

A G E N D A
JAMES CITY COUNTY PLANNING COMMISSION
AUGUST 5, 2009 - 7:00 p.m.

1. ROLL CALL
2. PUBLIC COMMENT
3. MINUTES
 - A. July 1, 2009 Regular Meeting
4. COMMITTEE AND COMMISSION REPORTS
 - A. Development Review Committee (DRC)
 - B. Policy Committee
 - C. Other Committee/Commission Reports
5. PUBLIC HEARINGS
 - A. SUP-0011-2009 7708 / 7710 Cedar Drive (deferral requested)
 - B. Z-0002-2009 / MP-0002-2009 Governor's Grove Section III - Proffer and Master Plan Amendment
 - C. SUP-0012-2009 101 Birch Circle
7. PLANNING DIRECTOR'S REPORT
8. COMMISSION DISCUSSIONS AND REQUESTS
9. ADJOURNMENT

A REGULAR MEETING OF THE PLANNING COMMISSION OF THE COUNTY OF JAMES CITY, VIRGINIA, WAS HELD ON THE FIRST DAY OF JULY, TWO-THOUSAND AND NINE, AT 7:00 P.M. IN THE COUNTY GOVERNMENT CENTER BOARD ROOM, 101-F MOUNTS BAY ROAD, JAMES CITY COUNTY, VIRGINIA.

1. ROLL CALL

Planning Commissioners

Present:

Deborah Kratter
George Billups
Joe Poole III
Reese Peck
Rich Krapf
Chris Henderson
Jack Fraley

Staff Present:

Allen Murphy, Director of Planning/Assistant
Development Manager
Angela King, Assistant County Attorney
Leanne Reidenbach, Senior Planner
Nicholas Bolash, Intern, County Attorney's Office
Terry Costello, Development Management Asst.

2. PUBLIC COMMENTS

Mr. Rich Krapf opened the public comment period.

There being no speakers, Mr. Krapf closed the public comment period.

3. MINUTES – JUNE 3, 2009

Mr. Joe Poole III moved for approval of the minutes with a second from Ms. Deborah Kratter.

In a unanimous voice vote, the minutes were approved (7-0).

4. COMMITTEE AND COMMISSION REPORTS

A. Development Review Committee (DRC)

Mr. Poole stated the DRC met on June 30, 2009 to review one case, S-0014-2009, Summerplace. This was the third DRC review of this by-right development of 164 single family homes. Mr. Poole stated that conceptual plans for the subdivision were reviewed earlier in the year in which discussions took place concerning internal street connectivity, cul-de-sacs, sidewalks versus pathways, community well and well locations, and residential clustering. He stated the DRC recommended approval of the applicant's request and staff's recommendation to accept cul-de-sac length exceptions and sidewalk waiver requests. This was in recognition of the site's topography and also given shared interest to protect the wooded and rural nature of Jolly Pond Road in the vicinity of the project. Mr. Poole stated that the applicant had agreed to additional considerations regarding mature tree preservation during the project's construction phases. The applicant also agreed to consultations with the James City Service Authority regarding the community well's capacity and it's potential to handle future and adjacent

development. He stated that the applicant had agreed to a subsequent DRC review and approval of its entry features along Jolly Pond Road.

Mr. Chris Henderson moved for approval of the DRC actions with a second from Ms. Kratter.

In a unanimous voice vote, the DRC actions were approved (7-0).

Mr. Fraley stated that many citizens have contacted him concerning clear cutting. He stated that the developer for the Summerplace development agreed to phased clearing for this by-right development. He wanted to commend the applicant for this since there was no requirement to clear in phases.

B. Policy Committee

Mr. Henderson stated that the Policy Committee met in June and has concluded their discussions on the Capital Improvement Program (CIP) process. He asked Ms. Kratter to provide some additional background on the document that was included in the packets for this meeting.

Ms. Kratter stated that the Policy Committee's review of the process included input from resources available in book form, the internet, and research done by staff. Other formats from other jurisdictions were also considered. Ms. Kratter stated the Committee has come up with a "score sheet" that would be used for any CIP project that is reviewed by the Policy Committee to determine which projects should be listed as the highest priority and those which should be classified as the lowest priority. She stated that there are eight overarching factors but that the eighth one is one classified as "special considerations." Ms. Kratter stated the importance of this is that no matter what other elements other projects may have, if there is a project that is required for immediate health and safety for the citizens, or is required by a federal or state mandate, or a project where funds are available for a certain time period, this category may be used.

Mr. Henderson stated that the categories used in the evaluation are quality of life, infrastructure, economic development, health and public safety, impact on operational budget, regulatory compliance, timing and location, and special considerations. Each category was assigned a varying percentage based on 100%. The Committee feels that this is a rational means of evaluating the capital improvement projects that reflect the community values and will help the Board of Supervisors to properly prioritize the capital investments made by the community.

Mr. Henderson moved to adopt the CIP ranking criteria as distributed and dated July 1, 2009. He thanked staff for their work on this criteria, and also John McDonald from Financial Management Services for his input.

Mr. Krapf thanked Ms. Kratter for putting this package together, along with Mr. Henderson and Mr. Reese Peck for initiating this discussion last year.

Mr. Poole seconded the motion.

In a unanimous voice vote, the motion was approved (7-0).

C. Steering Committee

Mr. Fraley stated the Steering Committee had its last meeting on June 25, 2009. The Committee unanimously recommended approval for the Comprehensive Plan draft to be presented to the Planning Commission.

Mr. Krapf thanked Mr. Fraley for all his work on the Steering Committee.

D. Other Reports

Mr. Peck stated that at the Board of Supervisor's meeting in June, the County Attorney, Mr. Leo Rogers issued an opinion on the role of covenants. Mr. Rogers clarified that while the County does not enforce covenants, if covenants are made known during the plan review process, and if a covenant provision is in conflict with the case that is being reviewed, that the recommendation should be that the covenant prevails. Mr. Peck asked staff to provide this information to the entire Planning Commission.

Mr. Fraley stated that despite the opinion by Mr. Rogers, the Board of Supervisors approved the application that was being reviewed.

Mr. Peck stated that he believed that the Board of Supervisors did not base their decision on the opinion rendered or that they disagreed with the opinion. He felt that there were several provisions that were interpreted broadly and that the wording in the covenants provided some flexibility.

Ms. Kratter stated that she felt there was also a question as to whether the covenant document that pertained to that application in particular was given to all of the land owners when they purchased their property. There may have been some questions as to whether the covenants truly were tied to the land as opposed to some type of private agreement filed in court.

Mr. Krapf stated that the Commission will acknowledge future cases that involve covenants and that staff will alert the Commission that they may exist.

Mr. Henderson asked about having something being put on the application for a special use permit or a rezoning that might identify if covenants exist.

Mr. Murphy stated staff is making this change.

5. PLANNING COMMISSION CONSIDERATIONS

A. Initiating Resolution - To amend section 24-650 of the Zoning Ordinance, to eliminate the words "approaching confiscation" from the requirements for granting variances

Mr. Nicholas Bolash stated that this resolution was to consider an amendment for eliminating the words “approaching confiscation” will change the circumstances under which the Board of Zoning Appeals grants property variances. He stated that the Virginia General Assembly passed a resolution removing the requirement that when the Board of Zoning Appeals grants a variance on the property, the hardship imposed on the property without granting a variance has to be approaching confiscation. Mr. Bolash stated that under the proposed change to the County Code, a variance can be granted if the variance would alleviate clearly demonstrated hardship. The change would bring the County Code into compliance with the updates to the Virginia Code.

Mr. Bolash recommended that the change in code be approved for public hearing.

Mr. Krapf asked for more information concerning the significance of removing the words “approaching confiscation.”

Mr. Bolash stated that there are two circumstances under which the Board of Zoning Appeals can grant a variance. The first is if the property is unreasonably restricted in its utility and the second is to alleviate clearly demonstrated hardship approaching confiscation. He gave the example of if a property has large easements making the property not feasible for use, then the only option would be for the County to take the property. The current language would allow the Board of Zoning Appeals to grant the variance only if this were the case. The proposed language gives the Board more flexibility in granting variances.

Mr. Poole asked what the reasoning was for the General Assembly to make the change.

Mr. Bolash stated that he believed it was due to general confusion for a number of zoning boards. The Virginia Supreme Court was then asked for some clarification. The Virginia General Assembly then determined this was the way to alleviate those concerns.

Mr. Fraley stated that as a member of the Board of Zoning Appeals, he applauds this change. He stated the Board has struggled with the meaning of “approaching confiscation” in the past. He stated that other jurisdictions also applied the term differently adding to the confusion. Mr. Fraley believed that this change is a good step forward in clarification.

Mr. Henderson stated that there were several cases in Newport News where the City was compelled to sue the Board of Zoning Appeals over the strict interpretation. He supports the change.

Mr. Fraley stated that most of the cases that come before the Board of Zoning Appeals involved citizens, usually in the lower to middle income range.

Ms. Kratter moved to approve the initiating resolution with a second from Mr. Poole.

In a roll call vote the motion was approved. (7-0, AYE: Henderson, Billups, Poole,

Fraley, Kratter, Peck, Krapf)

6. PUBLIC HEARINGS

- A. Zoning Amendment – To amend section 24-650 of the Zoning Ordinance, to eliminate the words “approaching confiscation” from the requirements for granting variances

Mr. Bolash requested the Planning Commission recommend that the Board of Supervisors amend section 24-650 of the Zoning Ordinance. The change will clarify the terms under which a variance may be granted.

Mr. Peck asked if the Commission could recommend that the language remains, therefore creating a higher standard.

Ms. Angela King answered that it would be mandatory to make the change in order to match the standard in the Virginia Code.

Mr. Poole asked if staff has received any feedback from citizens.

Mr. Bolash answered no.

Mr. Krapf opened the public hearing.

There being no comments, he closed the public hearing.

Mr. Henderson moved for approval with a second from Ms. Kratter.

In a roll call vote, the motion was approved. (7-0, AYE: Henderson, Billups, Poole, Fraley, Kratter, Peck, Krapf.)

- B. Zoning Amendment – To amend section 24-2, 24-213, 24-349, and 24-521 of the Zoning Ordinance, to replace the term “mentally retarded” with the term “intellectually disabled”

Mr. Bolash stated the Virginia General Assembly approved a measure to change these references to “intellectually disabled.” He recommended the Planning Commission recommend approval of this change to the Board of Supervisors.

Ms. Kratter asked if there was a definition for what constitutes an intellectually disability.

