

AT A REGULAR MEETING OF THE BOARD OF SUPERVISORS OF THE COUNTY OF JAMES CITY, VIRGINIA, HELD ON THE 22ND DAY OF JANUARY, NINETEEN HUNDRED NINETY, AT 1:02 P.M. IN THE COUNTY GOVERNMENT CENTER BOARD ROOM, 101 MOUNTS BAY ROAD, JAMES CITY COUNTY, VIRGINIA.

A. ROLL CALL

Perry M. DePue, Chairman, Powhatan District
Stewart U. Taylor, Vice Chairman, Stonehouse District

Judith N. Knudson, Jamestown District
Jack D. Edwards, Berkeley District
Thomas K. Norment, Jr., Roberts District
David B. Norman, County Administrator
Frank M. Morton, III, County Attorney

B. MINUTES - January 8, 1990

Mr. DePue asked if there were corrections or additions to the minutes.

Mr. DePue made a motion to approve the minutes as presented.

On a roll call, the vote was AYE: Norment, Taylor, Edwards, Knudson, DePue (5). NAY: (0).

C. HIGHWAY MATTERS

Mr. Frank Hall, Resident Engineer for the Virginia Department of Transportation, stated that Chickahominy Road should be completed in 30 days, Route 611 project will be advertised in April, a work order had been initiated for a "No U-Turn" sign on Route 60 West past the True Value Hardware store, and he had scheduled a meeting with Mr. Holland regarding the drainage issue on Church Lane.

Mr. Norment asked for a traffic analysis in Grove to reduce the speed limit from 45 mph to 35 mph from the Grove Heights Road to the York County line, a speed limit check on Route 143 in the vicinity of Frank's Truck Stop, and an investigation whether Adams Drive in James Terrace could be blocked off or posted with "No Through Traffic" signs.

Mr. Taylor asked that a log be removed from a ditch alongside the road in Chickahominy Haven.

Ms. Knudson restated Mr. Thomas Mahone's previous requests for a check of the three corners at intersections in Kingspoint where buses miss the pavement therefore creating holes, and lighting or reflective markers at the entrance to Route 199 West from Route 143.

Mr. Norment asked if the County could cooperate with the Department of Transportation in obtaining lighting at that location.

Mr. Hall responded that might be accomplished through a permit procedure.

Mr. DePue offered assistance if any problems arise on the Longhill Connector Road.

D. PRESENTATIONS

1. Effect of A-1/A-2 Zoning Changes, O. Marvin Sowers, Jr.

Mr. O. Marvin Sowers, Jr., Director of Planning, summarized the effect of A-1/A-2 zoning changes on rezoning and special use permit cases during 1989. He stated that the conversion of most by-right nonresidential uses to special use permit uses, and the increased three-acre minimum lot size and special use permits for family subdivisions with lots less than three acres amendments have not significantly increased.

Mr. Norment expressed appreciation to Planning and Real Estate Assessment staff for the report and presentation.

E. CONSENT CALENDAR

Mr. DePue asked if any Board member wished to remove any item from the Consent Calendar.

Mr. Norment asked that Item No. 1 be removed.

Mr. DePue made a motion to approve Items Nos. 2 and 3 on the Consent Calendar.

On a roll call, the vote was AYE: Norment, Taylor, Edwards, Knudson, DePue (5). NAY: (0).

2. Dedication of Streets in Rain Tree, Sections I and II

RESOLUTION

DEDICATION OF STREETS IN RAIN TREE, SECTIONS I AND II

WHEREAS, the developer of Rain Tree, Section I and II has requested the Board of Supervisors to include certain streets in the State Secondary Highway System; and

WHEREAS, the Board of Supervisors desires certain streets in Rain Tree, Section I and II, Berkeley to be included in the State Secondary Highway System, provided these streets meet with the requirements of the Virginia Department of Transportation, and providing that

any alterations, corrections, or other matters that might be found desirable by the Virginia Department of Transportation are made within a ninety (90) day period from the date that the Virginia Department of Transportation makes its final inspection.

