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Record No. 4941

In the Supreme Court of Appeals of Virginia at Richmond

BELLE-HAVEN CITIZENS ASSOCIATION, INCORPORATED, ET AL.

v.

HERBERT F. SCHUMANN, JR., ETC., ET AL.

FROM THE CIRCUIT COURT OF FAIRFAX COUNTY

RULE 5:12—BRIEFS.

§5. Number of Copies. Twenty-five copies of each brief shall be filed with the clerk of the Court, and at least three copies mailed or delivered to opposing counsel on or before the day on which the brief is filed.

§6. Size and Type. Briefs shall be nine inches in length and six inches in width, so as to conform in dimensions to the printed record, and shall be printed in type not less in size, as to height and width, than the type in which the record is printed. The record number of the case and the names and addresses of counsel submitting the brief shall be printed on the front cover.

HOWARD G. TURNER, Clerk.

Court opens at 9:30 a. m.; Adjourns at 1:00 p. m.

IN THE

Supreme Court of Appeals of Virginia

AT RICHMOND.

Record No. 4941

VRGINIA:

In the Supreme Court of Appeals held at the Supreme Court of Appeals Building in the City of Richmond on Friday the 10th day of October, 1958.

BELLE-HAVEN CITIZENS ASSOCIATION, INCORPORATED, ET AL. Appellants,

against

HERBERT F. SCHUMANN, JR., ETC., ET AL., Appellees.

From the Circuit Court of Fairfax County

Upon the petition of Belle-Haven Citizens Association, Incorporated, Bucknell Manor Citizens Association, Inc., Hollin Hills Community Association, Inc., Ray M. Van Hook, James S. Keith, James Mark, Jr., and Gilbert S. McCutcheon an appeal is awarded them from a decree entered by the Circuit Court of Fairfax County on the 22nd day of April, 1958, in a certain chancery cause then therein depending wherein the said petitioners were plaintiffs and Herbert F. Schumann, Jr., Zoning Administrator for Fairfax County, and others were defendants: upon the petitioners, or some one for them, entering into bond with sufficient security before the clerk of the said Circuit Court in the penalty of five hundred dollars, with condition as the law directs:

RECORD

* * * * *

Filed in Circuit Court Clerk's Office Aug. 5, 1957.

THOMAS P. CHAPMAN, JR.
Clerk Fairfax County, Va.

PETITION.

To the Honorable Judges of the Circuit Court of Fairfax County:

Your petitioners respectfully represent unto the Court as follows:

1. Some of your petitioners are tax payers residing in Mount Vernon Magisterial District, Fairfax County, Virginia, in the vicinity of a tract of land containing approximately 26 acres upon which the defendant, RIVER TOWERS, page 2 } INC., proposes to build two apartment houses. Your other petitioners are corporations all of whose members reside in the same vicinity.

2. The 26-acre parcel of land referred to stands on the land records in the name of Belle View Apartments, Section One, Incorporated, Belle View Apartments, Section Two, Incorporated, and Belle View Apartments, Section Three, Incorporated, tenants in common. It was conveyed to them by Belle View Shopping Center, Inc., by deed recorded in Deed Book 1351, page 5, on the land records of Fairfax County, Virginia. The deed does not disclose the acreage in the tract. The tax records show the tract to contain 19.63702 acres.

3. Your petitioners are advised, and therefore aver, that on February 25, 1947, when said parcel of land was owned by George C. Landrith and Eugene J. Olmi, the Board of Zoning Appeals of Fairfax County, granted a "special exception" allowing the construction of a multiple-housing project on a large parcel of land including the said 26-acre parcel. The action of the Board of Zoning Appeals is stated in the minutes as follows:

"Mr. Piggott moved, because he felt the application was in harmony with the general purpose of the Zoning Ordinance and maps, and would not adversely affect the use of the neighboring property, that the application be granted, providing the builders conformed to the recommendation of the

Planning Commission, seconded by Mr. Brookfield and unanimously carried."

The recommendation of the Planning Commission as stated in the minutes of the Board of Zoning Appeals was as follows:

"The Planning Commission also recommends that the exception be granted subject to the construction of the project in conformance with the type of architectural design indicated by the prospective rendering submitted with the application."

4. The prospective rendering submitted with the application showed garden-type apartments similar to those which were actually constructed on most of the original tract and similar to those which had been previously constructed in the Fairlington Apartment Development in Arlington County.

5. Between February 25, 1947, and June 5, 1957, no building permits were issued for the construction of any apartment on the said 26-acre parcel and no buildings were built thereon.

6. Your petitioners are advised, and therefore aver, that said 26-acre parcel of land is shown on the Official Zoning Map of Fairfax County zoned "Urban Residence—Class One." Under the Zoning Ordinance apartment buildings are permitted in the "Urban Residence—Class One" zone only upon special use permit granted by the Board of County Supervisors.

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7. On June 5, 1957, the defendant, Schumann, as Zoning Administrator of Fairfax County, approved building permits for River Towers, Inc., for the construction of footings for two 17-storey apartment buildings to be erected on said 26-acre parcel.

8. Hearing of the error of the Zoning Administrator in approving said permits, your petitioners appealed from his decision to the Board of Zoning Appeals. The appeal was filed on June 13, 1957.

9. On July 9, 1957, your petitioners appeared before the Board of Zoning Appeals of Fairfax County and urged the reversal of the erroneous decision of said Zoning Administrator. The matter was deferred by the Board until July 23, 1957, at which time the Board of Zoning Appeals, by a vote of three to two, affirmed the decision of the Zoning Administrator in approving the building permits for footings for the two said 17-storey apartment buildings.

10. Your petitioners are aggrieved by the error of the Zoning Administrator and Board of Zoning Appeals in that

the use permitted by the erroneous decision will adversely affect the neighborhood in which your petitioners live.

11. Your petitioners charge that the Zoning Administrator and the Board of Zoning Appeals erred in approving building permits for footings for the two said 17-storey apartment buildings for two reasons: (a) because the two buildings are not garden-type apartments and therefore violates the condition contained in the exception granted by the Board of Zoning Appeals in 1947, and (b) because insofar as said 26-acre parcel of land is concerned, the exception has expired because of the failure of the holders of the exception to obtain building permits within six months after the issuance of the exception as required by Section 6-12d(2) of the Zoning Ordinance of Fairfax County.

WHEREFORE, and Pursuant to Section 15-850 of the Code of Virginia from the decision of the Board of Zoning Appeals upholding the action of the Zoning Administrator approving building permits for footings for two 17-storey apartment buildings to be built by River Towers, Inc., on the said 26-acre parcel of land in Mount Vernon Magisterial District, Fairfax County, Virginia, and for the reversal of the action of the Board of Zoning Appeals and the Zoning Administrator.

BELLE-HAVEN CITIZENS
ASSOCIATION, INC., Petitioner
By Counsel.

HOLLIN HILLS COMMUNITY
ASS'N. INC., Petitioner
By Counsel.

RAY M. VAN HOOK, Petitioner
By Counsel.

JAMES S. KEITH, Petitioner
By Counsel.

JAMES MACK, JR., Petitioner
By Counsel.

GILBERT S. McCUTCHEON,
Petitioner
By Counsel.

