conditions of the House permit, the Developer Parties were required to submit an “as built” survey to obtain the Certificate of Occupancy for the House. There is a survey dated 11-14-22, **which notably has multiple versions**. Based on an account from the surveyor, he produced a version of the 11-14-22 survey that included the Garage (see Exhibit C), which we understand he would have been expected and/or required to include as it was, at that point in time, a manmade structure in existence on the property in close proximity to the property line. Based on the statement of Mr. McKnight, the surveyor, after producing the initial version of the survey that reflected the Garage, he was asked by Center Creek to produce a different version of the survey. That resulted in another version of the 11-14-22 survey, which was ultimately submitted to the City as the “as-built”. Mr. McKnight explained that he complied with the request, and believed he met his professional obligations by placing a “note” at the top of the *stamped and sealed* survey which provided: “All improvements not shown”. In addition, in the area where the Garage was actually in existence, provided the



following: "Future Garage Shown on Separate Permit". (See Exhibit B for this version of the Survey). While we have several concerns with the approach of the Surveyor, by the Surveyor's account another party asked him to produce that version of the survey and certainly a party other than the Surveyor made the decision as to what survey to submit to obtain the CO. Even with the notation and ignoring the omission of the Garage, we would not agree that the survey submitted to obtain the CO was appropriate because (i) it is not clear if it meets the "as built" requirement, which was specified in the building permit for the House; (ii) it references the Garage as a "Future" garage---which is simply not the case---the Garage was already substantially complete and (iii) it references a "separate permit" for the Garage, but recall that this was the permit application discussed above in which, in our view, the Developer Parties knowingly submitted inaccurate information---so referencing the City to that "separate permit" had the effect of directing the City to the permit application which we believe has been shown to be false even at the time it was first submitted. Contrast Exhibit B to Exhibit C, which confirms that the Garage was in existence as of 11-14-22. As a reminder, the House permit required an "as built" survey in order to obtain the CO. We believe that the requirements of 18 VAC10-20-380 require that any man-made structure be shown in a qualifying survey. Based on the foregoing, it appears to us that the Developer Parties took action to obscure the Garage, presumably out of a concern that the disclosure of the noncompliance with the Garage permit and applicable zoning requirements would jeopardize the CO for the House. If, in fact, the House permit required an "as built" survey and that was not provided, and the zoning violation would have or could have jeopardized the CO, then the CO for the House should be revoked pending demolition or correction of the Garage.

- (f) In December of 2022, the Pruetts and Dorns formally became aware of certain of the zoning issues (though we had already questioned a representative of the Developer Parties regarding the structure and the lot drainage). Center Creek did approach us about the issue at that time (which would be the one instance where we agree there was good faith on the part of Nate Van Epp of Center Creek) and proposed that 615 Maple purchase a sliver of both 612 and 614 Arlie in order to try to fix the issue. We asked questions and tried to evaluate the proposal, but information was not quickly forthcoming and additional issues came to light. These discussions continued over the holidays and into January 2023. As we were continuing to try to obtain a full understanding of the number of issues and assess if there was a viable path forward (not only on the encroachment but also on the drainage issues that had not been properly addressed by the Developer Parties), the Developer Parties requested and received from the City a "final inspection" on the Garage (1/26/23) and Bushey began using the Garage. We were frustrated that this step was initiated by Center Creek while we were discussing in good faith the various issues and surprised that the Garage "passed" the final inspection (as we understood the status at the time, in part based on the notations in the Online Portal) given what we understood were known permit and zoning issues at that time (though it is not clear what was disclosed to the actual City personnel performing that final inspection). With recent conversations, the current status of the Garage has become less clear.
- (g) As a sidenote but important consideration as it relates directly to the safety issues, in this late winter timeframe, we questioned whether or not the Garage (and fireplace that

protruded from the House into the setback) was properly fire rated. We were advised that the applicable fire ratings had not been observed (and apparently not identified in the CO/final inspection process for the House/Garage). It came to our attention in September of 2023 that the fire code issues had not been rectified, yet Bushey was continuing to use the Garage and presumably the fireplace at issue in the House. As well, the drainage issues, which the Developer Parties acknowledged and agreed verbally that they were responsible for, have not been addressed.

- (h) We would not characterize the actions of the Developer Parties as in “good faith” for the reasons noted.

