



FAIRFAX  
COUNTY

**BOARD OF ZONING APPEALS**

**PUBLIC HEARING DATE:** November 4, 2008

**TIME:** 9:30 a.m.

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V I R G I N I A

**October 28, 2008**

**STAFF REPORT**

**APPEAL APPLICATION A 2008-MA-051**

**MASON DISTRICT**

**APPELLANT:** Thomas and Patricia Mugavero

**LOCATION:** 6609 Dearborn Drive

**TAX MAP REF:** 60-4 ((15)) 7

**ZONING DISTRICTS:** R-2

**SITE AREA:** 24,232 square feet

**NATURE OF APPEAL:** Appeal of a determination that bamboo located in the floodplain is considered a use that is interfering with the drainage on property in the R-2 District in violation of Zoning Ordinance provisions.

CPF

For information, contact the Zoning Administration Division, Department of Planning and Zoning, 12055 Government Center Parkway, Suite 807, Fairfax, Virginia 22035-5505, 703-324-1314.

## DESCRIPTION OF APPEAL

- Appellant:** Thomas and Patricia Mugavero
- Issue:** Appeal of a determination that bamboo located in a floodplain is considered a use that is interfering with the drainage on property in the R-2 District in violation of Zoning Ordinance provisions.
- Property Description:** The property that is the subject of this appeal is located at 6609 Dearborn Drive, in the Mari-Dale Subdivision, east of Sleepy Hollow Road, west of Lake Barcroft, and north of Columbia Pike. The property is zoned R-2, Residential District, Two Dwelling Units / Acre and contains a lot area of approximately 24,232 square feet. The property is developed with a split level single family detached dwelling unit constructed in 1954. A copy of the zoning map sheet showing the subject property is provided on the previous page.
- Appellant's Position:** The appellant's application and basis for appeal are set forth in Attachment 1.

## ZONING ORDINANCE PROVISIONS

The provisions of the Zoning Ordinance that are pertinent to this appeal are listed below. The complete text of these provisions is provided as Attachment 2.

- Paragraph 1 of Sect. 2-304, Special Exception Uses
- Sect 2-602, Drainage, Floodplains, Wetlands and Resource Protection Areas
- Paragraphs 1 and 2 of Sect. 2-902, Administration, Floodplain Regulations
- Sect. 2-903, Permitted Uses, Floodplain Regulations
- Paragraph 1 of Sect. 2-904 Special Exception Uses, Floodplain Regulations
- Definitions of FLOODPLAIN, RESOURCE PROTECTION AREA, and USE as set forth in Article 20 of the Zoning Ordinance.

## BACKGROUND:

- The zoning (street) file for the subject property contains two building permits and a house location survey for the existing dwelling. The zoning file does not contain a copy of the original building permit for the existing dwelling. However, the house location survey shows an approval date of August 22, 1955. The file contains two other permits; one for a private above ground swimming pool, approved on May 12, 1969, and one for replacement steps to serve an existing deck attached to the residence which was approved in July, 2002. A copy of the building permits and the house location survey is provided as Attachment 3.