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DECREE.

This cause came on to be heard upon the petition for appeal from the decision of the Board of Zoning Appeals of Fairfax County affirming the decision of Herbert F. Schumann, Jr., Zoning Administrator for Fairfax County, approving buildings permits for footings for two 17-story apartment buildings to be built by River Towers, Inc., on a parcel of land in Mount Vernon Magisterial District, Fairfax County, Virginia, and upon argument of counsel;

UPON CONSIDERATION WHEREOF, and pursuant to Section 15-850 of the Code of Virginia, it is hereby ADJUDGED, ORDERED and DECREED that the petitioners be, and they hereby are, allowed an appeal from the decision of the Board of Zoning Appeals affirming the decision of the Zoning Administrator approving permits for footings for two apartment buildings proposed to be built by River Towers Inc. The Board of Zoning Appeals is hereby directed within 30 days from the entry of this order to make return as provided by law and to serve the same upon the attorney for the petitioners.

Enter:

PAUL E. BROWN, Judge.

Date: August 2nd, 1957.

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Filed Aug. 12, 1957.

THOMAS P. CHAPMAN, JR.
Clerk of the Circuit Court of
Fairfax County, Va.

MOTION TO STRIKE AND DISMISS.

Now come the Respondents herein, Herbert F. Schumann, Jr., The Board of Zoning Appeals for Fairfax County, George T. Barnes, J. Bryant Smith, Mrs. M. K. Henderson, A. Slater Lamond and The Board of County Supervisors of Fairfax County, and file this motion to strike the petition herein and dismiss this cause for the following reason:

1. That the petition shows upon its face that the appeal should not be granted.

WHEREFORE, the named Respondents pray that the appeal be not allowed and this cause dismissed.

ROBERT C. FITZGERALD
Said Respondents by Counsel.

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MOTION TO STRIKE CORPORATE PETITIONERS.

To the Honorable Judges of the Circuit Court of Fairfax County:

Now comes the Respondent herein, River Towers, Incorporated, and files this motion to strike the corporate petitioners herein for the following reason:

1. That the petition shows upon its face that Belle Haven Citizens Association. Incorporated, Bucknell Manor Citizens Association, Incorporated, and Hollin Hills Community Association, Incorporated are not proper parties to the petition filed, as provided by Section 15-850 of the Code of Virginia, 1950, as amended.

WHEREFORE, the named Respondent prays that the corporate petitioners named above be stricken from the petition filed in this cause.

RIVER TOWERS, INCORPORATED
By GLENN U. RICHARD
Said Respondent by counsel.

Filed Aug. 20, 1957.

THOMAS P. CHAPMAN, JR.
Clerk of the Circuit Court of
Fairfax County, Va.

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MOTION TO STRIKE AND DISMISS.

To the Honorable Judges of the Circuit Court of Fairfax County:

Now comes the Respondent herein, River Towers, Incorporated, and files this motion to strike the petition herein and dismiss this cause for the following reason:

1. That the petition shows upon its fact that the appeal should not be allowed, pursuant to the provisions of Section 15-850 of the Code of Virginia, 1950, as amended.

WHEREFORE, the named Respondent prays that the appeal be not allowed and that this cause be dismissed.

RIVER TOWERS, INCORPORATED
By GLENN U. RICHARD
Said Respondent by Counsel

Filed Aug. 20, 1957.

THOMAS P. CHAPMAN, JR.
Clerk of the Circuit Court of
Fairfax County, Va.

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Filed Oct. 7, 1957.

THOMAS P. CHAPMAN, JR.
Clerk of the Circuit Court of
Fairfax County, Va.

MOTION.

To the Honorable Arthur W. Sinclair, Judge of said Court:

Your petitioners respectfully move the Court to reconsider its rulings of September 27, 1957, for the following reasons:

1. The Court has stricken all of the corporate petitioners on the basis of argument and allegations by counsel for River Towers, Inc., that incorporated citizens' associations could never come within the class of persons entitled to appeal under Section 15-850 of the Code of Virginia, when at least one of said corporations, Hollin Hills Community Association, Inc., is the owner of real estate in Fairfax County, a taxpayer to Fairfax County and is thus clearly included by Section 15-850.

2. Petitioners agreed to a hearing on the motions to strike which were filed by Respondents in the belief that no order had been entered granting *certiorari,* with the reservation that they should not be prejudiced by the failure of the sheriff's office to serve the order upon the Commonwealth's Attorney. Actually petitioners were prejudiced because the Court ruled upon the meaning of Section 6-12 d (2) of the Zoning Ordinance of Fairfax County,

(a) Without having the ordinance placed in evidence.

(b) Upon the unsworn statements of fact of Counsel for River Towers, Inc., which petitioners had no opportunity to refute.

3. Counsel for River Towers, Inc., by his statements of fact outside the record, created the impression that the River Towers project was favored by the Board of Supervisors and the Board of Zoning Appeals and the Zoning Administration when actually the majority of the Board of Supervisors was opposed to the project, issued an order to the page 20 } Zoning Administrator to stay issuance of the building permit and rescinded the order only when advised by the Commonwealth Attorney that the Board had no power to stay a permit. The casting vote on the Board of Zoning Appeals was cast by a member who stated that he felt he was bound by the interpretation placed upon the ordinance by the Commonwealth Attorney. Again the Zoning Administrator acted upon the advice of the Commonwealth Attorney.

4. Although issues of fact were raised by the statements of counsel for River Towers, Inc., in answering argument Pe-

titioners were afforded no opportunity to present evidence to the contrary or to rebut the inferences drawn by such statements. This was clearly prejudicial to petitioners since in a hearing on the merits, which they would have had but for improper service of the order granting *certiorari* they would have closed the evidence.

E. A. PRICHARD
Of counsel for Petitioners.

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Filed Oct. 22, 1957.

THOMAS P. CHAPMAN, JR.
Clerk of the Circuit Court of
Fairfax County, Va.

RETURN OF BOARD OF ZONING APPEALS.

Pursuant to the orders of the Court entered heretofore, the Board of Zoning Appeals for Fairfax County files this return, as required by said orders, and submits herewith certified or photostatic copies of the following:

1. Application for Appeal from Decision of Administrative Officer, dated June 13, 1957, Numbered 17075.
2. Excerpts from the minutes of the Board of Zoning Appeals for July 9, 1957 and July 23, 1957, relative to this case.
3. The Code of the County of Fairfax, Virginia 1954, Volume II.
4. Certified copy of amendment to Chapter 6 of said Code adopted by the Board of County Supervisors of Fairfax County August 1, 1956.
5. Certified copy of amendments to Section 6-12 (d) 2 and Section 6-6.1, paragraph (a) of said Code adopted by the Board of County Supervisors of Fairfax County September 18, 1957.
6. Certified copy of letter denying the application for an appeal in this matter, dated July 30, 1957, from H. F. Schumann, Jr., Zoning Administrator.

It is submitted that for the facts and reasons as set forth

in the attached returns that the action of the Board of Zoning Appeals was reasonable and proper, and that the appeal and relief sought by the petitioners should be denied.

