

## Jenkins, Heather

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**From:** Johnson, Kim  
**Sent:** Friday, September 30, 2016 4:45 PM  
**To:** Jenkins, Heather  
**Subject:** Fwd: Request for waiver: Zand78 and Demavand9 Apple Manor subdivisions on Brushy Mountain

Sent from my Verizon, Samsung Galaxy smartphone

----- Original message -----

**From:** "Clinton, William" <wclinton@whitecase.com>  
**Date:** 9/30/16 4:34 PM (GMT-05:00)  
**To:** "McDaniel, Mary Leigh" <MaryLeigh.McDaniel@fauquiercounty.gov>, "Holder Trumbo (rhthjt@aol.com)" <rhthjt@aol.com>, "Butler, Chris" <Chris.Butler@fauquiercounty.gov>, "Granger, Chris" <Chris.Granger@fauquiercounty.gov>, "Gerhardt, Rick" <Rick.Gerhardt@fauquiercounty.gov>  
**Cc:** "Johnson, Kim" <kim.johnson@fauquiercounty.gov>  
**Subject:** Request for waiver: Zand78 and Demavand9 Apple Manor subdivisions on Brushy Mountain

To Members of the Fauquier County Board of Supervisors:

We are writing as owners of an 18<sup>th</sup> century farm known as "Inglewood" on the east face of Brushy Mountain, adjacent to the village of Scuffleburg. We strongly oppose the waiver sought by the developers known as "Zand78" and "Demavand9" for the unlawful Apple Manor subdivisions on Brushy Mountain.

Nothing in the zoning ordinance entitles the developers to a waiver of the applicable requirements, which should be applied all the more stringently in this case given the origin of this request in unlawful subdivisions of large mountainous tracts. Indeed, we understand that the developers have not even filed a site plan, subdivision plan or request for a special exception; if our understanding is correct, then they do not appear to be eligible for a waiver. Moreover, denial of a waiver would not constitute an "unreasonable restriction" on use of the subject property, which is located in a rural conservation district where the ordinance provides that agriculture and forestry are the preferred uses, even over residential uses. There are sound public finance reasons for this preference. The recent study by the Weldon Cooper Center for Public Service at the University of Virginia, for example, has found that residential development is a net tax loss for Fauquier County compared to substantial positive contributions by commercial and especially agricultural activities ([http://www.fauquiernow.com/index.php/fauquier\\_news/entry/fauquier-livestock-dont-call-911-taxes-2016](http://www.fauquiernow.com/index.php/fauquier_news/entry/fauquier-livestock-dont-call-911-taxes-2016)). Finally, the developer cannot make a case for any "hardship": the inability to develop an unlawful subdivision is not grounds for a waiver.

The Board also should be guided in this matter by the rural land use plan set forth in chapter 8 of the county's Comprehensive Plan, the guiding principles of which would be undermined by this development: "1. Encourage Farming; 2. Direct growth to designated Service Districts; 3. Protect environmental, cultural and visual resources; and 4. Provide strict controls over all new development in rural areas." The Plan states that undesirable residential development "will change the agricultural environment and the valued rural nature of our community" if not effectively managed through zoning and subdivision regulations and voluntary initiatives. The Plan addresses precisely the issue before the Board in this case:

The problem currently being experienced is that the traditional development patterns of our villages, estates and rural neighborhoods, which have resulted in the visual landscape that the County currently enjoys, are slowly being supplanted by a new pattern of development. That development is showing

tendencies to occur within our valued mountain areas and in open fields once productive for agricultural pursuits.

The Comprehensive Plan notes that "Fauquier County has been a state and national leader in planning and implementing rural area protection." Private covenants, such as those that apply to the Apple Manor Subdivision on Brushy Mountain, can help further the goals of the Comprehensive Plan. These private covenants should not be undermined by the granting of waivers to subdivisions that were created in violation of the County's subdivision ordinance. The County should not surrender its leadership role by granting a waiver to these unlawful subdivisions.

The value of Inglewood would be greatly diminished by the development of Brushy Mountain contemplated by the waiver. We have spent 18 years restoring the farm, which is noted in the County's bicentennial history, *Fauquier County, Virginia 1759 - 1959* (Fauquier County Bicentennial Committee, Warrenton, Virginia, 1959, page 282). Our efforts to resurrect Inglewood have been conducted in a manner that is consistent with its history and land use, including the recovery of long-abandoned pastures and preservation of mature forests on the western uplands that abut Brushy Mountain. We have begun production of lavender and other aromatic plants and we are near completion of a bank barn that will support livestock operations. We also have maintained since 2003 a formal forestry stewardship program with the state of Virginia (tract number FAQ-03033; on file with the Department of Forestry). We have invested in our land and placed it in a conservation easement with the Virginia Outdoors Foundation in a good faith reliance on Fauquier County's commitment to a rural environment.

The illegal subdivisions, by contrast, with their steep and rocky slopes – among the highest elevations in the county – appear to have no relation to agriculture or forestry. They are a stalking horse for hilltop vanity dwellings that would be incongruent with the forestry and agriculture activities of our community and would further suburbanize a county that *Progressive Farmer* magazine once named the best rural county in America. Such development would degrade the view shed of Brushy Mountain from public lands and by-ways. The conservation easement that the late owner executed with Virginia Outdoors Foundation establishes this fact quite clearly: "[A]reas of the ... property are visible from and contribute to the scenic views from State Route 688, a Virginia Byway and a Fauquier County designated scenic road as well as Interstate Route 66, U.S. Route 50, and U.S. Route 17." These subdivisions never should have been approved in the first place and should not be allowed now by virtue of the requested waiver.

Fauquier County is approaching the tipping point between a land rich in agricultural heritage and a faceless suburb of Washington, DC and the Dulles corridor. To take but one pertinent example, Hume has been degraded by development similar to what is contemplated on Brushy Mountain, to the point where it has lost much of the character of a rural agricultural community. If the waiver is granted and the subdivisions are developed as they have been around Hume, then we will leave and pursue our commitment to a rural environment elsewhere.

We note and fully agree with the submissions of our neighbors in Apple Manor, in particular Melanie Fein, Esq., expressing concern that the existing gravel roads are inadequate to handle the additional traffic that would result if the waiver is granted. We also fully support the submissions of our Scuffleburg neighbors John Richardson, Esq., on behalf of the Friends of Pleasant Vale Church, and Andrea Young, of Hidden Creek Farm. We will not repeat the cogent arguments that they have presented for denying the requested waiver. Respectfully submitted,

William and Sharon Clinton

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