NOW, THEREFORE, BE IT RESOLVED by the Board of Supervisors of James City County, Virginia, that the Virginia Department of Transportation be, and is hereby respectfully requested, contingent on the above, to include the following streets in Rain Tree, Section I and II, Berkeley, Election District, James City County, in the State Secondary Highway System:

1. Rain Tree Way, 50-foot right-of-way
From: Route 1447
To: Intersection of Indian Summer Lane
Distance: 322 Feet (0.06 mile)
2. Winterset Pass, 50-foot right-of-way
From: Route 1447
To: End of cul-de-sac
Distance: 357 feet (0.07 mile)
3. Indian Summer Lane, 50-foot right-of-way
From: Allyson Drive
To: End of cul-de-sac
Distance: 1,387 feet (0.26 mile)
4. Allyson Drive, 50-foot right-of-way
From: Route 1445
To: Intersection of Indian Summer Lane
Distance: 322 feet (0.06 mile)

The rights-of-way of 50 feet, along with drainage easements, are guaranteed as evidenced by the following plats of record:

Rain Tree, Section I, recorded in Plat Book 39, Page 61, dated June 27, 1984; and Rain Tree, Section II, recorded in Plat Book 43, Page 1, dated June 27, 1986.

BE IT FURTHER RESOLVED that this resolution be forwarded to the Resident Engineer of the Virginia Department of Transportation.

3. Clean County Commission - Historical Commission

R E S O L U T I O N

Clean County Commission

WHEREAS, the Board of Supervisors established the Clean County Commission by Resolution dated October 26, 1981; and

WHEREAS, the Resolution required that the five members be appointed one from each district; and

WHEREAS, the Board is desirous of amending that Resolution.

NOW, THEREFORE, BE IT RESOLVED by the Board of Supervisors of James City County, Virginia, that that certain Resolution dated October 26, 1981, creating the Clean County Commission be amended in part as follows:

1. The Clean County Commission shall be comprised of no less than three members appointed by the Board of Supervisors.

1. School Operations Center - Previously Appropriated Funds

The Board questioned whether the site acquisition would be completed within the next thirty days and which costs the appropriation covered.

Mr. John E. McDonald, Manager, Financial and Management Services, responded in the affirmative, and that the appropriation covered acquisition, site improvement and construction, and funds would be expended as bills were submitted.

Mr. Norment made a motion to approve the resolution.

On a roll call, the vote was AYE: Norment, Taylor, Edwards, Knudson, DePue (5). NAY: (0).

R E S O L U T I O N

SCHOOL OPERATIONS/MAINTENANCE CENTER

WHEREAS, the Board of Supervisors has appropriated \$860,638 for the construction of a maintenance/operations center for the Williamsburg-James City County Schools; and

WHEREAS, the Board has set these funds aside pending a final site selection and a School Board decision on the Bruton Heights property; and

WHEREAS, a final site for the operations center has been chosen and Bruton Heights declared surplus.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors, of James City County, Virginia, hereby releases these funds from a special capital contingency account and allows these funds to be spent for the purpose identified.

F. PUBLIC HEARINGS

1. Case No. Z-23-89. Zoning Ordinance Amendment/Nonconformities

Mr. Sowers stated that the amendment would allow existing developments within business or industrial zones, which have been made nonconforming with respect to open space, perimeter landscape requirements, or setback requirements as a result of a right-of-way dedication without compensation, to expand in accordance with the current Zoning Ordinance.

The Planning Commission unanimously recommended approval of the amendment.

A brief discussion followed regarding buffer zone, expansion and loss of open space.

Mr. DePue opened the public hearing, and as no one wished to speak, he closed the public hearing.

Mr. Norment made a motion to approve the ordinance amendment.

On a roll call, the vote was AYE: Norment, Taylor, Edwards, Knudson, DePue (5). NAY: (0).