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BOARD OF ZONING APPEALS
Board of Zoning Appeals for
Fairfax County, Virginia
By Counsel.

* * * * *

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* * * * *

Filed Oct. 22, 1957.

THOMAS P. CHAPMAN, JR.
Clerk of the Circuit Court of
Fairfax County, Va.

AMENDED PETITION.

To the Honorable Judges of the Circuit Court of Fairfax County:

Your petitioners respectfully represent unto the Court as follows:

1. Your petitioners, Ray M. Van Hook, James S. Keith, James Mark, Jr. and Gilbert S. McCutcheon, are tax payers residing in Mount Vernon Magisterial District, Fairfax County, Virginia, in the vicinity of a tract of land containing approximately 26 acres upon which the defendant, River Towers, Inc., proposes to build two apartment houses. Your petitioners are officers in unincorporated citizens associations in Mount Vernon Magisterial District.

2. Your petitioner, Hollins Hills Community Association, Incorporated, a Virginia Corporation, is a tax payer whose principal office is in Mount Vernon Magisterial District, Fairfax County, Virginia.

3. Your petitioners, Belle-Haven Citizens Association, Incorporated, and Bucknell-Manor Citizens Association, Incorporated, are corporations which pay annual registration taxes to the State of Virginia and whose principal offices are located in Mount Vernon Magisterial District, Fairfax County, Virginia.

4. The 26-acre parcel of land referred to stands on the land records in the name of Belle View Apartments, Section One, Incorporated, Belle View Apartments, Section Two, Incorporated, and Belle View Apartments, Section Three, Incorporated, tenants in common. It was conveyed to them by Belle View Shopping Center, Inc., by deed recorded in Deed Book 1351, page 5, on the land records of Fairfax County, Virginia. The deed does not disclose the acreage in the tract. The tax records show the tract to contain 19.63702 acres.

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5. Your petitioners are advised, and therefore aver, that on February 25, 1947, when said parcel of land was owned by George C. Landrith and Eugene J. Olmi, the Board of Zoning Appeals of Fairfax County, granted a "special exception" allowing the construction of a multiple-housing project on a large parcel of land including the said 26-acre parcel. The action of the Board of Zoning Appeals is stated in the minutes as follows:

"Mr. Piggott moved, because he felt the application was in harmony with the general purpose of the Zoning Ordinance and maps, and would not adversely affect the use of the neighboring property, that the application be granted, providing the builders conformed to the recommendation of the Planning Commission, seconded by Mr. Brookfield and unanimously carried."

The recommendation of the Planning Commission as stated in the minutes of the Board of Zoning Appeals, was as follows:

"The Planning Commission also recommends that the exception be granted subject to the construction of the project in conformance with the type of architectural design indicated by the prospective rendering submitted with the application."

6. The prospective rendering submitted with the application showed garden-type apartments similar to those which were actually constructed on most of the original tract and similar to those which had been previously constructed in the Fairlington Apartment Development in Arlington County.

7. Between February 25, 1947, and June 5, 1957, no building permits were issued for the construction of any apartment on the said 26-acre parcel and no buildings were built thereon.

8. Your petitioners are advised, and therefore aver, that said 26-acre parcel of land is shown on the Official Zoning

Map of Fairfax County zoned "Urban Residence—Class One." Under the Zoning Ordinance, apartment buildings are permitted in the "Urban Residence—Class One" zone only upon special use permit granted by the Board of County Supervisors.

9. On June 5, 1957, the defendant, Schumann, as Zoning Administrator of Fairfax County, approved building permits for River Towers, Inc., for the construction of footings for two 17-storey buildings to be erected on said 26-acre parcel.

10. Hearing of the error of the Zoning Admi-
page 25 } nistrator in approving said permits, your petitioners appealed from his decision to the Board of Zoning Appeals. The appeal was filed on June 13, 1957.

11. On July 9, 1957, your petitioners appeared before the Board of Zoning Appeals of Fairfax County and urged the reversal of the erroneous decision of the said Zoning Administrator. The matter was deferred by the Board until July 23, 1957, at which time the Board of Zoning Appeals, by a vote of three to two, affirmed the decision of the Zoning Administrator in approving the building permits for footings for the two said 17-storey apartment buildings.

12. Your petitioners, Ray M. Van Hook, James S. Keith, James Mark, Jr., and Gilbert S. McCutcheon, are aggrieved by the error of the Zoning Administrator and the Board of Zoning Appeals because the use permitted by the erroneous decision will adversely affect the neighborhood in which your petitioners live and will depreciate the value of their property.

13. Your petitioner, Hollin Hills Community Association, Incorporated, is aggrieved by the erroneous decision of the Board of Zoning Appeals and the Zoning Administrator because it owns property in the neighborhood which will be adversely affected and depreciated in value by the use permitted by the erroneous decision.

14. Your corporate petitioners, Belle-Haven Citizens Association, Incorporated, Bucknell-Manor Citizens Association, Incorporated, and Hollin Hills Community Association, Incorporated, were incorporated to allow the citizens of the respective communities which they represent to take corporate action on matters affecting the individuals who are members of the respective corporations, (said individuals being taxpayers of Mount Vernon Magisterial District) and particularly on matters concerning the orderly growth of the communities in which the members of the respective corporations reside. Your corporate petitioners are aggrieved that the erroneous decision of the Zoning Administrator not only disturbs the stability of the neighborhood of the Belle View area

and the pattern of growth which has been established through zoning, but destroys the faith of the members of your corporate petitioners and of the community at large in the protection afforded by the Zoning Ordinance and in the public officials who administer the Zoning Ordinance. Your corporate petitioners are moreover aggrieved that the effect of the decision to remove the consideration of the pro-
page 26 } ject from the Board of County Supervisors, to which it is now reserved by the Zoning Ordinance, and give it to appointed officials, thus further weakening the power of the Board of County Supervisors to regulate the growth of the area through zoning.

15. Your petitioners charge that the Zoning Administrator and the Board of Zoning Appeals erred in approving building permits for footings for the two said 17-storey apartment buildings for two reasons: (a) because the two buildings are not the type of garden apartments shown on the prospective rendering and therefore violate the condition contained in the exception granted by the Board of Zoning Appeals in 1947, and (b) because insofar as said 26-acre parcel of land is concerned, the exception has expired because of the failure of the holders of the exception to obtain building permits within six months after the issuance of the exception as required by Section 6-12d (2) of the Zoning Ordinance of Fairfax County.

WHEREFORE, and pursuant to Section 15-850 of the Code of Virginia, your petitioners pray for an appeal from the decision of the Board of Zoning Appeals upholding the action of the Zoning Administrator approving building permits for footings for two 17-storey apartment buildings to be built by River Towers, Inc., on the said 26-acre parcel of land in Mount Vernon Magisterial District, Fairfax County, Virginia, and for the reversal of the action of the Board of Zoning Appeals and the Zoning Administrator.

RAY M. VAN HOOK, Petitioner.
By Counsel.

JAMES S. KEITH, Petitioner

JAMES MARK, JR., Petitioner
By Counsel.

GILBERT S. McCUTCHEON,
Petitioner
By Counsel.

HOLLIN HILLS COMMUNITY
ASSO. ETC., Petitioner
By Counsel.