Mr. Bolash stated he was not aware of any definition.

Ms. King stated it was defined in the County Code, but she would have to do some research to see if it was defined in the Virginia Code.

Mr. Billups stated that some information may be listed in cases involving children who are labeled “intellectually disabled.”

Ms. King stated that this proposed change is to reflect what is currently in the Virginia Code.

Mr. Krapf opened the public hearing.

There being no comments, he closed the public hearing.

Mr. Henderson moved for approval with a second from Mr. Peck.

In a roll call vote, the motion was approved. (7-0, AYE: Henderson, Billups, Poole, Fraley, Kratter, Peck, Krapf.)

C. Z-0002-2009 / MP-0002-2009 Governor’s Grove Section III – Proffer and Master Plan Amendment

Mr. Murphy stated staff’s concurrence with the applicant’s request for a deferral to the August 5, 2009 Planning Commission meeting.

Mr. Krapf opened the public hearing.

There being no comments, he continued the public hearing to August 5, 2009.

D. SUP-0011-2009 - 7708 / 7710 Cedar Drive

Mr. Murphy stated staff’s concurrence with the applicant’s request for a deferral to the August 5, 2009 Planning Commission meeting.

Mr. Krapf continued the public hearing to August 5, 2009.

7. PLANNING DIRECTORS REPORT

Mr. Murphy had no additional comments to make but stated that Mr. Christopher Johnson has been hired by the Division as a Principal Planner.

8. COMMISSION DISCUSSIONS AND REPORTS

Mr. Krapf stated the Commission’s representative to the Board of Supervisors for July was Mr. Fraley.

Mr. Peck initiated the discussion on the Comprehensive Plan draft. He stated that the prime concern of the citizens was growth management. He mentioned the policies from Fairfax County that addressed concerns such as these. He stated that Fairfax County had pulled out the governing policies on how growth was going to be managed. Mr. Peck thought this might be

something for the Commission to consider highlighting and focusing on for the public. He thought it would be beneficial to highlight those action items that would be addressed over the next five years. Mr. Peck requested that while the Commission was reviewing the draft that the Policy Committee look at this idea concurrently. He stated that he will send information to the Commissioners as to the other localities he has researched.

Mr. Krapf stated the Commissioners can then work with staff to determine where this will be on the agenda for the Policy Committee.

Mr. Murphy stated that implementation concerns can be reviewed by the Policy Committee, although there will most likely be a discussion concerning this with the entire Planning Commission.

Mr. Peck prefers that the Policy Committee work on this concurrently.

Mr. Henderson stated he will like to confer with Mr. Murphy and review the workload of the Policy Committee. He stated there was a list of objectives that the Committee would like to accomplish before the end of the year. His thought was that this would be a discussion with the entire Planning Commission so he was unsure about the role of the Policy Committee.

Mr. Peck would like the Policy Committee to have time to look at the various options concerning the implementation. It is important how this is presented to the public and how decision makers use this document. Mr. Peck felt that one problem is that the format includes many maintenance items and, as a result, some of the items deemed important may be lost. There are two basic approaches: one being page by page restructuring of the plan, or the second being leaving it in the format presented and pulling out those items deemed most important. He felt that with the concerns expressed, unless there is a concise focus statement as to what the guiding principles are on growth management, that the impact on growth might be lost. Mr. Peck felt that having this discussion concurrently would add value to the Comprehensive Plan itself.

Mr. Henderson stated the entire Planning Commission should discuss implementation issues but that it is still an option to remand something back to the Policy Committee if the Planning Commission desires.

Ms. Kratter asked if there was going to be a separate work session to address some of the over arching formatting ideas. There is content and substance, but then there are issues relating to form that actually have some important impacts.

Mr. Krapf stated that would depend on how much feedback is received concerning format change. If the feedback received is so extensive that a separate work session is needed it could be, or if not much is received, the discussion should be built into one of the already scheduled work sessions.

9. ADJOURNMENT

Mr. Henderson moved for adjournment, with a second from Ms. Kratter.

The meeting was adjourned at 7:45 p.m.

Rich Krapf, Chairman

Allen J. Murphy, Secretary

**SPECIAL USE PERMIT-0011-2009: 7708/7710 Cedar Drive
Staff Report for the August 5, 2009, Planning Commission 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 **Building F Board Room; County Government Complex**

Planning Commission:	June 3, 2009	7:00 p.m. (deferred by the applicant)
Planning Commission:	July 1, 2009	7:00 p.m. (deferred by the applicant)
Planning Commission:	August 5, 2009	7:00 p.m. (deferred by the applicant)
Board of Supervisors:	September 9, 2009	7:00 p.m. (tentative)

SUMMARY FACTS

Applicant: Mr. Mark Kin of Electric Eagle, Ltd

Land Owner: Mr. Mark Kin

Proposed Use: The applicant has applied for a special use permit to allow for the construction of a 3,000 square-foot contractor's warehouse

Location: 7708 and 7710 Cedar Drive

Tax Map and Parcel No.: 0930900010 and 0930900011

Parcel Size: 0.94 acre (0.47 acre each parcel)

Existing Zoning: A-1, General Agricultural District

Comprehensive Plan: Rural Lands

Primary Service Area: Outside

STAFF RECOMMENDATION:

The applicant has requested an eight month deferral of this case until the March 2010 Planning Commission meeting in order to resolve outstanding issues. Staff concurs with this request.

Staff Contact: Jose Ribeiro, Planner Phone: 253-6685

ATTACHMENTS:

1. Letter of deferral by the applicant.

Leanne Reidenbach

Subject: FW: Deferral Request

From: Mark Kin-Electric Eagle [mailto:electric eagle@verizon.net]

Sent: Monday, July 27, 2009 9:50 PM

To: Leanne Reidenbach

Subject: Re: Deferral Request

We would like to have our SUP permit application deferred for 8 months so we will have the time to gather all information needed.

Thank You

Tracy and Mark Kin

REZONING-0002-2009 / MP-0002-2009: Governor's Grove Section III: Proffer and Master Plan Amendment

Staff Report for the August 5, 2009 Planning Commission 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

Building F Board Room; County Government Complex

Planning Commission: July 1, 2009 (applicant deferral)
August 5, 2009 7:00 p.m.

Board of Supervisors: (T.B.D.)

SUMMARY FACTS

Applicant: Mr. Vernon Geddy, III, on behalf of Jard Properties

Land Owner: Five Forks II, LLC and Five Forks III, LLC

Proposal: To modify the proffers and master plan approved with rezoning Z-0009-2005 / MP-0006-2005 to allow for the applicant's desired roadway entrance configuration associated with a pharmacy proposed for the Section III Commercial Parcel of the Governor's Grove development.

Location: 4399 and 4365 John Tyler Highway (Route 5)

Tax Map/Parcel No.: 4710100115 and 4620100014A, respectively

Parcel Size: 2.965 acres and 5.121 acres, respectively (8.086 acres in total)

Existing Zoning: MU, Mixed Use, with Proffers

Proposed Zoning: MU, Mixed Use, with (amended) Proffers

Comprehensive Plan: Low Density Residential and Moderate Density Residential on the 4399 John Tyler Highway (Section 3 / commercial) parcel, and Moderate Density Residential on the 4365 John Tyler Highway (Section 2 / open space) parcel

Primary Service Area: Inside

STAFF RECOMMENDATION

At the time this staff report was being finalized, the applicant provided revised master plan and supplementary materials (outfall diagram, revised elevations, etc.). Thus, this staff report is not able to reflect a review of these latest revisions. Staff recommends deferral of this application to allow for a proper review of these latest revisions to the master plan, including stormwater management features. These stormwater management features affect the existing open space, conservation easement, and Community Character Corridor (CCC) buffer. The outstanding issues need to be resolved to ensure greater consistency with the adopted Primary Principles for the Five Forks Area of James City County policy, and the Comprehensive Plan.

Staff Contact: David W. German Phone: 253-6685

David W. German, Senior Planner

PROJECT DESCRIPTION

Mr. Vernon Geddy, III has applied on behalf of Jim Jard / Jard Properties to amend the approved proffers and master plan associated with the Governor's Grove rezoning. This rezoning (Z-0009-2005 / MP-0006-2005) was originally approved by the Board of Supervisors on August 9, 2005. The amendments being sought are in support of a "Rite-Aid" Pharmacy that the developer is proposing to construct on the 2.965-acre "Governor's Grove Section 3" commercial parcel, located at 4399 John Tyler Highway, also identified as James City County Tax Map Parcel Number 4710100115. The proposal, as currently laid out, will also impact the neighboring 5.121-acre "Governor's Grove Section 2" parcel in two ways. First, an area estimated at 374 square feet would be removed from the northeast corner of this parcel to accommodate a proposed right-turn taper from eastbound John Tyler Highway into the pharmacy site. Second, the stormwater management structure that would serve the pharmacy site would need to outfall into the Section 2 parcel, as well. The Section 2 parcel is located at 4365 John Tyler Highway, also identified as Parcel Number 4620100014A on the James City County Tax Map. Currently, the Section 3 parcel is an inactive site, last used as a small mobile home park. It is generally level and features a number of mature trees, especially along its perimeter boundaries. The Section 2 parcel is heavily wooded and vegetated, and is protected by a natural open space easement owned by James City County. A thirty-five foot trail easement established by the originally approved proffers runs along northern boundaries of both Section 3 and Section 2, parallel to John Tyler Highway. A separate originally approved proffer provides that stormwater management structures that serve the Section 3 parcel may be constructed in the Section 2 parcel, subject to approval by the Environmental Division.

The proposed pharmacy is projected to be a 14,000 square-foot stand-alone structure that will be served by fifty-two parking spaces, a dumpster enclosure, and associated drive aisles. It should be noted that the land use (pharmacy) proposed with this application is permitted by both the existing zoning and the existing proffers for Governor's Grove, and is not at issue with this application. The applicant is seeking changes to three specific proffers approved with Z-0009-2005 (Proffers 6, 9, and 11, discussed in detail below), and is also proposing related changes to the approved master plan (MP-0006-2005) with this application.

The Section 3 parcel abuts John Tyler Highway (Route 5) and Ironbound Road (Route 615) near the intersection of these two roads in the Governor's Grove / Five Forks area. Separating the Section 3 parcel from the intersection are two parcels that are occupied by a Zooms gas station and associated small convenience store and parking areas. Both John Tyler Highway and Ironbound Road are Community Character Corridors.

