



To: Chair and Members, Nelson County Board of Zoning Appeals

CC: Mr. Stephen A. Carter | Nelson County Administrator

From: Timothy M. Padalino | Director – Nelson County Department of Planning & Zoning

Date: January 27, 2014

Subject: Appeal #2013-002 (Gates)

Introduction

On December 20th, the Department of Planning & Zoning received a petition for Appeal #2013-002 to the Board of Zoning Appeals from Mr. Jim Gates. You are being notified as a member of the Board of Zoning Appeals (BZA) in accordance with Article 14, Section 5 of the Zoning Ordinance.

The petition is an appeal of the Zoning Administrator's approval of a plat titled, "Plat of Lot A: A Subdivision of Parcel (A)-53, Tax Map 35" which was approved on September 17th, 2013. The petition states that, "The recorded plat is incomplete" and "Right Of Way given to the County is not legal." Copies of Mr. Gates' appeal materials, including a copy of the disputed plat, are included with this report.

In addition, this report includes a copy of a letter sent from the County to the petitioner on November 22nd, 2013 (prior to the appeal being filed). This letter was written in response to a list of numerous questions posed by Mr. Gates on Nov. 13th (which were submitted by the petitioner as part of his appeal materials), and is thus being provided to you for reference. However, please note that the County's Nov. 22nd letter to Mr. Gates addresses a broader range of issues than what was identified in the appeal; meaning that your review of Appeal #2013-002 does not include a review of all the information addressed in the County's Nov. 22nd letter to the petitioner.

Rather, your review of Mr. Gates' appeal is limited to that which he has specifically appealed; and is also limited to the requirements of the Zoning Ordinance. The BZA's responsibility and authority do not include the requirements set forth by the Subdivision Ordinance – only requirements contained in the Zoning Ordinance. To help illustrate those distinctions, the attached letter from Nov. 22nd is highlighted to identify the issues which are pertinent to this appeal, in contrast to the issues which are not under BZA review (and which are not highlighted).

Responses to Petition

A. Regarding the first appeal claim (“*The recorded plat is incomplete*”) relative to the requirements contained in the Zoning Ordinance:

1. The petitioner has claimed that “Lot A” did not meet the “Road frontage” requirements contained in Zoning Ordinance §4-3-5, which requires a, “minimum of one hundred twenty-five (125) feet fronting on a public or private road built to State or County road standards.” In this case, the proposed Lot A needed to be configured so as to have a minimum of 125’ fronting on a public road (Rte. 618 / Green Lane) built to State standards.
2. The petitioner claimed that, because Lot A was located on property that is beyond the “End of State Maintenance” sign, it did not meet the “Road frontage” requirements in §4-3-5. However, the End of State Maintenance sign was inaccurately installed at a location several hundred feet short of the end of the deeded right of way.
3. VDOT has provided documentation that confirms the legally-recorded length of Route 618 as being a total of 0.55 miles from the intersection with Buck Creek Lane, as shown on the approved plat. This total length was achieved by way of a 0.35 mile extension that was conveyed to the County by way of recorded deeds found on Deed Book 122, pages 411, 412, 415, and 416; that was approved by the Nelson County Board of Supervisors on April 14, 1971; and subsequently approved by VDOT on May 3, 1971.
4. In addition, Mr. Donald L. Austin, Sr., Resident Administrator for VDOT’s Appomattox Residency, noted in an email on November 5, 2013 that he had reviewed the matter with VDOT’s legal section, and concluded that VDOT will extend Green Lane to the complete length of 0.55 miles as originally intended.
5. In conclusion, legally recorded documents confirm that the disputed Lot A meets (and exceeds) the required 125’ of frontage along a public road; and VDOT has notified the County that they will construct and maintain the road to the full length of 0.55 miles beyond Buck Creek Lane, in accordance with the original intent when it was accepted into the Secondary System of Highways in 1971, which will resolve any outstanding issues with the proposed Lot A conforming to the requirements in §4-3-5.

B. Regarding the second appeal claim (“*Right Of Way given to the County is not legal*”):

1. Please draw your attention to the attached correspondence from Mr. Stephen A. Carter, County Administrator, to Mr. Jim Gates, petitioner, dated December 9th, 2013. This letter states that, “The County has no information suggesting that the conveyance was handled improperly,” and further indicates that the County is not in position to prove or disprove the legality of the conveyance of the right of way to the County in 1971.
2. That December 9th correspondence to Mr. Gates included a copy of the Meeting Minutes from the April 14, 1971 Board of Supervisors meeting. Contained therein under the heading, “Re: Addition to the Secondary System of Highways Route 618” is a motion containing the following:

- “WHEREAS, deeds have been obtained from all the affected landowners granting an easement and right of way to the County of Nelson for said proposed road;”
and
 - “BE IT RESOLVED: That the Virginia Department of Highways is hereby requested to take the aforesaid described road into the Secondary System of Highways, and the Board guarantees a right of way forty (40) feet for this road as recorded in the Clerk’s Office of this County.”
3. Further, the deeds referenced in the Board’s motion and recorded in Deed Book 122, pages 411, 412, 415, and 416, include a clause stating, “The said grantors covenant that they have the right to convey the said land to the grantee...” and were signed by the grantors on March 8th and March 10th, 1971.
 4. In conclusion, the County has documented evidence indicating that the conveyance of the right of way from the grantors to the County was legal and appropriate.

C. Regarding standing to appeal:

1. The petitioner does not have standing to appeal the zoning issue. The petitioner has not alleged or documented any particularized injury or harm that has resulted to him or his property as a result of the alleged lack of ordinance-mandated road frontage in “Plat of Lot A: A Subdivision of Parcel (A)-53, Tax Map 35.”

Please contact me with any questions or concerns you may have regarding this matter. The Board of Zoning Appeals hearing for this appeal is scheduled for **Monday, February 3rd at 7:30 p.m. in the General District Courtroom** on the third (3rd) floor of the Nelson County Courthouse.

Thank you very much for your time and attention to this matter. I remain available to discuss this matter at your convenience.

Sincerely,



Timothy M. Padalino

Director | Department of Planning & Zoning
tpadalino@nelsoncounty.org | 434-263-7090

OWNER: TMP 35-(A)-53
 THE HESSELBART-BRENNAN LIVING TRUST
 524 BUCK CREEK LANE
 FABER, VIRGINIA 22938
 INSTRUMENT NO. 130002495
 ZONED A-1

NOTE:
 1. THE DIVISION OF THE LAND DESCRIBED HEREIN IS WITH THE FREE CONSENT AND IN ACCORDANCE WITH THE DESIRE OF THE UNDERSIGNED OWNERS, PROPRIETORS AND TRUSTEES.