## **Procedural Issues**

- 1. This Request is NOT Properly Considered as a Special Use Permit as there is no issue with the use of the structure as a garage—the issue is that the structure appears to have violated various permit and zoning requirements.**

This proceeding relates to a structure already in existence that was constructed in violation of applicable zoning and permit requirements to the best of our understanding. There is no technical issue with the “use” of the property as an accessory structure, specifically a garage (though there is a potential safety issue from the proximity of the Garage to the House as well as fire code violation). The issue is with the size and location of STRUCTURE itself—no matter if it were a shed, garage, home office or some other use—the issue is that, as we understand it, the Developer Parties failed to comply with the applicable permit and zoning requirements.

- 2. If considered at all, the issues are more properly considered as a variance, but we also do not believe that Bushey could meet the requirements for a variance.**

If considered at all, this issue would be more properly considered as a variance. While we appreciate that Richmond broadly interprets the power to consider special use permits, Section 30-1040.3 notes the “exceptions to the district regulations or other restrictions set out in this chapter” may be granted through the variance process. Further, the provision on variances in Section 30-1040.3 appears to specifically address both consideration of yard setbacks in connection with accessory structures (30-1040.3(1)) and height (30-1040.3(16)). In this case, Bushey has asked for an exception through a special use permit to one requirement (though appearing to need relief from multiple requirements). While we believe a variance should not be granted, the factors for consideration of a variance expressly consider important, additional factors, such as the impact on property values in the surrounding areas and would impose a stricter, and we believe unattainable, standard for review.

- 3. While we appreciate the challenging job City Staff has, from our perspective, Mr. Watson’s (“Staff’s”) recommendation and associated Staff report was structurally flawed and should be disregarded for multiple reasons.**

In our view, Staff's recommendation, and resulting Staff Report, is flawed in several respects. Despite efforts to contact Staff prior to the recommendation being issued, we were only contacted by Staff after the decision had already been made to recommend approval. By Staff's own statements, its recommendation carries a tremendous weight in this process. The following are the concerns regarding Staff's process for developing its recommendation in this case:

- A. Standard for Review: Staff failed to consider what we believe is the correct standard for review. When asked by Staff for the basis of the recommendation, Staff indicated that it was a lot with a house and garage and that was a permitted use (see discussion above regarding the apparent mischaracterization of this request as about the "use" of the property). When further pressed, Staff referenced the City's Master Plan. The requirements for a SUP are stated in Section 17.11 (and discussed above) and referenced in the draft Ordinance, but were not considered based on Staff's direct statement or the Staff Report. With respect to the one specific requirement Staff noted, it provided as follows: "Specifically, staff finds that the use would not create hazards from fire, panic or other dangers in the area involved." (Staff Report, p. 1). Ironically, the Garage (as well as the House) currently have known, uncorrected fire code violations that the City failed to identify through the inspection process. If you refer to the pictures, the actual location of the Garage, which is immediately proximate to two wood (combustible fences) as well as tree limbs, is, in our view, a hazard. These concerns were raised months ago and reiterated recently, yet, based on our observation, Bushey has had unrestricted use the Garage despite the known violation.

There was no mention in this conversation with Staff of consideration of the noncompliance with permit or zoning requirements, or the magnitude of such noncompliance. In the actual Staff Report (see page 1), Staff tries to minimize the encroachment by putting it in terms of inches. The reality is that the encroachment was by TWO FEET from what was permitted, which means that Bushey has encroached in such a manner as to wipe out essentially ONE-THIRD of the area that the Richmond Code has provided to protect adjacent property owners.

- B. Height Limitation in Setback: Staff appeared in the conversation unaware of what we believe are the height limitations for structures located in the rear setback—Staff's lack of awareness was confirmed by its written report, which referenced a 20' requirement (Staff Report, p.1), despite the fact that that Developer Parties (through an email from Mark Baker) have acknowledged the height requirement and that Garage exceeds that requirement by several FEET. Refer to Section 30-680.1 which we believe sets forth the applicable height requirement—which, we will note, we pointed out to the City in a supplemental response.
- A. Site Inspection: Based on the conversation with Staff, no on-site inspection (from either 615 Maple or from the Arlie side) occurred. We would contend that it is impossible to

consider adequately the actual SUP standards, or just a general impact, without performing a site inspection.