- As early as April, 1981 the Department of Public Works and Environmental Services (DPWES) was involved in floodplain mitigation efforts along north side of Holmes Run Stream, where the appeal property is located, and had installed gabion walls for stream bank protection.
- The subject property was conveyed to the appellant at Deed Book 10944, Page 0699, recorded among the Fairfax County land records on June 1, 1999. A copy of the deed book and page are provided as Attachment 4.
- Between October 29, 1999 and April 2007, DPWES undertook field inspections and feasibility studies for Holmes Run Stream between Sleepy Hollow Road and the upper reaches of Lake Barcroft. The studies, conducted by Baker Engineering, concluded that the bamboo and fencing in the floodplain were major blockages to the floodplain.
- In December, 2006, DPWES contracted with Tru Green Land Care to remove all bamboo in the stormwater easement areas associated with Holmes Run Stream which encompasses areas of land owned by the Park Authority.
- On May 3, 2007, DPWES held the first scheduled community meeting to present the Baker Engineering report. Homeowners were notified that bamboo and fencing in the floodplain were causing flood elevations to rise and flooding to occur. Both short and long term options for the mitigation of floodplain issues and buffer zone areas were discussed. Homeowners were notified that allowing bamboo and fences to remain in the floodplain would constitute a violation of the Zoning Ordinance. Zoning Enforcement staff attended the meeting to discuss possible enforcement procedures. DPWES staff advocated the removal of all bamboo and fencing in the floodplain and informed the property owners that the agency would replant the affected areas, subject to the homeowners' approval of a replanting plan.
- On May 23, 2007 the appellants requested a copy of the Baker Engineering study and information about the existing storm drainage easement along Holmes Run Stream and the information was provided to them on May 30, 2007.
- On October 15, 2007 the second community meeting took place at the Mason District Governmental Center. At this meeting, property owners were asked to give written permission for the removal of bamboo and fencing on their individual lots. A landscaping plan for restoring the floodplain and buffer zone area with indigenous plantings was also presented for community approval. A proposed plan for a five year clean up effort for all of the bamboo and other invasive vegetation was announced.
- In a memorandum dated October 26, 2007, ZEB received a complaint from William Schell, Deputy Director, Maintenance and Stormwater Management Division (MSMD) regarding the existing stockade fence and bamboo located in the floodplain at 6609 Dearborn Drive which had not been authorized by the DPWES Director as required in Sections 2-602 and 2-903 of the Zoning Ordinance. The memorandum recommended that the bamboo and the existing stockade fence be removed, since it negatively impacts the neighbors by decreasing the conveyance of the 100 year floodwater flow, increases the 100-year water surface elevation, thus increasing the potential of flooding on adjacent properties. A copy of this memorandum is provided as

#### Attachment 5.

- On November 26, 2007 DPWES sent letters out via certified mail to ask for the property owners permission to let the County remove the bamboo and restore floodplain and buffer plantings to affected properties. Property owners were asked to sign a letter of permission and return the letters to DPWES. All of the property owners, with the exception of the appellants, responded by signing and returning the letters to DPWES.
- In January 2008, DPWES awarded a five year contract to Invasive Plant Control, Inc. to remove all bamboo on the affected properties in the floodplain except the appellants property at 6609 Dearborn Drive. The steps to be used in this process included initial removal of the bamboo, the treatment of the bamboo to prevent regrowth, and periodic returns to each individual property to control any new growth.
- In March, 2008 bamboo was removed from all affected properties except the appellants property at 6609 Dearborn Drive.
- On July 8, 2008, a Notice of Violation (NOV) was issued by ZEB via delivery by the Fairfax County Sheriff's Office to Thomas and Patricia Mugavero. The NOV stated that the stockade fence and the bamboo are located in the floodplain and that they obstruct, interfere with, and/or change drainage on the subject property and directed the appellants clear the violations within 30 days. The NOV mentioned that the fence and bamboo located in the floodplain have not been approved by the DPWES Director, as required in Section 2-900 of the Zoning Ordinance. The NOV cites Paragraph 2 of Section 2-602 of the Zoning Ordinance which provides that no use shall be established in a floodplain unless such use is approved under Sect. 2-900 by the DPWES Director or the Board of Supervisors in conjunction with the approval of a special exception application in accordance with Sect. 904, and that the use of the property violates Section 2-304, Special Exception Uses. A copy of the Notice of Violation is included with the appellant's submission (Attachment 1).
- The subject appeal was submitted by Thomas and Patricia Mugavero on August 6, 2008 and was accepted on September 8, 2008 and scheduled for public hearing before the Board of Zoning Appeals (BZA) on November 4, 2008. See appellant's submission (Attachment 1).