JOHN HESSELBART, TRUSTEE
 CONSTANCE BRENNAN, TRUSTEE

John Hesselbart, Trustee
Constance Brennan, Trustee

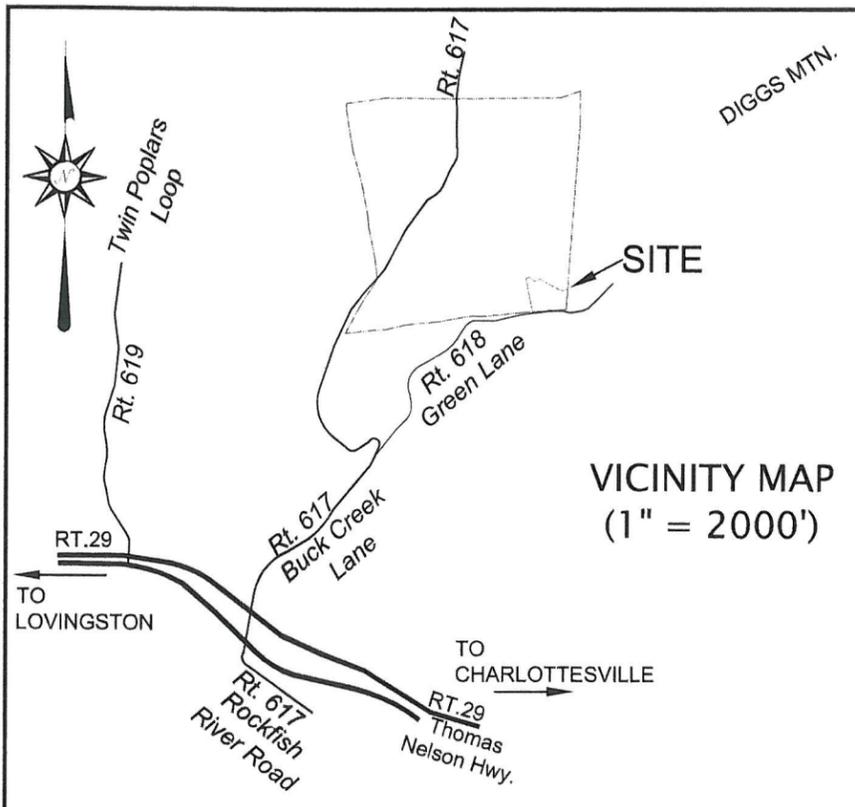
STATE OF VIRGINIA
 COUNTY OF NELSON
 The foregoing instrument was acknowledged before me this 16th day of September, 2013, by JOHN HESSELBART My Commission Expires March 31, 2014
 AND CONSTANCE BRENNAN

Notary Public *Tammy A. Tate* # 7057611
 My Commission Expires March 31, 2014

TAMMY A. TATE
 Notary Public
 Commonwealth of Virginia
 7057611
 My Commission Expires Mar 31, 2014

NOTE:
 APPROVED IN ACCORDANCE WITH SECTION 3-2-A.(1)
 [UPDATED: July 14, 2009]
 OF THE NELSON COUNTY SUBDIVISION ORDINANCE

