

A G E N D A

JAMES CITY COUNTY BOARD OF SUPERVISORS

County Government Center Board Room

September 8, 2009

7:00 P.M.

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- A. ROLL CALL**
- B. MOMENT OF SILENCE**
- C. PLEDGE OF ALLEGIANCE** – Kaitlynn Adkins, a fifth-grade student at James River Elementary School
- D. PUBLIC COMMENT**
- E. CONSENT CALENDAR**
1. Minutes – August 11, 2009, Regular Meeting
 2. Dedication of Opportunity Way into the State Secondary Highway System
 3. Award of Bid – Freedom Park Water Main – \$176,610
Supports County's Strategic Pathway 3.d - invest in the capital project needs of the community
- F. PUBLIC HEARINGS**
1. Case No. SUP-0012-2009. 101 Birch Circle Accessory Apartment
 2. Easement Agreement – The Pointe Homeowners Association – 4669 Sir Gilbert Loop
Supports County's Strategic Pathway 4.f - manage stormwater effectively and protect groundwater
 3. Cricket Communications, Inc. – Lease of Space on Virginia Peninsula Regional Jail Cellular Tower
- G. PUBLIC COMMENT**
- H. REPORTS OF THE COUNTY ADMINISTRATOR**
- I. BOARD REQUESTS AND DIRECTIVES**
- J. CLOSED SESSION**
1. Consideration of the acquisition of a parcel (s) of property for public use, pursuant to Section 2.2-3711(A)(3) of the Code of Virginia
- K. ADJOURNMENT** to 4 p.m. on September 22, 2009

AT A REGULAR MEETING OF THE BOARD OF SUPERVISORS OF THE COUNTY OF JAMES CITY, VIRGINIA, HELD ON THE 11TH DAY OF AUGUST 2009, AT 7:00 P.M. IN THE COUNTY GOVERNMENT CENTER BOARD ROOM, 101 MOUNTS BAY ROAD, JAMES CITY COUNTY, VIRGINIA.

A. CALL TO ORDER

B. ROLL CALL

James G. Kennedy, Chairman, Stonehouse District
Mary Jones, Vice Chair, Berkeley District
Bruce C. Goodson, Roberts District
James O. Icenhour, Jr., Powhatan District
John J. McGlennon, Jamestown District

Sanford B. Wanner, County Administrator
Leo P. Rogers, County Attorney

C. PLEDGE OF ALLEGIANCE – Alex Wesser, a rising twelfth-grade student at Jamestown High School, led the Board and citizens in the Pledge of Allegiance.

D. PUBLIC COMMENT

1. Mr. Jack Fowler, 109 Wilderness Lane, commented on unkempt lots and houses near Toano Middle School. He asked that the appearance of the properties be addressed.

2. Mr. Ed Oyer, 139 Indian Circle, commented on approval of special use permits of commercial businesses in residential areas; reassessments due to the commercial use of a property; and County property on Strawberry Plains Road.

3. Ms. Sarah Glossen, 3917 Blue Ridge Court, on behalf of the Longhill Station Neighborhood Watch committee, expressed her concern for the easement clearing by the James City Service Authority. She asked for additional time to allow for a compromise without cutting down trees between Longhill Station and Forest Glen for safety reasons.

E. CONSENT CALENDAR

Mr. Icenhour made a motion to adopt the items on the Consent Calendar with the amendments to the July 28, 2009, Work Session minutes.

On a roll call vote, the vote was AYE: Goodson, Jones, McGlennon, Icenhour, Kennedy (5). NAY: (0).

1. Minutes –
 - a. July 28, 2009, Work Session
 - b. July 28, 2009, Regular Meeting
2. Code Violation Lien – Trash and Grass Lien – 103 Redbud Lane

RESOLUTION

CODE VIOLATION LIEN – TRASH AND GRASS – 103 REDBUD LANE

WHEREAS, the Zoning Administrator has certified to the Board of Supervisors of James City County, Virginia, that the property owner as described below has failed to pay a bill in the amount listed, for cutting of grass and weeds or removal of trash and debris, although the County has duly requested payment; and

WHEREAS, the unpaid and delinquent charges are chargeable to the owner and collectible by the County as taxes and levies and constitute a lien against the Property.

NOW, THEREFORE, BE IT RESOLVED by the Board of Supervisors of James City County, Virginia, that in accordance with Sections 10-7 and 10-5 of the Code of the County of James City, Virginia, the Board of Supervisors directs that the following delinquent charges for services rendered, plus interest at the legal rate from the date of recordation until paid, shall constitute a lien against the Property to wit:

Cleaning of Trash/Debris and/or Cutting of Grass, Weeds, etc.:

ACCOUNT:	Herbert E. Watson, Jr. 103 Redbud Lane Williamsburg, VA 23185
DESCRIPTION:	103 Redbud Lane
TAX MAP/PARCEL NOS.:	(48-1)(07-0-0072) James City County, Virginia
FILING FEE:	\$10.00
TOTAL AMOUNT DUE:	\$460.00

3. Grant Award – Port Security Grant Program (PSGP) – \$126,354

RESOLUTION

GRANT AWARD - PORT SECURITY GRANT PROGRAM - \$126,354

WHEREAS, the James City County Police Department has been awarded a Port Security Grant Program (PSGP) in the amount of \$126,354 (\$31,588 local match; \$94,766 PSGP); and

WHEREAS, the matching funds are available in the County’s Grant Match account; and

WHEREAS, the funds are to be used toward the purchase of two zodiac-style boats and other security-related equipment.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, hereby authorizes the following budget appropriation to the Special Projects/Grants fund:

Revenues:

Port Security Grant Program	\$94,766
County’s Grant Match account	<u>31,588</u>
Total	<u>\$126,354</u>

Expenditure:

Port Security Grant Program	<u>\$126,354</u>
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- 4. Grant Award – Virginia Department of Motor Vehicles – \$35,005

RESOLUTION

GRANT AWARD – VIRGINIA DEPARTMENT OF MOTOR VEHICLES – \$35,005

WHEREAS, the James City County Police Department has been awarded a highway safety grant in the amount of \$35,005 from the Virginia Department of Motor Vehicles; and

WHEREAS, the grant requires no cash match; and

WHEREAS, the funds are to be used toward overtime traffic enforcement, various highway safety training courses and conferences for officers, and accident reconstruction equipment.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, hereby authorizes the following budget appropriation to the Special Projects/Grants fund:

Revenue:

DMV Fiscal Year 2010 – Highway Safety	<u>\$35,005</u>
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Expenditure:

DMV Fiscal Year 2010 – Highway Safety	<u>\$35,005</u>
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5. Grant Award – State Homeland Security Program (SHSP) – \$29,200

RESOLUTION

GRANT AWARD – STATE HOMELAND SECURITY PROGRAM (SHSP) – \$29,200

WHEREAS, the Virginia Department of Health, Office of Emergency Medical Services (VDH, OEMS) has awarded the James City County Fire Department a State Homeland Security Program (SHSP) grant in the amount of \$29,200; and

WHEREAS, the funds are to be used to purchase eight Panasonic ToughBook 19 computers for use in medic units for the completion of Pre-Hospital Patient Care Reporting (PPCR); and

WHEREAS, the grant will be managed by the Virginia Department of Emergency Management (VDEM); and

WHEREAS, the grant period is July 1, 2009-October 30, 2009; and

WHEREAS, the grant requires no match.

NOW, THEREFORE, BE IT RESOLVED, that the Board of Supervisors of James City County, Virginia, hereby authorizes the following budget appropriation to the Special Projects/Grants fund:

Revenue:

SHSP – ToughBook 19 Computers	<u>\$29,200</u>
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Expenditure:

SHSP – ToughBook 19 Computers	<u>\$29,200</u>
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6. Grant Award – Williamsburg Community Foundation (WCF) – \$1,995

RESOLUTION

GRANT AWARD - WILLIAMSBURG COMMUNITY FOUNDATION - \$1,995

WHEREAS, the Williamsburg Community Foundation (WCF) has awarded the James City County Fire Department Emergency Communications Division a grant in the amount of \$1,995; and

WHEREAS, the funds are to be used toward the purchase of mannequins and supplies for CPR classes; and

WHEREAS, the grant requires no match.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, hereby authorizes the acceptance of this grant and the following budget appropriation to the Special Projects/Grants Fund:

Revenue:

WCF – CPR Supplies \$1,995

Expenditure:

WCF – CPR Supplies \$1,995

F. PUBLIC HEARINGS

1. Police Department Building Proposed Comprehensive Agreement and Proposals

Ms. Stephanie Luton, Purchasing Director, stated that on May 12, 2009, the Board of Supervisors approved negotiations of a Comprehensive Agreement and the public hearing is required as part of the Public Private Education Act (PPEA) procurement process to receive comment prior to entering into the agreement. She stated that this project was previously discussed as part of the FY 2010 Capital Improvements Budget and a presentation outlining the finance package options has been held recently. She stated that when the project moved forward, a Special Use Permit (SUP) would be required and a public hearing would be held at a later date. She stated no action was required at this time.

Mr. Icenhour asked about the process of the construction of the Police Department Building. He stated that there would be separate action on the financing package, but no action was to be taken on the agreement. He clarified that there was already approval of the agreement.

Ms. Luton stated the approval on May 12, 2009, authorized negotiations of the agreement.

Mr. Icenhour asked if the agreement had to come back before the Board for further approval in the SUP process.

Ms. Luton stated that was correct.

Mr. Icenhour stated that he felt the public hearing was being held after the fact on the comprehensive agreement. He stated that he felt that a public hearing for public input should have been held prior to approving negotiations.

Mr. Wanner stated that the project went through the Capital Improvement Program (CIP) planning process and public hearings were held on the Capital Budget. He stated that when the Capital Budget was approved, the project was authorized. He stated that this hearing was part of the legal process required for PPEA.

Mr. Icenhour stated that he felt it was a meaningless step.

Mr. Goodson stated that when the negotiations were approved, no agreement was available for the public to see. He stated there could not be a public hearing on an agreement that did not exist.

Mr. Icenhour stated that the Board approved an agreement that was unseen. He stated his concern with the procedure, not the project.

Mr. Goodson stated that the reason for this process was to allow the Board to see the full scope of the procedure.

Mr. Kennedy opened the public hearing.

As no one wished to speak to this matter, Mr. Kennedy closed the public hearing.

2. Ordinance to Amend Chapter 20, Taxation, to Change from an Annual Reassessment Cycle to a Biennial Reassessment Cycle

Mr. John McDonald, Financial and Management Services Manager, stated that the ordinance amendment would change the reassessment schedule from an annual cycle to a biennial cycle.

Mr. Icenhour asked if Mr. McDonald would review the pros and cons of changing the assessment cycle.

Mr. McDonald stated that the County has been under the annual assessment cycle for over 40 years. He stated the advantages are equity among value changes and the real estate market is relatively open, which allows the assessment to be up to date. He stated that staff would prefer to stay with the annual cycle, but staff would be able to change to the biennial assessment cycle if the ordinance amendment was approved.

Mr. Kennedy opened the public hearing.

1. Mr. Ed Oyer, 139 Indian Circle, commented that he was not sure when the ordinance would be effective. He stated that this could have been done when the real estate market was going up rather than now, when it was down. He stated that assessments would stay inflated rather than having them reduced through an annual assessment. He stated he felt this was an abstract tax increase.

As no one else wished to speak to this matter, Mr. Kennedy closed the public hearing.

Mr. Goodson made a motion to adopt the ordinance. He commented on Mr. Oyer's comments and stated that this ordinance may be freezing a low assessment for two years as the market begins to recover. Mr. Goodson stated that this has been discussed for some time and he was happy to support the ordinance amendment.

Ms. Jones stated that this was a good way to control government spending and reduce staff time. She stated her support for the ordinance amendment.

Mr. McGlennon stated his opposition to biennial assessments, as he felt it was a more fair and equitable assessment. He stated that the impact of real estate assessments was that the changing values needed to be assessed more frequently. He stated that government spending was controlled through the tax rate. He stated that reduction in the tax rates was balanced with increasing assessments. He commented on insulating political elections with the timing of assessments.

Mr. Icenhour stated that establishing the land book prior to the budget process allowed for a land book that was six months old when the fiscal year began. He stated that the value of the assessment would always be historical, and with the biennial assessment cycle, the land book would be 30 months old. He stated that it was possible to lock in assessment values at a higher value than required. He stated that this was an artificial method to control government spending. He stated that the revenues were based on tax rates, not the assessment values. He stated his opposition to the ordinance amendment.

Mr. Kennedy stated he supported this for some time.

(2). On a roll call vote, the vote was AYE: Goodson, Jones, Kennedy (3). NAY: McGlennon, Icenhour,

G. BOARD CONSIDERATION

1. Resolution Authorizing Lease Revenue Financing for Construction and Renovation of Public Safety Facilities

Mr. McDonald stated that on July 14, 2008, the representatives from Davenport and Company presented several options for financing the Police Building project to take advantage of current low interest rates. He stated the bond market has changed since the last instance bonds were issued, with an opportunity for banks to bid on the bonds and the offering of Build America Bonds, which were to be used for all or part of the issuance. He stated that the resolution allowed the Chairman and the County Administrator to execute the bond documents, with a sale on September 2, 2009, with a competitive sale. He stated that the Economic Development Authority (EDA) is expected to approve the bond issue at its meeting in one week, open on September 2 and close on September 16.

Mr. Icenhour commented that General Obligation (GO) bonds require a referendum and Lease Revenue bonds do not require a referendum.

Mr. McDonald stated that was correct.

Mr. Icenhour asked if there was an interest rate difference in GO bonds and Lease Revenue Bonds.

Mr. McDonald stated that there was, but in this case with the County's bond rating, the difference should not be significant.

Mr. McGlennon made a motion to adopt the resolution.