G. BOARD CONSIDERATIONS

1. Case No. SUP-40-89. M. Wayne Beverly

Mr. Allen J. Murphy, Jr., Principal Planner, stated that this case, an application for a special use permit to allow the replacement of a manufactured home on 1.13 acres at 7797 Richmond Road, zoned A-1, General Agricultural, and further identified as Parcel (1-50B) on James City County Real Estate Tax Map No. (12-4), was postponed at the December 18, 1989, meeting.

Staff recommended denial for the reasons that the application does not meet administrative guidelines for manufactured home replacement and represented the continuation of a nonconformance situation with respect to multiple dwellings on a single lot.

Ms. Knudson made a motion to deny the special use permit.

On a roll call, the vote was: AYE: Norment, Edwards, Knudson, DePue (4). NAY: Taylor (1).

2. Case No. Z-13-89. Five Forks Associates

Mr. Sowers stated that this case was postponed at the December 4, 1989, meeting to address concerns of entrance alternatives including signalization, dedication of additional right-of-way, permitted uses and the protection of the conservation area.

Mr. Sowers reported that the applicant and VDOT concurred with two entrances to the development, VDOT had determined right-of-way as proffered was adequate, fast food restaurants and convenience stores with sale of fuel were proffered out, and platting of portions of residential lots within the conservation areas as proffered.

Staff and Planning Commission recommended approval for the following reasons: commercial portion was generally consistent and residential portion was substantially consistent with the Comprehensive Plan, proposal was generally consistent with surrounding development, with residential portion providing a transitional use to prevent strip shopping centers on Ironbound Road, and projected traffic could be adequately accommodated with improvements to Ironbound Road and the Five Forks intersection, with no impact on level of service at buildout by additional commercial area.

By consensus, the Board agreed to allow the applicant to speak.

1. Mr. Vernon Geddy, III, Esq., confirmed that the buffer zone would be in addition to the future right-of-way.

Mr. Taylor made a motion to approve the resolution.

On a roll call, the vote was AYE: Norment, Taylor, Edwards, Knudson, DePue (5). NAY: (0).

R E S O L U T I O N

CASE NO. Z-13-89. FIVE FORKS ASSOCIATES

WHEREAS, in accordance with Section 15.1-431 of the Code of Virginia, and Section 20-15 of the James City County Zoning Ordinance, a public hearing was advertised, adjoining property owners notified and a hearing scheduled on Zoning Case No. Z-13-89. for rezoning approximately 3.13 acres from B-1 to B-1, with proffers, on property identified as part of Parcel (1-54) on James City County Real Estate Tax Map No. (47-1); for rezoning 5.56 acres from A-2 to B-1, with proffers, on property identified as part of Parcel (1-54) on James City County Real Estate Tax Map No. (47-1); and for rezoning approximately 26.27 acres from A-2 to R-3, with proffers, on property identified as part of Parcel (1-54) and Parcel (1-55) on James City County Real Estate Tax Map No. (47-1); and

WHEREAS, the Planning Commission following its public hearing on November 14, 1989, concurred with the staff recommendation and voted 8-2 to recommend approval of Case Z-13-89.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, does hereby approve Zoning Case No. Z-13-89 and accepts the voluntary proffers.

G. PUBLIC COMMENT

1. Mr. Ed Riley, 611 Tam-O-Shanter, spoke about the increase of ticks that carry Lyme disease.

2. Mr. Frank Tsutras, 204 Richard Brewster, spoke in favor of the Williamsburg-James City County School Board securing the services of an appraiser, who would be qualified and experienced in the disposition and use of property and facilities such as Bruton Heights School.

H. REPORTS OF THE COUNTY ADMINISTRATOR

Mr. David Norman, County Administrator, recommended the Board go into executive session to consider a personnel matter.

I. BOARD REQUESTS AND DIRECTIVES - None

Mr. DePue recessed the Board for a short break and a meeting of the James City Service Authority Board of Directors at 2:05 p.m.

Mr. DePue declared the Board back in open session at 3:10 p.m.