Truman
 AGENT FOR THE BOARD OF SUPERVISORS
 DATE: 9/17/2013

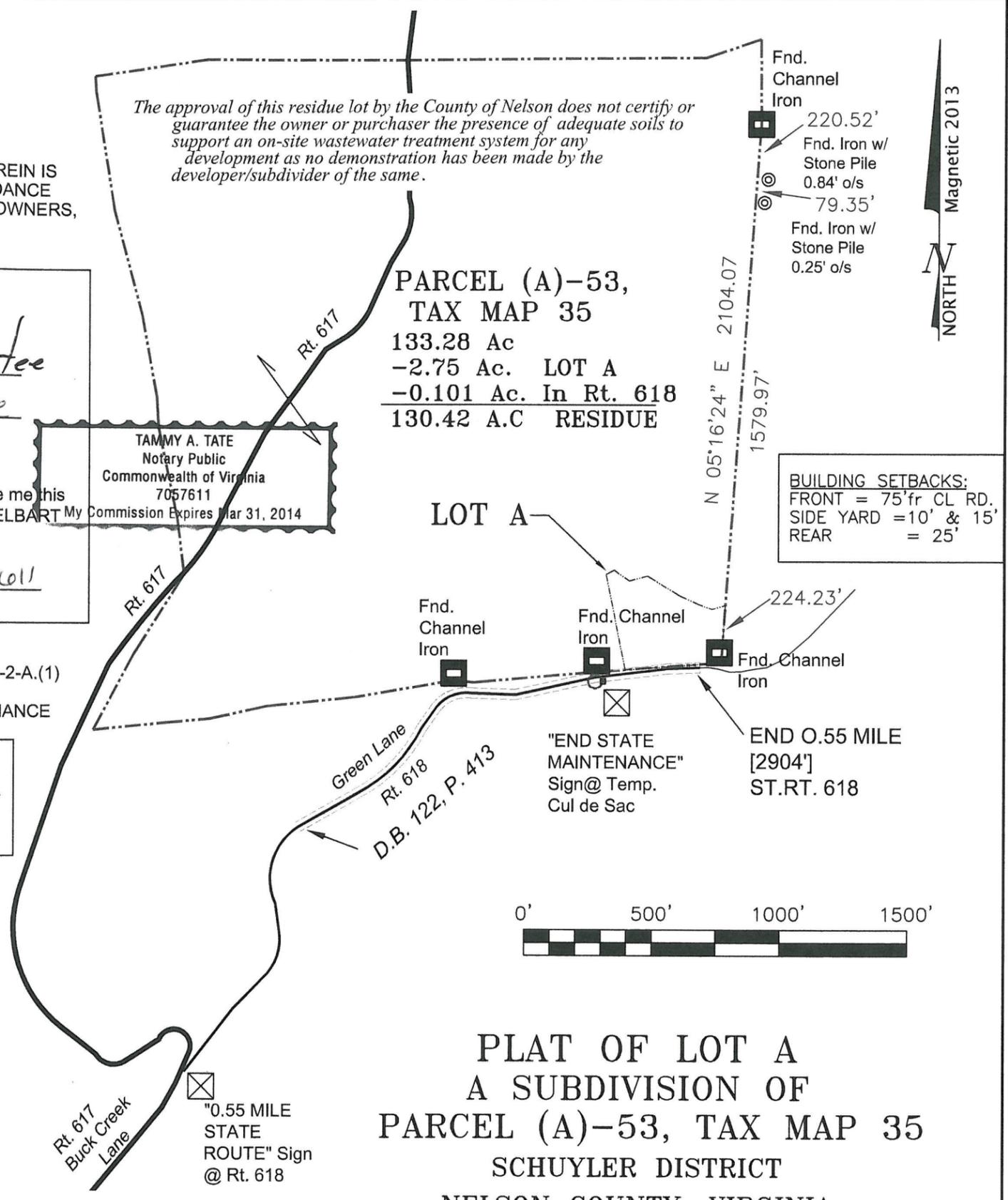


The approval of this residue lot by the County of Nelson does not certify or guarantee the owner or purchaser the presence of adequate soils to support an on-site wastewater treatment system for any development as no demonstration has been made by the developer/subdivider of the same.

PARCEL (A)-53,
 TAX MAP 35
 133.28 Ac
 -2.75 Ac. LOT A
 -0.101 Ac. In Rt. 618
 130.42 A.C RESIDUE

Fnd. Channel Iron
 220.52'
 Fnd. Iron w/ Stone Pile 0.84' o/s
 79.35'
 Fnd. Iron w/ Stone Pile 0.25' o/s

BUILDING SETBACKS:
 FRONT = 75' fr CL RD.
 SIDE YARD = 10' & 15'
 REAR = 25'

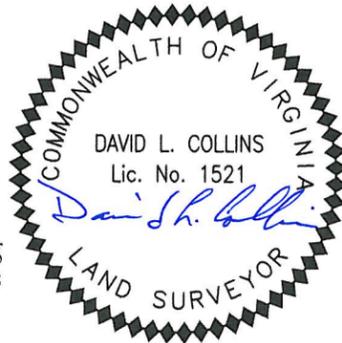


This subdivision approval is issued in reliance upon the certification that approved lots are suitable for "traditional septic systems"; however, actual system designs may be different at the time construction permits are issued.

The approved onsite sewage system and well sites are not shown on this plat. Those sites are shown on a separate plat on file in the Nelson County Health Department.

Approved by the Nelson County Health Department.
 DATE 9/16/13 HEALTH OFFICIAL *Tammy A. Tate*

- NOTE:
- BY CURRENT ZONING, T.M.P. 35-(A)-53 [OF 133 ACRES] MAY BE DIVIDED INTO A TOTAL OF 11 LOTS, WITH 2 ADDITIONAL LOTS OF 20 ACRES OR MORE. THOSE RIGHTS ARE APPORTIONED AS FOLLOWS:
 LOT A : NO FURTHER DIVISIONS;
 RESIDUE ; 10 LOTS WITH 2 ADDITIONAL LOTS OF 20 ACRES OR MORE.
 - PROPERTIES SHOWN HEREON ARE LOCATED IN ZONE "X" [AREAS OF MINIMAL FLOODING], AN AREA DETERMINED TO BE OUTSIDE THE 1% ANNUAL CHANCE FLOOD PLAIN AS SHOWN ON THE FLOOD INSURANCE RATE MAP (F.I.R.M.) COMMUNITY PANEL 51125C0260B, EFFECTIVE DATE JUNE 18, 2010.
 - NO TITLE REPORT PROVIDED.



David L. Collins, L.S., P.E.
 Civil Engineering/Land Surveying
 1188 Berry Hill Road - Nellysford, Virginia 22958
 Ph. (434) 361-1113

I HEREBY CERTIFY THAT THIS PLAT IS BASED ON A CURRENT BOUNDARY SURVEY AND, TO THE BEST OF MY KNOWLEDGE AND BELIEF, IS CORRECT AND COMPLIES WITH THE MINIMUM STANDARDS AND PROCEDURES ESTABLISHED BY THE VIRGINIA STATE BOARD OF ARCHITECTS, PROFESSIONAL ENGINEERS, LAND SURVEYORS, AND CERTIFIED LANDSCAPE ARCHITECTS.

PLAT OF LOT A
 A SUBDIVISION OF
 PARCEL (A)-53, TAX MAP 35
 SCHUYLER DISTRICT
 NELSON COUNTY, VIRGINIA
 AUGUST 26, 2013

COURSES ALONG RT. 618 RIGHT-OF-WAY
(Based on CL Location of Exist. Road Bed)

A-1 TO A-2

LINE	BEARING	DISTANCE
R1	S 86°54'56" W	77.76'
R2	N 13°39'48" E	11.20'
R3	N 78°47'08" W	27.26'
R4	N 87°01'15" W	33.43'
R5	S 82°51'23" W	118.39'
R6	S 86°01'59" W	125.97'

CENTERLINE OF STREAM CHANNEL,
PRINCIPAL COURSES SHOWN.

C-1 TO C-2

L1	N 62°44'33" E	35.41'
L2	S 54°00'47" E	73.85'
L3	N 75°36'37" E	72.75'
L4	S 57°26'21" E	149.59'
L5	S 64°52'52" E	82.26'
L6	S 69°05'15" E	56.45'

PARCEL (A)-53,
TAX MAP 35

PROPERTY LINE FROM C-1 TO C-2 IS
CENTERLINE OF STREAM CHANNEL,
PRINCIPAL COURSES SHOWN. C-2 IS THE
CONFLUENCE OF THE BRANCH AND CREEK

