



Legislation Details (With Text)

File #: 19-1147 **Version:** 1 **Name:**

Type: Action Item **Status:** Agenda Ready

File created: 1/14/2019 **In control:** Town Council Meeting

On agenda: 1/28/2019 **Final action:**

Title: Consideration of correction for resubdivision of lots 18, 19B & 20 of Malcolm Heights Subdivision

Sponsors:

Indexes:

Code sections:

Attachments: 1. Muhammad Mir Application for Boundary Line Adjustment 1_16_2019, 2. Revised Plat of Resubdivision - Mir, 3. Final Order Mir v Shariati et al 11 17 2017, 4. Resubdivision - Lots 18, 19B & 20 Malcolm Heights (Recorded 2008)

Date	Ver.	Action By	Action	Result
1/28/2019	1	Town Council Meeting	approved	Pass
1/28/2019	1	Town Council Meeting	approved	Pass

Subject:
Consideration of correction for resubdivision of lots 18, 19B & 20 of Malcolm Heights Subdivision
EXPLANATION AND SUMMARY :

The resubdivision of lots 18, 19B, and 20 of the Malcolm Heights Subdivision was considered and approved by Town Council in 2007 and recorded with Fairfax County in 2008. The resubdivision, located at Lincoln Street NW and Highland Street NW, consisted of a consolidation and resubdivision of three lots into four lots. The resubdivision met all Town of Vienna subdivision standards and RS-12.5 single-family dwelling zoning standards.

During the process of consolidation and resubdivision, the applicants failed to obtain written consent of the lender, Washington Mutual Bank. This became known during a recent court case involving the applicants and subsequent purchaser (foreclosure sale) of one of the resubdivided properties (Muhammad Mir v. Mahbobeh Shariati, et al.). Because the necessary consents were not obtained, as determined by Judge Jan L. Brodie of the Fairfax County Circuit Court, the consolidation and resubdivision was deemed “void from its inception.”

The Fairfax County Circuit Court has ordered a correction of the resubdivision, which creates two odd lots (Odd Lot A and Odd Lot B). These court-ordered odd lots are not buildable lots. They do not meet current subdivision and zoning ordinance regulations and are not accessible from any existing publicly dedicated street or a street dedicated by the subdivision plat. The odd lots are the result of the original subdividers’/ defendants’ “unclean hands,” and they are not subject to development as they are non-conforming lots. They may be combined in the future with other adjoining lots.

Section 17-61. Location of the Town Code states “Each lot shall abut on a street dedicated by the

subdivision plat or on an existing publicly dedicated street. Interior lots having frontage on two streets shall be prohibited except where unusual conditions, in the opinion of the planning commission, make other design undesirable.”

Departmental Recommendation : Staff recommends that Town Council approve correction of the resubdivision as required by the order from Fairfax County Circuit Court.

Finance Recommendation : N/A

Purchasing Recommendation : N/A

Town Attorney Recommendation : The parties affected by correction of the lot lines were parties to the litigation in Fairfax County Circuit Court, and the Town was a party to the action for the purpose of any correction or modification of the subdivision. All appeals were exhausted, and the Town must correct the subdivision lot lines in accordance with Judge Brodie’s order.

Town Manager's Recommendation : I recommend the Town Council approve the correction for resubdivision of lots 18, 19B & 20 of Malcolm Heights Subdivision as submitted.

Cost and Financing: N/A

Account Number: N/A

Decision Needed by This date: N/A

PROPOSED/SUGGESTED MOTION

“I move to approve the Fairfax County Circuit Court-ordered correction of the resubdivision of Lots 18, 19B, & 20 of Malcolm Heights Subdivision as identified on the plat and final order. I also move to approve incorporation of the Court’s ruling for creation of the odd lots and direct the Town Clerk to send a clerk’s certification of this Council action to the director of planning and zoning for inclusion in the Town’s zoning file for this subdivision.”

Or

Other action deemed necessary by Council.