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**WALSH COLUCCI
LUBELEY & WALSH PC**

April 24, 2019

Via Hand Delivery

Town of Vienna Board of Zoning Appeals
Attn.: Cindy Petkac, Director of Planning
and Zoning/Zoning Administrator
127 Center Street, South
Vienna, Virginia 22180

Re: Appeal of Zoning Violation
Appellants: James Hathaway and Soleyah Groves
Subject Property: 124 Melody Lane, SW Vienna, Virginia

Dear Ms. Petkac:

Please accept this letter as a request for an appeal of a Notice of Violation dated March 25, 2019 (the "Notice"), a copy of which is enclosed, that was issued for the Subject Property. This notice was subsequently revised by the Town of Vienna. The following information is provided as grounds for an appeal in accordance with Town of Vienna Zoning Ordinance (the "Zoning Ordinance") Section 18-239 and applicable state regulations.

The Notice identifies zoning violations that arise from a deck and enclosed porch constructed without a building permit and in excess of the maximum lot coverage allowed by the Town Code for the Subject Property as well as a newly built structure in violation of the Towns' minimum setback requirements and a driveway modified without a required permit. The Notice states that, pursuant to Section 18-218 of the Vienna Town Code, a new structure requires a building permit prior to construction, and that the porch was built out in excess of the allowable 25% lot coverage. It also states that a driveway permit has not been issued for the reduction in the size of the driveway.

The Appellants are the owners of the Subject Property. They contracted with Waters Construction, LLC ("Waters Construction") in August of 2017 to construct a 20 foot by 14 foot gabled screened porch with a 10 foot by 14 foot open deck. Waters Construction agreed in the contract to pull all required permits. Unfortunately, Waters Construction did not perform as agreed in the contract by failing to request any permits, and also failed to complete the work. Later, the Appellants learned that there was a potential issue with lot coverage with the new structure, and that it may not be possible to obtain a building permit without either reducing total lot coverage or requesting a variance from the Board of Zoning Appeals. They also learned that the porch violated rear yard setback requirements. Over the course of the past year, the

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Appellants have worked with the Town to identify an acceptable course of action to correct these issues. They have already taken a number of steps to address the problems:

- A new survey was conducted which resulted in an increase in land area, thereby reducing lot coverage.
- The driveway was reduced in size, further reducing lot coverage. The driveway modifications required far less disturbance than the 2,500 square foot threshold which would require a land disturbance permit. The Zoning Administrator also told the Appellants that their proposed driveway reduction was consistent with the Town Code. Nonetheless, the Appellants have also procured an updated survey reflecting the reduction of the driveway and applied for a driveway permit.
- A building permit application was filed to reduce the size of the enclosed area of the porch, thereby curing the lot coverage and setback issues. This permit was rejected because the survey enclosed did not reflect the new lot coverage with the new survey and reduction of the driveway.
- The Appellants are now working diligently to procure the necessary documents to obtain permits for both the driveway reduction and the proposed porch reduction, thereby resolving all outstanding issues on the Subject Property.

The Appellants sought to construct the screened porch and deck because Ms. Groves has a venom allergy to the Hymenoptera species, which includes bees, wasps, yellow jackets, hornets, and imported fire ants. Because of her allergy, she is at risk for anaphylaxis after an insect sting which can lead to death. For this reason, she spends minimal time outside exposing herself to these insects. A screened porch would allow her to enjoy the outdoors with their children without exposing her to the risk of insect stings and the subsequent consequences.

As owners of the Subject Property, the Appellants are aggrieved parties. The purpose of this appeal is to preserve the Appellants' rights, stay enforcement of the violation, and allow time for the Appellants to secure the necessary permits to reduce the size of the porch as set forth above. The Appellants also note that the Notice does not include the language required by Section 15.2-2311 of the Code of Virginia that requires any written notice of a zoning violation to inform the recipient that he may have a right to appeal the notice of a zoning violation or a written order within 30 days and is therefore invalid.

During the pendency of the appeal, the Appellants will continue to work with the Town to secure all necessary permits. If the Appellants and Town representatives agree to a mutually satisfactory resolution to address the alleged violation, this appeal will be withdrawn.

I would appreciate your acceptance of this appeal at your earliest convenience. I reserve the right to enter additional materials into the record both prior to and during the public hearing

and to supplement this statement for appeal. This appeal is submitted to stay enforcement of the Notice of Violation in accordance with Va. Code Ann. §15.2-2311(B).

Should you have any questions regarding the above, or require additional information, please do not hesitate to contact me. As always, I appreciate your cooperation and assistance.

Very truly yours,

WALSH, COLUCCI, LUBELEY & WALSH, P.C.

A handwritten signature in black ink, appearing to read "Nicholas V. Cumings". The signature is fluid and cursive, with the first name "Nicholas" and last name "Cumings" clearly distinguishable.

Nicholas V. Cumings

Enclosure

cc: James Hathaway
Soleyah Groves
Lynne Strobel