(0). On a roll call vote, the vote was AYE: Goodson, Jones, McGlennon, Icenhour, Kennedy (5). NAY:

RESOLUTION

RESOLUTION AUTHORIZING LEASE REVENUE FINANCING FOR CONSTRUCTION AND RENOVATION OF PUBLIC SAFETY FACILITIES

WHEREAS, the Board of Supervisors of James City County, Virginia (the "Board of Supervisors") has determined that James City County, Virginia (the "County") has an immediate need for (i) the construction and equipping of a police station building and (ii) the renovation of the current Law Enforcement Center for use by Fire Administration and Training (collectively, the "Project"); and

WHEREAS, there has been presented to the Board of Supervisors a plan for the lease financing of the Project which would not create debt of the County for purposes of the Virginia Constitution; and

WHEREAS, pursuant to such financing plan, the Economic Development Authority of James City County, Virginia (the "Authority") would issue its lease revenue bonds in an amount not to exceed \$15,100,000 (the "Bonds") to finance the Project, which would be leased by the Authority to the County, and to finance other related costs and to fund any required reserves associated with the issuance of the Bonds; and

WHEREAS, as a result of current conditions in the capital markets, the County's financial advisor, Davenport and Company, LLC (the "Financial Advisor"), has recommended that a determination be made closer to the time the Authority enters the market with the Bonds whether to offer and sell such Bonds pursuant to a competitive bidding process or a negotiated underwriting; and

WHEREAS, the Bonds will be: (a) Awarded by the Authority through a competitive electronic bidding process using a Notice of Sale, to be dated the date of its posting (the "Notice of Sale"), which states the structure and terms of the sale of the proposed Bonds, or (b) Sold pursuant to a Bond Purchase Agreement, to be dated as of the date of sale of the Bonds (the "Bond Purchase Agreement"), among the Authority, the County and one or more underwriters to be selected as described below (collectively, the "Underwriters"); and

WHEREAS, prior to the issuance of the Bonds, the County Administrator, as agent of the Authority, or his designee, may determine on behalf of the Authority, to elect that all or a portion of the Bonds shall constitute "Build America Bonds" pursuant to the Federal American Recovery and Reinvestment Act of 2009, the interest on which will be taxable to the holders thereof for federal income tax purposes, and either (a) Such holders will receive a tax credit equal to 35 percent of the interest on the Bonds or (b) The Federal government will make direct payments to, or as directed by, the Authority in the amount of the such credit as and when such interest is payable; and

WHEREAS, there have been presented to this meeting preliminary drafts of the following documents (collectively, the "Documents") in connection with the transactions described above, copies of which shall be filed with the records of the Board of Supervisors:

- (a) Ground Lease, dated as of September 1, 2009 (the "Ground Lease"), between the County and the Authority conveying to the Authority interests in certain real property;
- (b) Lease Agreement, dated as of September 1, 2009 (the "Lease"), between the Authority and the County conveying to the County a leasehold interest in the Project;
- (c) Indenture of Trust, dated as of September 1, 2009 (the "Indenture"), between the Authority and U.S. Bank National Association, as trustee (the "Trustee"), pursuant to which the Bonds are to be issued;
- (d) Assignment of Rents and Leases, dated as of September 1, 2009 (the "Assignment"), between the Authority and the Trustee, assigning to the Trustee certain of the Authority's rights under the Ground Lease and the Lease;

- (e) Leasehold Deed of Trust, dated as of September 1, 2009 (the “Deed of Trust”), from the Authority to the deed of trust trustees thereunder for the benefit of the Trustee;
- (f) Preliminary Official Statement with respect to the issuance and sale of the Bonds (the “Preliminary Official Statement”); and
- (g) Continuing Disclosure Certificate, dated as of September 1, 2009 (the “Continuing Disclosure Certificate”), pursuant to which the County agrees to undertake certain continuing disclosure obligations with respect to the Bonds.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, hereby:

1. The Board of Supervisors hereby finds and determines that it is in the best interests of the County to proceed with the lease financing of the Project.
2. The Bonds to be issued by the Authority shall have such terms as are approved by the Authority in a duly adopted resolution; *provided*, that the Bonds shall be subject to the following terms and conditions: (a) The aggregate principal amount of the Bonds shall not exceed \$15,100,000; (b) The weighted average maturity of the Bonds shall not exceed 25 years; (c) The Bonds shall be sold at a price not less than 98 percent nor more than 108 percent of the original aggregate principal amount thereof; (d) The “true” interest cost of the Bonds shall not exceed 5.50 percent per annum, after taking into account: (i) Any original issue discount or premium, if any; and (ii) In the case of any Bonds issued as “Build America Bonds,” any payments anticipated to be made by the federal government to, or as directed by, the Authority; and (e) The Bonds may be optionally redeemed after 10-1/2 years (or such shorter period as deemed advisable in the sale of the Bonds), with a redemption premium no greater than two percent of the principal amount of the Bonds to be optionally redeemed, provided that in the case of any Bonds issued as “Build America Bonds,” such Bonds may be subject to such optional and extraordinary optional redemption provisions as determined by the County Administrator, as the agent of the Authority, or his designee.
3. The Documents shall be in substantially the forms submitted to this meeting, which are hereby approved, with such completions, omissions, insertions and changes (including any changes necessary in connection with offering any Bonds as Build America Bonds) as may be subsequently approved by the Chairman or Vice Chairman of the Board of Supervisors, which approval shall be evidenced conclusively by the execution and delivery of the Documents to which the County is a party by such Chairman or Vice Chairman.
4. The Chairman and Vice Chairman of the Board of Supervisors, either of whom may act, are each hereby authorized and directed to execute the Ground Lease, the Lease, the Continuing Disclosure Certificate, the Preliminary Official Statement (if required) and the final Official Statement relating to the Bonds. The County Administrator and the County Attorney are hereby authorized to record or cause to be recorded the Ground Lease, the Lease (or a memorandum thereof), the Deed of Trust and the Assignment in the Clerk’s Office of the Circuit Court of the County.

5. The Chairman and Vice Chairman of the Board of Supervisors, either of whom may act, are each hereby authorized and directed to acknowledge and consent, if necessary, to the provisions of the Indenture, the Assignment and the Deed of Trust.
6. If, upon the recommendation of the Financial Advisor, the County Administrator or his designee determines that then-current market or other conditions warrant a negotiated sale of the Bonds, the County Administrator or his designee is hereby authorized, subject to the limitations set forth in Paragraph 2, to determine the Underwriters for the Bonds, including any syndicate members and members of the selling group for the Bonds, and negotiate the provisions of the Bond Purchase Agreement, including without limitation determining the prices at which the Bonds will be offered by the Underwriters to the public. The Chairman and Vice Chairman of the Board of Supervisors, either of whom may act, are each hereby authorized to execute and deliver such Bond Purchase Agreement.
7. The appropriate officers and agents of the County are hereby authorized and directed to prepare, and the Chairman and Vice Chairman of the Board of Supervisors are each authorized and directed to execute, the Preliminary Official Statement with respect to the issuance and sale of the Bonds, with such supplements as either the Chairman or Vice Chairman may consider necessary or desirable in connection therewith. The Chairman and Vice Chairman of the Board of Supervisors are each authorized, on behalf of the County, to deliver the Preliminary Official Statement and to deem the Preliminary Official Statement to be in final form as of its date within the meaning of Rule 15c2-12 of the Securities and Exchange Commission, except for the omission of certain pricing and other information allowed to be omitted pursuant to such Rule 15c2-12. The distribution of the Preliminary Official Statement shall be conclusive evidence that it has been deemed final as of its date by the County, except for the omission of such pricing and other information. The use and distribution of the Preliminary Official Statement are hereby authorized.

The appropriate officers and agents of the County are hereby authorized and directed to assist with the preparation of a final Official Statement, appropriately dated, in the form of the Preliminary Official Statement, with appropriate completions, insertions, omissions and changes as shall be necessary to accurately describe, among other things, the Bonds, the security therefore, and the Documents. The Chairman and the Vice Chairman of the Board of Supervisors, either of whom may act, are each authorized and directed to execute and deliver the final Official Statement on behalf of the County. The use and distribution of such final Official Statement are hereby approved.

8. The Board of Supervisors hereby selects and designates U.S. Bank National Association as Trustee and Troutman Sanders LLP as Bond Counsel with respect to the Bonds, and the Authority is hereby requested to designate them as such.
9. The County covenants that it shall not take or omit to take any action the taking or omission of which will cause the Bonds to be "arbitrage bonds" within the meaning of Section 148 of the Internal Revenue Code of 1986, as amended, including regulations issued pursuant thereto (the "Code"), or otherwise cause interest on the Bonds to be includable in the gross income for Federal income tax purposes of the registered owners thereof under existing law, unless any of the Bonds are issued as taxable "Build America Bonds," in which case the County shall comply with all requirements of the Code pertaining thereto.

10. All acts of the Chairman and Vice Chairman of the Board of Supervisors and other officers of the County, regardless of whether such acts occurred prior to or occur after the adoption of this Resolution, that are in conformity with the purposes and intent of this Resolution and in furtherance of the plan of financing, the issuance and sale of the Bonds and the undertaking of the Project are hereby approved and ratified.
11. The Board of Supervisors previously adopted on May 12, 2009 a reimbursement resolution in connection with the financing of the Project. The Board of Supervisors hereby amends the maximum principal amount of the indebtedness related to the Project as set forth in such resolution from \$15,000,000 to \$15,100,000. The provisions of such resolution relating to the reimbursement of "original expenditures", except as modified by the preceding sentence, remain in full force and effect and are ratified and confirmed hereby.
12. The County understands that, to the extent that the Bonds are not being offered as "Build America Bonds," the Authority is designating the Bonds as "qualified tax-exempt obligations" eligible for the exception from the disallowance of the deduction of interest by financial institutions allocable to the cost of carrying tax-exempt obligations in accordance with the provisions of Section 265(b)(3) of the Code. The County does not reasonably anticipate that it and any "subordinate entities" will issue during calendar year 2009 more than \$30,000,000 in qualified tax-exempt obligations for the benefit of the County, and the County will not designate more than \$30,000,000 of qualified tax-exempt obligations (including the Bonds as designated by the Authority) in calendar year 2009.
13. The Project is hereby declared to be essential to the efficient operation of the County, and the Board of Supervisors anticipates that the Project will continue to be essential to the operation of the County during the term of the Lease. The Board of Supervisors, while recognizing that it is not empowered to make any binding commitment to make appropriations beyond the current fiscal year, hereby states its intent to make annual appropriations in future fiscal years in amounts sufficient to make all payments under the Lease and hereby recommends that future Boards of Supervisors do likewise during the term of the Lease. If the County exercises its right not to appropriate money for rent payments under the Lease, the Trustee may terminate the Lease or otherwise exclude the County from possession of the Project.
14. This Resolution shall take effect immediately.

H. PUBLIC COMMENT

1. Mr. Ed Oyer, 139 Indian Circle, thanked those who have reached out to his family in its time of loss.

I. REPORTS OF THE COUNTY ADMINISTRATOR

Mr. Wanner stated that the Board should recess for a brief meeting of the James City Service Authority and reconvene for a closed session pursuant to Section 2.2-3711(A)(1) of the Code of Virginia for the consideration of a personnel matter involving the annual performance evaluation of the County Administrator. He noted that there was no second meeting in August. He stated there was also a potential item from

Councilman Gilliland from the City of Hampton related to the Green Jobs Alliance if the Board wished to discuss it.

J. BOARD REQUESTS AND DIRECTIVES

Mr. McGlennon expressed appreciation for the work of Mr. Kinsman and other contributing staff in the blight abatement at Lake Powell Point. He also stated that Councilman Randy Gilliland of the City of Hampton approached the Board on behalf of the Green Jobs Alliance to participate in competition for grant funding for green job training through the ARRA. He stated that the Green Jobs Alliance was requesting endorsement of the application for the funding and a financial contribution of roughly \$6,000. He asked that the financial request be considered at a later date if needed, but he would ask if the Board would be willing to endorse the resolution of support or to ask the Chairman to send a letter endorsing the grant applications.

Mr. Goodson stated concern about adopting a resolution that has not been presented to the public. He stated he was not prepared to vote at this time.

Mr. McGlennon stated that he agreed and he would be satisfied if the Chairman could send a letter if there was a consensus of support.

Mr. Kennedy stated he was agreeable to that.

Ms. Jones commented on the Green Jobs Alliance and noted that Van Jones, who wrote the stimulus package, formed the organization. She stated that this was an opportunity for one group to tap into the funds of the stimulus. She stated she did not support the Green Jobs Alliance applications.

Mr. McGlennon stated that this particular application's Executive Director was Randy Flood and Randy Gilliland, Hampton City Councilman, put together this package. He stated that he felt that the County should not pass up the opportunity to participate on the regional level.

Ms. Jones stated her concern for the organizational structure.

Mr. Goodson asked if Councilman Gilliland was a contractor.

Mr. Wanner stated that Gilliland was the Chairman of the Board of Directors and outlined the leadership and advisors of the organization.

Mr. Goodson asked if a local budget was available.

Mr. Wanner stated that a request for 10 cents per capita was included in the email request. He stated he would post applicable information and the proposed resolution to the website.

Mr. McGlennon stated that he was not aware of Van Jones's involvement.

Ms. Jones stated that he was one of the founding members of the Green Jobs Alliance according to the website.

Mr. Icenhour asked how the grant application process would work.

Mr. Wanner stated that it would come from the Workforce Investment Board through the U.S. Department of Labor.

Mr. Icenhour stated that the Peninsula had the premier workforce investment board in the region. He asked if the money would not come to this community if the application was not supported.

Mr. Wanner stated that was correct. He stated that the money would come through the Workforce Investment Board to local community colleges and technical schools. He stated that the information would be provided on the website to allow the board to make an informed decision on whether or not to request the Chairman to write a letter of endorsement.

Mr. Icenhour stated he would like the Board to take advantage of this opportunity.

Ms. Jones asked what oversight would be given if the grant money was awarded.

Mr. Icenhour stated the grant money would come through the Workforce Investment Board and administered by the Workforce Development Consortium, which was overseen by local elected officials. He stated that the money would go to specific programs. He stated that this funding would allow for great strides in workforce development programming. He stated there was no guarantee that the grant would be awarded.

Ms. Jones stated that she was surprised that other organizations did not exist to compete for the grants.

Mr. Kennedy stated the Board would communicate about this matter and decide whether or not to support this.

Mr. Kennedy recessed the Board at 7:56 p.m. for a meeting of the James City Service Authority.

Mr. Kennedy reconvened the Board at 8:07 p.m.

K. CLOSED SESSION

Mr. Goodson made a motion to go into closed session pursuant to Section 2.2-3711(A)(1) of the Code of Virginia for the consideration of a personnel matter involving the annual performance evaluation of the County Administrator.

On a roll call vote, the vote was AYE: Goodson, Jones, McGlennon, Icenhour, Kennedy (5). NAY: (0).

At 8:08 Mr. Kennedy recessed the Board into closed session.

At 10:26 p.m. Mr. Kennedy reconvened the Board.

Mr. Icenhour made a motion to adopt the closed session resolution.

On a roll call vote, the vote was AYE: Goodson, Jones, McGlennon, Icenhour, Kennedy (5). NAY: (0).

RESOLUTION

CERTIFICATION OF CLOSED MEETING

WHEREAS, the Board of Supervisors of James City County, Virginia, (Board) has convened a closed meeting on this date pursuant to an affirmative recorded vote and in accordance with the provisions of the Virginia Freedom of Information Act; and

WHEREAS, Section 2.2-3711 of the Code of Virginia requires a certification by the Board that such closed meeting was conducted in conformity with Virginia law.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, hereby certifies that, to the best of each member's knowledge: i) only public business matters lawfully exempted from open meeting requirements by Virginia law were discussed in the closed meeting to which this certification resolution applies; and ii) only such public business matters were heard, discussed, or considered by the Board as were identified in the motion, Section 2.2-3711(A)(1) of the Code of Virginia, to consider a personnel matter, the annual performance evaluation of the County Administrator.

L. ADJOURNMENT to 7 p.m. on September 8, 2009

Mr. McGlennon made a motion to adjourn.

On a roll call vote, the vote was AYE: Goodson, Jones, McGlennon, Icenhour, Kennedy (5). NAY: (0).

At 10:27 p.m. Mr. Kennedy adjourned the Board to 7 p.m. on September 8, 2009.

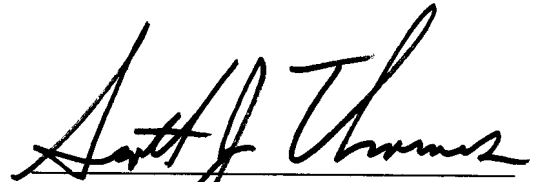
Sanford B. Wanner
Clerk to the Board

MEMORANDUM

DATE: September 8, 2009
TO: The Board of Supervisors
FROM: Scott J. Thomas, Environmental Director
SUBJECT: Dedication of Opportunity Way into the State Secondary Highway System


Attached is a resolution requesting acceptance of Opportunity Way on the County's Warhill Tract into the State Secondary Highway System. This street has been inspected and approved by representatives of the Virginia Department of Transportation as meeting the minimum requirements for secondary roadways.

Staff recommends adoption of the attached resolution.



Scott J. Thomas

CONCUR:



Steven W. Hicks

SJT/gb
OpportunityWay_mem

Attachments

RESOLUTION

DEDICATION OF OPPORTUNITY WAY INTO THE STATE SECONDARY HIGHWAY SYSTEM

WHEREAS, the Williamsburg Residency Office of the Virginia Department of Transportation recommends that the street(s) referenced in this Board's resolution be added to the secondary system of State highways as a no-cost rural addition pursuant to Section 33.1-229 and Commonwealth Transportation Board policy, because the street(s) meets current minimum standards, the condition of the existing hard surface is serviceable, the street(s) has provided continuous public service since its establishment in March 31, 2008, and currently serves a public school and public recreational facilities; and

WHEREAS, the Williamsburg Residency Office of the Virginia Department of Transportation confirms that no Department funds are required to improve the street(s) described on the attached additions form AM-4.3 to meet current minimum design or maintenance standards of the Department.