#### **ZONING ADMINISTRATOR'S POSITION**

This is an appeal of a determination that bamboo located in the floodplain is considered a use that is interfering with the drainage on property in the R-2 District in violation of Zoning Ordinance provisions. It is noted that the appellants are not appealing the second element of the NOV, namely the removal of the existing stockade fence. The appellants are seeking resolution of the fence violation through correspondence with DPWES.

The appellant's property, located at 6609 Dearborn Drive in the Mari Dale subdivision, is developed with a single family detached dwelling unit. Much of the rear yard on the subject property is part of a fifty foot wide sanitary sewer easement, which is covered with a heavy growth of bamboo, approximately 10-15 feet in height and encompassing approximately 2,500

square feet of area. The floodplain associated with Holmes Run Stream encompasses the rear half of the subject property, and a storm drainage easement includes the most active portions of the stream bed. The floodplain affects many properties in the area, and runs parallel to the stream bed on most lots located on the north and south sides of Holmes Run Stream. An aerial map and a map showing the homes along Dearborn Drive and the floodplain areas is included as Attachment 12. The area is also deemed a Resource Protection Area (RPA), subject to the regulations and guidelines of the Chesapeake Bay Preservation Ordinance. The Chesapeake Bay Preservation Ordinance seeks to reduce the cumulative negative impacts of pollution on waters by maintaining and preserving the RPA, to include flood and erosion control. The Chesapeake Bay Preservation Ordinance recognizes that the entirety of Fairfax County drains into the Potomac River, and ultimately into the Chesapeake Bay, and advocates the use of indigenous plantings and landscaping. These lands, designated as Chesapeake Bay Preservation Areas (CBPA's), are managed by various local and State agencies in order to prevent destruction and damage in the area in order to protect the quality of water in the Bay and other state waters, and consequently the quality of life in Fairfax County and the Commonwealth of Virginia.

Many of the homes on both sides of Holmes Run Stream were built prior to the establishment of the National Flood Insurance Program in 1958. As a result, many of the homes along Dearborn Drive have been built in the floodplain. Over the years, because of flooding issues with residential properties bordering Holmes Run Stream, the Department of Public Works and Environmental Services has worked extensively in the immediate area in the pursuit of flood mitigation measures and has looked at a variety of options to include channel widening and maintenance, construction of a levee or berm, individual house floodproofing, and the removal of potential blockages of flood flows caused by invasive planting and fencing. As a part of this work, DPWES hired a local consulting firm, Baker Engineering in 2005 to conduct a series of homeowner meetings and study the reach of Holmes Run Stream from the upstream limits of Lake Barcroft to Sleepy Hollow Road ( a distance of approximately 2,000 feet along both sides of Holmes Run Stream). The Baker Engineering report became the basis for further involvement by DPWES and for the commitment of public funds to mitigate floodplain issues for Holmes Run Stream. The report also provided various analyses of existing conditions and helped to provide several levee/berm options for the stream channel for future consideration. From the study, one thing was made abundantly clear; bamboo and fences associated with individual lots adversely affected the natural course of the stream and floodplain throughout the immediate area, especially during heavy rainstorms. During these events, the bamboo and fences in the floodplain formed a formidable barrier that captured much of the down and dead wood, miscellaneous debris, soil and sediments being washing downstream which produced a pooling effect with large stands of water occurring in various locations of the floodplain. As a result, many individual property owners were adversely affected by the flooding that occurred as a result of allowing bamboo to grow in the floodplain. Removing the obstacles presented by the bamboo growth and fencing in the floodplain, especially those which were situated in a perpendicular arrangement rather than parallel to the flow of the stream, proved the quickest and most cost effective measure to mitigate flooding. A copy of the findings of this study are included as Attachment 6.