PARCEL (A)-53,
TAX MAP 35

TM 35-(A)-54
Molly Bailey
D.B. 28, P. 385

LOT A

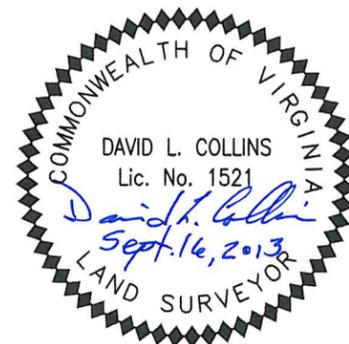
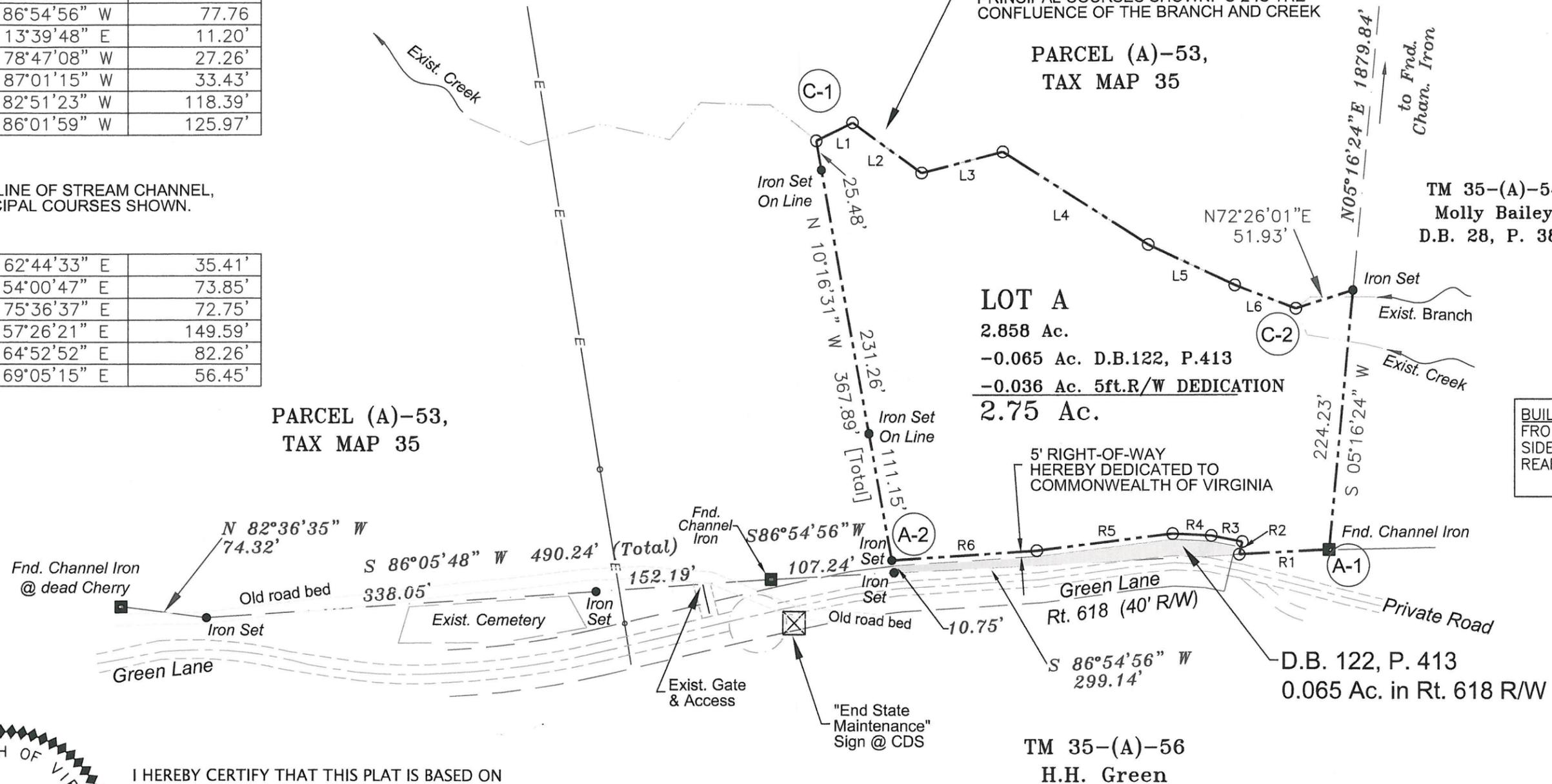
2.858 Ac.

-0.065 Ac. D.B.122, P.413

-0.036 Ac. 5ft.R/W DEDICATION

2.75 Ac.

BUILDING SETBACKS:
FRONT = 75' fr CL RD.
SIDE YARD = 10' & 15'
REAR = 25'



I HEREBY CERTIFY THAT THIS PLAT IS BASED ON
A CURRENT BOUNDARY SURVEY AND, TO THE
BEST OF MY KNOWLEDGE AND BELIEF, IS
CORRECT AND COMPLIES WITH THE MINIMUM
STANDARDS AND PROCEDURES ESTABLISHED BY
THE VIRGINIA STATE BOARD OF ARCHITECTS,
PROFESSIONAL ENGINEERS, LAND SURVEYORS,
AND CERTIFIED LANDSCAPE ARCHITECTS.



PLAT OF LOT A
A SUBDIVISION OF
PARCEL (A)-53, TAX MAP 35
SCHUYLER DISTRICT
NELSON COUNTY, VIRGINIA
AUGUST 26, 2013

David L. Collins, L.S., P.E.
Civil Engineering/Land Surveying
1188 Berry Hill Road - Nellysford, Virginia 22958
Ph. (434) 361-1113



COMMONWEALTH of VIRGINIA

IN COOPERATION WITH THE
STATE DEPARTMENT OF HEALTH

NELSON COUNTY HEALTH DEPARTMENT
4038 THOMAS NELSON HWY. Ste B
ARRINGTON, VA 22922
P.O. Box 98
LOVINGSTON, VA 22949

September 16, 2013

Tim Padalino, Planning Director
Nelson County Dept. of Planning
P.O. Box 558
Lovington, VA 22949

RE: Subdivision Hesselbart property
Tax Map # 35-A-53

Dear Mr. Padalino,

On August 29, 2013, the County of Nelson requested the Virginia Department of Health (via the Nelson County Health Department) review the proposed subdivision plat identified above. This letter is to inform you that the above referenced subdivision plat is approved for individual onsite sewage systems in accordance with the provisions of the *Code of Virginia*, and the *Sewage Handling and Disposal Regulations* (12 VAC 5-610-10 et seq., the "*Regulations*"), (and local ordinances if the locality has authorized the local health department to accept private evaluations for compliance with local ordinances).

This request for subdivision review was submitted pursuant to the provisions of § 32.1-163.5 of the *Code of Virginia* which requires the Health Department to accept private soil evaluations and designs from an Authorized Onsite Soil Evaluator (AOSE) or a Professional Engineer working in consultation with an AOSE for residential development. This subdivision was certified as being in compliance with the Board of Health's regulations by: Roger C. Nelson, AOSE #1340, (434) 221-9000. This subdivision approval is issued in reliance upon that certification.