Mr. DePue made a motion that the Board convene into executive session pursuant to Section 2.1-344 (a)(1) of the Code of Virginia, 1950, to discuss a personnel matter, evaluation.

On a roll call, the vote was AYE: Norment, Taylor, Edwards, Knudson, DePue (5). NAY: (0).

Mr. DePue reconvened the Board into open session.

Mr. Norment made a motion to approve the executive session resolution.

On a roll call, the vote was AYE: Norment, Taylor, Edwards, Knudson, DePue (5). NAY: (0).

R E S O L U T I O N

MEETING DATE: January 22, 1990

CERTIFICATION OF EXECUTIVE MEETING

WHEREAS, the Board of Supervisors of James City County, Virginia, (Board) has convened an executive 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 2.1-344.1 of the Code of Virginia requires a certification by the Board that such executive 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 executive meeting to which this certification resolution applies; and, (ii) only such public business matters as were identified in the motion convening the executive meeting were heard, discussed or considered by the Board.

Mr. Taylor made a motion to appoint Richard Cowles to the Agricultural and Forestal District Advisory Committee.

On a roll call, the vote was AYE: Norment, Taylor, Edwards, Knudson, DePue (5). NAY: (0).

Mr. DePue declared a recess until Monday, February 5, 1990, at 5:15 p.m.

The Board recessed at 4:45 p.m.



David B. Norman
Clerk to the Board

JAN 22 1990

ORDINANCE NO. 31A-117

BOARD OF SUPERVISORS
JAMES CITY COUNTY
VIRGINIA

AN ORDINANCE TO AMEND AND REORDAIN CHAPTER 20, ZONING, OF THE CODE OF THE COUNTY OF JAMES CITY, VIRGINIA, BY AMENDING ARTICLE V. NONCONFORMITIES, SECTION 20-403 EXPANSION OF NONCONFORMING USES.

BE IT ORDAINED by the Board of Supervisors of the County of James City, Virginia, that Chapter 20, Zoning, is hereby amended and reordained by amending Section 20-403. Expansion of nonconforming uses.

Chapter 20. Zoning

Article V. Nonconformities

Section 20-403. Expansion of nonconforming uses.

(a) Nonconforming uses may expand only in accordance with the provisions of this section. Any permitted expansion shall occur only on the lot occupied by the nonconforming use, and no area of any lot not originally devoted to the nonconforming use shall be utilized for any aspect of such expansion.

(b) For a nonconforming one-family dwelling use, the dwelling may be expanded without limitation, except as provided for in this section. In addition, new or expanded residential accessory structures and uses (such as a storage shed, garage, swimming pool, etc.) may be permitted subject to the provisions of this chapter. Expansion of the dwelling and new or expanded accessory structures and uses shall meet all current zoning requirements, including height, yard and setbacks, for the zoning district in which located, or the R-1 zoning district if such dwelling is not located in a zoning district where a residential use is permitted. In no case shall a nonconforming one-family dwelling be modified to accommodate additional dwelling units.

(c) For lots in any business or industrial district where the use is permitted in the zoning district in which the lot is located, but where the current zoning requirements (including, but not limited to, parking, yards, setbacks, landscaping, screening and buffering, height, signs, lot coverage, connection to public sewer and water) are not met, expansion of the building, and expansion of the land area within the lot devoted to activities other than buildings, may be approved, provided all current zoning requirements applicable to the expansion are met.

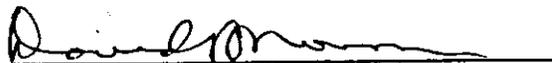
(d) Expansion of a use pursuant to paragraph (c) above meeting all zoning requirements except for connection to public water and public sewer may be permitted upon approval of a special use permit excepting the use from the public water and public sewer requirements.

(e) Existing permitted uses within any business or industrial district which have been made nonconforming with respect to open space, perimeter landscape requirements, or setback requirements as a result of a right-of-way dedication to the County or the Virginia Department of Transportation without compensation shall be allowed to expand in accordance with the current Zoning Ordinance under the conditions which existed prior to the dedication.