As a result of the findings of this report, DPWES conducted two community meetings and worked with sixteen affected property owners, to include the appellants, along the north and south sides of Holmes Run Stream. DPWES was given permission by all property owners

except the appellants to access their individual properties and remove bamboo, fencing, and any other obstructions to the floodplain. The reasons cited by the appellants for not allowing removal of the bamboo and fencing on their property at 6609 Dearborn Drive, was, according to DPWES, that the appellants wished to retain the privacy that the heavy growth of bamboo and the existing fencing afforded them across the rear of their lot. A copy of aerial photographs showing the bamboo growth on the appellant's property is included as Attachment 13.

DPWES, through community meeting and discussions with several property owners realized that the appellant's property at 6609 had immense stands of bamboo and an existing fence that obstructed the flow of water away from the neighboring lots. In October 2007, DPWES realized that the appellant's would not voluntarily allow any measures to be taken to remove the extensive bamboo growth or the existing stockade fence which was obstructing the stormwater flows and thus, a memorandum was issued by William Schell, Deputy Director, Department of Public Works and Environmental Services (DPWES) on October 26, 2007, which requested ZEB to issue a notice of violation to the property owners. Specifically, the memorandum stated that according to Par. 1 of Section 2-602 of the Zoning Ordinance, no change shall be made in the existing contours of any land, including any change in the course, width or elevation of any natural or other drainage channel, in any manner that will obstruct, interfere with, or change the drainage of the subject property without providing adequate drainage as determined by the DPWES Director, and that no such authorization had ever been given, or would be given, under the circumstances. DPWES, through the recent studies of the floodplain in the area, was able to prove that the bamboo and the fencing significantly obstructed, interfered with, and changed all movements of stormwater in that particular stretch of Holmes Run Stream. The memorandum requested that the bamboo and the existing stockade fence be removed, since the bamboo and stockade fence negatively impacted the neighbors by decreasing the conveyance of the 100 year flow and increased the 100-year water surface elevation, thus increasing the potential of flooding on adjacent properties. A copy of this memorandum is provided as Attachment 5.

Interfering with the natural drainage of land is a violation of Par. 2 of Sect. 2-602 of the Zoning Ordinance which states in pertinent part that "there shall be no filling, change of contours or establishment of any use in any floodplain except as may be permitted by the provisions of Par. 1 of Sect. 601, or Part 9 of Article 2, Floodplain Regulations." DPWES staff has determined that the growth of bamboo on the subject property was impacting the natural floodplain and stormwater drainage processes. To help reduce the negative impacts of local bamboo growth, DPWES hired private contractors to remove all bamboo out of the stormwater drainage easements along both sides of Holmes Run Stream in December 2006 and most recently in March, 2008, to clear any new bamboo growth in the easement and in the floodplain areas of individual properties along Dearborn Drive. Because of the appellants' refusal to grant permission to access the site, the March 2008 bamboo removal did not include the appellants property at 6609 Dearborn Drive. It was strongly emphasized in the May 3<sup>rd</sup> and October 15, 2007 homeowner meetings for Dearborn Drive property owners that invasive bamboo trees and fencing in the floodplain would be considered to be a violation of the current Zoning Ordinance. In a November 26, 2007 letter to property owners, including Mr. and Mrs. Mugavero, the appellants, DPWES offered all property owners along the north and south sides of Holmes Run Stream the opportunity to allow the County to remove the bamboo within the floodplain and also offered to restore plantings to meet with Chesapeake Bay Preservation Ordinance requirements. Approximately sixteen property owners were notified of this offer, including the appellants. According to DPWES, the appellants were the only property

owners to deny access to their property, citing privacy issues, thus declining the offer to remove the bamboo. A copy of the letter mailed to local property owners and a listing of the properties affected is included as Attachment 7. A copy of DPWES maps depicting the location of the individual residences in relation to the floodplain is included as Attachment 12.