BELLE-HAVEN CITIZENS
ASS'N. INC., Petitioner
By Counsel.

BUCKNELL-MANOR CITZENS
ASS'N. INC., Petitioner
By Counsel.

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ORDER.

This day came the parties, by their attorneys, upon motion to strike corporate Petitioners, filed by the Respondent, River Towers, Incorporated, upon the motions to strike and dismiss the petition, filed by the Respondents, and motion filed by the Petitioners asking the Court to reconsider its rulings from the bench, and upon consideration of arguments by counsel, after considering said motions, the Court, having reconsidered its rulings;

1. Hereby grants the motion to strike the corporate Petitioners, Belle Haven Citizens Association, Incorporated, Bucknell Manor Citizens Association, Incorporated, and Hollin Hills Community Association, Incorporated, with leave granted to the Petitioners within ten days subsequent to the entry of this order to amend the petition to properly allege that each of the Petitioners, including corporate Petitioners, are proper parties to the petition pursuant to the provisions of Section 15-850 of the Code of Virginia, as amended, specifying the grounds on which each Petitioner is aggrieved; to which ruling of the Court counsel for the Petitioners duly excepted as to the granting of said motion, and counsel for the Respondents duly excepted to the ruling of the Court granting leave to amend.

page 29 } 2. Denies, at this time, the motions of the Respondents to strike and dismiss the petition, with leave granted to the Respondents to renew or reinstate said motions upon filing an amended petition by the Petitioners

and filing with the Court on behalf of the Board of Zoning Appeals material required by order entered in this cause on August 2, 1957, and pursuant to Section 15-850 of the Code of Virginia, 1950, as amended; to which ruling of the Court the Respondents, by counsel, duly excepted.

3. That counsel for the Respondent, the Board of Zoning Appeals for Fairfax County, be granted a period of two weeks subsequent to the filing of amended petition by the Petitioners to make return of the papers and related documents pursuant to the order entered in this cause on August 2, 1957, and pursuant to Section 15-850 of the Code of Virginia, 1950, as amended, in view of the fact that a copy of this order was not served upon the Commonwealth's Attorney, or counsel for any of the Respondents, and that counsel for the Respondents were unaware of the entry of said order until during initial hearing on the above motions held on September 27, 1957.

ENTERED this 23rd day of October, 1957.

ARTHUR W. SINCLAIR, Judge.

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ORDER FOR ADDITIONAL TIME TO FILE PLEADINGS.

This matter came on to be heard upon the pleadings heretofore filed in this cause, and it appearing that an amended petition was filed on or about October 22, 1957; and it appearing further that Glenn U. Richard, Attorney for River Towers, Incorporated, was stricken with a heart attack on November 1, 1957, and has been confined to the Alexandria Hospital, and not permitted to attend to any business matters whatsoever, and that there is reasonable cause to permit counsel for Defendants to obtain additional time for filing responsive pleadings and motions to said amended petition.

IT IS THEREFORE ADJUDGED AND ORDERED that counsel for Defendants shall have thirty days from date of the entry of this order to file pleadings and motions in this cause.

And this cause is continued.

Enter:

ARTHUR W. SINCLAIR, Judge.

Date: November 18, 1957.

* * * * *

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ORDER.

This matter came on to be heard upon the petition of Belle View, Section One, Incorporated, Belle View, Section Two, Incorporated, and Belle View, Section Three, Incorporated and Belle View, Section Four, Incorporated, to be made party respondents, and it appearing to the Court that petitioners own the 26 acre tract of land in question, and that petitioners own garden type apartments and extensive tracts adjacent to and adjoining the said 26 acre tract, and are proper party respondents within the meaning of Section 15-850 of the Code of Virginia, as amended,

IT IS THEREFORE ADJUDGED AND ORDERED that Belle View, Section One, Incorporated, Belle View, Section Two, Incorporated, Belle View Section Three, Incorporated, and Belle View, Section Four, Incorporated, be and hereby are made party respondents in the above cause and are permitted to file an answer to the amended petition filed by petitioners within twenty-one days of the entry of this order.

And this cause is continued.

Enter:

ARTHUR W. SINCLAIR, Judge.

Date: December 2, 1957.

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Filed Dec. 2, 1957.

THOMAS P. CHAPMAN, JR.
Clerk of the Circuit Court of
Fairfax County, Va.

ANSWER BY RIVER TOWERS, INCORPORATED.

To the Honorable Judges of the Circuit Court of Fairfax County:

Your Respondent, River Towers, Incorporated, for answer to the petition filed in this cause, respectfully states as follows:

1. For answer to paragraph 1 of the Amended Petition, your respondent neither admits nor denies that the individual petitioners, Ray M. Van Hook, James S. Keith, James Mark, Jr. and Gilbert S. McCutcheon are taxpayers residing in Mount Vernon Magisterial District, Fairfax County, Virginia, in the vicinity of the described tract of land containing approximately 26 acres, and asks for strict proof thereof. Your respondent alleges further the allegation that the petitioners are officers of unincorporated citizens associations in Mount Vernon Magisterial District is immaterial.

2. Your respondent neither admits nor denies the allegations of paragraph 2, and calls for strict proof that Hollin Hills Community Association, Incorporated is a taxpayer within the meaning of Section 15-850 of the Code of Virginia.

3. Your respondent denies the allegations of paragraph 3 and calls for strict proof thereof, and denies that Belle Haven Citizens Association, Incorporated and Bucknell Manor Citizens Association, Incorporated are taxpayers within the meaning of Section 15-850 of the Code of Virginia.

4. For answer to paragraph 4 of the petition, your respondent admits that the approximately 26 acre parcel of land referred to as of record at the time of the filing of this petition was in the name of Belle View Apartments, Section One, Incorporated, Belle View Apartments, Section Two,
page 34 } Incorporated, and Belle View Apartments, Section Three, Incorporated, as tenants in common. Your respondent, River Towers, Incorporated, is a contract purchaser of the said tract of land. Your respondent believes the said tract of land to contain approximately 26 acres but an accurate metes and bounds description when prepared will disclose the exact acreage.

5. For answer to paragraph 5 of the petition, your respondent admits that on February 25, 1947 the Board of Zoning Appeals of Fairfax County granted a special exception which permitted the use of a large parcel of land, including the said approximately 26 acre parcel, for multiple housing. Your respondent denies that the Board of Zoning Appeals of Fairfax County granted the special exception for the use of the said land for multiple housing subject to any legally binding conditions. Your Respondent alleges that the special exception was granted by the Board of Zoning Appeals as set forth in the motion by Mr. Piggott quoted by the petitioners, because the Board of Zoning Appeals determined that the use of the land as requested in the application was in harmony with the general purpose of the zoning ordinance and maps and would not adversely affect the use of the neighboring property. Your respondent alleges that any language in the motion by the Board of Zoning Appeals which would in effect establish rules, regulations and standards for the erection of multiple housing not contained in the zoning ordinance of Fairfax Couny, now Volume II, Section 6-14 of the Code of the County of Fairfax, Virginia, 1954, as amended, would be mere surplusage, with no binding affect upon the applicants or their successors in title.