- B. **Objections Prior to this Meeting:** Both directly, and through counsel, we have tried to understand what transpired, understand the status and process, and have an avenue to provide what we believe is relevant information. Despite the direct impact on us and our proactive and various communications, our view did not seem to be considered and was barely acknowledged (Staff Report, p.3). As noted above, numerous written objections, in a very short time frame, have been assembled and provided (see list above). It is quite demoralizing as Richmond citizens who are directly, materially adversely affected by something of this nature that our perspective is not considered in the early stages of the process where there would be a legitimate opportunity to both understand and impact the analysis—and even know what standard the Staff was even applying. We appreciate that it is difficult to sort through a written communication that this this involved—but we felt we were left with no good alternative, through no fault of our own.
- C. **Standard for Not Recommending.** In the one discussion with the Staff, particularly because we were confused by the reference to the standards used by Staff (i.e. it was a house with a garage; and it complied with the Master Plan) which seemed to differ from the standards required by the SUP process and Code, we asked specifically what it would take for the Staff to not recommend the SUP. We were told it would have to be “egregious”. We pointed out to Staff that, by all accounts, it was an approximately 2 foot encroachment (even if ignoring the other issues)—and we asked Staff how that amount compared to other pending matters—none of the other matters cited by Staff had a difference of the magnitude we are dealing with here on even one zoning requirement. In addition to the encroachment of TWO FEET and the height requirement is exceeded by at least THREE FEET. Further, because we were unable to develop a line of communication with Staff, to our knowledge Staff was not aware and/or did not consider our concerns or views regarding the conduct of the Developer Parties. We think you will find that this request is egregious in virtually every way and should not be recommended or approved.

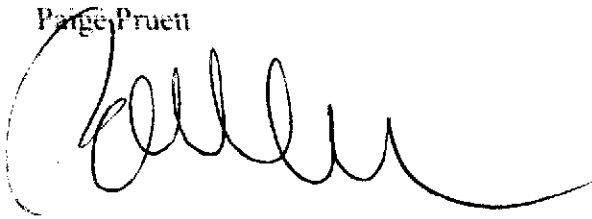
In conclusion, from our perspective:

- the Garage materially encroaches on the rear yard requirement in clear violation of the ordinances.
- the Garage materially exceeds the height limit for an accessory structure in the rear yard setback
- the Garage presents other potential areas of noncompliance, including but not limited to the exceedance of the permitted driveway width
- the Garage would never have been authorized as it was constructed

- the Developer Parties knew early on of the encroachment and failed to acknowledge it --- even took intentional actions to obscure revelation of the encroachment---when submitting documentation to obtain the permit for the Garage and CO for the House
- the Developer Parties continued construction despite their knowledge and at numerous junctures failed to correct the issue despite ample opportunity
- all the issues arise from the negligent and/or intentional action of the Developer Parties and or their agents and this behavior should not be rewarded to the detriment of the neighbors, particularly the Arlie Owners whose property values are substantially, negatively impacted by this nonconforming Garage
- Bushey has already modified her lot (after obtaining the CO) to add substantial parking such that she would not be harmed by the demolition of the Garage, but the neighbors are and will continue to be severely harmed if the Garage is legitimized
- Staff did not have all the relevant information when considering its recommendation, and appear potentially to have failed to understand or consider the applicable requirements, so its recommendation should be disregarded

We sincerely appreciate your consideration of the above information.

Paige Pruett



Paul Dorn, Jr.