Pursuant to § 360 of the *Regulations* this approval is not an assurance that Sewage Disposal System Construction Permits will be issued for any lot in the subdivision identified above *unless* that lot is specifically identified on the above referenced plat as having an approved site for an onsite sewage disposal system, and unless all conditions and circumstances are present at the time of application for a permit as are present at the time of this approval.

This subdivision approval is issued in reliance upon the certification that approved lots are suitable for "traditional systems," however actual system designs may be different at the time construction permits are issued.

If local subdivision ordinances require VDH personnel to sign a record plat, in addition to sending the letter above, the following statement must be printed on the plat:

This subdivision is approved for individual onsite sewage systems in accordance with the provisions of the *Code of Virginia*, and the *Sewage Handling and Disposal Regulations* (12 VAC 5-610-10 et seq., the "*Regulations*"),(and local ordinances if the locality has authorized the local health department to accept private evaluations for compliance with local ordinances).

This subdivision was submitted to the Health Department for review pursuant to Section 32.1-163.5 of the *Code of Virginia* which required the Health Department to accept private soil evaluations and designs from an Authorized Onsite Soil Evaluator (AOSE) or a Professional Engineer working in consultation with an AOSE for residential development. The Department is not required to perform a field check of such evaluations. This subdivision was certified as being in compliance with the Board of Health's regulations by: Roger C. Nelson, AOSE #1340, (434) 221-9000. This subdivision approval is issued in reliance upon that certification.

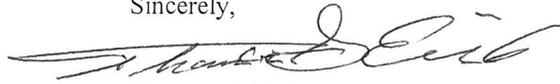
Pursuant to Section 360 of the *Regulations* this approval is not an assurance that Sewage Disposal System Construction Permits will be issued for any lot in the subdivision *unless* that lot is specifically identified as having an approved site for an onsite sewage disposal system, and unless all conditions and circumstances are present at the time of application for a permit as are present at the time of this approval. This subdivision may contain lots that do not have approved sites for onsite sewage systems.

This subdivision approval is issued in reliance upon the certification that approved lots are suitable for "traditional systems", however actual system designs may be different at the time construction permits are issued.

This subdivision plat may not show the drainfield sites for the subdivided lots, however, a copy of the subdivision plat on file at the Nelson County Health Department depicts the location of the approved drainfields.

This subdivision approval does pertain to the requirements of local ordinances.

Sincerely,

A handwritten signature in black ink, appearing to read "Thomas G. Eick", written in a cursive style.

Thomas G. Eick
EHS, Nelson County Health Department

Cc Roger C. Nelson, AOSE.

**APPEAL OF A DECISION OF THE ZONING ADMINISTRATOR
TO THE BOARD OF ZONING APPEALS (BZA)**

A citizen may appeal a zoning ordinance decision of the Zoning Administrator to the Board of Zoning Appeals (BZA). The BZA is a five-member quasi-judicial board appointed by the Circuit Court Judges of the 24th Judicial Circuit Court to hear these appeals.

To appeal, a citizen must file a *Petition for Appeal to the Board of Zoning Appeals* with the Zoning Administrator. The BZA will meet and hear the appeal and decide if a variance should be granted. A variance is granted by the BZA upon the affirmative vote of at least three of its members.

The BZA is restricted by certain requirements of state law in granting variances. State law does not allow the BZA to grant a variance as a personal accommodation, or because no one objects, or because it accomplishes what one might consider a "fair" result.

In order to grant a variance under Virginia law, the BZA must find: (1) that the strict application of the zoning ordinance would produce undue hardship; (2) that even if the hardship exists, it is not shared generally by other properties in the same zoning district and vicinity; and (3) that authorization of a variance will not be of substantial detriment to adjacent properties and the character of the zoning district will not be changed by its grant.

State law provides that a variance is appropriate only when the application of the zoning ordinance to a particular piece of property is adversely affected by reason of the "exceptional narrowness, shallowness, size or shape of a specific piece of property", and the application of the zoning ordinance "would effectively prohibit or unreasonably restrict the use of the property" or cause "a clearly demonstrable hardship approaching confiscation."

The applicant must produce evidence (petition, map, if available, and oral presentation) of the three factors mentioned above at the hearing before the BZA. The Supreme Court of Virginia has stated that a variance is a remedy that is properly applicable only in rare circumstances. The Court has narrowly interpreted the provisions of Virginia law to amount only to a "constitutional safety valve" which avoids confiscation by the operation of the zoning ordinance alone.

Applicants should provide as much detail as possible in the Petition that is provided to you by the Zoning Administrator.

**PROCEDURE FOR FILING A PETITION
OF APPEAL TO THE BOARD
OF ZONING APPEALS**

A petition of appeal to the Board of Zoning Appeals involving a variance or other appeal of a decision of the Zoning Administrator must be accompanied by the following information:

1. A completed *Petition for Appeal to the Board of Zoning Appeals* form;
2. A filing fee, in accordance with the fee schedule, to cover the costs of legal advertisements in the newspaper, mailing of letters to adjacent property owners, and review by the County staff;
3. A plat (legal size paper maximum) drawn to scale showing the lot or property described in the application, location of existing and proposed buildings, alterations, or additions, all setback lines, and the limits of any variance requested;
4. A location sketch of any property involved showing nearest road intersection(s), and a list of adjoining property owners.
5. Any applicable forms and/or documents, such as a certificate of elevation.

The above information must be submitted and fee paid to the Zoning Administrator before the required legal advertisements, meeting of the Board, and public hearing can be scheduled.

PETITION FOR APPEAL TO THE BOARD OF ZONING APPEALS
Nelson County, Virginia

1. PETITIONER(S):

Name: JIM GATES
Address: 750 GREEN LANE

2. PROPERTY OWNER(S):

Name: JOHN HESSELBART / CONSTANCE BRENNAN
Address: BUCK CREEK LANE

3. TYPE OF APPEAL (CHECK ONE):

- VARIANCE TO SECTION _____ OF THE ZONING ORDINANCE
- INTERPRETATION OF SECTION _____ OF THE ZONING ORDINANCE
- OTHER _____ (SPECIFY) (IF "OTHER", DO NOT ANSWER QUESTION #5)

Explanation and description of reason(s) for appeal:

RECORDED PART IS INCOMPLETE
RIGHTS OF WAY GIVEN TO THE COUNTY IS NOT LEGAL

4. LOCATION AND CHARACTERISTICS OF ANY PROPERTY INVOLVED WITH APPEAL:

- a. Address of property: END OF GREEN LANE ON LEFT
- b. Subdivision: PARCEL A-53
- c. Official tax map number: 35
- d. Acreage of property: 2.75
- e. Present use: RESIDENTIAL
- f. Present zoning classification: RESIDENTIAL LOT-SINGLE FAMILY
- g. Zoning classification of surrounding properties: AGRICULTURAL

5. Will the appeal, if granted, have any effect on present or future street right-of-ways, setbacks, and other improvement plans? (Refer to the County, Nelson County Service Authority, Virginia Department of Transportation - Amherst Office, if applicable.) If yes, give explanation.