PUBLIC IMPACTS

Archaeology:

Proffer(s): **Proffer #12 Archeology** (See original proffers; remains unchanged)

Staff Comment: This project will be located on a previously disturbed site and is not located within an area identified as highly sensitive in the James City County archaeological assessment "Preserving Our Hidden Heritage: An Archaeological Assessment of James City County, Virginia." The site is further protected by original Proffer #12, which provides for Archaeological studies of the site prior to the approval of any land disturbing permits for the project.

Environmental:

Proffers(s): **Proffer #4(c) Cash Contributions for Community Impacts** (See original proffers; remains unchanged) (Note: this proffer has no relationship to the development of Section 3 of Governor's Grove.)

Proffer #5 Buffer (See original proffers; remains unchanged) (Note: this proffer has no relationship to the development of Section 3 of Governor's Grove.)

Proffer #11 Environmental Protections (Amended with new proffers; discussed below.)

Watershed: The project site is located within the tidal mainstem portion of the Powhatan Creek Watershed.

Environmental Division Staff Comments:

Natural Open Space (NOS): While the additional proffer 11(f) indicates that an offsetting area for impacts to the NOS easement will be dedicated on Section 3, it must be verified that sufficient area of suitable, undisturbed vegetation is present on the Section 3 parcel. Supplemental plantings may be required in some areas of replacement easement to qualify for NOS.

Special Stormwater Criteria (SSC): From a conceptual standpoint, neither the USDA soil survey nor, the two borings included in the Phase II Environmental Site Assessment by ECS dated November 20, 2008, indicate favorable soils on site for infiltration. Specific infiltration tests will be required for site plan consideration of Special Stormwater Criteria Practices (SSCP) which rely on infiltration. For the conceptual plan, it would need to be stated that alternate SSCP's, approved by the Environmental Director, will be provided should any of the proposed SSCP's prove unfeasible.

Outfall: While stormwater management facilities and some utility work subject to Environmental Division approval was envisioned on Section 2 by Proffer #11(a), the impacts of clearing for stormwater facilities on the wooded buffer along John Tyler Highway should be shown on the Conceptual Master Plan so the overall impact of the development can be more accurately considered. Since the proposed outfall will likely have to be extended to reach an adequate channel, the impacts are likely understated in the July 23 submittal. **Further staff comment was not possible due the late submittal of a revised plan.**

Planning Division Staff Comments: Pursuant to the original proffers, the developer has previously entered into a "Deed of Easement for Natural Open Space," dated October 29, 2006. This easement predominantly covered Section 2 of the Governor's Grove property. Staff notes that Proffer# 11 has been amended such that any reduction in the total area of Section 2 (due to the proposed turn lane taper and stormwater management outfall) will be made up with a deed of exchange, adding back a like amount of land from Section 3 into the Open Space easement).

Public Utilities:

Proffer(s): **Proffer #3 Water Conservation** (See original proffers; remains unchanged)
Proffer #4(a) Cash Contributions for Community Impacts (See original proffers; remains unchanged) (Note: this proffer has no relationship to the development of Section 3 of Governor's Grove.)

The site is located within the Primary Service Area (PSA) and will be served by public water and sewer provided by the James City Service Authority (JCSA).

James City Service Authority (JCSA) Comments: All utility extensions or upgrades required will be made at the developer's expense. At the site plan level, the applicant will need to provide an analysis of the existing gravity lines, pump stations and force mains impacted by this development to demonstrate that adequate capacity exists to serve it. The Water Conservation requirements originally established in Proffer #3 will apply to the development of Section 3 of Governor's Grove.

Transportation:

Proffer(s): **Proffer #4(f) Cash Contributions for Community Impacts** (See original proffers; remains unchanged)
Proffer #6 Entrances/Turn Lanes (Amended with new proffers; discussed below.)
Proffer #7 Sidewalk Connections (See original proffers; remains unchanged) (Note: this proffer has no relationship to the development of Section 3 of Governor's Grove.)
Proffer #9 Multi-Use Path/Easement (Amended with new proffers; discussed below.)
Proffer #10 Private Drives (See original proffers; remains unchanged)
Proffer #14 Updated Traffic Study (See original proffers; remains unchanged) (Note: this proffer was met with this submission, as an updated traffic study has been prepared and submitted.)

Vehicular Access:

The applicant proposes that the Section 3 Pharmacy site will be served by two entrances: a left-in/right-in/right-out entrance from Ironbound Road and a full left-in/right-in/left-out/right-out entrance from John Tyler Highway. The original Proffer #6 and approved Master Plan provided for an entrance to the Section 3 parcel only from Ironbound Road (Route 615), with additional provisions for the developer to seek a second entrance from John Tyler Highway (Route 5) into the Section 3 parcel with a separate approval from the Board of Supervisors and from the Virginia Department of Transportation (VDOT), (discussed further below).

Pedestrian and Bicycle Access:

Pedestrian and bicycle access to and from the Section 3 pharmacy site will combine existing sidewalks, already planned features, and new improvements proposed by this application. Existing pavement and sidewalks exist along the John Tyler Highway and Ironbound Road frontages of the two Zooms properties, as well as along the Ironbound Road frontage of the Section 3 parcel. An 8' wide paved multi-use path in a 35' wide easement had previously been provided for along the John Tyler Highway frontages of the Section 2 and Section 3 parcels with the original Governor's Grove Rezoning and Master Plan (Z-0009-2005 / MP-0006-2005). With this new application, this easement will be maintained as before, but the 8' wide paved multi-use trail will also be constructed by the applicant along and across the Section 3 parcel, with additional access easements being provided as needed, as well. Finally, the northbound (between the Governor's Green Shopping Center driveway and the John Tyler Highway intersection) and southbound (between the John Tyler Highway intersection and the Clara Byrd Baker Elementary School entrance) shoulders of Ironbound Road will be expanded and paved to accommodate bike lanes. The Section 3 parcel, and the southwest corner of the John Tyler Highway / Ironbound Road intersection generally, will be well served for both pedestrians and bicyclists with the completion of these improvements.

Request for Parking Modification:

Section 24-59(g)(2) of the Zoning Ordinance states that a property owner may appeal to the Planning Commission for a waiver allowing a reduction in the required number of parking spaces for a given site. In these instances, it is incumbent upon the applicant to demonstrate that, due to the unique characteristics of the use and/or site, the number of parking spaces required by the ordinance would not be justified. Such a request may not be made to allow for an increase in the size of the building area for the site. The applicant has submitted such a waiver request to the Planning Commission for review and consideration. Planning staff concurs with the analysis presented in the waiver request letter, and notes that the additional area not used for parking is being maintained as landscaped open space on the site. Staff recommends approval of this parking modification waiver request, should the Planning Commission elect to recommend approval of this application to the Board of Supervisors.

Traffic Counts:

2007 Actual Traffic Count Volume: IRONBOUND ROAD (ROUTE 615): From Hickory Signpost Road (Route 629) to John Tyler Highway (Route 5): 8,299 average daily trips; JOHN TYLER HIGHWAY (ROUTE 5): From St. Georges Hundred Subdivision Entrance to Ironbound Road (Route 615): 11,303 average daily trips.

2026 Projected Traffic Count Volume: IRONBOUND ROAD (ROUTE 615): (No projections provided for this area); JOHN TYLER HIGHWAY (ROUTE 5): Centerville Road (Route 614) to Ironbound Road (Route 615): 12,000 average daily trips. This segment of John Tyler Highway is listed in the "watch" category in the Comprehensive Plan.

Traffic Impact Assessment (TIA):

In accordance with original Proffer #14, the applicant has submitted an updated traffic impact assessment (TIA), prepared by DRW Consultants, LLC, and dated May 25, 2009, in conjunction with this application. According to the TIA, this development is expected to generate 1,234 new daily trips onto the local roadway network, including 37 in the a.m. peak hour and 121 in the p.m. peak hour.

Appropriate Level of Service standards and trip generation thresholds were formally established for the Five Forks / Governor's Grove area by the *Primary Principles for the Five Forks Area of James City County* policy adopted by the Board of Supervisors on September 28, 2004. Analysis provided within the TIA addressed these standards and thresholds. The methodology of and conclusions drawn by this analysis were reviewed by Planning staff and by the traffic engineering staff of the VDOT Williamsburg Residency. Comments related to this analysis are listed below.

TIA Recommendations:

The DRW Consultants, LLC Traffic Impact Assessment recommends the following improvements:

- Left turn storage for northbound left turn into Section 3;
- Equal or greater storage for existing left turns on Ironbound Road;
- A paved shoulder adequate for a bike lane on southbound Ironbound Road from the Route 5 intersection to the driveway entrance of Clara Byrd Baker Elementary School;
- A paved shoulder adequate for a bike lane on northbound Ironbound Road from the Route 5 intersection to the driveway entrance of Governor's Green Shopping Center;
- Realignment of the northbound Ironbound Road approach that corrects the existing lateral transition problem on southbound Ironbound Road through the Route 5 signalized intersection;
- A two-way left turn lane on Route 5 to serve the Section 3 driveway as well as the Shops at Five Forks and Zooms;
- A right-turn taper on eastbound Route 5 at the Section 3 entrance driveway (although not warranted by traffic forecasts to date);
- Transition compatibility with additional left turn widening of Route 5 by the Section 1 residential property of the Governor's Grove development.

Each of these recommendations is incorporated into the revised Proffer #6 and the revised master plan that have been submitted by the applicant.