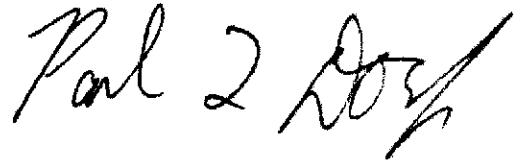
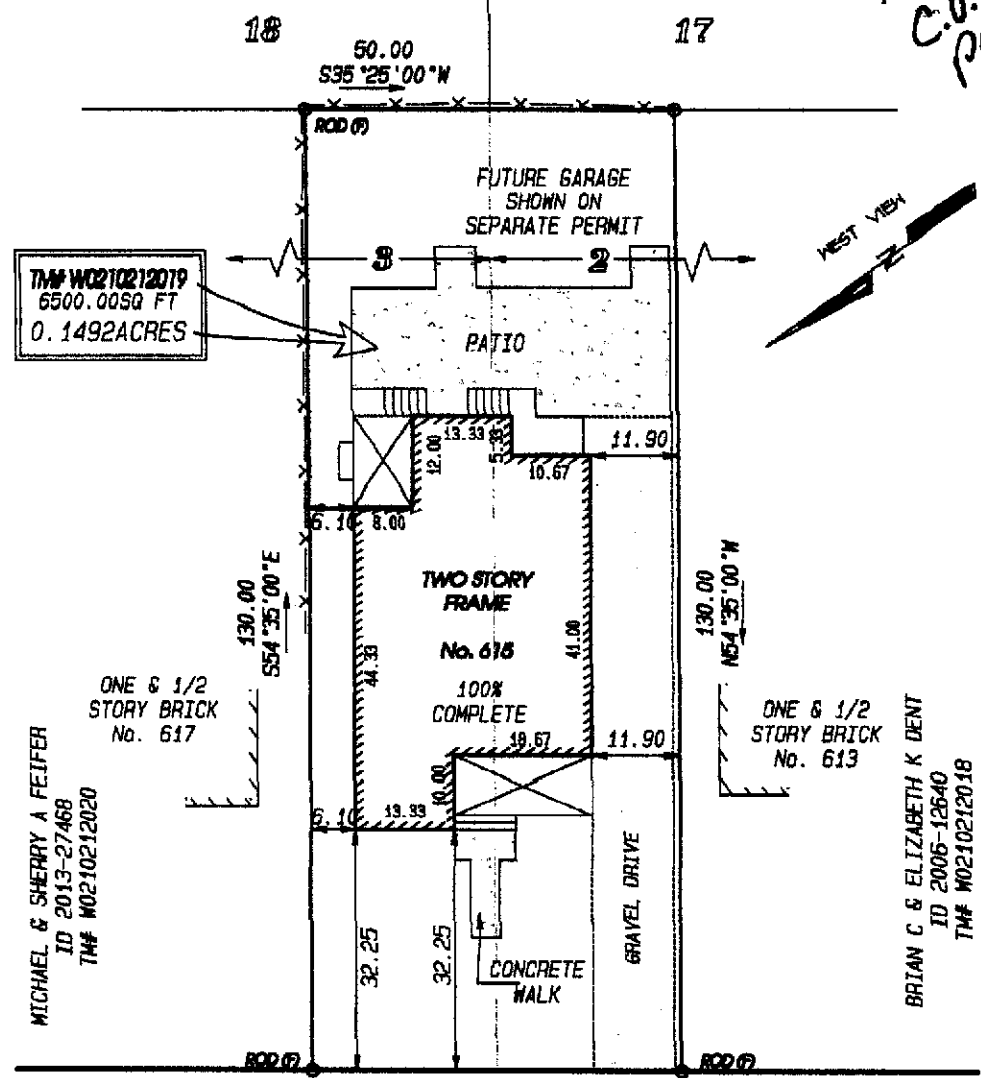




Exhibit B

Filed w/  
C.O. on Town  
provided by  
Plat

NOTES: THIS PROPERTY IS LOCATED IN F.E.M.A. FLOOD ZONE "X".  
CURRENT OWNER: KRISTINA L. BUSHEY ID2021-56016  
NOTE: ALL IMPROVEMENTS NOT SHOWN



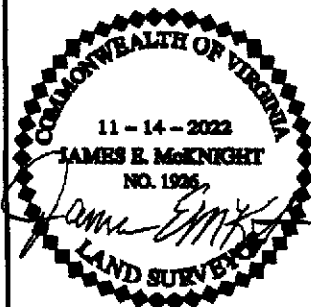
# MAPLE AVENUE

60' R/W

## 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 COMPLIED WITH THE MINIMUM STANDARDS ESTABLISHED BY THE VIRGINIA STATE BOARD OF ARCHITECTS, PROFESSIONAL ENGINEERS, AND LAND SURVEYORS.

SCALE: 1" = 20'