NOW, THEREFORE, BE IT RESOLVED by the Board of Supervisors of James City County, Virginia, that this Board requests the Virginia Department of Transportation to add the street(s) described on the attached additions form AM-4.3 to the secondary system of State highways, pursuant to Section 33.1-229, Code of Virginia and the Rural Addition Policy of the Commonwealth Transportation Board of the Virginia Department of Transportation.

BE IT FURTHER RESOLVED, this Board guarantees a clear and unrestricted right-of-way, as described on the attached form AM-4.3, and any necessary easements for cuts, fills and drainage.

BE IT FURTHER RESOLVED, that a certified copy of this resolution be forwarded to the Residency Administrator of the Virginia Department of Transportation.

James G. Kennedy
Chairman, Board of Supervisors

ATTEST:

Sanford B. Wanner
Clerk to the Board

Adopted by the Board of Supervisors of James City County, Virginia, this 8th day of September, 2009.

OpportunityWay_res

In the County of James City

By resolution of the governing body adopted September 08, 2009

The following VDOT Form AM-4.3 is hereby attached and incorporated as part of the governing body's resolution for changes in the secondary system of state highways.

A Copy Testee Signed (County Official):

Report of Changes in the Secondary System of State Highways

Project/Subdivision **Opportunity Way**

Type Change to the Secondary System of State Highways: **Addition**

The following additions to the Secondary System of State Highways, pursuant to the statutory provision or provisions cited, are hereby requested; the right of way for which, including additional easements for cuts, fills and drainage, as required, is hereby guaranteed:

Reason for Change: **Rural Addition (CTB Policy - No Cost)**

Pursuant to Code of Virginia Statute: **§33.1-229**

Street Name and/or Route Number

► **Opportunity Way, State Route Number 1035**

Old Route Number: 0

- From: Centerville Road (RTE. 614)
To: .16 Mi. SW of Route 614, a distance of: 0.16 miles.

Recordation Reference: Document # 060002226

Right of Way width (feet) = 120 feet

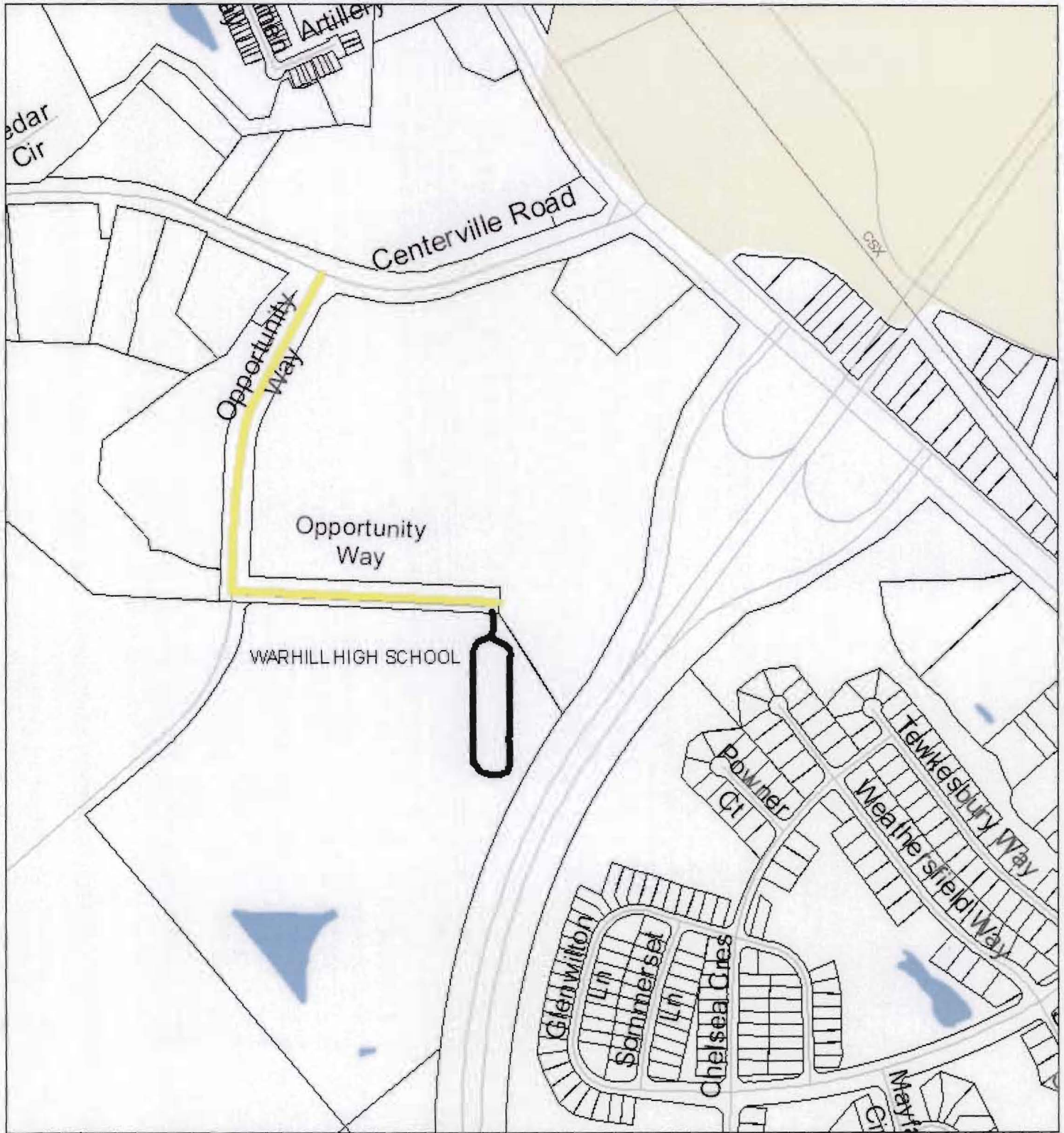
► **Opportunity Way, State Route Number 1035**

Old Route Number: 0


- From: .16 Mi. SW of Route 614
To: T Turn Around, a distance of: 0.30 miles.

Recordation Reference: Document # 060002226

Right of Way width (feet) = 120 feet



DEDICATION OF OPPORTUNITY WAY

 Street Being Dedicated

1 inch = 529 feet



MEMORANDUM

DATE: September 8, 2009
TO: The Board of Supervisors
FROM: Bernard M. Farmer, Jr., Capital Projects Coordinator
SUBJECT: Award of Bid – Freedom Park Water Main – \$176,610

James City County has received competitive bids for the construction of a water main serving Freedom Park and Master Planned facilities within the park. The project consists of approximately 3,300 feet of 12-inch water main, 700 feet of 8-inch water main, a connection for the Botanical Garden, and connections for future development at the Park. This project supports several planned improvements funded through a bond referendum for recreational facilities. A Special Use Permit (SUP) approving this project was previously issued. A total of 19 bids were received for the project with bid amounts ranging from the low bid of \$171,610 to a high bid of \$480,115. Outlined below are the lowest 10 bid amounts:

<u>BIDDER</u>	<u>AMOUNT</u>	<u>LOCATION</u>
Walter C. Via Enterprises	\$171,610.00	West Point, VA
Johnson & Glazer	198,850.00	Prince George, VA
J. Sanders Construction	198,477.00	West Point, VA
Peters & White Construction	206,854.00	Chesapeake, VA
Longhill Excavating	215,198.20	Williamsburg, VA
David A. Nice Builders	217,608.00	Williamsburg, VA
Toano Contractors	222,867.35	Toano, VA
William Wills Contractor	224,236.50	Saluda, VA
Curtis Contracting	235,775.00	West Point, VA
George Nice & Sons	244,222.00	Toano, VA

The apparent low bid amount of \$171,610 from Walter C. Via Enterprises is substantially less than initial estimates for this project, but consistent with the current trend of greater competition and more competitive pricing. Funding is available for this bid award from previously approved referendum funds. Staff has experience with and believes that the low bidder is well qualified and financially sound, and would perform well with this project. Accordingly, Walter C. Via Enterprises is recommended for award of the bid for construction of the Freedom Park Water Main.

Staff recommends adoption of the attached resolution authorizing the award of the construction bid to Walter C. Via Enterprises in the amount of \$171,610.


Bernard M. Farmer, Jr.

CONCUR:


John T.P. Horne

BMF/nb
AOB_IFB100001_mem

Attachments

RESOLUTION

AWARD OF BID – FREEDOM PARK WATER MAIN – \$176,610

WHEREAS, competitive bids were advertised for a water main to be constructed within Freedom Park;
and

WHEREAS, bids were received with the low bidder being Walter C. Via Enterprises with a bid of
\$171,610; and

WHEREAS, previously authorized Bond Referendum funds are available for this contract bid award.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia,
hereby authorizes the County Administrator or his designee to execute the necessary
contract documents with Walter C. Via Enterprises for the Freedom Park Water Main in the
total amount of \$171,610.

James G. Kennedy
Chairman, Board of Supervisors

ATTEST:

Sanford B. Wanner
Clerk to the Board

Adopted by the Board of Supervisors of James City County, Virginia, this 8th day of
September, 2009.

AOB_IFB100001_res

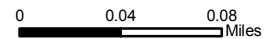
Freedom Park Water Main



Centerville Rd

This drawing is neither a legally recorded map nor a survey and is not intended to be used as such. The information displayed is a compilation of records, information, and data obtained from various sources, and James City County is not responsible for its accuracy or how current it may be. If discrepancies are found, please contact the Real Estate Assessment Division of James City County, Mapping/GIS Section.

1 inch = 400 feet



**SPECIAL USE PERMIT-0012-2009. 101 Birch Circle Accessory Apartment
Staff Report for the September 8, 2009, Board of Supervisors Public Hearing**

This staff report is prepared by the James City County Planning Division to provide information to the Planning Commission and Board of Supervisors to assist them in making a recommendation on this application. It may be useful to members of the general public interested in this application.

PUBLIC HEARINGS

Planning Commission:
Board of Supervisors:

Building F Board Room; County Government Complex

August 5, 2009, 7:00 p.m.
September 8, 2009, 7:00 p.m.

SUMMARY FACTS

Applicant: Norman David

Land Owner: Norman & Catherine David

Proposal: Mr. David has applied for a Special Use Permit (SUP) to allow for the renovation of his attic into a 1,368-square-foot accessory apartment.

Location: 101 Birch Circle

Tax Map/Parcel No.: 1340200054

Parcel Size: 1.34 acres

Zoning: R-6, Low-Density Residential

Comprehensive Plan: Rural Lands

Primary Service Area: Outside

STAFF RECOMMENDATION

Staff recommends denial of the application. Staff finds the proposal inconsistent with the Rural Lands designation and incompatible with the intent of the Low-Density Residential district due to the large scale of the proposal. Approval of the proposal could set a negative precedent for other applications for similarly sized accessory apartments in low-density residential subdivisions in the County. Should the Board approve the application, staff recommends such approval be contingent upon the conditions listed in an attached resolution.

Staff Contact: Luke Vinciguerra Phone: 253-6685

PLANNING COMMISSION RECOMMENDATION

On August 5, 2009, the Planning Commission voted 5-2 to recommend denial of the application.

Proposed Changes Made Since Planning Commission Meeting

No changes have been made to the plan. In the staff report presented to the Planning Commission, staff indicated that a site visit was conducted on July 10, 2009. The correct date is July 17, 2009. The change has been reflected in the staff report. The applicant received a Virginia Department of Transportation (VDOT) entrance permit for the second driveway on August 5, 2009.

PROJECT DESCRIPTION

Mr. Norman David has applied for an SUP to allow for the renovation of his home's attic into an accessory apartment to be occupied by his daughter. The existing one-story home (excluding the garage) is 2,550 square feet. The proposed accessory apartment would add an additional 1,368 square feet of livable space to the existing house.

PROJECT HISTORY

The applicant received a building permit in September 2008, for a dormer and deck addition. The deck addition provides the current access to the second-floor living space. A second permit was issued on July 13, 2009, to build two bedrooms, two bathrooms and a living area in the unfinished attic space. Both the building permit and SUP were applied for on June 1, 2009. The building permit was issued for the addition of living space minus the kitchen unit. The kitchen unit is the defining factor for determining whether the unit constitutes an accessory apartment. In the original building permit application, the applicant proposed a second-floor kitchen; however, it was subsequently removed from the plan when the applicant was told by Zoning staff that the plan could not be approved administratively and would require the issuance of an SUP for the accessory apartment. During staff's site visit on July 17, 2009, framing, plumbing, and HVAC equipment installation appeared to be substantially completed. The applicant constructed a second driveway leading to the accessory apartment without a VDOT entrance permit.

Special Provisions for Accessory Apartments

The R-6, Low-Density Residential zoning district allows accessory apartments with the issuance of an SUP in accordance with Section 24-32 of the James City County Code. Section 24-32 states "Accessory apartments shall comply with the following requirements:

- 1) Only one accessory apartment shall be created within a single-family dwelling;
- 2) The accessory apartment shall be designed so that the appearance of the building remains that of a one-family residence. New entrances shall be located on the side or rear of the building and the apartment may not occupy more than 35 percent of the floor area of the dwelling;
- 3) For purposes of location and design, the accessory apartment is part of the main structure and shall meet all setback, yard, and height regulations applicable to main structures in the zoning district in which it is located;
- 4) Off-street parking shall be required in accordance with section 24-54 of the Zoning Ordinance."

The proposal satisfies the preceding minimum requirements to be considered as an accessory apartment; however, it is only three square feet less than the 35 percent maximum. The maximum livable area of the apartment was determined by adding the floor area as stated in the home's original building permit (excluding garage), to the proposed size of the accessory apartment and multiplying by .35 ($\{2550 \text{ sqft home} + 1368 \text{ sqft proposal}\} \times .35 = 1,371 \text{ sqft maximum}$). All exterior improvements have been completed and are within the setbacks of the zoning district.

Public Utilities

Staff Comments: The property is outside the Primary Service Area (PSA) and is served by private well and septic. The Health Department has approved the septic tank's ability to service the accessory apartment.

Access and Parking

The entrance to the accessory apartment is to the side of the house facing Elmwood Lane and was constructed prior to the submittal of this application; off street parking is provided on-site by a second driveway and is in compliance with the Ordinance.

Staff Comments: The accessory apartment would have a minimal impact on traffic. Parking for the apartment would be accommodated on-site. Currently there are two driveways accessing different roads (the property is a corner lot). The secondary driveway terminates near the proposed entrance of the accessory apartment.

Surrounding Zoning and Land Use

The Elmwood subdivision is zoned R-6, Low-Density Residential. Elmwood is primarily comprised of large single-family detached units. There are no covenants or Homeowners Association (HOA) restrictions preventing the addition of an accessory apartment.

COMPREHENSIVE PLAN

Land Use Map

Designation	Rural Lands (Page 119): Residential developments not related to agriculture should have minimal impact to the land and be consistent with the Rural Lands Development Standards. Rural clusters on a small scale which meet the design standards are encouraged while large concentrations of residential development are strongly discouraged.
	Staff Comment: The proposal itself does not have a significant impact on the community; however, the Rural Lands designation and the zoning district stress low densities. Should this proposal be approved, it may set a precedent that large accessory apartments are acceptable in areas designated Rural Lands. The cumulative impacts of multiple large accessory apartments may begin to erode the intent of the Rural Lands designation as primarily for agricultural and forestall activities. Rural residential uses are appropriate when they are at a very low density and no more than one dwelling unit per three acres in a conventional subdivision pattern.
Goals, strategies and actions	<i>Action #1-Page 139:</i> Provide for low density and moderate density residential development in appropriate locations inside the Primary Service Area (PSA) and prohibit such development on rural lands outside the PSA.
	Staff Comment: The proposal would increase the density of a Rural Lands community. While this application by itself represents a negligible impact, approval of a large accessory apartment would set a negative precedent that accessory apartments of this size are acceptable in Rural Lands. This, over time, may have a noticeable negative effect on Rural Lands densities.