YES. #1 PART WILL NEED TO BE CORRECTED
#2 APPROVAL FOR THE LOT WILL BE RESCINDED

6. The Code of Virginia (Sec. 15.2 - 2309) and State case law contain specific requirements for the granting of a variance. Variance requests issued for reasons not related to these criteria constitute an invalid application of Board authority. The fact that the Board feels it is doing "justice", the request is considered necessary and essential by the applicant for personal, health, or other reasons, or the request is not opposed by nearby property owners does not, when standing alone, constitute valid reasons for the granting of a variance. The State Code requires that no variance shall be authorized unless the Board finds:

- a. The strict application of the ordinance would produce undue hardship.

- b. The hardship is not generally shared by other properties in the same zoning district and the same vicinity, i.e. the zoning requirement from which the variance is sought would not similarly restrict other properties which are zoned the same as the subject property.
- c. The authorization of the requested variance would not be a detriment to adjacent properties nor would the character of the zoning district be changed, if granted, i.e., the request would not reduce the amount of protection generally provided between adjoining properties under the existing Zoning Ordinance or would not permit a use or development which would be permitted if the property were rezoned to another zoning classification.
- d. The condition of the property or the proposed use is not of such a recurring nature in the community as to make the adoption of a general Zoning Ordinance amendment practical which would otherwise permit the proposed use by right, i.e., the variance would not have the effect of resolving recurring zoning problems shared generally by other property owners in the same district or vicinity.
- e. Approval of this and other similar requests would not have the effect of ultimately nullifying the zoning restriction.
- f. Financial loss is not the only hardship that would be inflicted by the Zoning Ordinance requirement but is a factor to be considered.
- g. The hardship is not self-inflicted in any manner.

The granting of the requested variance would alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience.

Identify and explain the hardship involved:

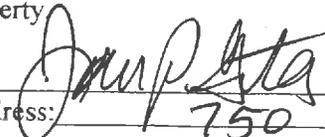
Under State law, applicants must show how their request meets the following criteria for the granting of a variance:

- a. The exceptional narrowness, shallowness, size or shape of the property, its topographic conditions, or other extraordinary conditions of the property, or use of immediately adjacent property effectively prohibit or unreasonably restrict the use of such property in a manner consistent with Zoning Ordinance requirements.

Identify any such special physical conditions associated with the property or adjacent property that justify the granting of a variance:

7. AFFIDAVIT:

The undersigned petitioner certifies that this petition and the foregoing answers, statements, and other information herewith submitted are, in all respects, true and correct to the best of their knowledge and belief. Also, the petitioner gives permission for members of the Board of Zoning Appeals and County Staff to visit and view the subject property

Signature:  Date 12.20.13
Mailing Address: 750 GREEN LANE FABER 22938

Variance # 2013-002

Telephone Number(s): _____

8. AFFIDAVIT PROPERTY OWNERS: (If not petitioner[s])

The undersigned property owner(s) has authorized the submission of this Petition:



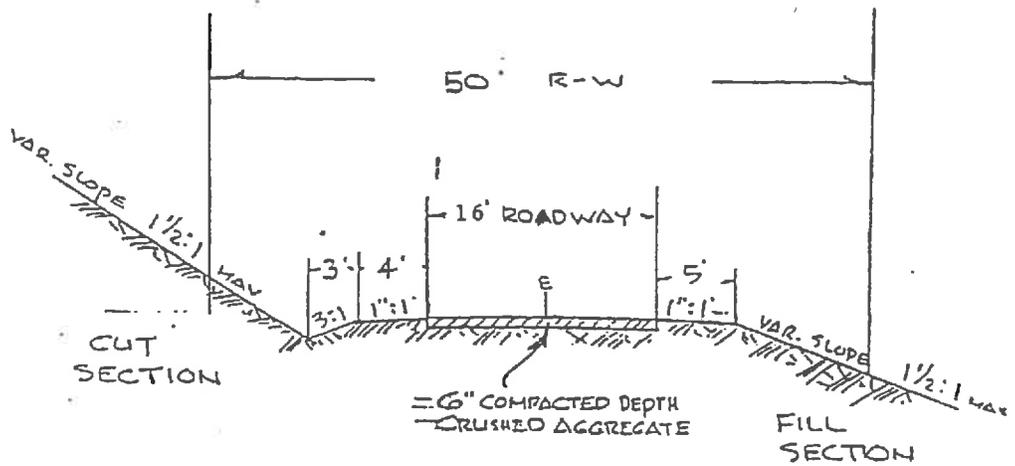
TO BE COMPLETED BY BOARD OF ZONING APPEALS STAFF

Completed application and \$ 25.00 fee received on 12-20-13. Public Hearing
notice published on 1-16-14 and 1-23-14 for hearing on 2-3-14.