Virginia Department of Transportation (VDOT) Comments: *The VDOT Williamsburg Residency has reviewed the revised master plan, traffic impact assessment, and proffers that were initially submitted by the applicant, and offered the following comments:*

1. The proposal appears to be consistent with the Transportation Principles of the Primary Principles for Five Forks Area of James City County adopted by the County in 2004:
 - a) All access proposals maintain an overall Level of Service (LOS) C at the Route 5/Route 615 intersection. Additionally, all entrances within the study area operate at a LOS C under all access proposals;
 - b) Given existing traffic counts below the background counts assumed in the Five Forks Study, the proposed trip generation is below the thresholds defined in the Five Forks Study for both the AM and PM peak study periods;
 - c) The proposed reconfiguration of the south leg of Route 615 provides shoulder bike accommodations on both sides of Route 615;

- d) The reconfiguration of the south leg of Route 615 reduces the lateral offset through the intersection introduced with the VDOT construction of the Geometric Improvements recommended in the Five Forks Study.
2. The Master Plan does not address the existing sidewalk across the frontage of the site on Route 615. This sidewalk should be maintained with the proposed improvements;
3. The proposed access plan exhibits minor improvements in overall delay over the other access proposals evaluated in the study. Another factor that provides a measure of intersection operation is the volume to capacity ratio (v/c), which indicates the amount of available capacity used at an intersection. The proposed access plan has a v/c of 0.68 in the AM peak hour and 0.65 in the PM peak hour, which represents that 68% and 65% of the available capacity will be utilized. The proposed access plan maintains or improves v/c when compared with the other access proposals evaluated. **Most critical lane group movements are improved under the proposed access plan;**
4. The proposed geometric improvement on the west leg of Route 5 provides additional storage to **accommodate a deficiency in the existing amount of storage in the eastbound left-turn lane at the signalized intersection.** We concur with the reconfiguration including two-way left turns providing access to Section 3 as well as the existing Shops at Five Forks and Zooms entrances as shown on the submitted Master Plan;
5. We concur with providing a right turn taper into the proposed Route 5 entrance;
6. Given limited corner clearance and proposed lane reconfiguration within the functional area of the south leg of Route 615, the proposed entrance on Route 615 should be limited to left-in, right-in, and right-out only as proposed. The left turn out should be restricted through the geometric design of the entrance and reinforced with appropriate signage;
7. We concur with the proposed trip generation rates as provided within the submitted traffic study. The proposal has the potential to generate 1,234 daily, 37 AM peak hour (21 entering, 16 exiting), and 121 PM peak hour (59 entering, 62 exiting) trips;
8. We concur with the trip distributions as provided within the submitted study. Trip distributions are consistent with the Five Forks Study;
9. Full construction plans will be required for review and approval prior to construction;
10. Based on VDOT's review, the study is technically correct and all alternatives were adequately evaluated.

***Planning Division Comments:** Planning staff concurs with VDOT's findings. Staff notes that the revised Proffer #6 submitted by the applicant removes the requirement for a separate VDOT / Board of Supervisors' approval for the proposed John Tyler Highway (Route 5) entrance to the Section 3 property. As reflected in the VDOT comments included above, the applicant's proposed roadway improvements and lane realignments do address the requirements contained in the original Proffer #6(c), including 1) alleviating an offsite congestion, delay, or safety problem at the proposed Ironbound Road entrance and 2) not increasing congestion or delay on Route 5.*

SUMMARY OF PROPOSED PROFFER AMENDMENTS

The following proffers remain unchanged from the way they were originally approved by the Board of Supervisors with Rezoning Z-0009-2005:

- Proffer #2** **Owners Association**
- Proffer #3** **Water Conservation**
- Proffer #4** **Cash Contributions for Community Impacts***
- Proffer #5** **Route 5 Buffer****
- Proffer #7** **Sidewalk Connections****
- Proffer #8** **Recreation****
- Proffer #10** **Private Drives**
- Proffer #12** **Archaeology**
- Proffer #13** **Architectural Review**
- Proffer #14** **Updated Traffic Study**
- Proffer #15** **Height Limitations**
- Proffer #16** **Commercial Use Restrictions**
- Proffer #17** **Buffer / Open Space Landscaping**

**Note: Proffer 4(f) indirectly impacts the development of Section 3 of Governor's Grove.*

*** Note: These proffers do not directly impact the development of Section 3 of Governor's Grove.*

A summary of the proposed amendments to the four remaining proffers follows:

- Proffer #1** **Master Plan:** Proposed Amendment allows for changes to the approved Master Plan (Z-0006-2005) to reflect road improvements and lane realignments, location of entrances, and development of the proposed pharmacy site on the Section 3 parcel of Governor's Grove as envisioned by the applicant;
- Proffer #6** **Entrances/Turn Lanes:** Proposed Amendment details the various turn lanes, bike lanes, and other traffic improvements planned for John Tyler Highway (Route 5) and Ironbound Road (Route 615). Further, this amendment details the configurations of the proposed entrances to the Section 3 parcel from John Tyler Highway and Ironbound Road;
- Proffer #9** **Multi-Use Path/Easement:** Proposed Amendment adds a new paragraph (d) to the original proffer. This amendment provides that the developer shall construct a paved 8' wide multi-use path as generally shown on the Amended Master Plan (MP-0002-2009). Additionally, an access easement for the trail will be granted to the County for the purposes of maintenance, repair, and replacement of the trail, and that further provides for public access to the trail in perpetuity. In the original proffers, the County had only been granted the easement for the trail, while this amendment provides both the easement and the construction of the trail by the developer.
- Proffer #11** **Environmental Protections:** Proposed Amendment provides that any land removed from the Natural Open Space area (Section 2 parcel) for the proposed entrance turn-lane taper from eastbound John Tyler Highway into the Section 3 parcel, and the area of any land used in the Section 2 parcel for stormwater management features or structures would be replaced by a like amount of land added into the Natural Open Space Easement from the Section 3 parcel.

COMPREHENSIVE PLAN

Land Use Map

<p>Land Use Map, General</p>	<p><i>Low Density Residential (Page 120):</i> Low Density areas are residential developments or land suitable for such developments with gross densities up to one dwelling unit per acre, depending on the character and density of surrounding development, physical attributes of the property, buffers, the number of dwellings in the proposed development, and the degree to which the development is consistent with the Comprehensive Plan. Very limited commercial establishments are acceptable within this land use designation.</p> <p><i>Moderate Density Residential (Page 121):</i> Moderate Density areas are residential developments or land suitable for such developments with gross densities up to four dwelling units per acre, up to a maximum of twelve dwelling units per acre, depending on the character and density of surrounding development, physical attributes of the property, buffers, the number of dwellings in the proposed development, and the degree to which the development is consistent with the Comprehensive Plan. Moderate Density Residential areas may include very limited commercial and community-oriented facilities generally intended to serve and support the residential community in which they are located.</p> <p><i>Staff Comment:</i> Staff notes that the project site is currently split between the Low (approximately 27% of the site) and Moderate (approximately 73% of the site) Density Residential land use designations, and also that the site was rezoned to Mixed-Use with the Z-0009-2005 / MP-0006-2005 in 2005. The proposed pharmacy is permitted by the current Mixed-Use zoning designation and the Z-0009-2005 rezoning. Additionally, the land use (pharmacy) for this project is not in question with this rezoning application, which is seeking only to amend some of the approved proffers and the approved master plan. These land use designations are supplemented by the Board adopted <i>Primary Principles for the Five Forks Area of James City County</i> resolution discussed below.</p>
<p>Five Forks Area</p>	<p><i>Description (Page 127):</i> The developed area in the immediate vicinity of the intersection of John Tyler Highway (Route 5) and Ironbound Road primarily serves nearby residential development. Limited commercial development of this nature may continue so long as the resulting land use mix of the area is limited primarily to community scale and neighborhood commercial and office uses. Moderate density residential development is encouraged as a secondary use.</p> <p><i>Staff Comment:</i> The proposed pharmacy represents a commercial use that will serve the immediate area, including the balance of the Governor’s Grove development. Staff further notes that the project is supported by the <i>Primary Principles for the Five Forks Area of James City County</i> resolution adopted by the Board of Supervisors on September 28, 2004. This resolution calls for: 1) A pedestrian-friendly mix of land uses (the site will be well served by sidewalks, paved multi-use trails, and bike lanes. The commercial area is balanced with the residential and open space areas of Governor’s Grove); 2) A reuse of vacant properties that are no longer utilized (the site is currently inactive, having last been used as a mobile home park); 3) A reduction in conflicts between incompatible land uses (the project features a substantial buffer to the south, separating it from an adjacent residential use. No other conflicts are present; 4) Connecting the land use pattern to a supportive, multi-modal transportation system (the whole of Governor’s Grove is (or will be) served by a well-developed network of public streets, sidewalks, multi-use trails, and bike lanes; 5) Defining and maintaining the historic, cultural, and aesthetic character of the Five Forks area (staff is encouraged by the building elevations that have been provided. Further, Proffer #13 establishes that elevations and other site aesthetics must be reviewed and approved by the Director of Planning, ensuring compliance with this resolution principle; 6) Ensuring the compatibility of future residential and non-residential development with the vision and principles of the Five Forks area (the land use and potential traffic generation are within the standards adopted for the Five Forks area, and are also in keeping with the 2005 rezoning that established the Governor’s Grove development).</p>

Environment

Powhatan Creek Watershed Management Plan Area	<i>Description (Page 47):</i> The 22-square mile Powhatan Creek watershed, which discharges into the James River near Jamestown Island, is ranked as having the greatest significance in biodiversity and natural areas in the Lower Peninsula of Virginia. The watershed is protected by the Powhatan Creek Management Plan adopted by the Board of Supervisors on February 26, 2002, and revised on October 10, 2006.
	<i>Staff Comment:</i> Because of its location, this property is subject to Special Stormwater Criteria (SSC) established for developments located within the Powhatan Creek Watershed Area.
Goals, Strategies and Actions	<i>Action # 5 (Page 66):</i> Encourage the use of Better Site Design, Low Impact Development, and best management practices (BMPs) to mitigate adverse environmental impacts.
	<i>Staff Comment:</i> According to information provided by the applicant, the following methods will be considered for implementation and compliance with the requirements set forth by Special Stormwater Criteria (SSC) for the Powhatan Creek Watershed Management Plan Area: (i) a bio-retention basin, (ii) pervious pavement systems, and (iii) enhanced outlet protection.

Community Character Corridor (CCC):

Suburban and Urban CCC	<i>Description (Page 84):</i> A suburban or urban CCC is characterized as an area that has moderate to high traffic volumes, moderate to high levels of existing or planned commercial or moderate-density residential uses, and may contain some wooded buffer along roads. The predominant visual character of these CCCs should be the built environment and natural landscaping, with parking and other auto-related areas clearly a secondary component of the streetscape. Development in urban and suburban CCCs should not replicate standardized designs commonly found in other communities, but rather reflect nearby historic structures, a sensitivity to the history of the County in general, and an emphasis on innovative design solutions.
	<i>Staff Comment:</i> Staff notes that the applicant proposes to maintain a 50' CCC buffer, as called for in the Comprehensive Plan (page 145) along both the John Tyler Highway and Ironbound Road Frontages of the Section 3 parcel. Staff further notes that the applicant will be working with the Landscape Planner to save mature trees along both of these buffers. Finally, it is noted that existing Proffer #13 helps to ensure that the architectural and aesthetic appearance of the proposed Rite Aid pharmacy will be in keeping with the Five Forks area and the design elements called for in the <i>Primary Principles for the Five Forks Area of James City County</i> resolution adopted by the Board of Supervisors on September 28, 2004.

