

**STATEMENT OF JUSTIFICATION
PROPERTY OF ZAND 78, LLC AND DEMAVAND 9, LLC
WAIVER REQUEST
(ZONING ORDINANCE §7-302.1(A)(2))
AUGUST 12, 2016**

INTRODUCTION: Zand 78, LLC and Demavand 9, LLC (collectively the “Applicant”) are the owners of property within the Apple Manor Subdivision located in the Marshall Magisterial District. Ms. Partow Payandeh is the managing member of both of the LLC’s. The Applicant is seeking approval of a waiver in order to allow a private road to connect to a private road to give access to the 7 lots in the subdivision. The relevant lots are further identified as PINs 6022-96-1121-000, 6032-04-4173-000, 6032-06-3415-000, 6032-15-3237-000, 6032-16-8625-000, and 6032-27-2904-000 (collectively the “Property”).

The property is located east of Route 688 (Leeds Manor Road) approximately 3.3 miles south of its intersection with Route 17 (Winchester Road). The Property is zoned Rural Conservation.

PROPOSAL: The Applicant requests a waiver in accordance with §7-302.1(A)(2) so as to allow a private road to connect with another private road. Attached as **Exhibit A** are exhibits that depict the proposed route for the new roads to serve the Property. One road connects to Orchard Hill Lane in order to serve lot 9R-1B (“Waiver Segment A”), and the other connects Apple Manor Road to Audubon Trail, both private streets (“Waiver Segment B”).

DISCUSSION: The Applicant’s predecessor in title, Mehrmah Payandeh, purchased the Property in June and July 1997. On December 4, 1998, Mrs. Payandeh placed a conservation easement on the entire Property in favor of the Virginia Outdoors Foundation (VOF). A copy of the recorded VOF easement is attached as **Exhibit B**. Mrs. Payandeh previously requested a waiver from the requirement of §7-302.1(B) of the Fauquier County Zoning Ordinance and §2-39.3(C)(3) of the Fauquier County Subdivision Ordinance on April 20, 2006. The waiver for the Fauquier County Zoning Ordinance was approved on May 10, 2007 and the waiver for the Fauquier County Subdivision Ordinance was approved on October 19, 2007. Subsequently, on October 25, 2007, Mrs. Payandeh’s subdivision was administratively approved. Thereafter, litigation ensued between the Applicant and a neighboring lot owner, Melanie Fein. The litigation culminated in an Order from the Supreme Court of Virginia that held the subdivision must comply with the requirements of §2-39(3)(C)(3) of the Fauquier County Subdivision Ordinance in effect in 1997. A copy of the Supreme Court’s Order is attached as **Exhibit C**. In order to cure the deficiencies found by the Supreme Court of Virginia, a private road that meets the standards of design laid out in Section 5 of the Fauquier County Subdivision Ordinance must be constructed, unless a variation of the Subdivision Ordinance is approved. At this time, the Applicant does not wish to pursue a subdivision variation.



Applicable Ordinance Requirements. Construction of said private road requires a waiver from the following Fauquier County Zoning Ordinance:

§ 7-302 Limitations

1. The following limitations shall apply:

A. All types:

1. Private streets within a development shall be limited to those streets which are not required or designed to provide access to adjacent properties or the remainder of the tract being developed, or other streets, as determined by the Commission.

2. The private street must connect directly to a state maintained street. In reviewing applications for a waiver of this limitation, the Board may consider as an additional factor in granting such waiver the development limitations which are imposed on the subject property because the proposed division is either (1) a family transfer pursuant to §2-39 of the Fauquier County Subdivision Ordinance, or (2) a large lot subdivision pursuant to §2-310 of this Ordinance provided that the parent property is subject to a conservation easement held by a body politic or a political subdivision of the State.

3. The right-of-way must be a minimum of fifty (50) feet in width.

[. . .]

2. The Board may modify the foregoing limitations in conjunction with a request for a special exception permit, site plan approval or subdivision plan approval provided the applicant can show that no other remedy is realistically feasible, that plausible alternatives have been exhausted, that to not so modify the applicable limitation(s) would place an unreasonable restriction on the use of the property and that properties through which access is planned will not be unreasonably affected.

Justification for the Waiver Requested. There are four reasons justifying the Board’s approval of a waiver of the requirement that private streets connect directly to a public street.

First, the relevant Ordinance clearly allows for waivers of this nature for large lot subdivisions when the parent property is subject to a conservation easement. The lots at issue that are currently of record, and that are the subject of a pending infrastructure plan, qualify as “large lots” as each is greater than 50 acres. Also, there is a conservation easement applicable to the entire Property that restricts the use of the property but also allows for its subdivision. Attached as **Exhibit D** is a letter from the Virginia Outdoor Foundation providing approval for the proposed new road connecting Apple Manor Road and Audubon Trail.

Second, this Board has already approved a waiver, indicating the Board’s approval of private roads to serve the Property.

Third, because the Supreme Court found that the road previously approved by the Board did not comply with the restrictive covenants applicable to the Property, which incorporated the 1997 Subdivision Ordinance, an alternative road design had to be devised. The proposed road design is a design that can comply with the Supreme Court’s order.

As this Board may be aware, it has been the County's position historically that large lot subdivisions do not have to comply with the road design standards of the Subdivision Ordinance. However, the Supreme Court did not agree with this interpretation of the Ordinance and ultimately found that Section 5 of the Subdivision Ordinance, related to road design, does apply to "large lot" subdivisions. Two of the most problematic provisions of that Section are 5-6 which requires that grades not exceed 10% and 5-8 which does not allow cul-de-sacs longer than 700 feet.

In order to serve all lots without utilizing cul-de-sacs longer than 700 feet, the Applicant proposes to connect two cul-de-sacs—Apple Manor Road and Audubon Trail. Additionally, lot 9R-1B will be served by a very short cul-de-sac that is 141.86 feet in length.

Additionally, in order to meet the 10% grade requirement without undertaking significant clearing and grading activities, the Applicant's engineer has concluded that the alignment for Waiver Segment B meets the objective of disturbing the least amount of land while also complying with the 10% grade requirement.

Fourth, to refuse the waiver would cause a great deal of hardship to the Applicant and unreasonably limit the use of the Property. Furthermore, the approval of this waiver would not negatively impact surrounding properties.