Housing

Goals, strategies and actions	<i>Action #2- Page 107:</i> In order to protect the character of established neighborhoods, installation of an accessory apartment will only be allowed with a special use permit.
	Staff Comment: Through this condition, the Comprehensive Plan acknowledges the impacts accessory apartments may have on the density of a community. Staff finds this proposal to be inconsistent with the low-density character of Rural Lands.
	<i>Strategy #3-Page 106:</i> Promote a scale and density of residential development compatible with adjacent and surrounding land uses, supporting infrastructure, and environmental conditions.
	Staff Comment: Staff finds that approval of the SUP at the scale proposed would be inconsistent with the density of the existing neighborhood.

Staff finds the proposal is generally inconsistent with the land use designation and housing strategies identified in the 2003 Comprehensive Plan.

Recent Accessory Apartment Cases

The Board has considered two accessory apartment proposals in the past seven years. In 2007 the Board approved a 770-square-foot apartment in Page Landing and in 2002 denied a 400-square-foot proposal in Gatehouse Farms. Both previous cases were in the R-1 district. In the 2002 proposal, the applicant attempted to rent the master bedroom and bath of his home. In 2007, the proposal was to build a small addition to the rear of the house. Both previous proposals were significantly smaller than the current case and in staff's opinion, appeared more closely to resemble a single-family home's appearance. Staff recommended approval for both cases.

Compatibility with the Low-Density Residential District

Though the minimum requirements for consideration as an accessory apartment have been met, staff finds the overall proposal to be inconsistent with characteristics commonly associated with accessory apartments. The project, as submitted, is inconsistent with other similar proposals in size and overall arrangement, incompatible with the intent of the Low-Density Residential district and incompatible with the Rural Lands designation.

Staff finds the proposal to more closely resemble a duplex than an accessory apartment. As much of the addition was completed before the application for an SUP was submitted, staff did not have an earlier opportunity to comment on the proposed design of the apartment or location of entrances and driveways. The current proposal depicts the entire second story of the residence as an apartment, with its own entrance and driveway. If four additional square feet were added to this floor plan, it would classify the apartment as a duplex (which are not permitted in the Low-Density Residential district). Had staff been able to evaluate the proposal before construction, recommendations would have included a smaller scale apartment, a single, shared driveway, and a shared entrance or separate entrance at the rear or right side of the property. The design would be such that regular interactions between occupants of the principal dwelling and accessory apartment would be likely. Due to this proposal's size and separate access, it is not clear that the apartment would be a secondary use to the principal residence and more closely resembles a duplex. The Board approved one other SUP for an accessory apartment in the Elmwood Subdivision in 1989, at a size of only 600 square feet.

As there are only three R-6, Low-Density Residential neighborhoods in the County, care needs to be taken to ensure new proposals don't erode the uniqueness of the district or this subdivision. Similar to the R-1, Limited Residential, district, communities in these designations are older and not designed to accommodate increases in density. As stated in R-6's Statement of Intent "This district is established for the purposes of stabilizing and protecting the existing low-density residential character from encroachment by nonresidential or higher density uses..." As the proposal would increase the neighborhood's density and possibly set a precedent that similarly sized accessory apartments are acceptable in the district, it is staff's opinion that approval of the application, could begin to erode the low density nature of the neighborhood by increasing its density; thus it would, be in contradiction to the intent of the district. Approval of this application could restrict the County's ability to limit the size of accessory apartments in low density areas in the future and limit the tools available to ensure proposals meet the intent of a zoning district.

The densities of R-6 are unique compared to other less intense districts. A-1, General Agriculture, and R-8, Rural Residential, have future prospects of being used for more intense uses such as the development of agrobusinesses or for higher densities. While R-8 promotes the possibility of higher densities, A-1, General Agriculture promotes agricultural uses. R-6 and R-1 are the districts where low density residential development are promoted and expected to be maintained. It's also noteworthy that in A-1, General Agriculture, and R-8, Rural Residential, accessory apartments are by-right uses, while in R-6 and R-1, a special use permit is required.

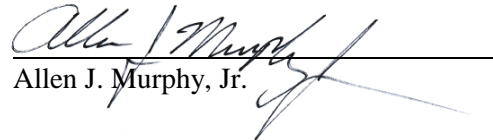
RECOMMENDATION

Staff recommends denial of the application. Staff finds the proposal inconsistent with the Rural Lands designation and incompatible with the intent of the Low-Density Residential district due to the large scale of the proposal. Approval of the proposal could set a negative precedent for other applications for similarly sized accessory apartments in low density residential subdivisions in the County.

On August 5, 2009, the Planning Commission voted 5-2 to recommend denial of the application. However, should the Board approve the application, staff recommends such approval be contingent upon the conditions listed in the attached resolution.

Luke Vinciguerra

CONCUR:



Allen J. Murphy, Jr.

LV/gb
Sup0012-09BirchApt.doc

ATTACHMENTS:

1. Current 1st floor plan
2. Current elevations
3. Current elevations (side)
4. Proposed apartment layout
5. Proposed exterior elevations
6. Proposed exterior elevations with deck and stairs
7. Location map
8. Unapproved Planning Commission minutes
9. Resolution

**SPECIAL USE PERMIT- 0012-2009. 101 Birch Circle Accessory Apartment.
Staff Report for the September 8, 2009, Board of Supervisors Public Hearing**

This staff report is prepared by the James City County Planning Division to provide information to the Planning Commission and Board of Supervisors to assist them in making a recommendation on this application. It may be useful to members of the general public interested in this application.

PUBLIC HEARINGS

Planning Commission:
Board of Supervisors:

Building F Board Room; County Government Complex

August 5, 2009 7:00 p.m.
September 8, 2009 7:00 p.m.

SUMMARY FACTS

Applicant: Norman David

Land Owner: Norman & Catherine David

Proposal: Mr. David has applied for a special use permit to allow for the renovation of his attic into a 1,368 square foot accessory apartment.

Location: 101 Birch Circle

Tax Map/Parcel No: 1340200054

Parcel Size: 1.34 acres

Zoning: R-6, Low Density Residential

Comprehensive Plan: Rural Lands

Primary Service Area: Outside

STAFF RECOMMENDATION

The applicant has withdrawn the Special Use Permit application from consideration by the Board of Supervisors.

Staff Contact: Luke Vinciguerra

Phone: 253-6685

ATTACHMENTS:

1. Applicant withdrawal letter

RESOLUTION

CASE NO. SUP-0012-2009. 101 BIRCH CIRCLE ACCESSORY APARTMENT

WHEREAS, Mr. Norman David has applied for a Special Use Permit (SUP) to allow for the renovation of his home's attic into an accessory apartment; and

WHEREAS, the property is located at 101 Birch Circle on property more specifically identified as James City County Tax Map No. 1340200054 (the "Property"); and

WHEREAS, the Planning Commission of James City County, following its public hearing on August 5, 2009, on a 5-2 vote, recommended denial of Case No. SUP-0012-2009; and

WHEREAS, the Board of Supervisors of James City County, Virginia finds this use to be consistent with the 2003 Comprehensive Plan and intent of the zoning district for this Property.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, does hereby approve Case No. SUP-0012-2009 as described herein, with the following conditions:

1. This SUP shall be valid for a single accessory apartment, within the confinements of the existing principal dwelling's attic and not to exceed 35 percent of the total floor area of the dwelling.
2. The permitted accessory apartment shall be part of the owner-occupied residential structure on the property. The owner of the property shall occupy the remainder of the residential structure as long as the accessory apartment is rented.
3. Prior to the modification of the current building permit or issuance of a new building permit for an accessory apartment, the applicant shall be responsible for recording with the Clerk of the Circuit Court a deed restriction, approved by the County Attorney, on the property. The deed restriction shall stipulate that the accessory apartment shall be used, occupied, and maintained in accordance with the conditions set forth in the Board of Supervisors' resolution approving the SUP. A copy of the Board of Supervisors' resolution shall be attached to the deed restriction as an exhibit. A court-certified copy of the recorded deed restriction shall be submitted to Code Compliance and the Proffer Administrator along with the building permit application.
4. Within 12 months of the issuance of this SUP, the accessory apartment shall receive a Certificate of Occupancy, or the SUP shall become void.
5. door providing direct internal access between the accessory apartment and the primary dwelling shall be maintained at all times.
6. This SUP is not severable and any invalidation of any word, phrase, or sentence shall invalidate the reminder.

James G. Kennedy
Chairman, Board of Supervisors

ATTEST:

Sanford B. Wanner
Clerk to the Board

Adopted by the Board of Supervisors of James City County, Virginia, this 8th day of
September, 2009.

Sup0012-09BirchApt_res

Grace Brockmann

From: Luke Vinciguerra
Sent: Friday, September 04, 2009 3:40 PM
To: Grace Brockmann
Cc: Michelle Salnoske
Subject: BOS memo, please post with the email below.
Attachments: BOS report 2.doc

Categories: Orange Category

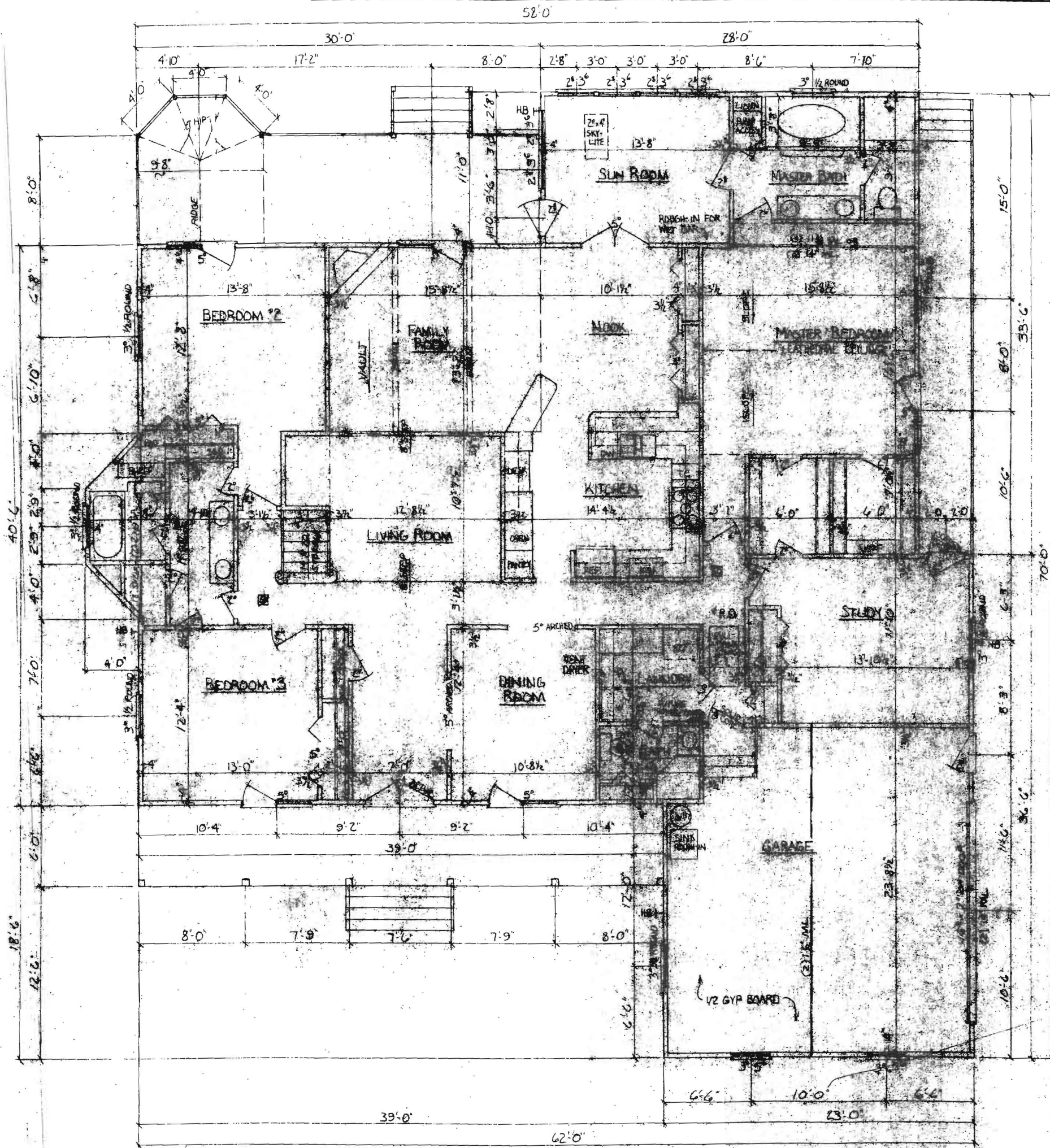
From: Norman David [mailto:normpdavid@hotmail.com]
Sent: Friday, September 04, 2009 1:51 PM
To: Luke Vinciguerra
Subject: Special Use permit 101 Birch Circle

Luke:

After due consideration, Kathie and I have decided to withdraw our application for the Special Use Permit. Please confirm the withdrawal as soon as possible.

Have a good weekend.

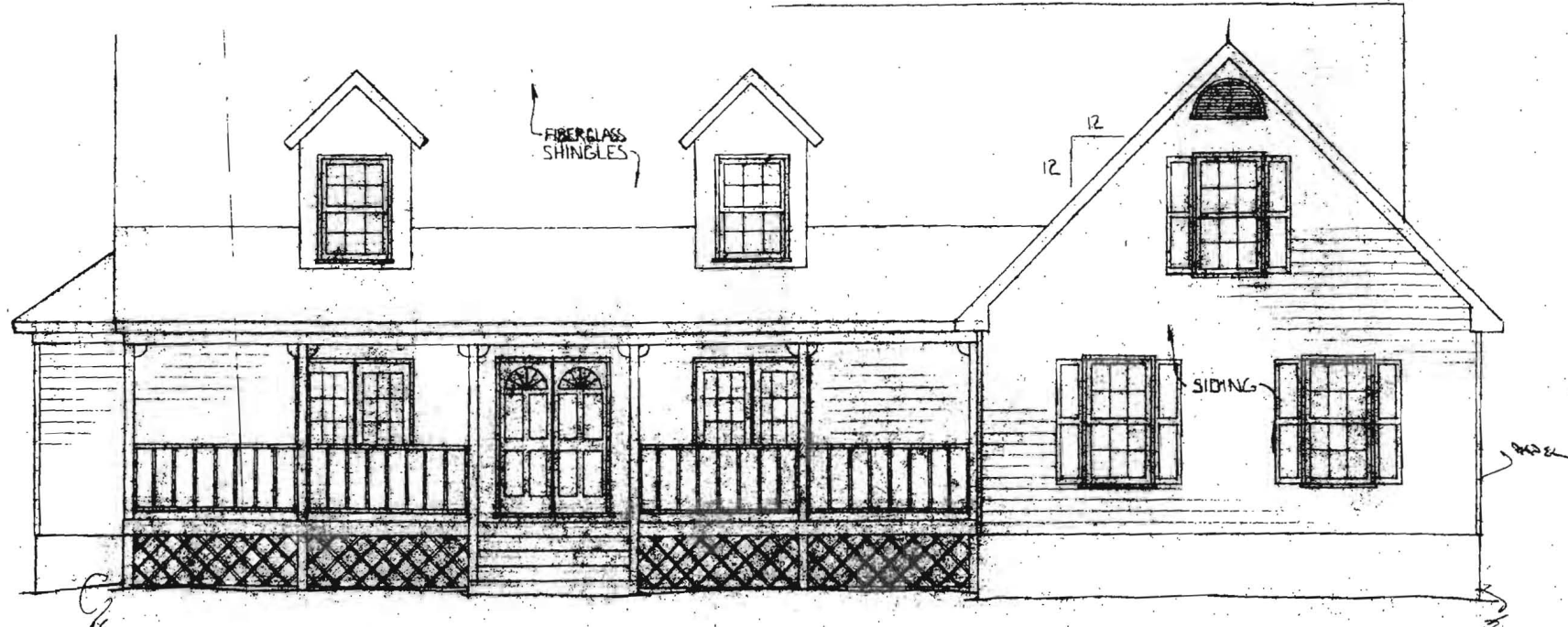
Norman P. David



- REVISIONS:
- ① 5-29-91
 - GAZERO ON REAR
 - MOVE BEDROOM #2 EAST DOOR
 - MOVE WALL BESIDE STAIRS ADD RAILING
 - ADD DORMERS
 - ADD SHUTTERS
 - ② 6-12-91
 - DOOR SWING @ GARAGE & HALL
 - ADD SCREEN DOOR IN STUDY
 - CHANGE ENTRY DOOR FROM 5" TO 5 1/2"
 - ③ 7-11-91
 - CHANGED F.O. TO ARCHED OPENINGS IN DINING ROOM