Staff Comment:

Staff finds this application to be in keeping with the *Primary Principles for the Five Forks Area of James City County* resolution adopted by the Board of Supervisors on September 28, 2004, as well as the currently approved master plan for Governor’s Grove (MP-0006-2005), and the current zoning designation for the project parcel. The submitted application is generally in keeping with the tenets of the 2003 James City County Comprehensive Plan.

RECOMMENDATION:

At the time this staff report was being finalized, the applicant provided revised master plan and supplementary materials (outfall diagram, revised elevations, etc.). Thus, this staff report is not able to reflect a review of these latest revisions. Staff recommends deferral of this application to allow for a proper review of these latest revisions to the master plan, including stormwater management features. These stormwater management features affect the existing open space, conservation easement, and Community Character Corridor (CCC) buffer. The outstanding issues need to be resolved to ensure greater consistency with the adopted Primary Principles for the Five Forks Area of James City County policy, and the Comprehensive Plan.

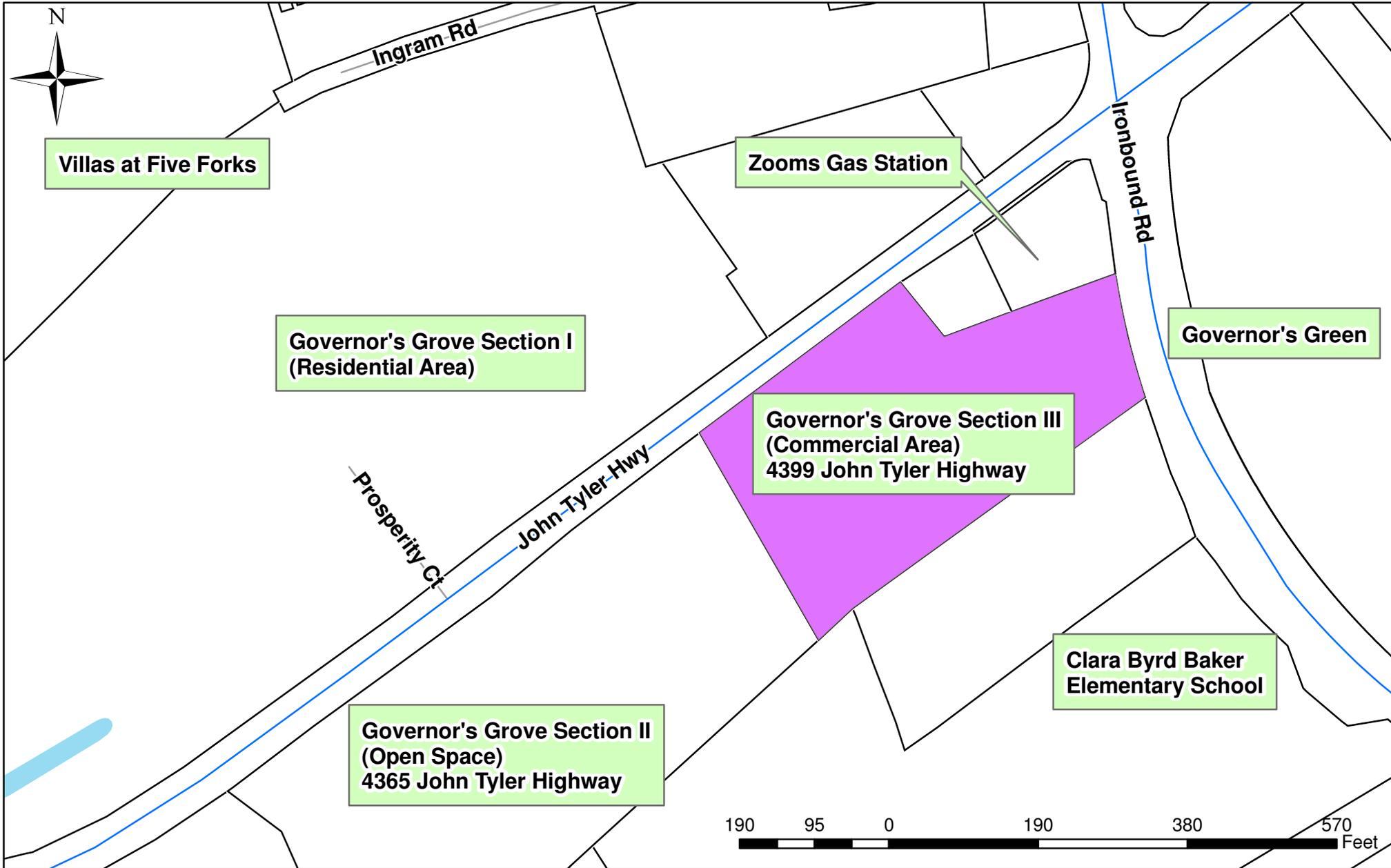
ATTACHMENTS:

1. Project Location Map
2. Originally Approved Proffers (Approved with Z-0009-2005 / MP-0006-2005)
3. Proposed Proffer Amendment (submitted with this application)
4. Request for Reduction in Required Parking Spaces (applicant letter)
5. Proposed Building Elevations
6. Alternate Outfall Diagram (received July 27, 2009)
7. Proposed Amended Master Plan (under separate cover)

JCC-Z-0002-2009 / MP-0002-2009

Governor's Grove Section III

Proffer and Master Plan Amendment



PROFFERS

THESE PROFFERS are made this 16th day of May, 2005 by FIVE FORKS, VIRGINIA, INC., a Virginia corporation, and KATHRYN S. DALY, Successor Trustee to E. H. Saunders under the E. H. Saunders Revocable Trust dated July 29, 1997 (together with their successors and assigns, the "Owner") and NATIONAL HOUSING, LLC, a Virginia limited liability company ("Buyer").

RECITALS

A. Owner is the owner of four contiguous tracts or parcels of land located in James City County, Virginia, one with an address of 4360 John Tyler Highway, Williamsburg, Virginia and being Tax Parcel 4620100014, the second with an address of 4310 John Tyler Highway, Williamsburg, Virginia and being Tax Parcel 4620100037, the third with an address of 3191 Ironbound Road, Williamsburg, Virginia and being Tax Parcel 4710100035, and the fourth with an address of 3181 Ironbound Road, Williamsburg, Virginia and being Tax Parcel 4710100036, being more particularly described on Exhibit A attached hereto (together, the "Property"). A portion of the Property is now zoned B-1 and a portion is now zoned R-8. The Property is designated Moderate Density Residential and Low Density Residential on the County's Comprehensive Plan Land Use Map.

B. Buyer has contracted to purchase the Property conditioned upon the rezoning of the Property.

C. Owner and Buyer have applied to rezone the Property from B-1 and R-8 to MU, Mixed Use District, with proffers.

D. Buyer has submitted to the County a master plan entitled "Master Plan for Rezoning of Governor's Grove for National Housing Corporation" prepared by AES Consulting Engineers dated March 21, 2005 and revised May 23, 2005 (the "Master Plan") for the Property in accordance with the County Zoning Ordinance.

E. Owner has submitted to the County a traffic impact analysis entitled "Traffic Analysis for Governor's Grove" prepared by DRW Consultants, Inc. dated March 18, 2005 (the "Traffic Study") for the Property.

F. On September 28, 2004, the Board of Supervisors of James City County adopted Primary Principles for the Five Forks Area of James City County (the "Primary Principles")

G. Owner and Buyer desire to offer to the County certain conditions on the development of the Property not generally applicable to land zoned MU.

NOW, THEREFORE, for and in consideration of the approval of the requested rezoning, and pursuant to Section 15.2-2298 of the Code of Virginia, 1950, as amended, and the County Zoning Ordinance, Owner agrees that it shall meet and comply with all of the following conditions in developing the Property. If the requested rezoning is not granted by the County, these Proffers shall be null and void.

CONDITION

1. **Master Plan.** The Property shall be developed generally as shown on the Master Plan, with only minor changes thereto that the Development Review Committee determines do not change the basic concept or character of the development. There shall be no more than 132 residential dwelling units on the Property. All residential dwelling units on the Property shall be offered for sale by the developer thereof.

2. **Owners Association.** There shall be organized an owner's association or associations (the "Association") in accordance with Virginia law in which all unit owners in the Property, by virtue of their property ownership, shall be members. The articles of incorporation, bylaws and restrictive covenants (together, the "Governing Documents") creating and governing the Association shall be submitted to and reviewed by the County Attorney for consistency with this. Proffer. The Governing Documents shall require that the Association adopt an annual maintenance budget, which shall include a reserve for maintenance of stormwater management BMPs, recreation areas, private roads and parking areas, shall

require each initial purchaser of a unit to make a capital contribution to the Association for reserves in an amount equal to one-sixth of the annual general assessment applicable to the unit (but no less than \$100.00) and shall require that the association (i) assess all members for the maintenance of all properties owned or maintained by the association and (ii) file liens on members' properties for non-payment of such assessments. Upon the request of the Director of Planning the Association shall provide evidence of such initial capital contributions. The Governing Documents shall grant the Association the power to file liens on members' properties for the cost of remedying violations of, or otherwise enforcing, the Governing Documents.

3. **Water Conservation.** (a) Water conservation standards shall be submitted to the James City Service Authority for its review and approval as a part of the site plan or subdivision submittal for development on the Property and Owner and/or the Association shall be responsible for enforcing these standards. The standards shall address such water conservation measures as limitations on the installation and use of irrigation systems and irrigation wells, the use of approved landscaping materials and the use of water conserving fixtures and appliances to promote water conservation and minimize the use of public water resources.

(b) If the Owner desires to have outdoor watering it shall provide water for irrigation utilizing surface water collection from the surface water pond that is shown on the Master Plan and shall not use James City Service Authority ("JCSA") water for irrigation purposes.

4. **Cash Contributions for Community Impacts.** For each dwelling unit on the Property the one time cash contributions set forth in this Section 4 shall be made.

(a) A contribution of \$796.00 for each dwelling unit on the Property shall be made to the James City Service Authority ("JCSA") in order to mitigate impacts on the County from the physical development and operation of the Property. The JCSA may use these funds for development of alternative water sources or any project related to improvements to the JCSA water system, the need for which is generated by the physical development and operation of the Property.

(b) A contribution of \$1,000.00 for each dwelling unit on the Property shall be made to the County in order to mitigate impacts on the County from the physical development and operation of the Property. The County may use these funds for any project in the County's capital improvement plan, the need for which is generated by the physical development and operation of the Property, including, without limitation, for emergency services equipment replacement and supply, school uses, off-site road improvements, library uses, and public use sites.