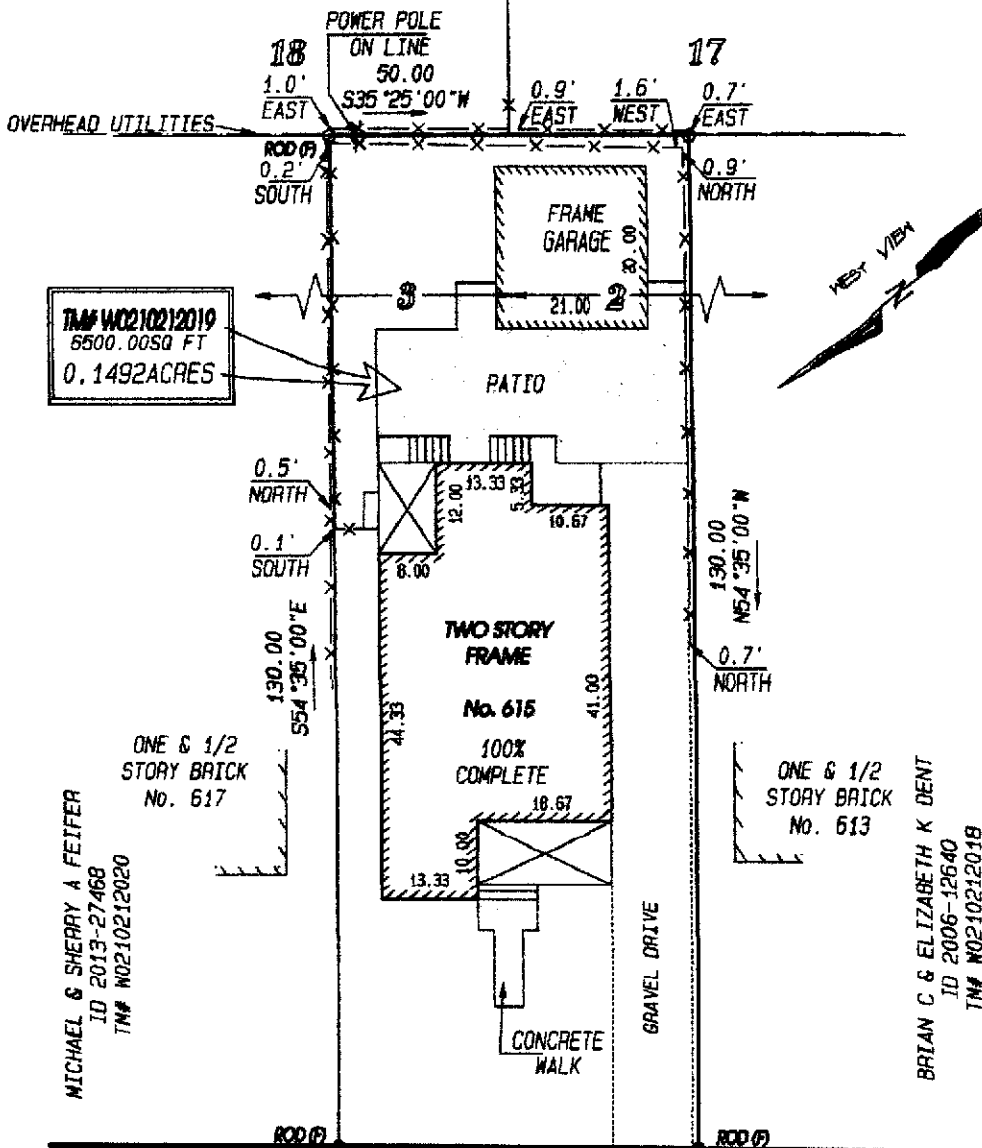
**McKNIGHT & ASSOCIATES, P.C.**  
LAND SURVEYORS PLANNERS

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

JOB NUMBER: 89045616FIN

NOTES: THIS PROPERTY IS LOCATED IN F.E.M.A. FLOOD ZONE "X".  
 CURRENT OWNER: KRISTINA L. BUSHEY ID2021-36618

Exhibit  
 C



105.00' TO THE SOUTH LINE OF  
 SAINT CHRISTOPHERS LANE  
 EXTENDED

50.00  
 N35°25'00"E

CURB &  
 GUTTER

# 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

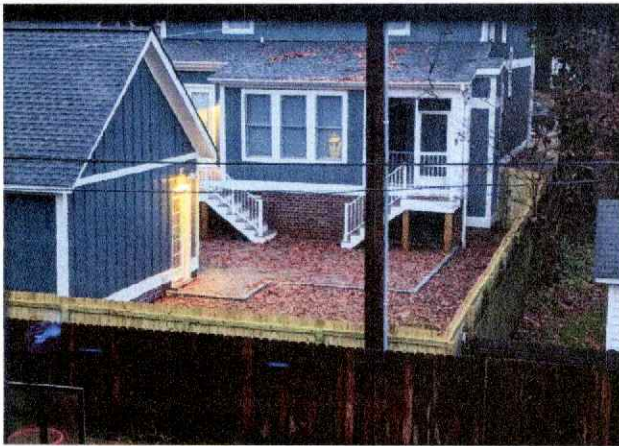
JOB NUMBER: 89043616FIN



615 Maple Garage  
Exhibit D



Note the interior fence in the foreground as it corners to the left---this shows how the Garage covers more than one-half (within the side yard setbacks) of the total span of the lot



This picture above and below gives a sense of the lack of distance between the Garage and

