

**David S. Bailey, PLLC**

16397 Triple Creek Lane  
Beaverdam, VA 23015  
Email: dsbailey@igc.org

Attorney at Law  
*Law and Science for the Environment*

Telephone: 804-227-3122  
Toll Free: 888-831-0659  
FAX: 804-227-3581  
Cellular: 804-564-6896

Of Counsel  
Tammy L. Belinsky

December 7, 2005

Daniel J. Schardein, Director  
Department of Code Administration  
1300 Courthouse Road  
Stafford, VA 22554

RE: Notice of appeal of decision regarding #241944, Crow's Nest  
Assessors Parcels 48-1, 49-27

Dear Mr. Schardein:

On behalf of Linda and Jack Fellers, I am filing an appeal of a "decision or determination" under the provisions of Va Code § 15.2-2311, the decision by the Director of Planning, Jeff Harvey, in his official capacity, that "the [Crow's Nest Preliminary] plan meets all requirements of the Stafford County Code," which by definition includes compliance with Section 28-62 of the zoning ordinance. This decision is contained in his report to the Stafford County Planning Commission; dated December 7, 2005, page 4.

The specific objections and basis for this appeal are outlined in the attached "appeal justification" and enclosed forms.

I am enclosing:

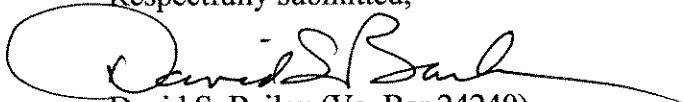
- The appeal application
- A separate statement of the appeal justification, with attachments
- The staff report in which the decision is made
- Tax map 49
- Verification that real estate taxes are paid
- Owner's consent form
- Our firm's check for \$500.

Pursuant to Va Code § 15.2-2311(B), and under County ordinance Section 28-349(b), and there being no "imminent peril to life or property," the applicant requests that all proceedings in furtherance of this action appealed from be stayed. Specifically, the plan cannot be reviewed by the Planning Commission until the appeal is resolved by the Board of Zoning Appeals.

Further, the appellant notes that the citizens of Stafford County were not, in fact, given the minimum five day review period prior to the Planning Commission meeting. Specifically, although the plan was submitted within such period, it was not made available to citizen

requests. Therefore, should this plan go to the Planning Commission, appellants state a procedural objection on this grounds and assert that the Planning Commission is without authority to hear this issue on December 7, 2005.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "David S. Bailey". The signature is written in a cursive style with a large, looping initial "D".

David S. Bailey (Va. Bar 24240)

Counsel for Appellant Linda and Jack Fellers

cc: William Cook, Chairman  
Stafford County Planning Commission

## Appeal Justification

Linda and Jack Fellers are the owners of assessor's parcel 49C-2-1-4, located directly across from the stated property, at the confluence of the Accokeek and Potomac Creeks. They are appealing a "decision or determination" under the provisions of Va. Code 15.2-2311, the decision by the Director of Planning, Jeff Harvey, in his official capacity, that "the [Crow's Nest Preliminary] plan meets all requirements of the Stafford County Code," which by definition includes compliance with Section 28-62 of the zoning ordinance (Attachment I, page 4, Report to Planning Commission).

This dispute is a zoning matter. In determining compliance with the zoning ordinance, Planning Director Jeff Harvey is administering the zoning ordinance. The interpretations of any official charged with any aspect of zoning ordinance administration are appealable to the local board of zoning appeals (Va. Code §15.2-2309, -.2311, and -.2312). The board of zoning appeals shall hear and decide appeals from any order, requirement, decision or determination made by an administrative officer in the administration of Chapter 28 (Code of Stafford County § 28-349).

Application #241944 is a preliminary site plan for the subdivision and development of property. This subdivision plan is a plan of development, defined in the Stafford County zoning ordinance (Code of Stafford County § 28-25) as "*Plan of development*. A plan or subdivision plat reviewed under this chapter to ensure compliance with section 10.1-2109 of the Code of Virginia [*Local governments to designate Chesapeake Bay Preservation Areas; incorporate into local plans and ordinances; impose civil penalties*] and this chapter, prior to any clearing or grading of a site or the issuance of a building permit." This "plan" is submitted in satisfaction of Stafford County zoning ordinance §28-62.

Additionally, Va. Code §15.2-2286(A)(8) authorizes the submission of plans of development prior to issuance of building permits to "assure compliance with regulations contained in the zoning ordinance." Site plans are defined as "proposals for development or a subdivision." "Development" is defined as a "tract of land developed or to be developed as a unit under single ownership or unified control which ... is to contain three or more residential dwelling units." (Va. Code §15.2-2201).