On July 8, 2008, a Notice of Violation (NOV) was issued by ZEB via delivery by the Fairfax County Sheriff's Office to Thomas and Patricia Mugavero. The NOV stated that the stockade fence and the bamboo are located in the floodplain and that they obstruct, interfere with, and/or change drainage on the subject property and asked that the appellants clear the violations within 30 days. The NOV also mentioned that the fence and the bamboo had not been approved by the DPWES Director as required pursuant to Part 9 of Article 2, Floodplain Regulations of the Zoning Ordinance. Par. 1 and 2 of Section 2-902 states:

1. The provisions of this Part shall apply to *all land within a floodplain*. The floodplain limits shown on the Zoning Map shall be used as a guide; provided, however, that only those land areas which meet the definition of floodplain shall be subject to the provisions of this Part.
2. The Director shall be responsible for the administration of this Part. He shall review all proposed uses to determine whether the land on which the proposed use is located is in a floodplain. The Director may, in appropriate cases, require information from the applicant, including, but not limited to, an engineering study of the floodplain. Upon a determination that the land on which the proposed use is located is in a floodplain, he shall determine whether such use may be permitted in accordance with the provisions of Sect. 903 below or requires the approval of a special exception as set forth in Sect. 904.

In this particular case, as a result of the Baker Engineering Study, the DPWES Director had already determined that the bamboo and the existing fencing would not be permitted in the Holmes Runs Stream floodplain. The NOV states that a review of County records establishes that there have been no approvals as required by the Zoning Ordinance for the establishment of any use in the floodplain on the subject property. The NOV directs the appellants to remove all uses, including the stockade fence and bamboo, from the floodplain. A copy of the Notice of Violation is included with the appellant's submission (Attachment 1). Photographs taken by ZEB staff of the appellant's property in September, 2008 are included as Attachment 8.

The appellants, Thomas Mugavero and Patricia Mugavero, in their appeal response submitted by their attorneys, John W. Farrell and Anne Reilly Jones of McCandlish & Lillard, state that when they purchased the property in 1999 the bamboo and the stockade fence were already in place. The appellants claim that bamboo is a vegetative material and not a "use," and they feel that the Zoning Ordinance does not attempt to regulate vegetation. To demonstrate this, the appellants attached a copy of Chapter 118 of the Fairfax County Code, Chesapeake Bay Preservation Ordinance, and called attention to Sect. 118-3-3, Additional Performance Criteria for Resource Protection Areas, which addresses regulation of vegetation in Resource Protection Areas and their surrounding buffers. Per Sect. 20-300 of the Zoning Ordinance, a "use" is defined as follows:

USE: Any purpose for which a structure or a tract of land may be designed, arranged, intended, maintained, or occupied; also, any activity, occupation, business or operation carried on, or intended to be carried on, in or on a structure or on a tract of land.

Staff feels that the definition of “use” as provided in Sect. 20-300 of the Zoning Ordinance is appropriate due to the fact that the definition also calls out “activities”, which would include the growing of bamboo. The violations, as mentioned in the July 8, 2008 NOV are for violations of the Zoning Ordinance, and not the Chesapeake Bay Preservation Ordinance, which is administered by DPWES. Thus the argument, as presented by the appellants attorney, does not apply in this particular case. The appellant feels that if the landowner is required to obtain a special exception to permit the continued existence of a patch of bamboo, “it would necessarily follow that a special exception would also be required to maintain a lawn, bushes, or other plant materials as the plain language of the Zoning Ordinance makes no distinction between bamboo, grass, or any other vegetative material.” The appellants further maintain that “the presence of bamboo does not constitute filling nor does it change the contours of the property, and that the level of soil on the subject property has not been altered.” They claim “there are merely plants growing on that soil”. The appellants feel that the NOV misapplies the Zoning Ordinance in this instance, and that the bamboo on the subject property does not constitute a violation of either Paragraph 2 of Section 2-602 or Paragraph 1 of Section 2-304. Staff contends that pursuant to Par. 1 and 2 of Sect. 2-902, all uses in floodplains (even lawns, bushes, plant materials) must be approved by the DPWES Director, including the growing or retention of bamboo. However, from a practical standpoint, DPWES typically regulates uses, such as the appellants’ bamboo, which create environmental problems and property damage.