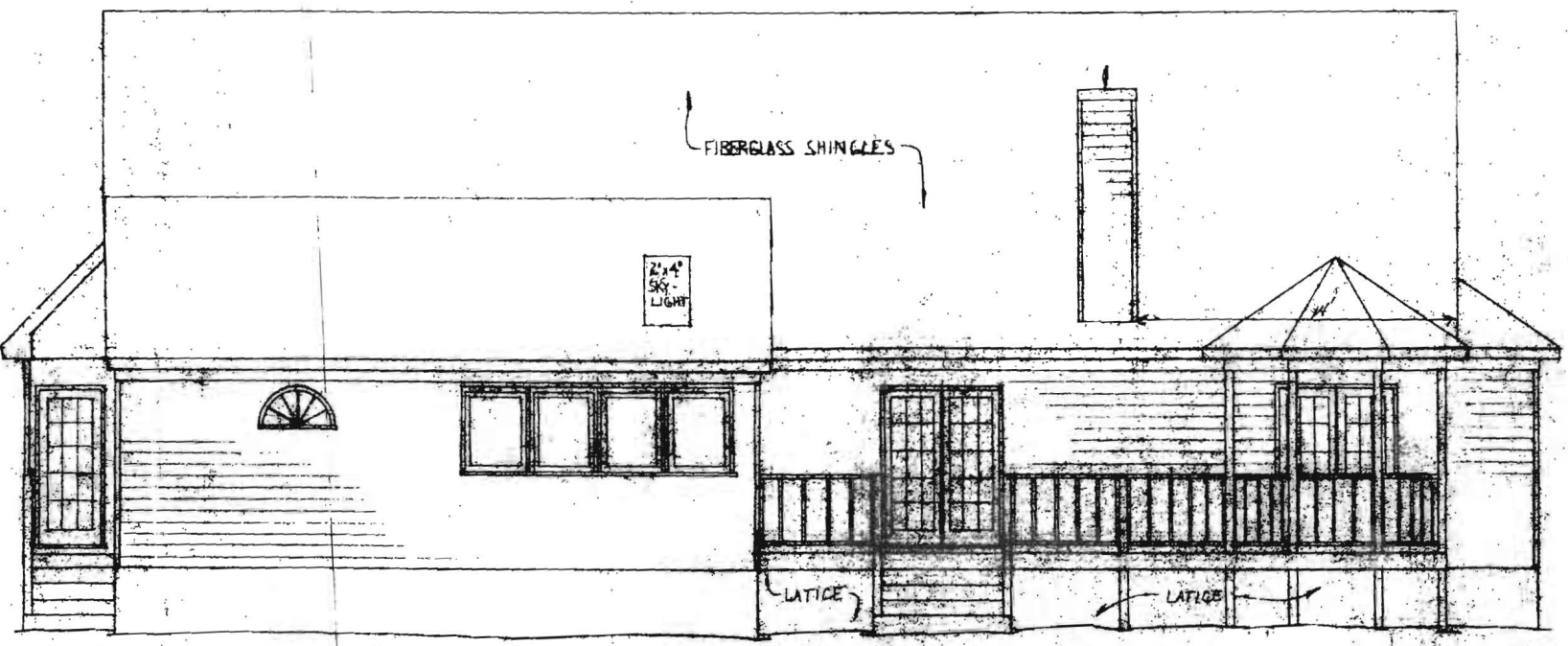
LIVING AREA	2659 sqft
DECK	606 sqft
GARAGE	536 sqft

This drawing has been prepared by a draftsman and does not constitute a contract. It is the property of the architect and is not to be used for any other purpose without the written consent of the architect. The architect assumes no responsibility for the construction of the building shown hereon.



FRONT ELEVATION
SCALE: 1/4" = 1'-0"

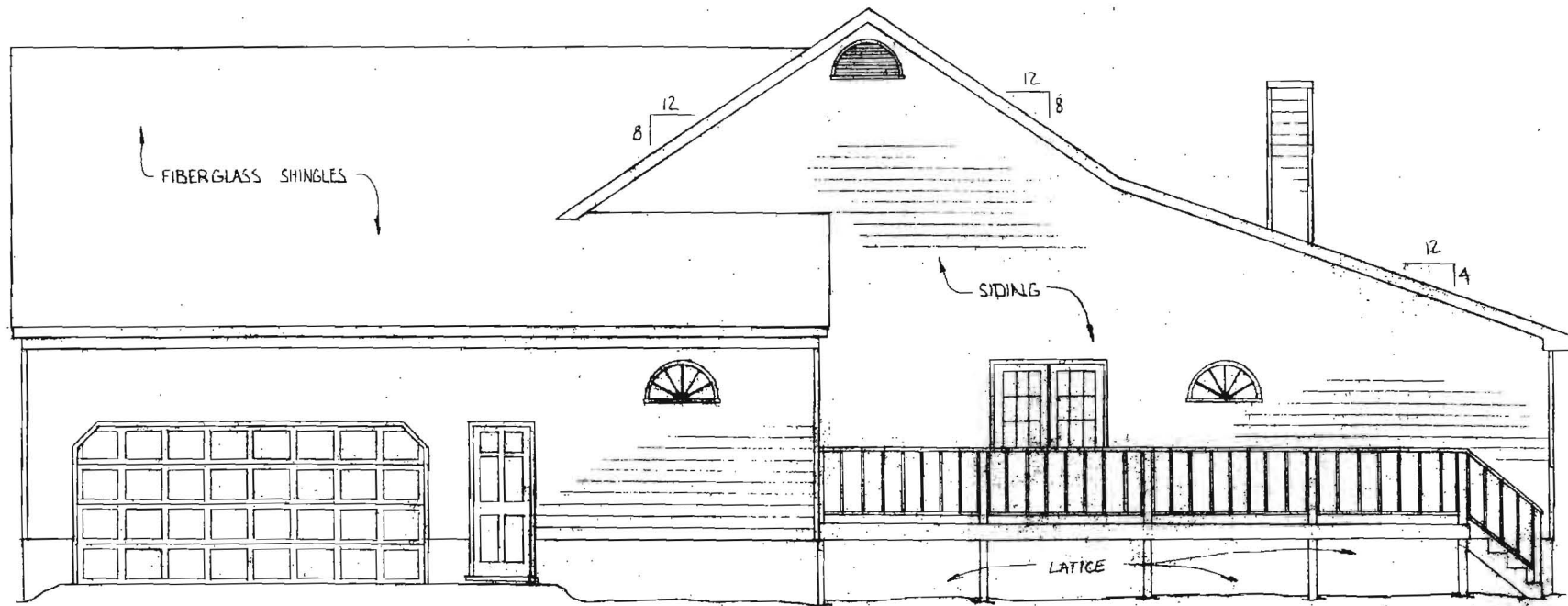
*Redwood siding
exposed rafters
Lath
Flared columns
SINGLE PANE (601) 507-4556 FAX*



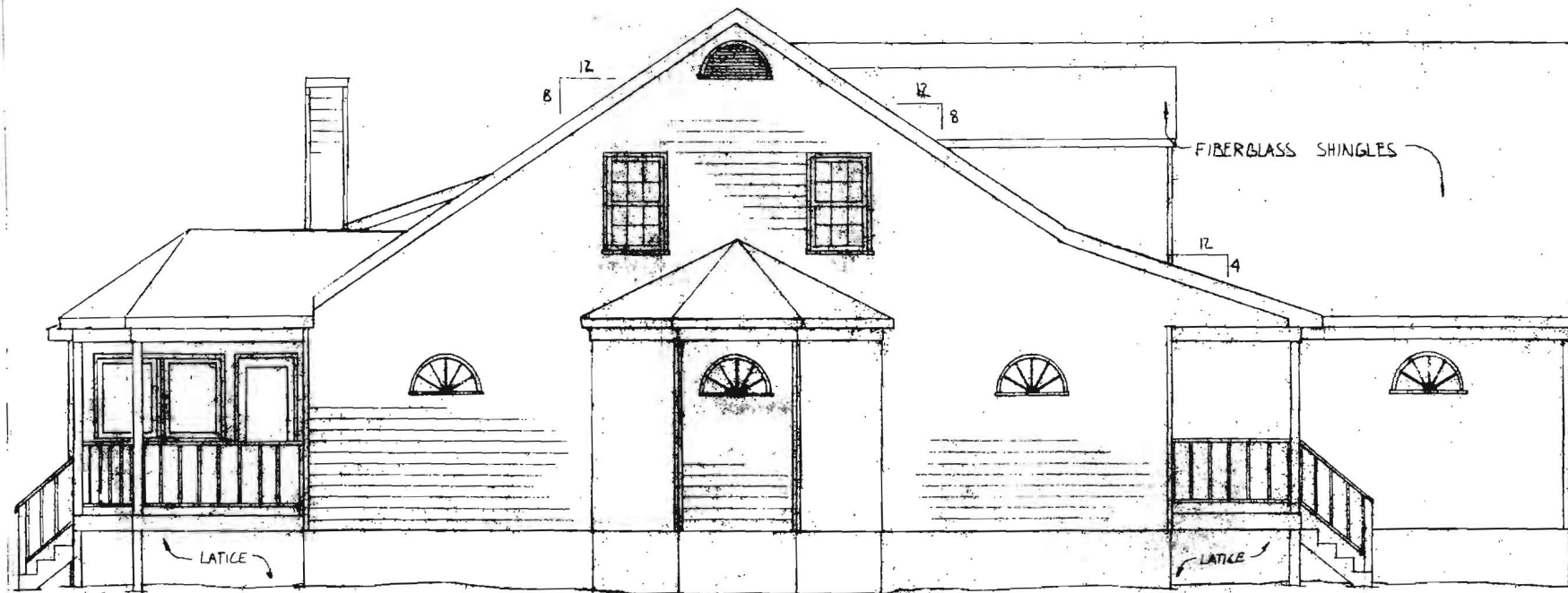
REAR ELEVATION
SCALE: 1/4" = 1'-0"

DAVID RESIDENCE
SHELDON LUMBER CO.

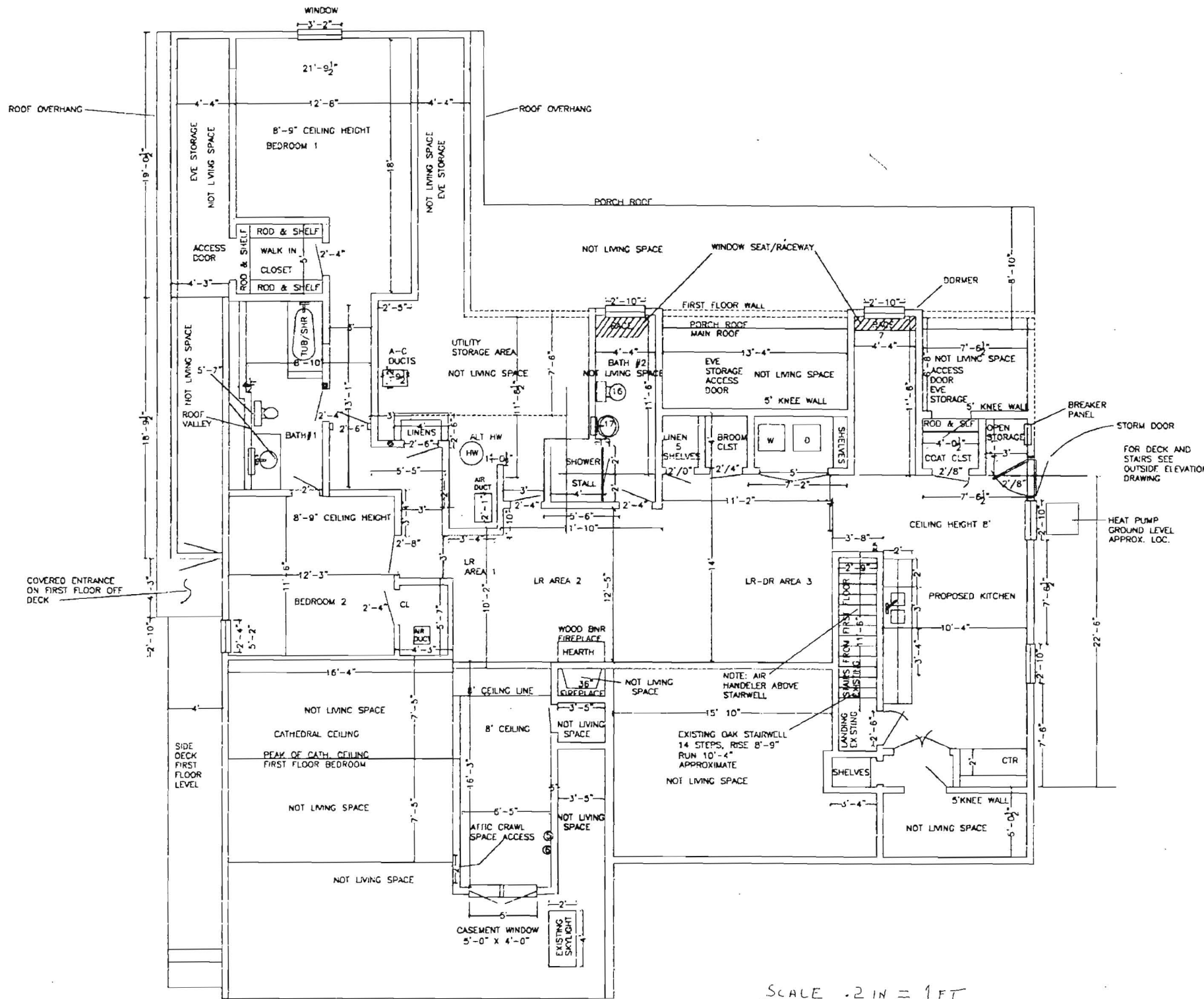
Exhibit # 2 current elevations



RIGHT SIDE ELEVATION
SCALE: 1/4" = 1'-0"



LEFT SIDE ELEVATION
SCALE: 1/4" = 1'-0"



- NOTES:
- 1) SKYLIGHTS ARE TO BE ON THE SLOPED CEILING.
 - 2) 52" FANS ARE TO BE ON THE FLAT 9' HIGH CEILING.
 - 3) 36" FIREPLACE TO HAVE SLATE SURROUND
 - 4) RECESSED CAN LIGHTS
 - 5) PHONE OUTLETS
 - 6) CABLE JACKS
 - 7) RACEWAY/WINDOW SEAT
 - 8) SMOKE ALARMS
 - 9) SMOKE ALARM/CARBON MONOXIDE DET.
 - 10) ELECTRICAL OUTLET (DUAL)
 - 11) HEAT LAMP
 - 12) LIGHT W/EXHAUST FAN
 - 13) SOLAR TUBE IN CEILING
 - 14) ELONGATED LIGHTS
 - 15) FLORECENT LIGHT FIXTURE
 - 16) STANDARD TOILET
 - 17) PEDISTLE SINK 19"

SQUARE FOOTAGE CALCULATIONS
 NOTE: LIVING SPACE SQ. FT. DOES NOT INCLUDE UNHEATED AREAS OR CLOSETS OR OTHER AREAS A PERSON CANNOT WALK INTO OR STANDUP IN.