(f) Prior to the approval of expansion of a nonconforming use under this section, the nonconforming use shall be verified as set forth in section 20-405 of this article. (Ord. No. 31A-88, Section 20-109, 4-8-85; Ord. No. 31A-101, 5-18-87)


Perry M. DePue
Chairman, Board of Supervisors

ATTEST:


David B. Norman
Clerk to the Board

SUPERVISOR	VOTE
NORMENT	AYE
TAYLOR	AYE
EDWARDS	AYE
KNUDSON	AYE
DEPUE	AYE

Adopted by the Board of Supervisors of James City County, Virginia,
this 22nd day of January, 1990.



BOOK 474 PAGE 680

PROFFERS

THESE PROFFERS, made as of this 28th day of December, 1989, by FIVE FORKS ASSOCIATES, INC., a Virginia corporation, I. LEAKE WORNOM, JR., CHERYLLE H. WORNOM and HOWARD C. ANDLETON ("Owners").

RECITALS:

A. Owners are the owners of certain real property in James City County, Virginia (hereinafter referred to as the "Property") and more particularly described as follows:

That certain parcel of land containing 35.06 acres at the intersection of Ironbound Road and State Route 5 in James City County, Virginia, set out and shown on the plat hereto attached entitled "REZONING FOR FIVE FORKS ASSOCIATES -SCHEMATIC PLAN," made by Langley and McDonald, Engineers - Planners - Surveyors, revised 6/22/88 and 9/5/89.

B. Owners have applied for rezoning of a portion of such property from A-2 to B-1 with proffers, a portion from B-1 to B-1 with proffers, and a portion from A-2 to R-3 with proffers.

C. James City County (the "County") may be unwilling to rezone because of possible traffic impacts on the surrounding area and environmental impacts on highly erodible soils, downstream wetlands and Lake Powell.

D. Owners, for themselves and their successors and assigns, desire to offer to the County certain conditions on the development of the Property that are not generally applicable to

land zoned B-1 or R-3 for the protection of the community that are intended to mitigate possible impacts from the development or the surrounding area.

NOW THEREFORE, for and in consideration of the approval by the Board of Supervisors of the County of James City of the requested rezoning, and pursuant to Section 15.1-491.1 et. seq. of the Code of Virginia, 1950, as amended, Owners agree that they will meet and comply with all of the following conditions for the development of the Property.

CONDITIONS

1. a. The turn lanes described below shall be constructed contemporaneously with the development of the B-1 property:

(i) for southbound traffic on Route 615, a left turn lane into the principal business entrance shown on the Schematic Plan prepared by Langley and McDonald entitled "REZONING FOR FIVE FORKS ASSOCIATES - SCHEMATIC PLAN", revised 6/22/88 and 9/5/89 submitted herewith (the "Schematic Plan") having a minimum taper of fifty (50) feet and a minimum length of two hundred (200) feet;

(ii) for traffic entering the principal business entrance from northbound Route 615, a right turn lane having a minimum taper of seventy five (75) feet and a minimum length of one hundred seventy (170) feet;

(iii) for northbound traffic on Route 615 turning westerly onto Route 5, a left turn lane having a minimum taper of

fifty (50) feet and a minimum length of one hundred eighty-five (185) feet; and

(iv) for westbound traffic on Route 5 turning southerly on Route 615, a left turn lane (including curbing along the southern right of way of Route 5, if needed) with a minimum taper and length as required by the Virginia Department of Transportation ("VDOT").

b. The turn lanes described below shall be constructed contemporaneously with the development of the R-3 property:

(i) for southbound traffic on Route 615, a left turn lane into the residential entrance shown on the Schematic Plan with a minimum taper of eighty (80) feet and a minimum length of one hundred twenty (120) feet; and

(ii) for traffic entering the residential entrance from northbound Route 615, a right turn lane having a minimum taper length of seventy five (75) feet and a minimum length of hundred seventy (170) feet.

c. No certificates of occupancy shall be issued for buildings (i) on the B-1 property until the turn lanes described in subparagraph a. above, or (ii) for buildings on the R-3 property until the turn lanes described in subparagraph b. above, have been completed or the completion thereof is bonded, with surety, to the satisfaction of the County Attorney.