(c) A contribution of \$500.00 for each dwelling unit on the Property shall be made to the County in order to mitigate impacts on the County from the physical development and operation of the Property. The County may use these funds for any project in the County's capital improvement plan, the need for which is generated by the physical development and operation of the Property, including, without limitation, off-site stream stabilization or other stormwater management projects in the Powhatan Creek watershed.

(d) The contributions described above, unless otherwise specified, shall be payable for each dwelling unit on the Property at or prior to the final approval of the site plan or subdivision plat for such unit.

(e) The per unit contribution(s) pursuant to this Section shall be adjusted annually beginning January 1, 2006 to reflect any increase or decrease for the preceding year in the Consumer Price Index, U.S. City Average, All Urban Consumers (CPI-U) All Items (1982-84 = 100) (the "CPI") prepared and reported monthly by the U.S. Bureau of Labor Statistics of the United States Department of Labor. In no event shall the per unit contribution be adjusted to a sum less than the amounts set forth in paragraphs (a) and (b) of this Section. The adjustment shall be made by multiplying the per unit contribution for the preceding year by a fraction, the numerator of which shall be the CPI as of December 1 in the year preceding the calendar year most currently expired, and the denominator of which shall be the CPI as of December 1 in the preceding year. In the event a substantial change is made in the method of establishing the CPI, then the per unit contribution shall be adjusted based upon the figure that would have resulted had

no change occurred in the manner of computing CPI. In the event that the CPI is not available, a reliable government or other independent publication evaluating information heretofore used in determining the CPI (approved in advance by the County Manager of Financial Management Services) shall be relied upon in establishing an inflationary factor for purposes of increasing the per unit contribution to approximate the rate of annual inflation in the County.

(f) A single lump sum contribution of \$24,162.00 shall be made to the County prior to the County being obligated to grant final development plan approval for any development on the Property in order to mitigate impacts on the County from the physical development and operation of the Property. The County may use these funds for intersection improvements at the Route 5/Ironbound Road intersection or, if the County determines not to construct such improvements, for any project in the County's capital improvement plan, the need for which is generated by the physical development and operation of the Property.

5. **Route 5 Buffer.** There shall be a 150 foot buffer along the Route 5 frontage of the Property north of Route 5 generally as shown on the Master Plan. The buffer shall be exclusive of any lots or units and shall be undisturbed, except for the entrance, right turn taper and stormwater management facilities as shown generally on the Master Plan, the trails, sidewalks and bike lanes as shown generally on the Master Plan, and with the approval of the Development Review Committee, for utilities, lighting, entrance features and signs. Dead, diseased and dying trees or shrubbery, invasive or poisonous plants may be removed from the buffer area with the approval of the County-Engineer. A buffer plan showing the location of the stormwater management facility, trails, picnic facilities and providing for supplemental landscaping in the buffer area adjacent to the stormwater management BMP pond shown on the Master Plan and in the southeast corner of the buffer generally as shown on the Master Plan shall be submitted as a part of the development plan for Section 1 of the Property for review and approval by the Director of Planning. The supplemental landscaping shown on the approved plan shall be installed or its installation bonded prior to the issuance of any certificates of occupancy for dwelling units in Section 1.

6. **Entrances/Turn Lanes.** (a) There shall be one entrance into Section 1 of the Property to and from Route 5 and one entrance into Section 3 of the Property to and from Ironbound Road, all as generally shown on the Master Plan, except as specifically permitted by paragraph (b) of this Proffer 6. An eastbound left turn lane and a westbound right turn taper on Route 5 shall be constructed at the entrance to the Property from Route 5. The turn lanes proffered hereby shall be constructed in accordance with Virginia Department of Transportation ("VDOT") standards and shall be completed prior to the issuance of the first certificate of occupancy. At the time of construction of the turn lanes proffered above, Owner shall install, to the extent not already existing, a three foot paved shoulder on the north side of Route 5. Owner shall reserve sufficient area for a future vehicular connection from Section 3 of the Property to the adjacent property to the north (Tax Parcel 4710100024). The entrance into Section 3 of the Property shall be designed and constructed to accommodate a shoulder bike lane along Ironbound Road.

(b) The area in Section 1 shown on the Master Plan as "Emergency Access Only" shall be used only for emergency vehicle and pedestrian access to and from the Property and Ingram Road .unless the Board of Supervisors of the County, with the approval of VDOT, prior to preliminary site plan approval requests that the emergency vehicle access be opened to normal vehicular traffic, either as an exit only from the Property or a full entrance/exit. Any such entrance shall be constructed in accordance with VDOT standards and the design thereof shall be approved by the Director of Planning.

(c) With the prior approval of VDOT and the Board of Supervisors of the County, Owner may install a right in/right out only access from the Property to Route 5 in Section 3 in the location as generally shown on the Master Plan. Such entrance shall only be approved upon a demonstration by the applicant that 1) the entrance will alleviate an offsite congestion, delay, or safety problem at the proposed Ironbound Road entrance and 2) the entrance will not increase congestion or delay on Route 5. Any such entrance shall be constructed in accordance with VDOT standards and the design thereof shall be approved by the Director of Planning.

7.

Sidewalk Connections. There shall be a pedestrian walkway connection from the internal pedestrian walkway in Section 1 to the multi-use path adjacent to Route 5 generally as shown on the Master Plan. There shall be internal pedestrian walkways installed generally in the locations shown on the Master Plan, which may be installed in phases as residential units are constructed. Pedestrian walkways shall be installed concurrently with the construction of adjoining units.

8. **Recreation.** Owner shall provide the recreational facilities shown on the Master Plan before the County is obligated to grant certificates of occupancy for more than 30 dwelling units on the Property. The recreational facilities on the Property shall meet the standards set forth in the County's Recreation Master Plan as determined by the Director of Planning.

9. **Multi-Use Path/Easement.** (a) There shall be a paved multi-use path at least five feet in width installed on Section 1 of the Property generally as shown on the Master Plan. The path shall be located to avoid mature or specimen trees where reasonably feasible and the exact location of the trail shall be approved by the Director of Planning. The path shall be either (i) installed or (ii) bonded in form satisfactory to the County Attorney prior to the issuance of any certificates of occupancy.

(b) At or prior to the County being obligated to issue any building permits for residential dwelling units on the Property, Owner shall grant to the County free of charge an easement 35 feet in width over the area of Section 2 of the Property immediately adjacent to Route 5 permitting the County to construct and maintain a path in the easement area.

(c) At or prior to the County being obligated to issue any building permits for residential units on the Property, Owner shall grant to the County, free of charge, an easement 35 feet in width through the open space of Section 1 of the Property generally in the location shown on the Master Plan permitting the County to construct and maintain a trail in the easement area.

10. **Private Drives.** All entrance roads, interior roads, driveways, lanes or drive aisles connecting the parking areas on the Property to Route 5 or Ironbound Road shall be private.

11.

Environmental Protections. (a) The Owner shall maintain and preserve as open space with terms consistent with these Proffers the area designated on the Master Plan as Open Space generally in the locations shown on the Master Plan. The exact boundaries of the Open Space shall be shown on subdivision plats and/or site plans of the Property. The Open Space shall remain undisturbed by Owner and in its natural state, except as set forth below. Dead, diseased and dying trees or shrubbery and invasive or poisonous plants may be removed from the Open Space with the approval of the County Engineer. With the prior approval of the Environmental Division utilities may intrude into or cross the Open Space and clearing and construction activities necessary therefor may take place in the Open Space. Pedestrian paths, trails and bridges generally as shown on the Master Plan may intrude into or cross the Open Space and clearing and construction activities necessary therefor may take place in the Open Space. Stormwater BMPs may be located in the Open Space but shall not be located in nor impact the channel flow of perennial streams unless specifically approved by the Environmental Division and any stormwater BMP in Section 2 shall be located only in areas already cleared as of the date hereof. To the extent reasonably feasible, utility crossings shall be generally perpendicular through the Open Space and Owner shall endeavor to design utility systems that do not intrude into the Open Space. The Open Space shall be exclusive of lots or dwelling units.

(b) Owner shall submit to the County a master stormwater management plan as a part of the site plan submittal for the Property, including the stormwater management pond generally as shown on the Master Plan, dry swales and/or other low impact design measures, methods and measures to reduce fecal bacteria, such as aeration and maintenance of appropriate water levels in the stormwater management pond and generally attempting where feasible and practical to maximize the amount of drainage from impervious surfaces draining to pervious surfaces prior to draining into the BMP pond, for review and approval by the Environmental Division. The master stormwater management plan may be revised and/or updated during the development of the Property with the prior approval of the Environmental Division. The County shall not be obligated to approve any final development plans for development on the Property until the master

stormwater management plan has been approved. The approved master stormwater management plan, as revised and/or updated, shall be implemented in all development plans for the Property.

(c) There shall be a 10 foot construction setback adjacent to the Open Space on the Property. No building shall be permitted in this setback area. This setback shall be shown on all development plans for those areas of the Property.

(d) The Association shall be responsible for developing and implementing a turf management plan ("Turf Management Plan") for the maintenance of lawns and landscaping on the Property in an effort to limit nutrient runoff into Powhatan Creek and its tributaries. The Turf Management Plan shall include measures necessary to manage yearly nutrient application rates to turf such that the application of total nitrogen does not exceed 75 pounds per year per acre. The Turf Management Plan shall be prepared by a landscape architect licensed to practice in Virginia and submitted for review to the County Environmental Division for conformity with this proffer. The Turf Management Plan shall include terms permitting enforcement by either the Owners Association or the County. The Turf Management Plan shall be approved by the Environmental Division prior to final subdivision or site plan approval.

(e) Owner shall explore the potential of shared stormwater management with the owner of the adjoining parcels, County Parcel No.'s 4620100015 and 4620100011.

12. **Archaeology.** A Phase I Archaeological Study for the Property shall be submitted to the Director of Planning for his review and approval prior to land disturbance. A treatment plan shall be submitted to, and approved by, the Director of Planning for all sites in the Phase I study that are recommended for a Phase II evaluation, and/or identified as being eligible for inclusion on the National Register of Historic Places. If a Phase II study is undertaken, such a study shall be approved by the Director of Planning and a treatment plan for said sites shall be submitted to, and approved by, the Director of Planning for sites that are determined to be eligible for inclusion on the National Register of Historic Places and/or those sites that require a Phase III study. If in the Phase II study, a site is determined eligible for nomination to the National Register of Historic Places and said site is to be

preserved in place, the treatment plan shall include nomination of the site to the National Register of Historic Places. If a Phase III study is undertaken for said sites, such studies shall be approved by the Director of Planning prior to land disturbance within the study area. All Phase I, Phase II and Phase III studies shall meet the Virginia Department of Historic Resources' Guidelines for Preparing Archaeological Resource Management Reports and the Secretary of the Interior's Standard and Guidelines for Archaeological Documentation, as applicable, and shall be conducted under the supervision of a qualified archaeologist who meets the qualifications set forth in the Secretary of the Interior's Professional Qualification Standards. All approved treatment plans shall be incorporated into the plan of development for the site and shall be adhered to during the clearing, grading and construction activities thereon.