6. For answer to paragraph 6 of the petition, your respondent neither admits nor denies the allegations contained therein and asks for strict proof thereof, but your respondent alleges that any prospective rendering which may have been submitted with the application, or which may have been presented at the public hearing on the application before the Board of Zoning Appeals, could not legally form the basis, under the ordinances of Fairfax County, Virginia, for a valid condition restricting the use of the said tract of land for multiple housing strictly in conformance with any such prospective rendering.

7. For answer to paragraph 7 of the petition, your respondent neither admits nor denies the allegations therein and asks for strict proof thereof; your respondent alleges that subsequent to the granting of the special exception on
page 35 } February 25, 1947 by the Board of Zoning Appeals, that building permits were obtained from time to time for the construction of multiple housing upon the said tract of land, which included the approximately 26 acre parcel; that the use of the said parcel of land for multiple housing was thereby established and that such use runs with the land, and that when the use was so established it was established for the entire tract of land covered by the special ex-

ception and remains in full force and effect at the present time.

8. For answer to paragraph 8 of the petition, your respondent admits the allegation that the said 26 acre parcel of land is shown on the official zoning map of Fairfax County zoned "Urban Residence—Class One." Your respondent alleges that the said tract of land, including the 26 acre parcel of the same, was zoned prior to February 25, 1947 at the time the Board of Zoning Appeals granted the special exception allowing the construction of multiple housing upon the said tract of land in a zoning district which permitted the erection of multiple housing upon said land; that multiple housing has been permitted within the zoning classification for the said parcel of land, including the 26 acre parcel, at all times since February 25, 1947 and is also permitted in "Urban Residence—Class One" under the amendment to Chapter 6 of the Code of the County of Fairfax, Virginia, Volume II, adopted August 1, 1956, by the Board of Supervisors of Fairfax County, Virginia, commonly called the "Freehill Amendment." Your respondent denies that the said amendment adopted August 1, 1956 has any application to the said parcel of land, including the 26 acre parcel thereof, for which the special exception establishing the use of the land for multiple housing was granted by the Board of Zoning Appeals of Fairfax County on February 25, 1947, and where the use of the said land for such purposes was established by the construction of multiple housing upon large portions of the said tract.

9. For answer to paragraph 9 of the petition, your respondent admits the allegations contained therein.

10. For answer to paragraph 10 of the petition, your respondent denies that the Zoning Administrator erred in approving said permits.

11. For answer to paragraph 11 of the petition, your respondent admits the allegations contained therein. Your respondent alleges that under the applicable ordinances of Fairfax County, Virginia, applicable statutes of the
page 36 } Commonwealth of Virginia, applicable decided cases, and upon the evidence presented to the Board of Zoning Appeals by the petitioners, that the decision of the Board of Zoning Appeals approving the action of the Zoning Administrator in this matter was clearly correct.

12. For answer to paragraph 12 of the petition, your respondent denies that the petitioners, or any of them, are aggrieved by the action of the Zoning Administrator or the Board of Zoning Appeals; the respondent denies that either

the Zoning Administrator or the Board of Zoning Appeals reached an erroneous decision; and your respondent denies that the action by the Zoning Administrator or by the Board of Zoning Appeals will adversely affect, in any legal manner, the petitioners or any of them, or any property interest which they may have within the immediate neighborhood of the said approximately 26 acres.

13. The respondent denies that Hollins Hills Community Association, Incorporated is aggrieved by the action of the Zoning Administrator or the Board of Zoning Appeals, and denies that either reached an erroneous decision, and denies that the action taken will adversely affect Hollin Hills Community Association, Incorporated, or any property interest which it may have, and denies further that Hollin Hills Community Association, Incorporated is aggrieved in any way under the terms of Section 15-850 of the Code of Virginia as to the property owned by it which is not in the immediate neighborhood of the said 26 acre tract, but is far removed from said tract.

14. Your respondent denies the allegations of paragraph 14 and calls for strict proof thereof. Your respondent alleges that Belle Haven Citizens Association, Incorporated, Bucknell Manor Citizens Association, Incorporated and Hollin Hills Community Association, Incorporated are not proper parties to petition the court within the meaning of Section 15-850 of the Code of Virginia, in this cause, and as such should be stricken as party plaintiffs. Your respondent denies that the Zoning Administrator made an erroneous decision, or that Belle Haven Citizens Association, Incorporated, or Bucknell Manor Citizens Association, Incorporated could have been aggrieved, these corporations not being property owners, not being the persons within the meaning of Section 15-850 of the Code of Virginia. Your respondent further denies that the said decision of the Zoning Administrator was erroneous as to Hollin Hills Community Association, Incorporated, which corporation does not come within the mean-
page 37 } ing of Section 15-850 of the Code of Virginia, the land alleged to be owned by said corporation being far distant from said 26 acre tract and not affected by said rulings. Your respondent alleges that said 26 acre tract is surrounded by swamp area, a sewage disposal plant and multiple housing, and that multiple housing is the most logical and the best use of the said 26 acre tract; that Volume II, Section 6-14 (b) of the Code of the County of Fairfax County, Virginia, 1954, as amended, expressly provides as to multiple

housing "the height of any structure shall not be limited"; that this mandatory provision was in force and effect at the time the exception was granted on February 25, 1947, and remains in force at the present time. Your respondent further alleges that the Zoning Administrator and the Board of Zoning Appeals acted lawfully and properly, pursuant to the statutes of the State of Virginia and the zoning ordinances of Fairfax County, Virginia.

15. For answer to paragraph 15 of the petition, your respondent denies the allegation and conclusions alleged therein. Your respondent alleges as follows:

(a) That there was no legally effective condition attached to the special exception granted by the Board of Zoning Appeals on February 25, 1947 which would restrict the utilization of the tract of land, including the approximately 26 acres, to multiple housing of a limited height; that Volume II, Section 6-14 (b) of the Code of the County of Fairfax, Virginia, 1954, as amended, expressly provides that in the case of multiple housing "the height of any structure shall not be limited"; and that this mandatory provision was in force at the time this special exception was granted on February 25, 1947 and remains in force at the present time.

(b) That Section 6-12 (d) 2 of the Zoning Ordinance of Fairfax County is inapplicable as the same relates to a special exception for the use of land for multiple housing; that said Section, by its terms, is expressly limited to an order of the Board approving the erection, alteration or the use of a building. Section 6-12 (f) and Section 6-12 (f) 5 of the Zoning Ordinance of Fairfax County expressly provides that the Board of Zoning Appeals is empowered to grant

page 38 } special exceptions and authorize the Zoning Administrator to issue use permits for the erection of multiple housing projects, when in the judgment of the Board such exception shall be found to be in harmony with the general purpose and intent of the zoning ordinance and map and will not tend to affect adversely the use of neighboring property. The special use permits and the building permits under the Fairfax County ordinances are issued in due course by the Zoning Administrator after the Board of Zoning Appeals grants the special exception for multiple housing. The Board of Zoning Appeals at no time issued an order "approving the erection, alteration or use of a building" as contemplated by Section 6-12 (d) 2 of the Zoning Ordinance of Fairfax County.

WHEREFORE, your respondent prays that this cause be dismissed, at the cost of the petitioners.