2. Owners shall, upon the request of VDOT, dedicate to VDOT all of the 26' strip located on the Property shown on the Schematic Plan as Additional R/W Dedication along the frontage of

the Property on Route 615 that has not previously been conveyed to VDOT to permit the widening of Route 615.

3. There shall be two (2) entrances to the property zoned B-1 from Ironbound Road. The center line of the principal entrance shall be located four hundred-eighty (480) feet south of the south right of way line of Route 5. The service entrance to the business zoned property shall be constructed opposite and, to the extent possible, aligned with the entrance to the Clara Byrd Baker Elementary School. If and when requested by VDOT, Owners shall make the necessary alterations and improvements to the entrances proffered above to install (or pay the costs of installation of) a traffic signal at the intersection of the service entrance to the B-1 property and the entrance to the Elementary School and to take such steps requested by VDOT to prevent traffic from turning left from southbound Ironbound Road into the principal entrance to the B-1 property or from leaving the principal entrance and turning left onto southbound Ironbound Road.

4. Between May 1 and June 30, 1990 Owners shall have conducted by their environmental consultants, retained by Owners and acceptable to the County, a field survey of the area designated on the Schematic Plan as "Potential Small Whorled Pogonia Habitat" to determine the existence of small whorled pogonias on the Property. Owners shall furnish the County a copy of the results of such study.

5. If the study described in condition 4 above indicates no small whorled pogonias were found on the Property, or, if small whorled pogonias were found and the County Environmental Engineer and the Owners' environmental consultant agree that all the pogonias found are located in an area where they would not be adversely affected by the stormwater Best Management Practices ("BMPs") proffered in this condition 5, then:

(a) BMPs shall be designed, installed and maintained to control surface water runoff from the B-1 property and the portion of the R-3 property within the stormwater detention basin drainage area shown on the Schematic Plan. Such BMPs shall include a stormwater detention basin, and may, if agreed upon by Owners, Owners' engineers and the County Engineer, include infiltration trenches and/or porous pavement (depending on parking lot grades and soil percolation rates). The stormwater detention basin shall be located in the lower reaches of the major ravine system in the northeastern part of the Property and shall be designed and constructed, subject to the approval of the County Engineer, either (i) as a wet pond providing two week detention in accordance with the criteria and recommendations set forth on pages 5-7 through 5-12 of the Final Report entitled "Water Quality Management Plan for Skiffe's Creek Reservoir Watershed" dated December 1984 and prepared by Camp Dresser, & McKee or (ii) as an extended dry detention pond in accordance with the criteria set forth in "Controlling Urban Runoff" by the

Metropolitan Washington Council of Governments. Other sedimentation and erosion control structures, in addition to those discussed above, shall be designed, installed and maintained as required in the site plan or subdivision review process, by the Virginia Erosion and Sedimentation Control Handbook and by the County Engineer's Guidelines for Erosion and Sediment Control on Highly Erodible Areas.

(b) The area shown as "Conservation Area" on the Schematic Plan shall be left undisturbed and shall remain in its natural state, except for stormwater BMPs and other sedimentation and erosion control structures and devices proffered pursuant to condition 5 (a) hereof. Portions of the Conservation Area may be included in lots in any subdivision platted in the R-3 area but except as permitted by the preceding sentence, no land disturbing, clearing or building shall take place in the Conservation Area.