### **Objection #1: The plan does not provide a perennial flow assessment or field determination of critical resource protection areas (CRPAs) for all areas within the project limits.**

All preliminary site development plans shall contain the limits of flood plains and critical resource protection areas (Code of Stafford County §28-249(b)(7)) and the location of all streams and drainage ways (Code of Stafford County §28-249(b)(8)). Additionally, development plans shall delineate the site-specific boundaries of CRPAs through an environmental assessment, and shall provide a site-specific determination of whether water bodies with perennial flows occur on site (Code of Stafford County §28-62(b)(1)b). Any plan shall clearly delineate tidal wetlands, tidal shores, non-tidal wetlands connected by surface flow and contiguous to tidal wetlands or water bodies with perennial flow, water bodies with perennial flow, and a 100' buffer adjacent to the four items just enumerated, and the environmental site assessment shall delineate the site-specific geographic extent of the CRPA (Code of Stafford County §28-62(h)(2)).

The plan does not provide a perennial flow assessment or field delineated CRPAs for Parcel B of the project (Attachment II, Perennial Flow Determination; Attachment III, Perennial Flow Determination Map). The absence of this assessment is confirmed by the map listing all photo points for the perennial flow assessment, drawn and submitted by Jeff Harvey (Attachment IV, page 4, Preliminary Plan).

Additionally, per the letter from Williams Environmental Group dated November 29, 2005, the Perennial Flow Determination Report excluded non-jurisdictional streams from the Perennial Flow Determination Report (Attachment V, WEG letter dated November 29, 2005).

**Objection #2: The plan does not provide a perennial flow assessment or field determination of critical resource protection areas (CRPAs) for areas on which project roads will be constructed.**

According to the report to the Planning Commission (Attachment I), primary access to the subdivision is provided by existing platted right of ways through the Crow's Nest Harbour Subdivision from Raven Road, State Route 609. These existing right of ways are currently undeveloped, and the applicant is proposing construction of roads as shown on the plan to serve the subdivision. The plan also proposes improvements to Raven Road to the southwestern edge of the subdivision.

The plan does not provide a perennial flow assessment or field delineated CRPAs for the road areas in the Crow's Nest Harbour Subdivision (Attachment II, Perennial Flow Determination Report; Attachment III, Perennial Flow Determination Map). The absence of this assessment is confirmed by the map listing all photo points for the perennial flow assessment, drawn and submitted by Jeff Harvey (Attachment IV).

**Objection #3: The plan contains CRPAs that have not been field delineated.**

All "cross hatched" CRPAs on the site plans are based on County maps, not a field delineation (Attachment VI).

**Objection #4: The plan does not provide an environmental assessment drawn to the same scale as the plan of development.**

The environmental site assessment shall be drawn in the same scale as the plan of development (Code of Stafford County §28-62(h)(2)d).

The plan is drawn at a scale of 1 inch = 750 feet and 1 inch = 100 feet. The perennial flow determination map is drawn at a scale of 1 inch = 400 feet.

**Objection #5: The plan does not contain an accurate boundary survey.**

All preliminary site development plans shall contain a boundary survey accurate to one foot in two thousand five hundred (2,500) feet relative to a specified meridian (Code of Stafford County, §28-249(b)(4)).

The applicant has not surveyed the property and has not provided an accurate boundary survey. Note #11 under Zoning Summary states the project boundary is taken from the information of record (Attachment VII, page 3, Crow's Nest Site Plan).

**Objection #6: The plan does not accurately delineate the CRPAs.**

The plan does not relate the field determination to the site plan delineation. Per the Williams Environmental Group letter dated November 29, 2005 (Attachment V), the plan provides GPS points for only 7 of 16 streams in the Perennial Flow Determination maps. A sole GPS point, at the break of the perennial reach, is all that is provided for each of these 7 streams. Because the property has not been surveyed, it is impossible to relate these GPS points to the site plan maps. The County tax maps are not accurate in this regard, which is why a field delineation is required.

**Objection #7: The plan depicts houses located on streams, and drainfields located on streams and in wetlands.**

This objection needs no further clarification (Attachment VIII).

**Objection #8: The Perennial Flow Determination Report does not evaluate all streams.**

Because the Perennial Flow Determination Report does not evaluate all streams, the plan does not meet the requirements of the zoning ordinance.

The appellants have standing. They reside at 192 Indian Point Road, Stafford, VA, tax assessor parcel #49C-2-1-4. This waterfront property is located adjacent to the proposed development, and at the confluence of Accokeek and Potomac Creeks.

Appellant is aggrieved by the decision of staff to forward to the Planning Commission the preliminary plan for review. Specifically, proper planning cannot occur without the accurate delineation of site-determined CRPAs. The CRPAs are critical deterrents to eroding soil, which empties sediment and nutrients into creeks. Failure to comply with the requirements of the Chesapeake Bay Preservation Overlay District (28-62) will lead to soil erosion and encroachment of CRPAs, and subsequent degradation of water quality. This will have a direct, substantial and pecuniary impact on the appellant's real property.

Deficits in the plan may not be reversed at later stages of planning. As noted by Shawn Smith, Program Manager, Chesapeake Bay Local Assistance Division, once a preliminary plan is approved, the property owner is vested in the plan and it is difficult if not impossible to change the conditions of development at a later date (Attachment IX, email, November 15, 2005).