AREA	DIMENSIONS	SQUARE FOOTAGE
B.R. 1	18'-0" X 12'-8"	228.0
BTH 1 & HALL	8'-10" X 13'-1"	115.5
D.R. 2	11'-6" X 12'-3"	140.8
HALL 2	5'-5" X 3'-0"	16.2
HALL 3	3'-0" X 3'-4"	10.0
HALL 4	3'-0" X 3'-0"	9.0
L.R. AREA 1	10'-2" X 3'-4"	33.8
BATH 2	11'-6" X 4'-4"	49.8
SHOWER	4'-0" X 4'-0"	16.0
LAUNDRY	4'-0" X 7'-2"	28.6
EXIST. DORMER	11'-6" X 4'-4"	49.8
PROP. KIT.	10'-4" X 22'-6"	232.5
L.R. AREA 2	11'-10" X 12'-5"	146.9
L.R. AREA 3	11'-2" X 14'-0"	156.3
OPEN STORAGE	4'-0" X 4'-1"	16.3
HALL TO KT.	3'-8" X 4'-0"	14.6
NEW DORMER	8'-5" X 16'-3"	104.2
		1368.3
FIRST FLOOR SQ. FT.		±2650
ALLOWABLE EXPANSION %		X .35
		1406.4
AMOUNT UNDR ALLOWABLE		38.1

SCALE .2 IN = 1 FT

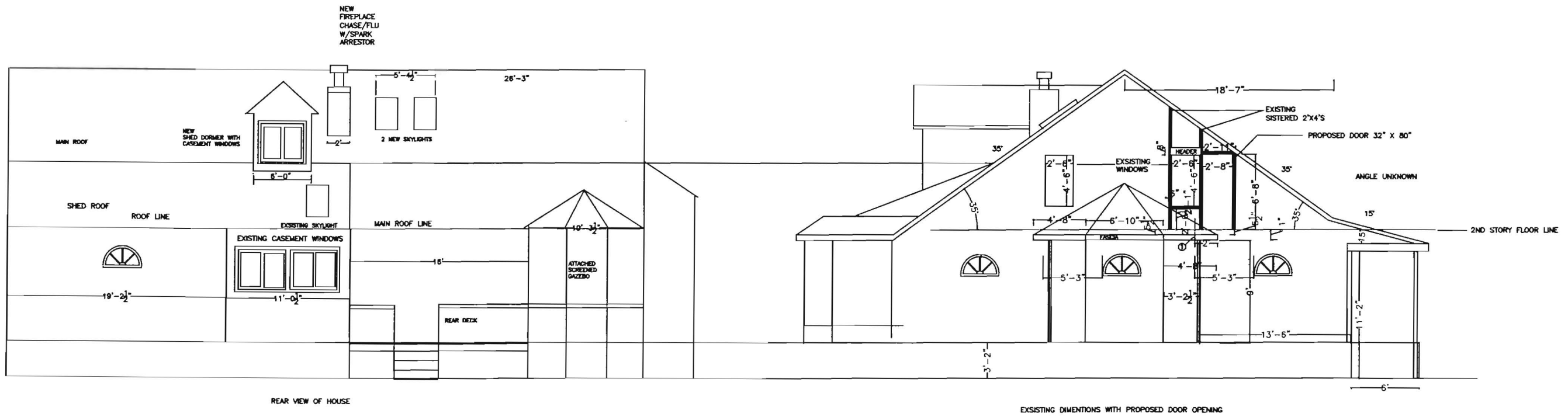
101 BIRCH CIRCLE
 WILLIAMSBURG, JCC, VA 23188
 SQUARE FOOTAGE CALCULATIONS
 2ND FLOOR RENOVATION PLAN

APPROVALS :

REVISIONS:
 1) ORIGINAL ISSUE 7/19/09 NPD
 2)

DRAWING SUBJECT TO FIELD CHANGES.

slight layout
 Exhibit #4



NOTES: ○
 1) TRIM LINE TO CUT OFF GAZEBO ROOF RIGHT EDGE TO ACCOMMODATE DECK
 2) SUPPORT AREA UNDER DECK TO GROUND TO BE COVERED WITH LATTICE WITH ACCESS DOOR TO UNDERNEATH ON LEFT SIDE.

101 BIRCH CIRCLE
 WILLIAMSBURG, JCC, VA 23188
 2ND FLR RENOVATION, LEFT & REAR EXTERIOR
 MADE FOR: PAUL WHITE, BUILDER

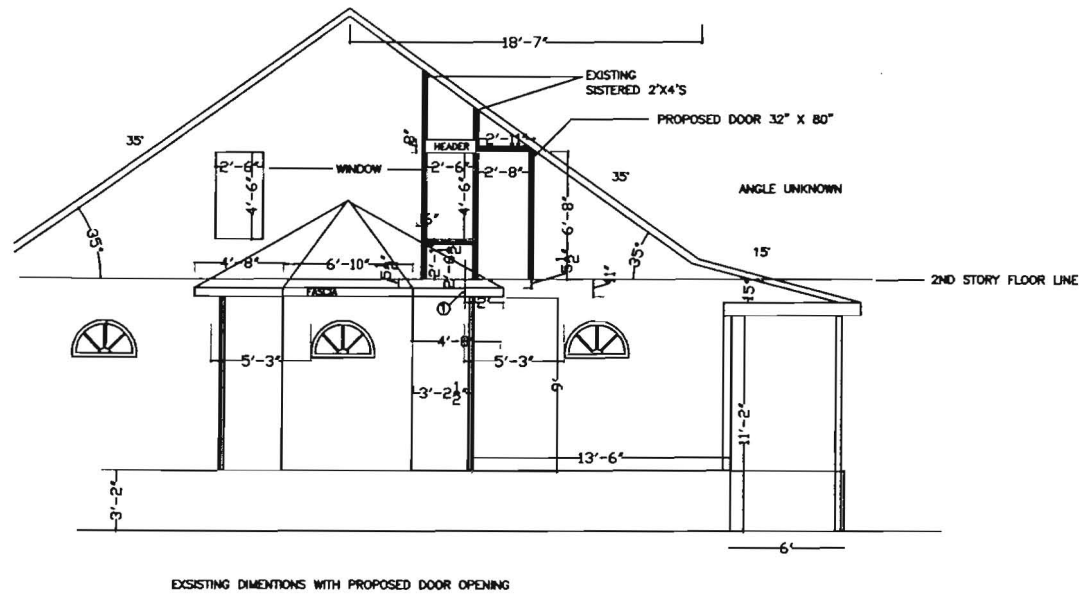
APPROVALS :

REVISIONS: ISSUE 9/18/08 NPD
 1) ORIGINAL 8/08
 2) REVISED 8/08
 3) REVISED 8/09

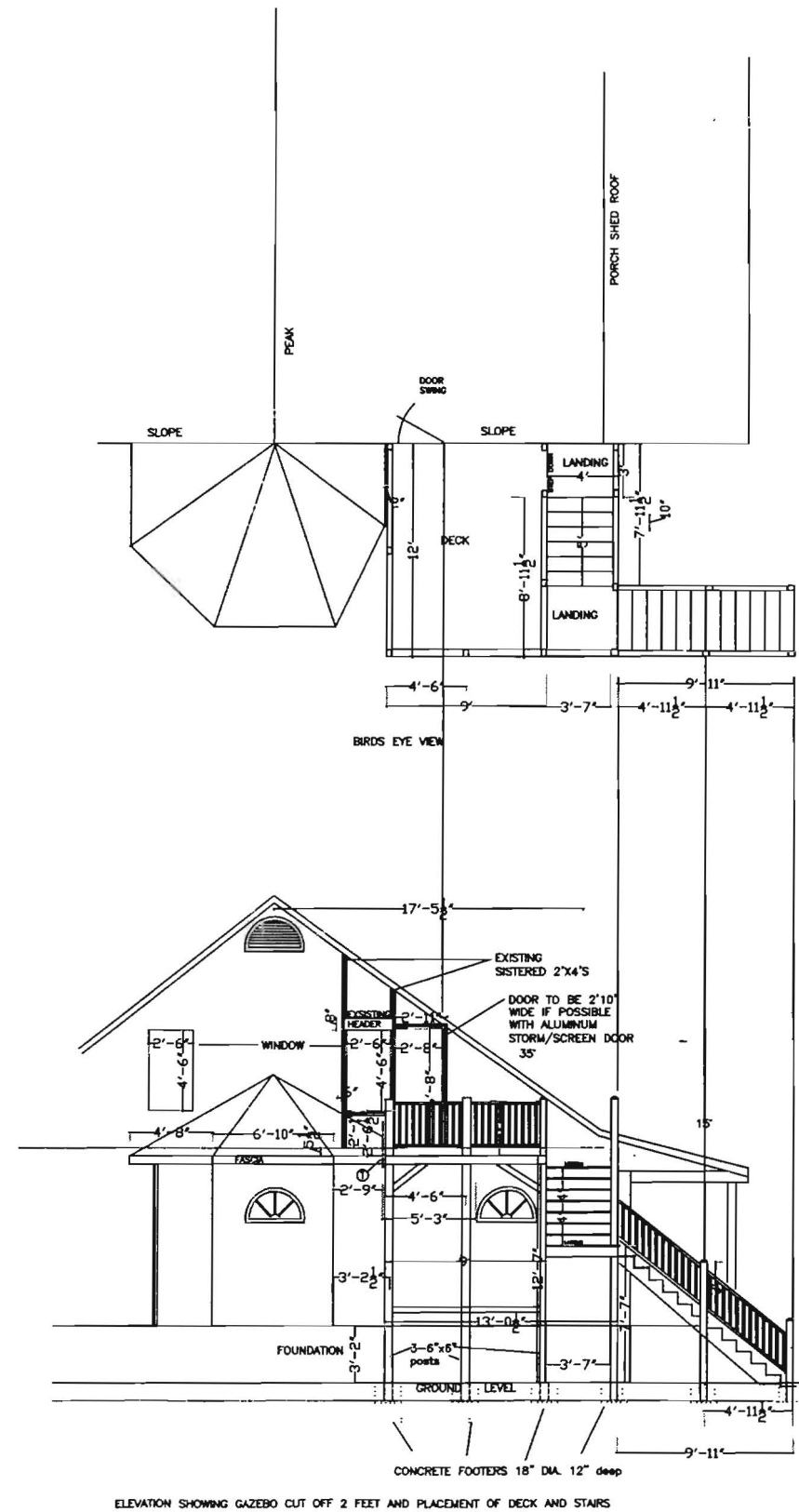
SUBJECT TO FIELD CHANGES

Exhibit #5
 Proposed exterior elevations

- NOTES: ○
- 1) TRIM LINE TO CUT OFF GAZEBO ROOF RIGHT EDGE TO ACCOMMODATE DECK
 - 2) SUPPORT AREA UNDER DECK TO GROUND TO BE COVERED WITH LATTICE WITH ACCESS DOOR TO UNDERNEATH ON LEFT SIDE OR RIGHT SIDE BEHIND STAIRS.

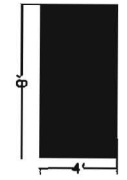


EXISTING DIMENSIONS WITH PROPOSED DOOR OPENING



ELEVATION SHOWING GAZEBO CUT OFF 2 FEET AND PLACEMENT OF DECK AND STAIRS

- STAIR NOTES: ALL CALCULATIONS TO BE VERIFIED!
- 1) GROUND TO FIRST LANDING CALCULATIONS
RISE= 7'-7", RUN=9'-11"
T-WD= 10'-13/16", R-HT= 7'-9/16"
OF RISERS= 12, # OF TREADS=11
STRINGER=12'-1/8", INCLINE=34.97°
 - 2) FIRST TO SECOND LANDING CALCULATION
RISE=4'-4", RUN= 5'-0"
T-WD= 10", R-HT=7'-7/16"
OF RISERS=7, # OF TREADS=8
STRINGER=6'-2-3/4", INCLINE=36.64°



101 BIRCH CIRCLE
 WILLIAMSBURG, JCC, VA 23188
 ATTIC MODIFICATIONS LEFT SIDE & DECK
 MADE FOR: PAUL WHITE, BUILDER

APPROVALS :

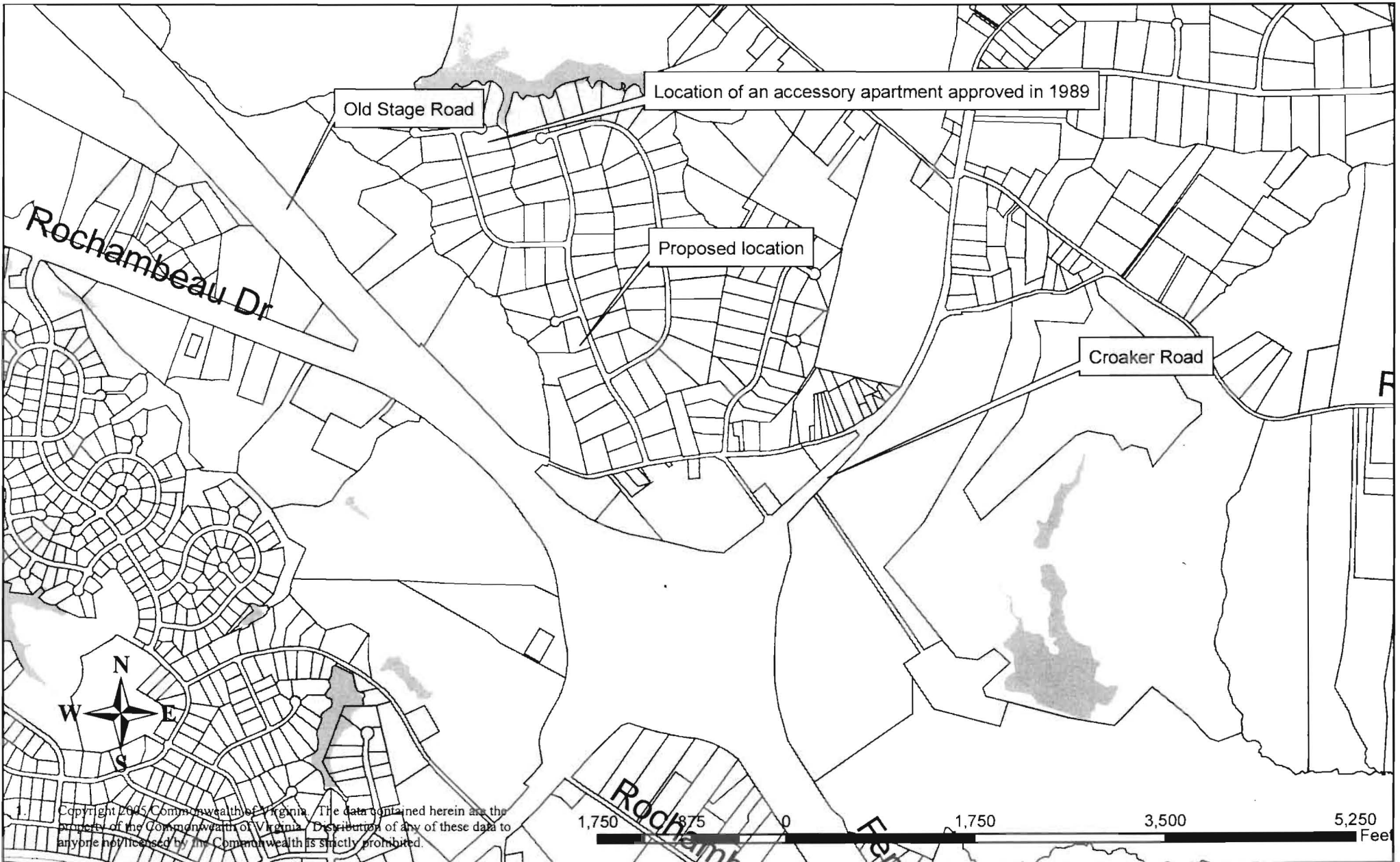
REVISIONS:
 1) ORIGINAL ISSUE 4/25/08 NPD
 2) REVISED 9/24/08