13. **Architectural Review.** Prior to the County being obligated to grant final development plan approval for any of the buildings shown on any development plan for any portion of the Property, there shall be prepared and submitted to the Director of Planning for approval architectural and landscaping plans, including architectural elevations, for the Director of Planning to review and approve for general consistency with the guidelines from Article III, Section 5 of the Primary Principles and the architectural elevations submitted herewith entitled "Governor's Grove at Five Forks, Conceptual Elevations". The Director of Planning shall review and either approve or provide written comments setting forth changes necessary to obtain approval within 30 days of the date of submission of the plans in question. Decisions of the Director of Planning may be appealed to the Development Review Committee, whose decision shall be final. Final plans and completed buildings shall be consistent with the approved conceptual plans.

14. **Updated Traffic Study.** If any use is proposed on Section 3 of the Property with a materially, as determined by the Director of Planning, higher trip generation based on ITE trip generation figures than the use used in the Traffic Study which results in an overall materially, as determined by the Director of Planning, higher trip generation from Section 3 of the Property, then Owner shall submit with the proposed site plan for the new use an updated traffic impact study to the Director of Planning and VDOT based on the new proposed use for their review and approval to confirm that the new A.M. and P.M.

peak hour new trips from the different use fall within the trip generation thresholds set forth in Article I, Section 5 of the Primary Principles. If the County does approve development plans for such a use, at the time of final plan approval Owner shall make an additional one time cash contribution to the County calculated pursuant to the formula set forth on Exhibit B attached hereto for the incremental trip generation from the new use over and above the trip generation from Section 3 assumed in the Traffic Study in order to mitigate impacts on the County from the physical development and operation of the Property. The County may use these funds for any project in the County's capital improvement plan, the need for which is generated by the physical development and operation of the Property, including, without limitation, intersection improvements at the Route 5/Ironbound Road intersection. If the update to the Traffic Study indicates trip generation from Section 3 exceeds the trip generation thresholds set forth in Article I, Section 5 of the Primary Principles, the County shall not be obligated to approve development plans for such use.

15. **Height Limitation.** No building in Section 1 or Section 3 of the Property shall exceed 45 feet in height.

16. **Commercial Use Restrictions.** The following uses shall not be permitted in Section 3 of the Property:

Convenience store
Automobile service station
Fast food restaurant

17. **Buffer/Open Space Landscaping.** Any areas of buffer or open space proffered hereby that are disturbed by adjacent construction activity on the Property shall be landscaped in accordance with the County's landscape ordinance requirements, subject to any restrictions in applicable easements.

Exhibit A
Property Description

Parcel I

All that certain tract, piece or parcel of land, with any and all the buildings, and improvements thereon, situate, lying and being in Berkeley District, James City County, Virginia, formerly situated in Jamestown District, James City County, Virginia, lying just west of the "Five Forks" intersection on both sides of State Route 5, said parcel of land containing 27.38 acres, more or less, but hereby conveyed in gross and not by the acre, said property known as "Goat Hill", and being shown upon that certain blue print plat, thereof entitled, "COMPILED PLAT SHOWING THE EMILY M. HALL PROPERTY, SITUATED IN JAMESTOWN DISTRICT, JAMES CITY COUNTY, VIRGINIA," made by Vincent D. McManus, C. L. S. and dated November, 1945, a blue print copy of which plat is recorded in the Clerk's Office of the Circuit Court of the City of Williamsburg and James City County in Plat Book 23, page 4, to which said plat reference is hereby made for a more particular description of the property conveyed herein:

LESS AND EXCEPT that certain lot of land, containing 1.70 acres, more or less, conveyed by Emily M. Hall, unmarried, to Albert M. Baker and Frances M. Baker, husband and wife, by deed dated December 18, 1951, and recorded December 19, 1951 in James City County Deed Book No. 46, page 210, said conveyance is more fully shown and described on that certain plat entitled, "Plat Showing Lot Surveyed For Emily M. Hall, Located Near Five Forks, James City County, Virginia", surveyed December, 1951, and made by W. D. Thomas, Surveyor, and duly recorded in James City County Plat Book No. 13, page 1, to which said plat reference is hereby made for a more particular description of the property excepted from the hereinabove referred to plat recorded in the aforesaid Clerk's Office in Plat Book 23, page 4.

AND FURTHER LESS AND EXCEPT all that certain piece or parcel of land, lying, situate and being in Berkeley District, James City County, Virginia, containing 0.485 acres, more or less, and shown and designated as PARCEL "A", on that certain blueprint plat entitled, "PLAT OF PART OF GOAT HILL, PROPERTY OF EDMUND H. SAUNDERS", dated February, 1968, and made by Stephen Stephens, C. L. S., a copy of which said blueprint plat is attached to a deed from the party of the first part to Heffner Oils, Incorporated, a Virginia corporation, dated April 30, 1968, and recorded in the aforesaid Clerk's Office on May 17, 1968 in Deed Book 116, page 290 and incorporated therein by reference, to which deed and plat reference is made for a more particular description of the property therein conveyed.

Parcel I being a portion of the property conveyed to the party of the first part by Deed dated September 30, 1965, from Emily M. Hall, unmarried, and recorded in the aforesaid Clerk's Office in Deed Book 103, page 52.

Parcel II

All that certain piece, parcel or lot of land, together with any improvements thereon, lying and being in Jamestown Magisterial District, James City County, Virginia, as shown and designated on a certain blueprint plat entitled, "Plat Showing Portion of Land Belonging to A. M. Baker, Located Near Five Forks, James City County, Virginia", made by W. D. Thomas, DC.S., November, 1952, a copy of which plat is duly of record at Plat Book 13, page 26, in the Clerk's Office of the Circuit Court of the City of Williamsburg and County of James City, Williamsburg, Virginia. Said property is bounded and described as follows on said plat: Commencing at a point in the center of the road which leads from Powell's Pond to Five Forks; thence, S 76 20' W a distance of 212.3 feet along the line of the property thereby conveyed and the land formerly belonging to A. M. Baker; thence N 30 00' W a distance of 100 feet along the line of the property thereby conveyed and the land formerly of Emily Hall; thence, N 76 02' E a distance of 253.4 feet along the line of the property thereby conveyed and the land formerly of A. M. Baker to a point in the center of the aforesaid road; thence up said road S 0 23' E a distance of 100 feet to the point of departure in the center of said road.

Being the same property as that conveyed to the party of the first part herein by deed dated June 7, 1968, from Lois S. Nixon and Lawrence N. Nixon, her husband, and Mary C. Taylor and Donald R. Taylor, her husband, which said deed is duly of record in the aforesaid Clerk's Office in Deed Book 117 at page 60.

Parcel III

All that certain lot, piece or parcel of land together with the buildings and improvements thereon and the appurtenances thereunto belonging or in anywise appertaining, lying, being and situate in Berkeley District, James City County, Virginia, being described as follows: commencing at a point in the center of the county road leading from Five Forks to Virginia State Route #615, said point being 276.13 feet southwest of the concrete marker set by the Highway Department to designate the southwest limit of the right of way for Virginia State Highway Routs #5, at the intersection between the said Route #5 and the road leading from Five Forks to Route #615; thence South 62 15' West a distance of 15 feet to an iron pipe; said iron pipe being the point where the said road and the property therein conveyed converge; thence continuing South 62 15'.W. a distance of 159.19 feet, more or less, to an iron pipe, said pipe being the southwest boundary of the property thereby conveyed; thence North 30 00' West a distance of 105 feet, more or less, to a point, said point being the northwest corner of the property thereby conveyed thence North 76 20' East a distance of 227.3 feet, more or less, to a point, said point being in the center of the road leading from Five Forks to Virginia State Route #615 and being the Northeast corner of the property thereby conveyed; thence South 0 23' East a distance of 65 feet, more or less, to the point of beginning.

Being the same property as that conveyed to the party of the first part from Walter. H. Boswell and Louise C. Boswell, husband and wife, by deed dated September 28, 1970 and recorded in the aforesaid Clerk's Office at Deed Book 128, page 268.

Parcel IV

All that certain lot, piece or parcel of land, containing a total of 2.77 acres +/- lying, being situate in Berkeley Magisterial District, James City County, Virginia, as shown, set forth and designated as 2.00 AC. and 0.77 AC. on that certain plat entitled, "PLAT SHOWING BOUNDARY LINE ADJUSTMENT AND PROPERTY LINE EXTINGUISHMENT BETWEEN THE PROPERTIES OWNED BY : THE PATRICK COMPANIES, INC. AND FIVE FORKS, VIRGINIA INCORPORATED"), DATED April 21, 1998 and prepared by AES, Consulting Engineers, which plat is recorded in the Clerk's Office of the Circuit Court for the City of Williamsburg and County of James City, in Plat Book 69, at page 56.

TOGETHER with all singular the rights, privileges, hereditaments and appurtenances to the said premises belonging or in anywise incident or appertaining.

The foregoing conveyance is made subject to all easements, conditions or restrictions of record or apparent on the ground insofar as they may lawfully affect the property conveyed hereby.

ALL LESS AND EXCEPT that certain portion of the property containing 1.6 acres, more or less, shown and set out on the Master Plan as "Existing B-1 to Remain".

Exhibit B
Formula for Contributions to Intersection Improvements

Any increase in trip generation will increase the contribution according to the following formula:

1. $[(AM * X) + (PM * Y)] / (AM + PM) = \text{Weighted Percent of New Trips}$
2. $\text{Weighted Percent of New Trips} * \$123,850 = \text{Cash Contribution}$

Where AM=additional AM peak trips, PM=additional PM peak trips, X=AM/500, and Y=PM/650.

FIRST AMENDMENT TO PROFFERS

THIS FIRST AMENDMENT TO PROFFERS is made this 29th day of July, 2009, by FIVE FORKS 2, LLC, a Virginia limited liability company (“Owner”) and FIVE FORKS 3, LLC, a Virginia limited liability company (“Five Forks 3”) and JARD PROPERTIES, LLC, a Virginia limited liability company (“Buyer”).