RIVER TOWERS, INCORPORATED
By RIVER TOWERS INC.
Said Respondent by Counsel.

* * * * *

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Filed Dec. 2, 1957.

THOMAS P. CHAPMAN, JR.
Clerk of the Circuit Court of
Fairfax County, Va.

PETITION OF BELLE VIEW, SECTION ONE, INCORPORATED, BELLE VIEW, SECTION TWO, INCORPORATED, BELLE VIEW, SECTION THREE, INCORPORATED, AND BELLE VIEW, SECTION FOUR, INCORPORATED, TO BE MADE PARTY RESPONDENTS.

Now come your petitioners, all Virginia corporations, by counsel, and allege as follows:

1. That Belle View, Section One, Incorporated, Belle View, Section Two, Incorporated, Belle View, Section Three, Incorporated, own the 26 acre parcel of land referred to in the above cause, as tenants in common.

2. That said corporations entered into a contract dated September 21, 1956, with Grayrock, Incorporated, for the sale of 26.8424 acres, less and except the portion of Potomac Avenue within said tract, and a certain tract granted to the Board of Supervisors by deed recorded in Deed Book 1000, Page 176 of the Fairfax County, Virginia land records.

3. That all rights under said contract were assigned to River Towers, Incorporated, with the consent and approval of Belle View, Section One, Incorporated, Belle View, Section Two, Incorporated, and Belle View, Section Three, Incorporated; that said three corporations and Belle View, Section Four, Incorporated, own extensive tracts of land upon which are located garden type apartments, adjacent to and adjoining said 26 acre tract of land.

4. That your petitioners are proper parties respondent to

said cause within the meaning of Section 15-850 of the Code of Virginia, as amended; that the Court enter an order making your petitioners parties respondent to said
page 40 } amended petition, and permitting your petitioners to file an answer to the amended petition in this cause.

And your petioners will ever pray.

BELLE VIEW, SECTION ONE, INCORPORATED, BELLE VIEW, SECTION TWO, INCORPORATED , BELLE VIEW, SECTION THREE, INCORPORATED BELLE VIEW, SECTION FOUR, INCORPORATED
By WM. A. MONCURE
Counsel.

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MOTION TO STRIKE CORPORATE PETITIONERS.

To the Honorable Judges of the Circuit Court of Fairfax County:

Now comes the respondent herein, River Towers, Incorporated, and files this motion to strike the corporate petitioners herein for the following reasons:

1. That the pleadings show that Belle Haven Citizens Association, Incorporated and Bucknell Manor Citizens Association, Incorporated are not property owners in Fairfax County, Virginia, and are not proper parties to the petition filed within the meaning of Section 15-850 of the Code of Virginia, 1950, as amended.

2. That Hollin Hills Community Association, Incorporated is alleged to own property which is so distant from the 26 acre tract in question that it cannot be aggrieved by the decision in question, and is therefore not a proper party within the meaning of Section 15-850 of the Code of Virginia, 1950, as amended.

WHEREFORE, your respondent moves that the corporate

petitioners named above be stricken from the petition filed in this cause.

RIVER TOWERS, INCORPORATED
By RIVER TOWERS INC.
Said Respondent by Counsel.

Filed Dec. 2, 1957.

THOMAS P. CHAPMAN, JR.
Clerk of the Circuit Court of
Fairfax County, Va.

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MOTION FOR BILL OF PARTICULARS.

To the Honorable Arthur W. Sinclair, Judge of said Court:

Your respondent, River Towers, Incorporated, respectfully moves the Court to require each of the petitioners to file a Bill of Particulars clearly and concisely furnishing the following information to the respondents:

1. That each petitioner itemize the real estate owned by each petitioner in Fairfax County, Virginia, and clearly identify the same by street number and otherwise, showing its location in relation to and its distance from the approximately 26 acre tract described in the petition.
2. That each petitioner list the date of acquisition of each parcel of real estate owned by each petitioner in Fairfax County, Virginia.
3. That Belle Haven Citizens Association, Incorporated and Bucknell Manor Citizens Association, Incorporated state whether they do or do not own any real estate in Fairfax County, Virginia, and if so, show its location in relation to and distance from the tract described in the petition and the date of acquisition of each parcel of real estate.

WHEREFORE, your respondent, River Towers, Incorporated, respectfully moves the court for a Bill of Particulars

as requested above in order that it may have this information for the proper preparation of pleadings and defenses.

Respectfully,

RIVER TOWERS, INCORPORATED
By RIVER TOWERS INC.
Counsel.

Filed Dec. 2, 1957.

THOMAS P. CHAPMAN, JR.
Clerk of the Circuit Court of
Fairfax County, Va.

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Filed Dec. 5, 1957.

THOMAS P. CHAPMAN, JR.
Clerk of the Circuit Court of
Fairfax County, Va.

ANSWER BY BELLE VIEW, SECTION ONE, INCORPORATED, BELLE VIEW, SECTION TWO, INCORPORATED, BELLE VIEW, SECTION THREE, INCORRATED, AND BELLE VIEW, SECTION FOUR, INCORPORATED.

Now come your respondents for answer to the amended petition, alleging as follows:

1. Your respondents deny the allegations of paragraphs 1, 2 and 3, and call for strict proof thereof.

2. Your respondents admit the allegations of paragraph 4, but allege that they do not know the exact acreage of said tract, other than it is approximately 26 acres and an accurate survey will determine the acreage.

3. Your respondents admit that the Board of Zoning Appeals, on February 25, 1947, granted a special exception as to a large parcel of land of which the 26 acre tract was a parcel, for multiple housing. Your respondents deny all other

allegations of said paragraph, and call for strict proof thereof.

4. Your respondents deny the allegations of paragraph 6, 7 and 8 and call for strict proof thereof.

5. Your respondents admit the allegations of paragraph 9.

6. Your respondents deny that the Zoning Administrator erred in approving said permits.

7. Your respondents admit the allegations of paragraph 11, and allege that said decisions were clearly correct.

8. Your respondents deny the allegations of paragraph 12, 13, 14 and 15, and call for strict proof thereof.

page 47 } 9. Your respondents join with River Towers, Incorporated in the Answer, Motion for Bill of Particulars, and Motion to Strike Corporate Petitioners, heretofore filed by River Towers, Incorporated, and pray that this cause be dismissed at the cost of petitioners.

BELLE VIEW, SECTION ONE, INCORPORATED, BELLE VIEW, SECTION TWO, INCORPORATED, BELLE VIEW, SECTION THREE, INCORPORATED, BELLE VIEW, SECTION FOUR, INCORPORATED

By WM. A. MONCURE
Said Respondents by Counsel.

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MOTION TO STRIKE AMENDED PETITION.

Now come the Respondents herein, Herbert F. Schumann, Jr., The Board of Zoning Appeals, the individual members thereof and the Board of County Supervisors of Fairfax County, and file this their Motion to Strike the Amended Petition herein and dismiss this cause for the following reason:

1. That the amended petition shows upon its face that the relief sought by the Petitioners should not be granted.

WHEREFORE, the above named Respondents pray that

this Motion by granted and this cause be dismissed with costs awarded to Respondents.

ROBERT C. FITZGERALD
Said Respondents by Counsel.