Bamboo is not an indigenous vegetative material in Northern Virginia, but is an invasive plant which grows heartily and multiplies at a rapid rate. When allowed to grow in floodplain areas, as along Dearborn Drive and in the Holmes Run Stream, bamboo can be strong enough to obstruct the drainageway patterns and cause extensive upstream and downstream impacts much like a wall or any other physical obstruction placed in or around a floodplain location.

The appellants, through their agents, are not appealing the fence violation on their property, and claim that they anticipate discussion with the County to determine the kind or type of fencing that could be approved on the subject property. In their appeal response they request that the Board of Zoning Appeals (BZA) consideration of the fence violation be continued to allow this discussion to reach a resolution acceptable to the County and the appellants. A recent letter, dated October 8, 2008 and written by the appellants agents at McCandlish and Lillard, seeks DPWES approval for a new wrought iron fence. This letter is included as Attachment 9.

DPZ staff has met or talked with several of the property owners currently living along Dearborn Drive to the west of the appellants property. DPWES has conducted two community meetings asking for homeowner support of the bamboo and cleanup of the fencing throughout the area, and to discuss the findings of the Baker report. The meetings also served to inform the property owners of the potential damage caused by allowing bamboo and fences to block the waterway causing flood elevations to rise, and that the bamboo and fencing constituted violations of the Zoning Ordinance. At the first of these meetings, held on May 3, 2007, the homeowners were also briefed on the enforcement procedures for non-compliance regarding these zoning issues and how NOV’s are issued by ZEB staff. According to DPWES, the appellants attended both meetings. Following this

first community meeting, DPWES received a written request from Mr. and Mrs. Mugavero, asking for information on the Baker Engineering report, the existing storm drainage easement adjacent to their property, and the presentation material used in the May 3, 2008 meeting. A second community meeting took place on October 15, 2007 at the Mason Governmental Center where these same issues were again discussed, along with the County's proposals for restoring the buffer zone plantings with the affected property owners. With the exception of the appellants, all of the property owners were in full support of the DPWES efforts to clear any obstructions located in the floodplain of their properties, to include the removal of fences and bamboo, and for DPWES to replace plantings on their individual lots in the buffer zone and floodplain areas.

Several of the property owners have witnessed the build up of substantial debris in the form of garbage and/or down and dead wood in the form of tree stumps and broken branches, uprooted vegetation, and soil/sedimentation that has been washed downstream as a result of thunderstorms and storms associated with recent hurricane activity. Many of these same property owners contend that this accumulation of debris usually forms a type of dam at the base of the existing bamboo groves and any other fencing still standing in the floodplain, which diverts the stormwater flows onto their lots rather than allowing it to continue downstream, causing the water to pool and flood their homes. Most recently, these same property owners feel that the flooding produced in May and September, 2008 was a direct impact of the existing bamboo grove and the fencing on the appellant's property at 6609 Dearborn Drive. Michael Rossetti and Edith Blackwell, owners of the residence at 6611 Dearborn Drive, have written a letter to the BZA dated October 9, 2008, in which they outline some of the flooding problems they have experienced on their property. On September 6, 2008, they contend that as a result of Tropical Storm Hanna they experienced a flood of over 14 inches of water in their ground floor living area, and they were forced to evacuate their home at the request of the local fire department. Mr. Rossetti and Ms. Blackwell ask in their letter that the BZA deny the current appeal, and require that the bamboo and fencing on the appellant's property be removed as DPWES and DPZ have requested. They state that they and most of their other neighbors have complied with the recommendations of DPWES in order to minimize the future flood damage to their property as well as that of others in the immediate area.