6. If (i) the study described in condition 4 above indicates small whorled pogonias were located within the potential habitat area shown on the Schematic Plan, unless the County Environmental Engineer and the Owners' environmental consultant agree the pogonias are located in an area where they would not be adversely affected by the BMPs proffered in condition 5 (a) above, or (ii) Owners commence land disturbing or construction on the Property before the results of the field study proffered in condition 4 above are available, then:

(a) BMPs shall be designed, installed and maintained to control surface water runoff from the B-1 and R-3 property. Such BMPs shall include a stormwater detention basin, and may, if agreed upon by Owners, Owners' engineers and the County Engineer, include drop inlets and piping, infiltration trenches and/or porous pavement (depending on parking lot grades and soil percolation rates). The stormwater detention basin shall be located in the southeastern part of the Property, with the exact location subject to the approval of the County Engineer. The detention basin shall be designed and constructed, with the approval of the County Engineer, in one of the two methods and in accordance with the criteria described in condition 5 (a) above. Other temporary or permanent sedimentation and erosion control structures, in addition to those discussed above, shall be designed, installed and maintained as required in the site plan or subdivision review process, by the Virginia Erosion and Sedimentation Control Handbook and by the County Engineer's Guidelines for Erosion and Sediment Control on Highly Erodible Areas.

(b) if the pogonias are found within the portions of the habitat area on the Property shown on the Schematic Plan not included within the Conservation Area designated on the Schematic Plan, the Conservation Area shall be expanded to include the portion of the potential habitat area within which the pogonias are found plus an additional 10' buffer strip immediately adjacent to such habitat area. If land disturbing or

construction begins before the results of the proffered field survey are available, the Conservation Area shall be expanded to include the entire potential habitat area on the Property not already included in the Conservation Area, plus an additional 10' buffer strip immediately adjacent to such habitat area, until the results of the survey are available.

(c) the area shown as "Conservation Area" as expanded pursuant to condition 6 (b) above, if necessary, shall be left undisturbed and in its natural state. No land disturbing, clearing or construction shall take place in the Conservation Area.

(d) Owners shall permit Dr. Donna Ware, curator of the William and Mary Herbarium, to accompany the Owners' environmental consultant onto the potential habitat area of the Property to assist in the field survey or to transplant small whorled pogonias if the Owners' environmental consultant, the County Environmental Engineer and Dr. Ware determine that transplanting is desirable.

7. The Conservation Area shall be conveyed to a property owners' association satisfactory to the County Attorney to be organized by the developer in which all lot owners shall be members and which shall be responsible for maintenance, including maintenance of stormwater BMPs and other sedimentation and erosion and control structures or devices located in such Conservation Area, and trash removal in such area. Until conveyance of such area to the property owners' association,

Owners shall be responsible for such maintenance. If requested by the County, Owners or the homeowners' association shall grant to the County a conservation easement over the Conversation Area in form and substance satisfactory to the County and Owners or the association.

8. The area to be rezoned from A-2 to B-1 (5.66 acres) shall not be developed and no improvements shall be erected thereon unless such development shall incorporate the area presently zoned B-1 (3.13 acres) and the entire 8.79 acres shall be used only for a "shopping center" as hereinafter defined. The shopping center shall contain no more than 70,000 square feet. For the purposes of this Proffer a shopping center is defined as:

A group of two (2) or more architecturally unified commercial establishments built on a site (which may include out parcels) which is planned, developed, owned or managed as an operating unit and which provides on-site parking in definite relationship to the types and sizes of the commercial establishments therein and which may include retail and office uses.

The following uses, which otherwise are permitted under the B-1 classification of the Zoning Ordinance, shall not be permitted on any of the area zoned or rezoned B-1:

- Automobile service stations;
- Hotels, motels, tourist homes and convention centers;
- Schools, fire stations, post offices, houses of worship and libraries;
- Cemeteries;
- Marinas, docks, piers, yacht, boat basins;
- Wholesale and retail marine or waterfront businesses,
- Radio and television stations and accessory antenna or towers,
- Fast food restaurants,
- Convenience store with sale of fuel.

9. A maximum of 53 single-family detached residential lots only shall be permitted on the property to be rezoned R-3. No other residential use shall be made of the property rezoned R-3. No more than one single family dwelling shall be built on each lot.