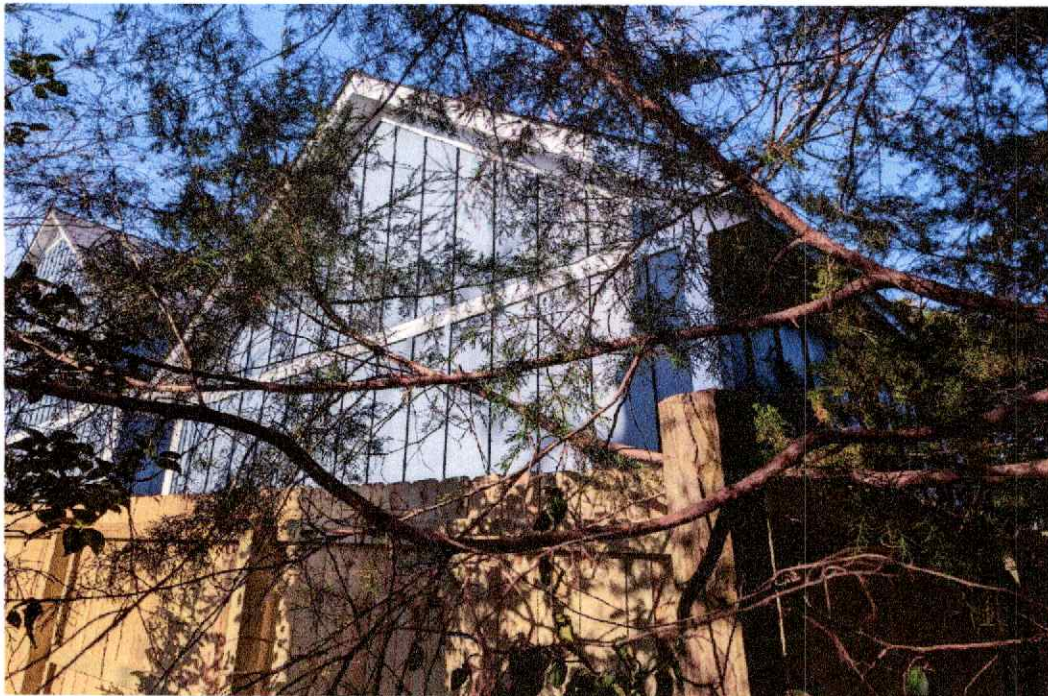


house/pedestrian stairs

615 Maple Garage  
Exhibit D



The above picture captures the disproportionate size of the 615 Maple garage (blue) relative to a typical/adjacent structure. It also shows the dormer roof line.



This is the view from 612 Arlie at the fence; except for the side yard setback, the structure extends the full length of the back property line of 612 Arlie

615 Maple Garage  
Exhibit D



The new/light brown fence approximates the 615 Maple property line. You can see the closeness (especially with the overhang) and the height from even the edge (relative to 6 foot fence).



The above shows the semi circle parking that has been added, the wide driveway and complete lack of a side yard until you get to the structure. The perspective of the structure helps to demonstrate the angle and challenge of the turning radius

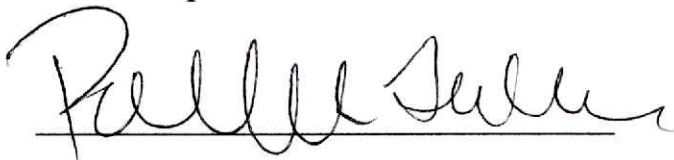
David Watson (David.watson@rva.gov)

Department of Planning and Development Review [PDRLandUseAdmin@rva.gov](mailto:PDRLandUseAdmin@rva.gov)

**OPPOSITION** TO SUP – 126088-2023 related to 615 Maple Ave

To Whom It May Concern:

The purpose of this letter is to **OPPOSE SUP- 126088-2023** related to the garage at 615 Maple. Please note that additional written comments will be submitted.

A handwritten signature in black ink, appearing to read "Paige Lester Pruett", written over a horizontal line.

Signature

Paige Lester Pruett, Trustee

Paige Lester Pruett Revocable Trust

614 Arlie St

Richmond, VA 23226

**From:**

604 Arlie St  
Richmond, VA 23226

---

**OPPOSITION TO SUP – 126088-2023 related to 615 Maple Ave**

**To Whom It May Concern:**

**The purpose of this letter is to OPPOSE SUP- 126088-2023.**



---

**Signature**

Nicole Cefere

**Name (Print)**

**From:**

Glenn Miller  
606 Arlie Street  
Richmond, VA 23226

**OPPOSITION TO SUP – 126088-2023 related to 615 Maple Ave**

**To Whom It May Concern:**

**The purpose of this letter is to OPPOSE SUP- 126088-2023.**



**Signature**

Glenn Miller

**Name (Print)**

OPPOSITION TO SUP – 126088-2023 related to 615 Maple Ave

To Whom It May Concern:

I/We live at the address below which is near 615 Maple Avenue and I/we **OPPOSE SUP- 126088-2023.**

Reason for Opposition:

- The structure is both too wide (420 sq feet) to be that close to adjoining property lines.
- The structure is too tall to be that close to adjoining property lines (it is several feet above the City requirement of twelve feet to the midpoint), which blocks light and impairs the enjoyment of other homeowners.
- The structure is too large for an accessory structure that close to the property line; it throws off the harmony of the neighborhood.
- The homeowner/builders actions of building contrary to what was approved should not be rewarded.
- A SUP should not be granted for something that never could have been approved in the first place as is the case with this structure.
- All of the above
- Other:

\_\_\_\_\_  
\_\_\_\_\_

Adresss:

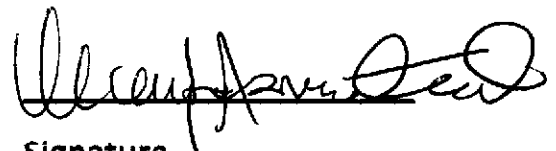
607 Arlie St, Richmond, VA 23226



Signature

N.L. Armistead

Name (Print)



Signature

MARY L. ARMISTEAD

Name (Print)

David Watson (David.watson@rva.gov)

Department of Planning and Development Review [PDRLandUseAdmin@rva.gov](mailto:PDRLandUseAdmin@rva.gov)

**OPPOSITION TO SUP – 126088-2023** related to 615 Maple Ave

To Whom It May Concern:

The purpose of this letter is to **OPPOSE SUP– 126088-2023** related to the garage at 615 Maple.

Carol W Jamerson

Signature

CAROL W JAMERSON

Name (Print)

607 MAPLE AVENUE RICHMOND VA  
23226

Address

~~Carol W Jamerson~~ error, cws

Signature

Kenneth W (Chip) Jamerson Jr

Name (Print)

Cc: Paul Dorn, Jr. (dornpl@gmail.com)

Paige Pruett (paige.lester@yahoo.com)



From:

William M. and Ann M. Lewis  
608 Arlie Street  
Richmond, VA 23226

OPPOSITION TO SUP - 126088-2023 related to 615 Maple Ave

To Whom It May Concern:

The purpose of this letter is to **OPPOSE SUP-126088-2023**.

We oppose the granting of the SUP because this structure was not approved to be and never should have been built this close to the adjoining rear <sup>p</sup> property lines. The structure is too tall and too large to be that close the adjoining property lines generally, but particularly when considering the harmony of the neighborhood.

This structure could not have been approved in advance and should not be retrospectively approved.

Please deny the SUP request, so that the structure would have to be promptly removed.

William M. Lewis

Signature

William M. Lewis

Name (Print)

Ann M. Lewis

Signature

Ann M. Lewis

Name (Print)


To Whom It May Concern:


**OPPOSITION** TO SUP – 126088-2023

Related to 615 Maple Ave

The purpose of this letter is to **OPPOSE SUP– 126088-2023** related to the garage at 615 Maple that was constructed 2.0 feet too close to the rear property line (in the rear setback) and is at least 3 feet too tall (approximately 20 feet total height for a one-story garage).

  
Signature

  
Name (Print)

  
Address

From:

Payton Alex Knight  
614 Maple Ave  
Richmond, VA 23226

OPPOSITION TO SUP – 126088-2023 related to 615 Maple Ave

To Whom It May Concern:

The purpose of this letter is to **OPPOSE SUP- 126088-2023** related to the oversized garage that was built too close to the rear property line and that is also too tall.

PA Knight

Signature

PA Knight II

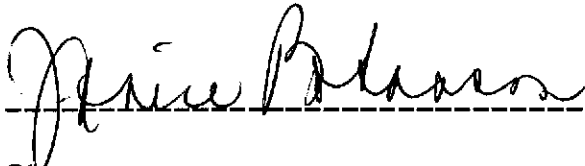
Name (Print)

OPPOSITION TO SUP - 126088-2023

Related to 615 Maple Ave

To Whom It May Concern:

The purpose of this letter is to OPPOSE SUP- 126088-2023 related to the garage at 615 Maple that was constructed 2.0 feet too close to the rear property line (in the rear setback) and is at least 3 feet too tall (approximately 20 feet total height).