SUBJECT TO FIELD CHANGES

Exhibit #6
 Proposed exterior elevations with deck & stairs

SUP-0012-2009

101 Birch Circle Accessory Apartment



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Unapproved minutes for the August 5, 2009 Planning Commission

SUP-0011-2009 – 101 Birch Circle

Mr. Luke Vinciguerra stated that Mr. Norman David has applied for a special use permit to allow for the renovation of his home's attic into an accessory apartment to be occupied by his daughter. The property is zoned R-6, Low Density Residential and is designated Rural Lands on the Land Use Map. He stated the proposed accessory apartment would add an additional 1,368 square feet of livable space to the existing 2,550 square foot home. He stated the requirements for an accessory apartment have been met; however, staff recommends denial of this application. Mr. Vinciguerra stated the reasons were the size of the apartment and the incapability with the R-6 district and Rural Lands designation. He said that the Zoning Ordinance states that the Commission and Board of Supervisors shall give "due regard" to the nature of adjacent uses and the probable effect of the proposed expansion on them. He stated that the plans call for a two-bedroom, two-bathroom apartment with a separate driveway and entrance, which staff finds more like a duplex than an accessory apartment. Mr. Vinciguerra stated that by adding four additional square feet, it would be considered a duplex which is not permitted in this residential district. He stated that it is staff's opinion that a more appropriate design would encourage regular interaction between occupants of the principle dwelling and the accessory apartment. He stated that this proposal would increase the neighborhood's density and could set a precedent for similar size accessory apartments. Mr. Vinciguerra stated it was staff's opinion that approval of this application could begin to erode the low density nature of the neighborhood. He stated the owner has received a building permit for the additional living space in the attic and this is permissible by-right as the plan did not include a kitchen. A kitchen is the deciding factor whether this is considered additional living space or an accessory apartment. Mr. Vinciguerra stated that the applications for the building permit and the special use permit were submitted on the same day. During staff's site visit, it was observed that a considerable amount of work had been completed, such as framing, plumbing, and HVAC installation. The additional driveway and separate entrance was already built. Staff does not feel the County should be obligated to offer any concessions regarding the work already completed. Mr. Vinciguerra stated that should the Commission approve this application, staff has suggested several conditions listed in the staff report.

Ms. Kratter asked if this was the only two-story dwelling in the subdivision.

Mr. Vinciguerra answered that he did not know.

Ms. Kratter asked if the accessory apartment retains the same footprint as the original dwelling.

Mr. Vinciguerra answered that the conversion of the attic will not alter the footprint of the existing dwelling.

Mr. Krapf clarified that the only exterior changes were the deck, the dormer, and the

exterior doorway.

Mr. Fraley asked if the square footage that was listed for the accessory apartment included the deck.

Mr. Vinciguerra answered that it did not. Decks are not included as livable square footage.

Mr. Krapf clarified the sequence of events. He stated the applicant applied for a building permit and a special use permit on June 1, 2009. Subsequently, staff made a site visit and noted that the framing was nearing completion and plumbing and HVAC had been installed. The building permit was issued on July 13, 2009. Mr. Krapf asked if there were any discussions with Code Compliance or any other agencies regarding the fact that accessory apartments are a specially permitted use in this zoning district and the process to obtain a special use permit.

Mr. Vinciguerra stated that before the applications were received, the applicant contacted a zoning officer who informed them that a special use permit would be needed if a kitchen was proposed.

Mr. Krapf clarified that the plan that was submitted for the building permit did not have a kitchen; it just contained additional living space.

Mr. Henderson asked if there was a general contractor involved in the project.

Mr. Vinciguerra answered that Mr. Paul White was the builder.

Mr. Henderson asked for clarification if the work had begun before the building permit was issued.

Mr. Vinciguerra answered that the site visit showed that a substantial amount of work had been completed prior to the issuance of a building permit.

Mr. Henderson asked if the builder has done work in the County before and should have been familiar with the County's building permit procedures.

Mr. Krapf stated that Mr. White requested to speak during the public comment period.

Mr. Billups asked if this were to be a multi-family unit.

Mr. Vinciguerra stated that this is not for a duplex but the plan is for an accessory apartment. The plan is that the apartment will be occupied by the applicant's daughter.

Mr. Krapf opened the public hearing.

Ms. Cathy David, owner of the property in question, spoke concerning the application. She stated the purpose of the application was to have her daughter move in during a time when

she was facing some life changing circumstances. Another reason for this application was the ability of Ms. David and her husband to age in place. The apartment would allow for a caretaker and/or caregiver to live on the premises if necessary. Ms. David stated they are making every effort not to have to leave their home in the future and wanted to provide work for contractors and subcontractors during a slow economy. She checked with the covenants and restrictions for their subdivision and could not find any. Ms. David stated they obtained all of the necessary permits including the one for the driveway. She stated that there are accessory apartments in every subdivision in the County. They considered this living arrangement a result of the current economic conditions where adult children have to live with their parents and/or grandparents.

Mr. Norman David stated that there were three numbers that were mentioned for the square footage of the home. One figure was taken from the original drawing which states the residence is 2,659 square feet, County records state the house is over 3,000 square feet, and another record shows 2,550 square feet. He was unsure which record to use. Mr. David stated that they met all of the setback requirements. He did overlook the VDOT permit requirement for the driveway, but that situation has been rectified. He did not agree that his home, with the addition of an accessory apartment should be compared to a duplex. Mr. David showed pictures of the residence. He also stated that he has signed letters from his neighbors stating they have no objections to the apartment. He did not feel that this apartment would affect the character of the subdivision. Mr. David stated they have been residents there for 18 years and have no future plans of moving. He stated that he has written a four page letter in response to the letter he received from the County concerning the special use permit.

Mr. White, builder for the project, stated that he felt this would not set a precedent since the last accessory apartment approved in this subdivision was in 1989. There is a permit to put bathrooms, a living area, bedrooms, and a fireplace in the apartment. He felt it was unreasonable not to allow a stove when a full size refrigerator, wet bar, and cabinets were allowed.

Mr. Poole asked the applicant if they would be agreeable to having a condition that allows for the occupant of the apartment to be limited to a blood relative.

Ms. Norman stated that such a condition would negate the fact that aging in place was important to them. She stated that this condition would hurt them financially. It was not the intention to have a caregiver/caretaker when the initial building started. It was after the discovery of how much this would cost that the idea of aging in place came to be. Ms. Norman stated that any further restrictions imposed on them would have to be discussed before agreeing to them.

Mr. Billups asked if there was an ordinance governing the number of overnight workers that would be allowed to stay in a home.

Ms. King stated that she was not aware of any.

Ms. Kratter asked the applicants how many individuals would be occupying the apartment initially.

Ms. Norman answered that initially it would be just her daughter. On occasion there may be a family member staying there who may be visiting the area.

Ms. Kratter asked the applicants if they would be comfortable with the restriction that would prohibit the apartment from being rented for profit.

Ms. David stated she did not believe that this was a restriction in the covenants. She stated it would be nice if the investment paid off at some point. She stated their initial intention was not to have it as a rental, but with the idea of aging in place it may become one at some point. Ms. David stated that this restriction may be a problem.

Mr. Krapf asked why the kitchen area was crossed out when the original plan was submitted for a building permit. He then asked why did the work begin and progress as it did before a building permit was issued.

Mr. David answered that the work began before the permit was issued so that Mr. White's workers could begin the work, which was needed due to the slowdown in the economy. Once the permit was applied for, the kitchen was crossed out on the plans due to the fact that they were told at that time that a special use permit would be required. He stated that they did not realize a special use permit was needed until they applied for a building permit. Mr. David stated the first permit that was received was for the deck and dormer. He stated that people were available to begin work on the apartment so construction began for that. He stated that they applied for a building permit a few weeks later.

Mr. Peck asked Mr. White if the cabinets, refrigerator, and additional space could still be utilized if the stove was not allowed. He asked if the only thing that would not be allowed is the electrical hookup for a stove.

Mr. White answered that a full size refrigerator and a wet bar with cabinets would be allowed. The only thing that would not be allowed would be a 220 hookup for a stove.

Mr. Peck asked if a microwave oven would be allowed.

Mr. White answered that he believed that it would be.

Ms. Melissa Brown stated that normally when accessory apartments are not allowed, a wet bar with a small sink and small cabinets have been allowed. A full size refrigerator and stove would not be allowed as that would be associated with a kitchen.

Mr. Peck asked if there were any specific restrictions as to the size.

Ms. Brown stated that there are no specific restrictions but that it was handled on a case-by-case basis.

Mr. Peck asked if a full size refrigerator would be allowed.

Ms. Brown answered that in the past these have not been allowed.

Mr. White stated that he felt there was nothing illegal about having a full size refrigerator. He felt that the cabinets did not necessarily designate a kitchen. He felt that the issue was concerning the stove. He also stated that some wet bars come with small refrigerators.

Mr. Billups asked if there was any restriction against a gas stove.

Ms. Brown answered that all stoves are treated the same way. It does depend on the overall design of the facility, which is why she stated it is determined on a case-by-case basis.

Mr. Billups asked if denying this application would impose a hardship on the family.

Mr. Murphy answered that the Zoning Administrator is lawfully required to make a decision as to whether or not a given structure is designed and intended to be used as a dwelling. She must use her discretion absent any specificity in the County's regulations in order to make that determination. Mr. Murphy stated it does depend on the circumstances, and the design and layout of the structure.

Mr. Billups thought there may be a way to creatively design the apartment with the gas line that will be installed.

Mr. Krapf believes that another issue is that all the hookups and set up can be installed for a kitchen set, and once the certificate of occupancy is issued, a kitchen could be established. A kitchen space is what separates additional living space from an additional dwelling unit.

Mr. Peck asked if permits were needed to install cabinets or counter tops.

Ms. Brown stated no. She stated these would be looked at by Zoning when an application was made for a building permit. She stated that plumbing and electrical work would need permits.

Mr. Henderson stated he felt the issue was the separate entrance in that it appears to be a separate dwelling unit. He asked whether it would still require a special use permit if there was a shared entrance and it appeared to be one unit.

Ms. Brown stated that as long as it is designed to include a kitchen unit, it would still be considered as an accessory apartment.

Mr. Henderson asked if the Commission would be subject to suit if the application was denied.

Ms. King answered that the Commission would not necessarily be subject to suit, it just may be difficult to defend your actions in the future based on specific applications that come before the Commission.

Mr. Murphy stated that consistency would be important in order to avoid being arbitrary and capricious.

Mr. Fraley asked Mr. White if he was familiar with the permitting process in the County.

Mr. White stated he was aware of the regulations.

Mr. Fraley asked why the work began before the permits were obtained.

Mr. White answered that permits had been obtained for the deck, stairs, and dormer.

Mr. Fraley asked staff to clarify the sequence of events leading up to the building permit being obtained.

Mr. Vinciguerra answered that staff conducted a site visit after receiving the special use permit application in order to determine whether the amount of livable area exceeded ordinance requirements for accessory apartments. At the time of the site visit, staff observed that much of the work had already been completed.

Mr. David stated that while it may appear that much of the HVAC work was completed prior to issuance of a building permit, many ducts and pipes were moved in preparation for the additional work to begin. He stated the plumbing is not completely installed. Some work has been done to run it upstairs and down through the closets, but it was not connected to the downstairs plumbing at the time of staff's visit.

Ms. David stated that the subcontractors informed them that they did work in the beginning that was allowed without a building permit. She felt that they did everything the way that it should be done. They obtained permits at the time the subcontractors informed them that permits were needed to continue. The work has since stopped until all of this is resolved.

Mr. Fraley asked if the oven was still planned for the apartment.

Ms. David answered they would like to have a stove in the apartment.

Ms. Kratter clarified that the building permit has been issued and everything that was submitted to add the additional living space is approved except for the oven / stove, which is requires a special use permit.

Ms. David stated that was correct.

Mr. Vinciguerra stated that a building permit has been issued for everything except the kitchen area. Should this application be denied, a kitchen would not be allowed and the space would need to be used for another purpose.

Mr. Chris Johnson stated this application deals with more than just the issuance of a permit for a stove and a refrigerator. A secondary driveway has already been installed. An

exterior staircase and entrance has already been constructed facing the main entrance road within the subdivision. The driveway and entrance contribute to the appearance of a second dwelling unit on the property. He stated that if the special use permit is denied, they can still have the additional living space. The additional living space could not include a kitchen.

Mr. Peck asked if the applicants would be required to removed the separate entrance way.

Mr. Johnson answered that the separate entrance was properly permitted and could remain. Staff would have preferred that entrance be located on the opposite side of the structure to make it less visible from the main entrance road.

Mr. Peck asked what the physical additions to the structure would be if the application was denied.

Mr. Johnson answered that the applicant would have to show what would be located in the area where the kitchen was proposed. The rest of the addition shown on the plan could be constructed.

Ms. Kratter asked if the County imposes any kind of penalty for work that begins before getting a building permit.

Ms. King answered that there are code violations for work that has been done without a permit. She stated that typically the builder is contacted and steps are taken to get the appropriate permits before proceeding with any other action. In this case, the permit is now in place, so typically the requirement is satisfied.

Mr. Johnson stated that Code Compliance can issue a notice of violation letter and the County Code allows for a doubling of the permit fee.

Ms. David displayed a picture of the residence from the front of the property. It showed where the main driveway was on the right side of the residence. The separate stair entrance is on the left side. She stated it would be efficient to have the stair entrance on the same side as the driveway. Due to the design of the additional living space, a door would not fit there. There are trees that shield any full view of the staircase from the neighbor's view across the street.

Mr. David stated that they did look at putting the entrance at the back end of the home. This was not feasible because there is a swimming pool in the back yard. There was no choice of where to put the stair entrance except where it is currently located.

Mr. Fraley stated he could sympathize with the applicants. He stated that he felt the design made the apartment appear to be a separate residence. He believed that the point staff made was that the design in its entirety has the appearance of a separate residence. Mr. Fraley asked if there were any regulations or policies about renting accessory apartments to third parties.

Ms. Brown answered that there are no ordinance requirements or policies that relate to

leasing to third parties. This could only be addressed where conditions are applied, such as through a special use permit.

Mr. Fraley asked the applicants to comment on his interpretation of the plan that the additional living space appears to be a totally separate living unit.

Ms. David stated that when adult children live with parents, there has to be some independence. She felt that this was an important goal.

Mr. Krapf read the definition of an accessory apartment in the Zoning Ordinance. He asked for clarification with the wording that an accessory apartment is "clearly secondary to a single family dwelling."

Ms. Brown stated that there is no definition of secondary but that it is a judgment call. In this instance, there are additional requirements for accessory apartments including that the location be at the side or rear of the building and that the floor area not exceed 35% of the total square footage of the house. She stated that the proposal needs to be looked at as a whole and not just to what is being added. She stated staff made the determination that the requirements for an accessory apartment were met; however, the Ordinance states that the Planning Commission and the Board of Supervisors may provide due regard for additional considerations such as the Comprehensive Plan, the surrounding uses, and conditions over and above the minimum requirements.

Mr. Fraley asked whether the minimum requirements would be met if a stove was included in the plan with an approved special use permit.

Ms. Brown stated yes it would.

Mr. Henderson questioned the amount of livable space in the addition, which was calculated at 1,368 square feet, with the home already being 2,659 square feet.

Ms. Brown stated that when floor area is calculated on a second story addition, it excludes areas below the eaves, stairwells, and HVAC areas. When these areas are excluded, the addition is just under the 35% maximum allowed. The square footage that was used in the calculation was the one that was on the original building permit.