Filed Dec. 5, 1957.

THOMAS P. CHAPMAN, JR.
Clerk of the Circuit Court of
Fairfax County, Va.

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DECREE.

This cause came on to be heard upon the petitions and various pleadings filed in this cause, and upon the stipulation agreed to by counsel for all parties, and upon the agreed exhibits filed herein, and it appearing to the court that the decision of the Zoning Administrator, in approving the building permits herein involved for River Towers, Incorporated for the construction of the buildings sought to be erected, and the subsequent action thereon by the Board of Zoning Appeals, was in all respects correct, and that the petition filed herein should therefore be dismissed;

And it appearing further that the Belle Haven Citizens Association, Incorporated and Bucknell Manor Citizens Association, Incorporated are not proper parties to this cause, inasmuch as they do not own real estate, and are not aggrieved by the action complained of;

IT IS THEREFORE, ADJUDGED, ORDERED and DECREED that the petition heretofore filed in this cause be and is hereby dismissed, to which ruling the petitioners except on the grounds that according to the facts disclosed by the stipulation, and exhibits filed therewith, the buildings proposed to be constructed by the respondent, River Towers, Inc., violate the condition imposed upon the special exception granted by the Board of Zoning Appeals on February 25, 1947, and that under Section 6-12d(2) of the Zoning Ordinance of Fairfax County the special exception expired when the

property owners took out no building permits for the buildings now proposed to be built within six months of
page 66 } the granting of the special exception.

IT IS FURTHER ADJUDGED, ORDERED and DECREED that the Belle Haven Citizens Association, Incorporated, and the Bucknell Manor Citizens Association, Incorporated, are not proper parties to this cause, and that they be, and hereby are, stricken as petitioners in said cause, to which ruling Belle Haven Citizens Association, Incorporated, and Bucknell Manor Citizens Association, Incorporated, except, on the ground that, it is unnecessary for a party to own real estate to be a party aggrieved within the meaning of Section 15-850 of the Code of Virginia.

And the petitioners thereupon indicated their intention to apply to the Supreme Court of Appeals of Virginia for an appeal from this decree.

And this decree is final.

Enter:

ARTHUR W. SINCLAIR, Judge.

Date: April 22, 1958.

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Filed May 15, 1958.

THOMAS P. CHAPMAN, JR.
Clerk of the Circuit Court of
Fairfax County, Va.

STIPULATION.

Now come the Petitioners and the Defendants in the above-styled cause and, subject to objection for relevancy and materiality, stipulate and agree as follows:

1. On February 25, 1947, Eugene J. Olmi and George C. Landrith were granted permission to erect a multiple housing

development under Section XII, Sub-section F5 and Section XIV of the Fairfax County Zoning Ordinance on approximately 110 acres extending from the south side of Eye Street in New Alexandria Subdivision to the Bucknell tract, from the west side of Mount Vernon Memorial Highway to Route 629, Mount Vernon District. A certified copy of the minutes of the Board of Zoning Appeals granting said exception is hereto attached.

2. That pursuant to said special use permit the owners of said tract built the following apartments:

	Number of Apartment Units	Acreage	Building Permit Issued	Completion of Construction
Belleview, Sec. 1	326 (and incinerator)	26.5	6/18/47	2/3/49
Belleview, Sec. 2	138	9.5	5/2/49	3/20/50
Belleview, Sec. 3	254	17.	5/3/49	4/7/50
Belleview, Sec. 4	254	17.5	2/2/50	5/9/51
Total	972	70.5		

3. That Belleview Section One, Incorporated, built a swimming pool for the entire apartment development, starting April 30, 1954, and completed the swimming pool in August, 1954, and built a bath house for the swimming pool page 83 } on June 11, 1957, completing the bath house in August, 1957.

4. That the owners of the said Belleview tract of 110 acres obtained a general business zoning for 13.5 acres of said tract on May 21, 1947; that said owners created a corporation, Belleview Shopping Center, Incorporated, and transferred title to said 13.5 acres to said corporation.

5. That Belleview Shopping Center, Incorporated, has constructed the following commercial buildings:

BUILDING	BUILDING PERMIT ISSUED	COMPLETED
Office Building and 12 stores	March 28, 1950	April 21, 1951
3 stores	December 14, 1953	July 26, 1954
1 store	November 21, 1953	July 8, 1954
4 stores	November 24, 1954	March 31, 1955

6. That 5.5 acres of the 13.5 acres of the shopping center still remains to be developed.

7. That legal title to the remaining 26 acres of the original 110 acre tract is in the name of Belleview, Section One, Incorporated, Belleview Section Two, Incorporated, and Belleview Section Three, Incorporated.

8. That River Towers, Incorporated, has a contract dated September 21, 1956, to purchase said 26 acres from said owners. A copy of the contract is hereto attached.

9. That on March 8, 1957, River Towers, Incorporated, applied for a variance for three twenty-story apartment buildings on said 26 acre tract, each of said three apartment buildings to contain 981 units, and each to be 174 feet in height; that this variance was denied by the Board of Zoning Appeals on April 9, 1957.

10. That on June 5, 1957, River Towers, Incorporated, was granted building permits for footings for two 17 story apartment buildings, each building to be 147 feet in height and contain 277 apartment units in accordance with the density requirements of Section 6-14 of the Fairfax County Code. These permits were renewed on January 15, 1958.

11. That said 26 acre tract of land is served by
page 84 } public water supply from Alexandria Water Company, gas from Washington Gas Light Company, electricity from the Virginia Electric and Power Company, telephone service from the Chesapeake and Potomac Telephone Company and sewage disposal facilities by Fairfax County. Said facilities are adequate for the proposed apartments.

12. That the shopping center is a large shopping center containing many stores and containing 5.5 acres of undeveloped commercial property.

13. That on May 22, 1957, the Board of Supervisors directed the Building Inspector not to issue building permits to River Towers, Incorporated, and that the action of the Board was rescinded on June 5, 1947. Copies of the minutes of the Board of Supervisors meetings held on May 22, 1957, May 29, 1957, and June 5, 1957, insofar as they relate to River Towers, Incorporated, are hereto attached.

14. That attached hereto and made a part hereof is an aerial photograph of the 26 acre tract on which the proposed apartment buildings will be constructed; that said photograph is somewhat distorted; that the area sketched in red is an approximation and not exact.

15. The attached photographs of the Fairlington Apartment project represent the project as it now exists. (Fairlington Apartment project was mentioned in the minutes of

the meeting of the Board of Zoning Appeals of February 25, 1947.)

16. Attached hereto and made a part hereof is a copy of a plat showing the 26 acre tract in question.

17. Attached hereto and made a part hereof is a plat showing the 26 acre tract in connection with surrounding areas referred to in the stipulation.