Signature

JANICE BOHANNON

Name (Print)



Signature

ALVAH BOHANNON

Name (Print)

705 MAPLE AVE

Address

OPPOSITION TO SUP – 126088-2023 related to 615 Maple Ave

To Whom It May Concern:

I/We live at the address below which is near 615 Maple Avenue and I/we **OPPOSE**  
**SUP- 126088-2023.**

Reason for Opposition:

- The structure is both too wide (420 sq feet) to be that close to adjoining property lines.
- The structure is too tall to be that close to adjoining property lines (it is several feet above the City requirement of twelve feet to the midpoint), which blocks light and impairs the enjoyment of other homeowners.
- The structure is too large for an accessory structure that close to the property line; it throws off the harmony of the neighborhood.
- The homeowner/builders actions of building contrary to what was approved should not be rewarded.
- A SUP should not be granted for something that never could have been approved in the first place as is the case with this structure.
- All of the above
- Other:

\_\_\_\_\_  
\_\_\_\_\_


Address:

5805 Christopher Lane

  
Signature

JAMES BURKHOLDER

Name (Print)

  
Signature

MARINA BURKHOLDER

Name (Print)

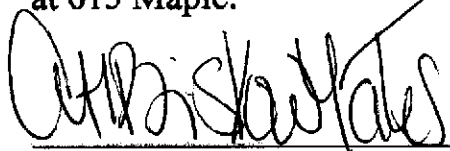
David Watson (David.watson@rva.gov)

Department of Planning and Development Review [PDRLandUseAdmin@rva.gov](mailto:PDRLandUseAdmin@rva.gov)

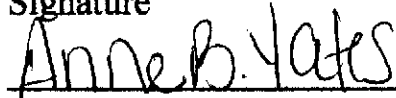
**OPPOSITION TO SUP – 126088-2023 related to 615 Maple Ave**

To Whom It May Concern:

The purpose of this letter is to **OPPOSE SUP– 126088-2023** related to the garage at 615 Maple.



Signature



Name (Print)



Address

~~Signature~~

~~Name (Print)~~

Cc: Paul Dorn, Jr. ([dornpl@gmail.com](mailto:dornpl@gmail.com))

Paige Pruett ([paige\\_lester@yahoo.com](mailto:paige_lester@yahoo.com))

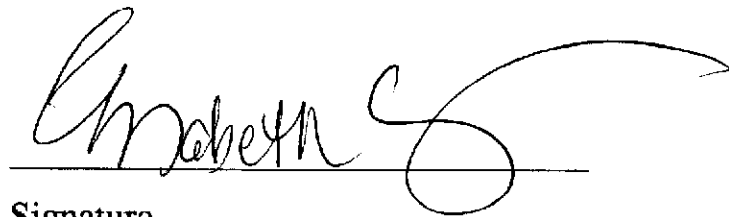
From:

Elizabeth Lewis  
5812 Christopher Lane  
Richmond, Va 23226

OPPOSITION TO SUP – 126088-2023 related to 615 Maple Ave

To Whom It May Concern:

The purpose of this letter is to **OPPOSE SUP- 126088-2023** related to the oversized garage that was built too close to the rear property line and that is also too tall.

A handwritten signature in cursive script, appearing to read "Elizabeth Lewis", written over a horizontal line. The signature is fluid and includes a large, sweeping flourish at the end.

Signature

Elizabeth Lewis

Name (Print)

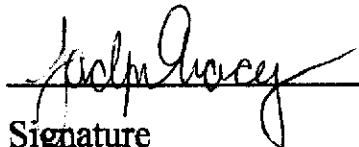
David Watson (David.watson@rva.gov)

Department of Planning and Development Review [PDRLandUseAdmin@rva.gov](mailto:PDRLandUseAdmin@rva.gov)

**OPPOSITION TO SUP – 126088-2023 related to 615 Maple Ave**

To Whom It May Concern:

The purpose of this letter is to **OPPOSE SUP– 126088-2023** related to the garage at 615 Maple.

  
\_\_\_\_\_

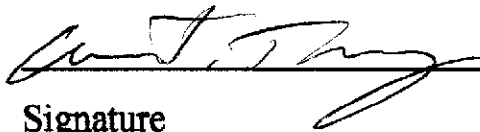
Signature

Jaclyn Tracey  
\_\_\_\_\_

Name (Print)

5814 Christopher Ln  
\_\_\_\_\_

Address

  
\_\_\_\_\_

Signature

Andrew T. Tracey  
\_\_\_\_\_

Name (Print)

Cc: Paul Dorn, Jr. (dornpl@gmail.com)

Paige Pruett (paige\_lester@yahoo.com)