Date of Decision: _____ Decision: _____

CLASS 1. PRIVATE STREET CROSS-SECTION

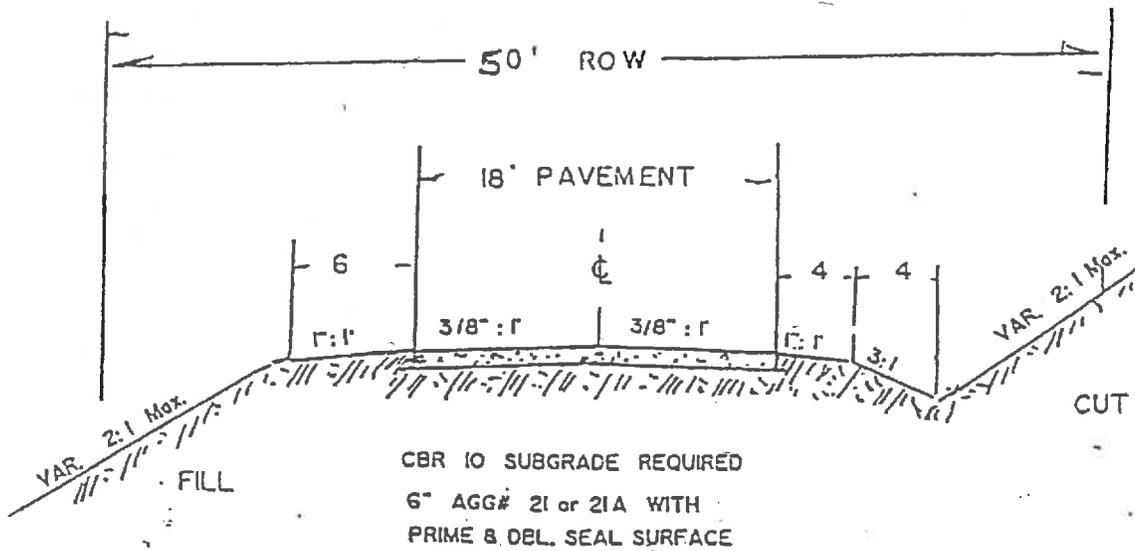
FIGURE 1



PRIVATE STREET TO SERVE 3-20 LOTS

CLASS 2. PRIVATE STREET CROSS-SECTION

FIGURE 2



PRIVATE STREET TO SERVE 21 OR MORE LOTS

James Gates <jgginc@aol.com>

November 15, 2013 12:41 PM

To: scarter@nelsoncounty.org , tpadalino@nelsoncounty.org and 1 more...

Subdivision Plat for The Hesselbart-Brennan Living Trust, Lot A



11 - 13 - 13

Steve Carter, County Administrator
Tim Padalino, Agent for the Board of Supervisors
Phil Payne, County Attorney

Reference: Subdivision Plat for the Hesselbart-Brennan Living Trust - Lot A

Steve and Tim:

We have had phone conversations and meetings about the above referenced plat that was approved by Tim, Agent For The Board Of Supervisors, in spite of the fact that the plat does not comply with the county ordinance with regard to road frontage and right of way width. I'm sure that you both know that the county ordinance requires a " Minimum of one hundred twenty-five (125') feet fronting on a public or private road BUILT TO STATE OR COUNTY ROAD STANDARDS." Additionally, the county ordinance requires a total ROW width of FIFTY FEET (50'). The surveyor, David L Collins, L.S.,P.E., had to know when he submitted the plat that these requirements had not been met. It also must have been known to Tim, Agent For The Board Of Supervisors, that the fifty foot wide ROW did not exist because it is CLEARLY noted on the plat as a " 40' R/W ". Tim, as Agent For The Board Of Supervisors, demands that these requirements be met by all other surveyor's and applicants. So, why was this particular plat approved without these two basic requirements in the county code being met?

Tim, Agent For The Board Of Supervisors, demands that all other surveyor's and applicants fill out the VDOT Plat Checklist, get VDOT approval for a subdivision and have VDOT sign off on the final plat PRIOR to approval and recording. Why wasn't VDOT approval asked for and required in this case?

Here are some other deficiencies/missing information on the David Collins, L.S., P.E. plat:

1. There are no utilities shown and no utility easement has been provided.
2. The building side setbacks are not shown...where is the 10' setback and where is the 15' setback?
3. No certification by the Health Department is shown on the plat.
4. Missing VDOT signature of approval indicating compliance with state regulations.

I have been informed by Don Austin, of VDOT, that Green Lane will be extended to the end of the VDOT ROW using tax payer / VDOT funds. I am expecting that a new corrected plat will be submitted for approval showing: a Fifty Foot (50') ROW for that new section of road as is required by the county ordinance, utility easements, setbacks, Health Department Certification and the new Cul-de-Sac shown with the typical VDOT Sixty Foot (60') radius. A 60' radius at the end of a state road is required of ALL other applicants for subdivision approval for public safety reasons and, because I live beyond the "new end of state maintenance", I have a strong interest in public safety. Certainly, the note that David Collins, L.S., P.E. placed on the plat " END STATE MAINTENANCE SIGN @ Temp. Cul de Sac" (I assume that Temp. means temporary) indicates that it WILL be moved. The new ROW / Cul-de-Sac at the end of Green Lane will require revisions to the existing plat of Lot A.

Steve, in our last phone conversation you said, " We don't have to report to you". I hope that you will change your mind about that because I am expecting a written response that addresses ALL of these issues.

Sincerely,

Jim Gates
750 Green Lane
Faber, Va
jgginc@aol.com

APPENDIX A - ZONING

Minimum of seventy-five (75) feet from the center of the road or fifty (50) feet from the edge of the right-of-way, whichever is the greater distance.

4-3-1b Internal lot without road frontage:

Minimum of fifty (50) feet from the property line designated as the front yard.

4-3-2 Side yard:

Lots 1 to 5 acres in size: Minimum of ten (10) feet from the property line and the total width of the required side yards shall be twenty five (25) feet or more.

Lots greater than 5 acres in size: Minimum of twenty (20) feet from the property line and total width of the required side yards shall be fifty (50) feet or more.

4-3-3 Rear yard:

Lots 1 to 5 acres in size: Minimum of twenty-five (25) feet from the rear property line.

Lots greater than 5 acres in size: Minimum of fifty (50) feet from the rear property line.

4-3-4 Accessory structure:

Minimum of fifteen (15) feet from property line, except no accessory building shall be located within the required front yard setback.

4-3-5 Road frontage:

Minimum of one hundred twenty-five (125) feet fronting on a public or private road built to State or County road standards.

4-4 *Special provisions for corner lots.*

4-4-1 Of the two sides of a corner lot, the front shall be deemed to be the shorter of the two sides fronting on streets.

4-4-2 The minimum side yard on the side facing the side street shall be thirty (30) feet for both main and accessory building(s).

4-5 *Reserved for future use.*

4-6 *Height limitations.*

Any structure erected up to a height greater than thirty-five (35) feet from grade requires a Special Use Permit with the following exceptions: single family dwellings, two family dwellings, boardinghouse, tourist home, wooden poles up to eighty (80)

James Gates <jgginc@aol.com>

To: scarter@nelsoncounty.org , tpadalino@nelsoncounty.org

Green Lane - SR 618 Nelson County

November 29, 2013 4:06 PM



Steve & Tim:

I have looked at the two recorded "easements" that were signed by two members of the Green Family in 1971 giving Nelson County a ROW for .35 miles past the dead end of SR 618. I want to see the documentation that Nelson County has verifying that the family members that signed the easements were the executors of the estate and had the legal authority to sign for the estate. There were over 100 heirs to the Green estate in 1971 and I want to be sure that the two family members that signed the easements were not simply the only two family members that the county could locate.