Mr. Henderson asked how many unrelated individuals can occupy a dwelling unit.

Ms. Brown stated that with the definition of a family, no more than three unrelated individuals could occupy a single dwelling unit.

Mr. Henderson stated that potentially with a special use permit, there could be six unrelated individuals living on the premises.

Ms. Brown answered yes, with the approved special use permit. Otherwise it would be limited to three.

Mr. William Kniss, 203 Elmwood Avenue, stated that he received notification as an adjacent property owner after the work had started.

Mr. Krapf stated that these notifications are mailed out after the application has been received by the Planning Division.

Mr. Kniss stated that this subdivision was not set up to have two-family dwellings on one piece of land. This will bring in more traffic and cause more water to be used. He also felt that the entire neighborhood should have been notified, not just the properties adjacent to the applicant. If this application is approved, he felt that many more owners in the subdivision will do the same. He believed that this addition was for the applicant's daughter, but he was not aware of the separate entrance. Mr. Kniss did not want to see this addition as a paid rental unit or see other apartments in his neighborhood.

Mr. David stated that the zoning of the subdivision does not prohibit an accessory apartment, but there are certain criteria that have been established.

Mr. Raymond Dillis, 201 Elmwood Avenue, did not object to the applicant's daughter living in the addition. He would not like to see this living unit used as a rental.

There being no further comments, Mr. Krapf closed the public hearing.

Ms. Kratter stated that the accessory apartment as proposed does meet Ordinance requirements. She does not believe there would be an influx of accessory apartments proposed given that the last one was approved twenty years ago. She stated that one of the goals of the Comprehensive Plan is to have more affordable housing units and she feels that the addition of an accessory apartment works towards that goal. Ms. Kratter felt that most people who convert their attic to living space do so with the intent of family members living there. She stated she could support this application.

Mr. Poole stated he was appreciative of the applicant's situation and was mindful of the neighbor's concerns. He understood the applicant's desire to age in place and was mindful of the fact of adult children needing to have an independent living space apart from the parents. He stated he would be comfortable recommending approval of this application with the condition that the apartment be occupied by a blood- or marriage-related family member, being one person, or a single care giver. Mr. Poole stated that when there is a turnover in occupants, such as a tenant situation, he was uncomfortable in approving this application. He does not feel that the structure as proposed resembles a multi-family dwelling.

Ms. King cautioned against placing such restrictions on the special use permit application. There would be issues of enforceability and, as staff has mentioned, violations would be handled on a complaint basis.

Mr. Murphy stated that Mr. Poole's suggestion of a condition was not part of the application. After conferring with staff and the County Attorney's office, there would be

problems with enforcing such restrictions.

Mr. Fraley stated that the Ordinance states that as long as the accessory apartment is rented, the owners must occupy the remainder of the dwelling.

Mr. Peck stated that he raised this issue during one of the Planning Commission work sessions. It has been shown that the idea of aging in place has raised issues concerning accessory apartments. He mentioned an article in *Smart Money Magazine* that specifically stated that localities will have to address these issues in their ordinances. Mr. Peck feels uncomfortable approving applications on an ad hoc basis, particularly because he feels that this issue will increasingly need to be addressed. He stated he was inclined to support staff's recommendation until uniform policies are developed in this area.

Mr. Billups stated that the original intent of the applicant to have a separate unit for their daughter is an ongoing condition that faces many people today. He felt that the idea of setting a precedent should not be a reason to deny this application. There is no way to know if there would be an influx of applications for accessory apartments, or to know whether a unit would be a rental in the future. Mr. Billups stated he would support this application.

Mr. Henderson stated that this issue is more complex than originally envisioned and felt that it has some serious policy implications. He agreed with Mr. Peck that this issue warrants further discussion and possibly some guidelines that could be followed in the future. The big concern for him was not so much the family status, but what could potentially occur in the future (for example, the unit becoming a rental). Mr. Henderson stated he would support staff's recommendation.

Mr. Fraley agreed that the application met the minimum requirements of the ordinance with regards to accessory apartments. He had concerns with this application fitting in with the low density residential zoning. He was unsure if it was compatible with the definition of Rural Lands. He would have preferred to see a smaller scale apartment with a shared driveway, and also with a capability of inhabitants of both units being able to interact. Mr. Fraley felt that it was designed to be two separate units with the capability of being rented. He understands that it is not the intention of the applicant to have a rental unit, but it is designed that way. He was concerned of the impacts to the neighborhood if this unit was rented out in the future. Mr. Fraley stated that he will reluctantly support staff's recommendation.

Mr. Krapf felt that this was not a clear cut issue. He thought it was important to note that this zoning district, R-6, was only one of two zoning districts where a special use permit is required for accessory apartments. He read the intent of the R-6 zoning district, which is to stabilize and protect the existing low density residential character from encroachment by non-residential or high density uses. Mr. Krapf stated that the apartment proposed is not secondary in use, as is stated in the definition of an accessory apartment. He felt that this was not consistent with the intent of the zoning district. He felt that without the special use permit, the applicants could still provide additional living space for their daughter. Mr. Krapf also stated that the size of accessory apartments that have been approved in the County previously have been significantly smaller than the one proposed. He would support staff's recommendation for

denial.

Mr. Fraley moved to support staff's recommendation for denial.

Mr. Peck seconded the motion.

In a roll call vote the motion was approved 5-2. (AYE: Poole, Fraley, Henderson, Peck, Krapf; NAY: Billups, Kratter.)

Mr. Billups wanted it stated for the record that the original issue for this application was the stove.

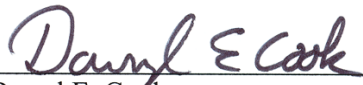
MEMORANDUM

DATE: September 8, 2009
TO: The Board of Supervisors
FROM: Darryl E. Cook, County Engineer
SUBJECT: Easement Agreement – The Pointe Homeowners Association – 4669 Sir Gilbert Loop

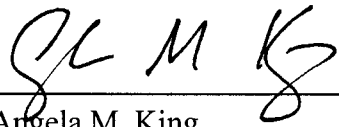
At the same time that Mainland Farm was being acquired by the Economic Development Authority, Albert and Frances White donated a significant amount of environmentally sensitive land to James City County. One of the donated parcels of land was a 15.02-acre parcel located between The Pointe at Jamestown and St. George's Hundred subdivisions. The plat that conveyed this parcel to the County reserved an area of the parcel for the location of a future stormwater management facility to serve The Pointe at Jamestown subdivision.

The stormwater management facility, which controls only stormwater runoff from the subdivision, has now been constructed within the area reserved for the facility. However, an easement needs to be created which allows The Pointe Homeowners Association to access and perform maintenance activities on the facility. There is a recorded maintenance agreement that was executed between the County and the developer, Westover Meadows, which assigned maintenance responsibilities for the facility to the developer and its successors.

Staff recommends approval of the attached resolution authorizing the County Administrator to execute any and all documents necessary to convey such an easement to The Pointe Homeowners Association.



Darryl E. Cook

CONCUR:


Angela M. King

DEC/nb
PointeEsmnt_mem

Attachment

RESOLUTION

EASEMENT AGREEMENT – THE POINTE HOMEOWNERS ASSOCIATION –

4669 SIR GILBERT LOOP

WHEREAS, James City County (County) owns 15.02 acres located at 4669 Sir Gilbert Loop, designated as Parcel No. 0100041 on James City County Real Estate Tax Map No. (46-2) (the “Property”); and

WHEREAS, there is a stormwater management facility located on the Property that was constructed for and controls stormwater runoff from The Pointe at Jamestown subdivision; and

WHEREAS, The Pointe Homeowners Association requires an easement to access and maintain the stormwater facility in its proper working condition; and

WHEREAS, the Board of Supervisors, following a public hearing, is of the opinion that it is in the public interest to convey an easement to The Pointe Homeowners Association.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, hereby authorizes the County Administrator to execute any and all documents necessary to convey an easement to The Pointe Homeowners Association for access to and maintenance of the stormwater management facility at 4669 Sir Gilbert Loop.

James G. Kennedy
Chairman, Board of Supervisors

ATTEST:

Sanford B. Wanner
Clerk to the Board

Adopted by the Board of Supervisors of James City County, Virginia, this 8th day of September, 2009.

PointeEsmnt_res



CONVEYANCE OF DRAINAGE EASEMENT TO THE POINTE AT JAMESTOWN HOMEOWNERS ASSOCIATION

1 inch = 300 feet



Area Reserved For BMP Location on
Plat from the Whites to James City County

N 23° - 39' - 25" W
211.40'

STAKE FOUND

IR.F. 11-49.26'

STAKE FOUND

552.76'

EXISTING
20' UTILITY EASEMENT

POTENTIAL
BMP SITE

STAKE FOUND
N 54° - 32' - 04" W
100.06'

STAKE FOUND

N 88° - 09' - 00" W
132.83'

FENCE POST

N 88° - 32' - 56" W
223.87'

N 24° - 15' - 22" W
168.43'

FENCE POST

SAN. SEWER
MANHOLE "MH"

EXIST
20' UT

S 50° - 09' - 46" W
101.22'

S 80° - 56' - 51" W
159.65'

S 55° - 56' - 51" W
110.00'

S 84° - 32' - 32" W
112.00'

1 OF
ARM
.875
437

CONVEYANCE OF DRAINAGE EASEMENT TO THE POINTE AT JAMESTOWN HOMEOWNERS ASSOCIATION

1 inch = 150 feet

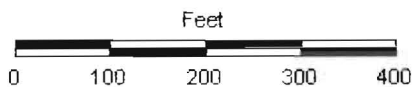
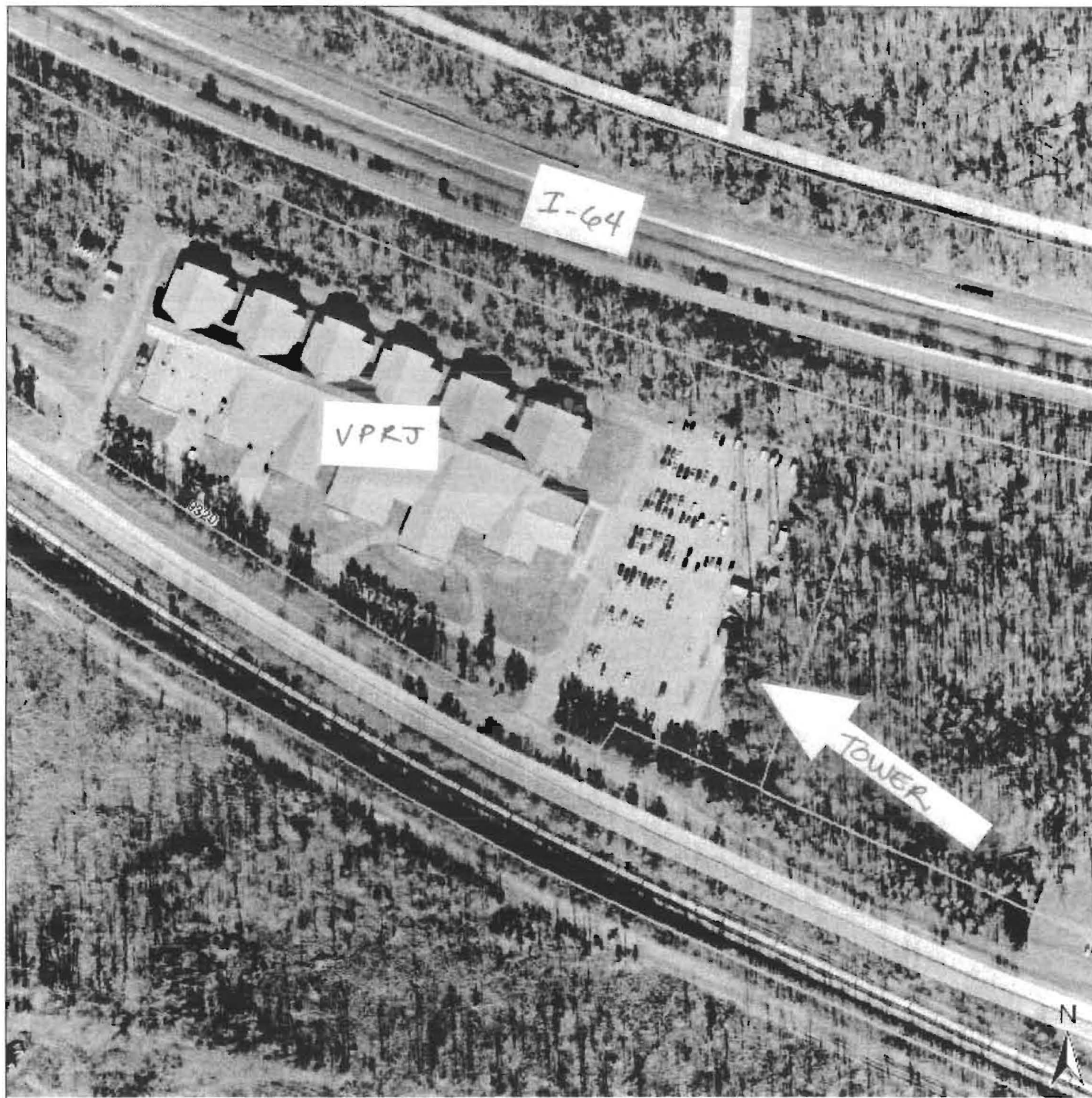


James City County



Legend

- Parcels
- Default
- Default



0 100 200 300 400
Feet

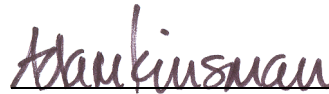


MEMORANDUM

DATE: September 8, 2009
TO: The Board of Supervisors
FROM: Adam R. Kinsman, Deputy County Attorney
SUBJECT: Cricket Communications, Inc. - Lease of Space on Virginia Peninsula Regional Jail Cellular Tower

Cricket Communications, Inc. ("Cricket") has submitted a request to lease space to erect a cellular array on the County's tower located at the Virginia Peninsula Regional Jail site along Merrimac Trail. The proposed lease would allow Cricket to place a cellular array on the existing tower and 150 square feet of ground next to the base of the tower for location of related support equipment. The term of the lease is five years, with an option for Cricket to renew the lease for four additional five-year terms. The proposed rent will be approximately \$25,000 per year, which will increase by three percent each year and is in line with the rent paid by the other carriers located on the tower.

Staff recommends approval of the resolution.



Adam R. Kinsman

CONCUR:



Leo P. Rogers

ARK/gb
CricketComm_mem

Attachments

RESOLUTION

CRICKET COMMUNICATIONS, INC. - LEASE OF SPACE ON

VIRGINIA PENINSULA REGIONAL JAIL CELLULAR TOWER

WHEREAS, James City County owns a 280-foot tower (the "Tower") located on James City County Real Estate Tax Map Parcel No. 6010100011 and more commonly known as 9320 Merrimac Trail, Williamsburg, Virginia; and

WHEREAS, Cricket Communications, Inc. ("Cricket") wishes to lease space on the Tower to erect a cellular array as well as approximately 150 square feet of ground space to place necessary support equipment; and

WHEREAS, after a public hearing, the Board of Supervisors is of the opinion that the County should enter into a lease agreement with Cricket.

NOW, THEREFORE, BE IT RESOLVED by the Board of Supervisors of James City County, Virginia, that the County Administrator is hereby authorized and directed to execute a Lease Agreement between James City County and Cricket Communications, Inc., for space on the Tower upon which Cricket may erect a cellular array and 150 square feet of ground space for necessary support equipment and such other memoranda, agreements, or other documents as may be necessary to effectuate the Lease.

James G. Kennedy
Chairman, Board of Supervisors

ATTEST:

Sanford B. Wanner
Clerk to the Board

Adopted by the Board of Supervisors of James City County, Virginia, this 8th day of September, 2009.

CricketComm_res



DEDICATION OF OPPORTUNITY WAY

 Street Being Dedicated

1 inch = 529 feet