DPZ Staff have also recently met with Claire and Alexis Roos, who reside at 6613 Dearborn Drive, two houses away from the appellant's property. They also have been heavily impacted by flooding and have not been able to make all the repairs needed after the lower level of their residence was damaged as a result of the September 6, 2008 storms. They ask that the BZA deny the appeal and contend that the bamboo and the fence should be removed in order to minimize the potential of future flood damage. Andrew Orlando, a resident of Dearborn Drive, has also submitted an e-mail to DPZ Staff that says they cannot support any efforts that will permit property owners from being exempted for the order to remove bamboo from the property. The letters submitted by Mr. Rossetti and Ms. Blackwell, Claire and Alexis Roos, and Andrew Orlando are included as Attachment 10. Pictures included in Attachment 10 clearly show that the existing fence and the bamboo on the appellant's property obstructed the movement of the floodwaters.

In view of the fact that the County has expended a great deal of time, money, and resources into studying the stretch of Holmes Run Stream between the upper reaches of Lake Barcroft and Sleepy Hollow Road, including hiring Baker Engineering to conduct an in depth study of the area, scheduling and staffing homeowners meetings to present various short term and long-term options, and offering to remove impediments and obstructions located in the floodplain areas at

no cost to the local property owners, it would seem logical only a full and complete compliance and support by all property owners within the affected area would produce the desired results as recommended by DPWES. Although the appellants contend that bamboo is a vegetative material and not a “use”, the growing of bamboo, whether planted by the appellant or previous property owners, is an “activity” as described in the definition of use from Article 20 of the Zoning Ordinance, and thus prohibited on the subject property.

The appellants are the only property owners with a portion of their lot in the floodplain who have not accepted the recommendations of the County regarding these issues as demonstrated by DPWES reports and studies, that the bamboo does negatively impact the neighbors by decreasing the conveyance of the 100 year flow, increases the 100-year water surface elevation, thus increasing the potential of flooding on adjacent properties. Photographs as submitted in the letters sent by neighboring property owners Rosetti and Blackwell and Claire and Alexis Roos (included in Attachment 10) and those pictures recently taken by DPWES staff (Attachment 11) clearly show that the debris accumulation because of the bamboo growth and the existing fence is obstructing the movement of the floodwater. Due to the lack of support as shown by the appellants to the various County efforts in removing all recognized obstructions in the floodplain, the full extent of the floodplain mitigations and relief efforts for the properties located along this stretch of Holmes Run Stream has not yet been realized on the parcels adjacent to the subject site, and the appellant’s actions have affected many of the adjoining property owners. Further, it is noted that if bamboo is not removed from one property, it will spread to adjacent properties, thus negating the County’s effort to improve the water flow by eliminating the invasive bamboo. Staff recommends that the BZA uphold the Zoning Administrator’s determination of July 8, 2008 that the bamboo located in the floodplain is considered a use that is interfering with the drainage of property in violation of Zoning Ordinance provisions.

#### **ATTACHMENTS:**

1. Appellant’s Application and Basis for Appeal
2. Applicable Zoning Ordinance Provisions
3. Building Permits, and House Location Survey
4. Deed Book 10944, Page 0699
5. DPWES Memorandum to Michael Congleton, ZEB outlining possible violations
6. Dearborn Drive Flood Mitigation Study Holmes Run, by Baker Engineering
7. Letter from DPWES to affected property owners
8. ZEB Inspection Photographs of Subject Property
9. Letter from McCandlish & Lillard to DPWES requesting approval of fence
10. Letters regarding current appeal as submitted by Michael Rossetti and Edith Blackwell, Claire and Alexis Roos, and Andrew Orlando
11. Photograph’s taken at Subject Property by DPWES staff on October 16, 2008
12. DPWES maps showing residence and floodplain locations
13. Aerial Photographs showing bamboo growth on appellants property.