I don't think that the ROW is a legal one and I need to see documentation proving that it is. As far as I am concerned, the road beyond the existing end of state maintenance sign is a private drive and anyone using it without permission or anyone who is not a land owner on the road is trespassing until proven otherwise.

Sincerely,

Jim Gates
750 Green Lane
Faber, Va 22938
jgginc@aol.com

DEPARTMENT OF
PLANNING & ZONING



PLANNING COMMISSION
BOARD OF ZONING APPEALS

November 22, 2013

Mr. Jim Gates
750 Green Lane
Faber, VA 22938
jpginc@aol.com

Re: Response to “Subdivision Plat for the Hesselbart-Brennan Living Trust - Lot A”
message dated November 13, 2013

Mr. Gates,

Thank you for your inquiry of November 13. I’ve attempted in this letter to respond to your inquiries and your assertions that, “the plat does not comply with the county ordinance with regard to road frontage and right of way width.”

Please draw your attention to the County’s requirements for private streets as specified in Section 4-6-C of the Subdivision Ordinance, “Construction Standards for *Private Streets*” (emphasis added). The minimum width of the Right-of-Way (ROW) for private streets is fifty feet (50’). This regulation does not establish any requirements for roads in the *public* road system; it is to regulate the design and construction of private streets only.

Because Route 618 Green Lane is within the public road system, the 40’ ROW does not conflict with the private street requirements set forth in the Nelson County Subdivision Ordinance, as the County does not regulate public roads or streets.

Regarding the County’s requirements for “Road frontage,” please draw your attention to the Nelson County Zoning Ordinance. Section 4-3-5 requires a, “minimum of one hundred twenty-five (125) feet fronting on a public or private road built to State or County road standards.” More specifically, within the context of the plat of division in question, the proposed Lot A needed to be configured so as to have a minimum of 125’ fronting on a public road (Rte. 618 / Green Lane) built to State standards.

The plat shows Green Lane extending for a total length of 0.55 miles from its intersection with Buck Creek Lane, and provides a reference for the instrument of record (Deed Book 122, Page 413) for this public road (Rte. 618 / Green Lane). The configuration of Lot A provides for approximately three hundred and five feet (305') of frontage along the public road (Rte. 618 / Green Lane).

Regarding the status of this public road being built to State standards, my approval was based on the assumption that the roads within VDOT's public road system are built to VDOT's own standards. In the case of this particular section of Rte. 618 / Green Lane, it does not appear that the State standards were met when it was constructed.

Upon learning of this discrepancy after the plat was approved, the County diligently pursued the matter with Mr. Don Austin, Resident Administrator for VDOT's Appomattox Residency, and Mr. Jeff Kessler, Area Land Use Engineer for VDOT's Lynchburg District.

In a message dated October 23rd, Mr. Kessler confirmed that the public ROW for Green Lane was correctly referenced and depicted to the correct total length of 0.55 miles. Mr. Austin then visited the site and determined that the "End of State Maintenance Sign" had been incorrectly located, resulting in several hundred feet of Green Lane not being constructed to State standards.

Mr. Austin has since confirmed that VDOT will extend Rte. 618 / Green Lane to a total length of 0.55 miles, as specified in the original resolution and rural addition requested in 1971. Regarding this VDOT intention to extend Route 618 / Green Lane, the County has no authority and no agency in the design specifications or implementation of the extension of the public road.

Separately, your claim that I, "demand that all other surveyor's and applicants fill out the VDOT Plat Checklist" is not correct. While I have previously obliged Mr. Kessler's prior requests to have applicants submit a Plat Checklist as a supplemental document with their actual proposed plats, I do not require or demand that the checklist be included. The checklist is a product of the office of VDOT-Lynchburg District's Transportation and Land Use Program; it is their prerogative, and I do not require or enforce it.

Rather, what I have done previously is to convey to applicants that VDOT-Lynchburg District has instituted their own requirement for said checklist to be submitted along with proposed plats when the County seeks review comments from VDOT.

Additionally, the plat in question was not sent to VDOT-Lynchburg District for review because VDOT review was not required for this plat per the Nelson County Subdivision Ordinance. Specifically, Section 5-5-C-(12)-b, "Certification by the Virginia Department of

Transportation,” does not apply to the plat in question. As such, this plat did not require review or approval signature from VDOT.

You also posed additional questions about other contents of the plat as specified in Subdivision Ordinance Section 5-5-4-9, “Contents of Final Plat.” Typically the required minimum setbacks are required to be located graphically. The plat in question was approved with the required minimum setbacks depicted in the “Building Setbacks” table on Sheet 2 of 2. Separately, the location of utility easements is not required to be depicted on plats for single-lot divisions that front upon a public ROW.

Regarding Virginia Department of Health review and approval of the plat in question, the required certification for the Virginia Department of Health (as required when the onsite sewage system and/or well site is not shown on the final plat) is contained on Sheet 1 of 2, as is the accompanying approval signature. Additional certification language is contained in the approval letter from Mr. Tom Eick, Environmental Health Specialist for the Nelson County Health Department, dated September 16th and kept on file with the plat.

Finally, please note that my interpretation that the configuration of Lot A met the road frontage requirements was made relative to a Zoning Ordinance provision (Section 4-3-5). As such, I am required to notify you that if you should disagree with that interpretation, you may appeal my decision to the Nelson County Board of Zoning Appeals pursuant to Section 14-5 of the Nelson County Zoning Ordinance within thirty (30) days from the date of this letter. If an appeal is not made within this time period, then my decision becomes final and unappealable per 15.2-2311 of the Code of Virginia.

An application for such an appeal may be obtained at the Planning and Zoning Office and the cost of an appeal is \$25.00. You may also find the same application online at the County website by following this link:

<http://www.nelsoncounty-va.gov/wp-content/uploads/Board-of-Zoning-Appeals-Application.pdf>

Thank you very much for your time and attention. Sincerely,

Timothy M. Padalino

Director of Planning & Zoning | tpadalino@nelsoncounty.org

CC: Mr. Stephen A. Carter | Nelson County Administrator