10. Five Forks shall impose by restrictive covenant a buffer area at least 30' in width along the northern line of the R-3 property area where it abuts at the B-1 property. Such buffer shall remain in its natural state, except for stormwater BMPs and other sedimentation and erosion control structures and devices proffered pursuant to condition 4 hereof, and shall be augmented where necessary by additional evergreen planting, if requested, by the Development Review Committee of the County.

11. Areas shown as "Designated Open Space" in the R-3 area on the Schematic Plan shall be left in their natural vegetated state or landscaped in accordance with plans approved by the Development Review Committee. If grading, as approved by the Development Review Committee, of any part of such areas requires the removal of natural vegetation, such vegetation shall be replaced with appropriate screen planting approved by the Development Review Committee. Such Designated Open Areas shall be conveyed to the aforementioned property owners' association which shall be responsible for all maintenance and trash removal in such areas. Until conveyance of such areas to the association, Owners shall be responsible for such maintenance.

12. All streets and roads in the residential R-3 area

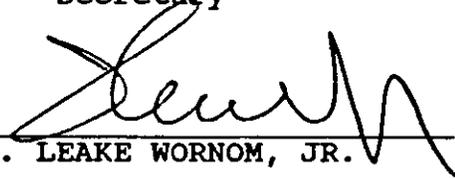
shall be built to specifications of VDOT and shall be dedicated to it for maintenance.

13. The area to be rezoned from A-2 to B-1 (5.66 acres) shall not be developed and no improvements shall be erected thereon unless the areas shown as "Designated Open Space" within the area presently zoned B-1 (3.13 acres) and the area to be rezoned B-1 (5.66 acres) shall be made subject to a scenic easement and shall be left in their natural vegetated state or landscaped in accord with plans approved by the Development Review Committee. If relocation of the entrance is made such "Designated Open Space" may be adjusted to accommodate such change. If grading of such area or any part thereof requires the removal of such natural vegetation, the owner of such parcel shall replace the same with appropriate screen planting approved by the Development Review Committee of the County. The owner of such parcel shall maintain such planting and shall keep the area free of trash and debris.

IN WITNESS WHEREOF, Owners, intending to be legally bound, have duly executed these Proffers.

FIVE FORKS ASSOCIATES, INC.

By: 
C. LEWIS WALTRIP, II,
Secretary

 (SEAL)
I. LEAKE WORNOM, JR.

Cherylde H. Wornom (SEAL)
CHERYLDE H. WORNOM

Howard C. Andleton (SEAL)
HOWARD C. ANDLETON

STATE OF VIRGINIA AT LARGE
CITY OF WILLIAMSBURG, to-wit:

The foregoing instrument was acknowledged before me
this 20 day of December, 1989, by C. Lewis Waltrip, II,
Secretary of FIVE FORKS ASSOCIATES, INC., on behalf of the corpo-
ration.

Amy L. Davis
NOTARY PUBLIC

My commission expires:
11.22.92

STATE OF VIRGINIA AT LARGE
CITY/COUNTY OF Norfolk + News, to-wit:

The foregoing instrument was acknowledged before me
this 28th day of December 1989, by I. LEAKE WORNOM, JR. and
CHERYLLE H. WORNOM, husband and wife, Owners.

Amy R. Dudley
NOTARY PUBLIC

My commission expires:
4/10/93

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STATE OF VIRGINIA AT LARGE

CITY/COUNTY OF King and Queen, to-wit:

The foregoing instrument was acknowledged before me this 28th day of December, 1989, by HOWARD C. ANDLETON, Owner.

James P. Dudley
NOTARY PUBLIC

My commission expires:
4/10/93

City of Williamsburg, County of
James City.
In the Clerk's office of the City of Williamsburg and County of James City the
18 day of May, 1990 This proffered
was presented with certificate annexed and
admitted to record at 1.07 o'clock
Teste: Robert S. Ward, Clerk
by Howard
Deputy Clerk