18. That the petitioners who are parties to the Chancery cause now pending in the Circuit Court of Fairfax County, Virginia, own real estate as follows:

	Direction from Project	Elevation	Feet from Closest Building	Feet from Property Line
Ray M. Van Hook 800-10th Street New Alexandria	North	8 feet	1940 feet	1650 feet
James S. Keith 411 Wake Forest Drive West Grove	South	10 feet	1150 feet	50 feet
James Mark, Jr. 901 Clemson Drive West Grove	Southwest	35 feet	1450 feet	350 feet
page 85 }				
Gilbert S. McCutcheon 1109 Marine Drive Marlan Forest	Southwest	140 feet	3400 feet	2450 feet
Hollins Hills Community Association, Inc.	Southwest	85 feet	4300 feet	3250 feet

(a) The property of Ray M. Van Hook is separated from the River Towers project by apartment buildings of Belleview Sections One, Two and Three.

(b) The Hollins Hills pool is separated from the River Towers project by a wooded hill having an elevation of 150 feet. Other park property owned by Hollin Hills Community Association has a higher elevation affording a view of the 26 acre tract.

19. That Belle Haven Citizens Association, Incorporated, owns no real estate; that the nearest lots in Belle Haven to the River Towers project are northwest of the project and are 30 feet in elevation, 3125 feet from the proposed buildings, and 2950 feet from the property line; that some of the

houses in Belle Haven are further away and have a higher elevation, but some of the houses are over a ridge interfering with a view of the project.

20. That Bucknell Manor Citizens Association, Incorporated, owns no real estate; that Bucknell Manor is west of the River Towers project; that distance from the project and elevation generally are similar to the Belle Haven Subdivision.

21. Attached hereto are photographs of typical buildings in the Belleview Development built prior to December 3, 1951.

22. That the proposed apartments will connect with Belleview Boulevard which has direct access to Fort Hunt Road and Mount Vernon Memorial Highway, four lane improved highways.

February 20, 1958.

E. A. PRICHARD
Counsel for Petitioners.

ROBERT C. FITZGERALD
Commonwealth's Attorney.

WM. A. MONCURE
Counsel for River Towers, Incorporated, Belle View Section One, Incorporated, Belle View Section Two, Incorporated, Belle View Section Three, Incorporated, Belle View Section four, Incorporated.

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Filed Jun. 6, 1958.

THOMAS P. CHAPMAN, JR.
Clerk of the Circuit Court of
Fairfax County, Va.

NOTICE OF APPEAL AND ASSIGNMENTS OF ERROR.

To: Thomas P. Chapman, Jr., Esquire,
Clerk of the Circuit Court of Fairfax County
Fairfax, Virginia.

Counsel for petitioners in the above-styled cause hereby gives notice of appeal from the final decree entered in this cause on April 22, 1958, and hereby assigns the following errors:

1. The Court erred in dismissing the petition and amended petition because the decision allows the Respondent, River Towers, Incorporated, to build apartment buildings under a special exception of the Board of Zoning Appeals which, under Section 6-12 (d) 2 of the Zoning Ordinance, expired more than ten years ago.

2. The Court erred in dismissing the petition and amended petition because the effect is to allow the Respondent, River Towers, Incorporated, to build apartment houses under a special exception granted by the Board of Zoning
page 90 } Appeals without complying with a condition contained within the special exception.

3. The Court erred in striking the Petitioners, Belle-Haven Citizens Association, Incorporated, and Bucknell Manor Citizens Association, Incorporated.

E. A. PRICHARD,
Counsel for Petitioners.

* * * * *

A Copy—Teste:

H. G. TURNER, Clerk.

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RULE 5:12—BRIEFS

§1. Form and Contents of Appellant's Brief. The opening brief of appellant shall contain:

(a) A subject index and table of citations with cases alphabetically arranged. The citation of Virginia cases shall be to the official Virginia Reports and, in addition, may refer to other reports containing such cases.

(b) A brief statement of the material proceedings in the lower court, the errors assigned and the questions involved in the appeal.

(c) A clear and concise statement of the facts, with references to the pages of the printed record when there is any possibility that the other side may question the statement. When the facts are in dispute the brief shall so state.

(d) With respect to each assignment of error relied on, the principles of law, the argument and the authorities shall be stated in one place and not scattered through the brief.

(e) The signature of at least one attorney practicing in this Court, and his address.

§2. Form and Contents of Appellee's Brief. The brief for the appellee shall contain:

(a) A subject index and table of citations with cases alphabetically arranged. Citations of Virginia cases must refer to the Virginia Reports and, in addition, may refer to other reports containing such cases.

(b) A statement of the case and of the points involved, if the appellee disagrees with the statement of appellant.

(c) A statement of the facts which are necessary to correct or amplify the statement in appellant's brief in so far as it is deemed erroneous or inadequate, with appropriate references to the pages of the record.

(d) Argument in support of the position of appellee.

The brief shall be signed by at least one attorney practicing in this Court, giving his address.

§3. Reply Brief. The reply brief (if any) of the appellant shall contain all the authorities relied on by him not referred to in his opening brief. In other respects it shall conform to the requirements for appellee's brief.

§4. Time of Filing. As soon as the estimated cost of printing the record is paid by the appellant, the clerk shall forthwith proceed to have printed a sufficient number of copies of record or the designated parts. Upon receipt of the printed copies or of the substituted copies allowed in lieu of printed copies under Rule 5:2, the clerk shall forthwith mark the filing date on each copy and transmit three copies of the printed record to each counsel of record, or notify each counsel of record of the filing date of the substituted copies.

(a) If the petition for appeal is adopted as the opening brief, the brief of the appellee shall be filed in the clerk's office within thirty-five days after the date the printed copies of the record, or the substituted copies allowed under Rule 5:2, are filed in the clerk's office. If the petition for appeal is not so adopted, the opening brief of the appellant shall be filed in the clerk's office within thirty-five days after the date printed copies of the record, or the substituted copies allowed under Rule 5:2, are filed in the clerk's office, and the brief of the appellee shall be filed in the clerk's office within thirty-five days after the opening brief of the appellant is filed in the clerk's office.

(b) Within fourteen days after the brief of the appellee is filed in the clerk's office, the appellant may file a reply brief in the clerk's office. The case will be called at a session of the Court commencing after the expiration of the fourteen days unless counsel agree that it be called at a session of the Court commencing at an earlier time; provided, however, that a criminal case may be called at the next session if the Commonwealth's brief is filed at least fourteen days prior to the calling of the case, in which event the reply brief for the appellant shall be filed not later than the day before the case is called. This paragraph does not extend the time allowed by paragraph (a) above for the filing of the appellant's brief.

(c) With the consent of the Chief Justice or the Court, counsel for opposing parties may file with the clerk a written stipulation changing the time for filing briefs in any case; provided, however, that all briefs must be filed not later than the day before such case is to be heard.

§5. Number of Copies. Twenty-five copies of each brief shall be filed with the clerk of the Court, and at least three copies mailed or delivered to opposing counsel on or before the day on which the brief is filed.

§6. Size and Type. Briefs shall be nine inches in length and six inches in width, so as to conform in dimensions to the printed record, and shall be printed in type not less in size, as to height and width, than the type in which the record is printed. The record number of the case and the names and addresses of counsel submitting the brief shall be printed on the front cover.

§7. Effect of Noncompliance. If neither party has filed a brief in compliance with the requirements of this rule, the Court will not hear oral argument. If one party has but the other has not filed such a brief, the party in default will not be heard orally.

CLERK
SUPREME COURT OF APPEALS
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