RECITALS

A. Owner is the owner of a parcel of land located in James City County, Virginia, with an address of 4399 John Tyler Highway, Williamsburg, Virginia, and being Tax Parcel 4710100115 (the “Five Forks 2 Parcel”). Five Forks 3 is the owner of an adjacent parcel of land located in James City County, Virginia, with an address of 4365 John Tyler Highway, Williamsburg, Virginia, and being Tax Parcel 4620100014A (the “Five Forks 3 Parcel”).

B. The Five Forks 2 Parcel and the Five Forks 3 Parcel (as well as other property known as Section 1 of Governor’s Grove) are both now zoned Mixed Use (MU), with proffers, and are subject to (i) plan of development entitled “Master Plan for Rezoning of Governor’s Grove for National Housing Corporation” prepared by AES Consulting Engineers dated March 21, 2005 and revised May 23, 2005 (the “Existing Master Plan”) and (ii) Proffers made by Five Forks, Virginia, Inc., Kathryn S. Daly, Successor Trustee to E. H. Saunders under the E. H. Saunders Revocable Trust dated July 29, 1997 and National Housing, LLC, dated May 16, 2005 and recorded in the Clerk’s Office of the Circuit Court for the City of Williamsburg and County of James City as Instrument No. 050019045 (the “Existing Proffers”).

C. Buyer has contracted to purchase the Five Forks 2 Parcel conditioned upon the approval of an amendment to the Existing Master Plan and Existing Proffers. Buyer, Owner and Five Forks 3 have applied to amend the Existing Master Plan and Existing Proffers in certain

respects. The applications have been assigned case numbers Z-0002-2009 and MP-0002-2009 (the “Applications”) by the County Planning Department. Under the Existing Master Plan and Existing Proffers, the Five Forks 2 Parcel is shown and designated as Section 3 of Governor’s Grove and the Five Forks 3 Parcel is shown and designated as Section 2 of Governor’s Grove. Section 2 and Section 3 of Governor’s Grove are hereinafter sometimes referred to as the “Property”. All other capitalized terms used herein and not otherwise defined shall have the definition set forth in the Existing Proffers.

D. Buyer has submitted to the County an amended plan of development for Sections 2 and 3 entitled “Master Plan and Rezoning Amendment for Governor’s Grove, Section 3” made by AES Consulting Engineers and dated May 20, 2009, last revised July 29, 2009 (the “Amended Master Plan”).

E. Owner and Five Forks 3 desire to offer to the County certain amended conditions on the development of the Property not generally applicable to land zoned MU for the protection and enhancement of the community and for the high-quality and orderly development of the Property in accordance with Section 15.2-2296 *et seq.* of the Virginia Code and Section 24-16 of the Zoning Ordinance.

NOW, THEREFORE, in consideration of the approval by the County of the Applications and the Amended Master Plan and the acceptance of this First Amendment to Proffers, the Existing Proffers are hereby amended as set forth below. Those existing proffers established with Rezoning Z-0009-2005, and not specifically amended below, shall remain in full force and effect.

1. Section 3 Master Plan. Section 3 of the Property shall be developed generally as shown on the Amended Master Plan. Development plans may deviate from the Amended Master

Plan as provided in Section 24-518 of the Zoning Ordinance, as the same may be amended.

2. **Proffer 6 Amendment.** Section 6 of the Existing Proffers is hereby deleted in its entirety and replaced with the following new Section 6:

6. **Entrances/Turn Lanes.** (a) There shall be one entrance into Section 1 of the Property to and from Route 5, one entrance into Section 3 of the Property to and from Route 5 and one entrance into Section 3 of the Property to and from Ironbound Road, all as generally shown on the Amended Master Plan. The entrances shall have the following turn lanes:

(i) At the entrance to Section 1 of the Property from Route 5, an eastbound left turn lane and a westbound right turn taper on Route 5 shall be constructed.

(ii) At the entrance to Section 3 of the Property from Route 5, a westbound two way left turn lane serving the Section 3 entrance as well as Zoom's and The Shops at Five Forks and an eastbound right turn taper on Route 5 shall be constructed.

(iii) At the entrance to Section 3 of the Property from Ironbound Road, left turn storage for northbound left turns into Section 3, equal or greater storage for existing left turns on Ironbound Road, a paved shoulder adequate for a bike lane on southbound Ironbound Road from Route 5 to the school entrance, a paved shoulder adequate for a bike lane on northbound Ironbound Road from the Governor's Green driveway on Ironbound Road to Route 5 and realignment of the northbound Ironbound Road approach to the Route 5/Ironbound Road signalized intersection that corrects the existing lateral transition problem on southbound Ironbound Road through the intersection shall be constructed or installed. This entrance shall be designed, constructed and signed to restrict left turns out of the entrance onto northbound Ironbound Road. .

The turn lanes and other improvements proffered hereby shall be constructed in

accordance with Virginia Department of Transportation (“VDOT”) standards and shall be completed prior to the issuance of the first certificate of occupancy for the Section served by the turn lane or improvement in question. At the time of construction of the turn lanes proffered above, Owner shall install, to the extent not already existing, a three foot paved shoulder on the north side of Route 5. Owner shall reserve sufficient area for a future vehicular connection from Section 3 of the Property to the adjacent property to the north (Tax Parcel 4710100024). The entrance into Section 3 of the Property shall be designed and constructed to accommodate a shoulder bike lane along Ironbound Road.

(b) The area in Section 1 shown on the Master Plan as “Emergency Access Only” shall be used only for emergency vehicle and pedestrian access to and from the Property and Ingram Road unless, prior to preliminary site plan approval, the Board of Supervisors of the County, with the approval of VDOT, requests that the emergency vehicle access be opened to normal vehicular traffic, either as an exit only from the Property or a full entrance/exit. Any such entrance shall be constructed in accordance with VDOT standards and the design thereof shall be approved by the Director of Planning.

3. Proffer 9 Amendment. Section 9 of the Existing Proffers is hereby amended by the addition of a new paragraph (d) reading as follows:

(d) At or prior to the County being obligated to issue a certificate of occupancy for a building on Section 3 of the Property, Owner shall (i) have installed a paved multi-use path at least eight feet in width on Section 3 of the Property generally as shown on the Amended Master Plan and (ii) granted the County an easement in form reasonably satisfactory to the County Attorney which grants public access to the path and the right for the County to enter upon the path for purposes of maintenance, repair and replacement. The path shall be located to avoid

mature or specimen trees where reasonably feasible and the exact location of the trail shall be approved by the Director of Planning.

4. **Proffer 11 Amendment**. Proffer 11 of the Existing Proffers is hereby amended by the addition of a new paragraph (f) reading as follows:

(f) Five Forks 3 has previously entered into a Deed of Easement for Natural Open Space dated October 29, 2006 to James City County (the "Easement") over Section 2 of the Property, among other areas. If Owner proposes any adjustments to the easement area under the Easement, it shall by deed of exchange subject a like amount of land from Section 3 to the Easement so that the amount of land covered by the Easement is not decreased.

WITNESS the following signatures:

FIVE FORKS 2, LLC

By: _____
Title:

STATE OF VIRGINIA
CITY OF WILLIAMSBURG, to-wit:

The foregoing instrument was acknowledged before me this ____ day of _____, 2009, by _____.

_____(SEAL)
Notary Public

My Commission expires: _____

FIVE FORKS 3, LLC

By: _____
Title:

STATE OF VIRGINIA
CITY OF WILLIAMSBURG, to-wit:

The foregoing instrument was acknowledged before me this ____ day of _____,
2009, by _____.

_____(SEAL)
Notary Public

My Commission expires: _____

JARD PROPERTIES, LLC

By: _____
Title:

STATE OF VIRGINIA
CITY OF WILLIAMSBURG, to-wit:

The foregoing instrument was acknowledged before me this ____ day of _____,
2009, by _____.

_____(SEAL)
Notary Public

My Commission expires: _____

**EXHIBIT A
PROPERTY DESCRIPTION**

A. FIVE FORKS 2 PARCEL – Section 3 of Property

B. FIVE FORKS 3 PARCEL – Section 2 of Property

July 21, 2009

Mr. Richard Krapf, Chair
James City County Planning Commission
101-A Mounts Bay Road
Williamsburg, Virginia 23185

**RE: Case #Z-0002-2009/MP-0002-2009
Governor's Grove Section 3
Parking Waiver Request**

Dear Mr. Krapf:

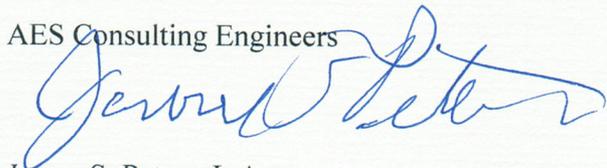
AES Consulting Engineers, on behalf of Jard Properties, respectfully requests that the Planning Commission grant a Parking Waiver for the proposed pharmacy at Governor's Grove. Our initial submittal of May 20, 2009 illustrated a 14,000 S.F. pharmacy with parking provided at a ratio of 1 space per 200 S.F., yielding 70 spaces. As a result of discussions with the proposed user, our traffic consultant, citizens, and Commission and Board members we would like to propose a reduction in the James City County parking requirement from 70 spaces to 52 spaces.

Parking generation for drugstores with a drive-thru from the 3rd Edition Parking Generation by ITE shows the highest weekday peak hour parking rate was 3.67 vehicles per thousand square feet. The highest Saturday generation was 3.58 vehicles per thousand square feet. 14,000 square feet at 3.67 spaces per thousand square feet translates to 52 spaces. We believe, and the proposed end user agrees, based on experience at other locations, that this number of parking spaces is more than sufficient for a pharmacy on Section 3 at Governor's Grove. This solution further serves to reduce impervious surfaces on the site; and, coupled with the use of pervious pavement and bio-retention, allows for more infiltration of surface runoff from the development.

Thank you for your consideration of this request.

Sincerely,

AES Consulting Engineers



James S. Peters, L.A.

Landscape Architect / Land Planner

JSP:gcs

S:\Jobs\9263\05-Lot 3\Admin\Correspondence\Letters\926305L01-jsp-parkingwaiver.doc



5 SIDE ELEVATION - ENTRY
1/8" = 1'-0"



4 SIDE ELEVATION - DRIVE THRU
1/8" = 1'-0"



2 REAR ELEVATION
1/8" = 1'-0"



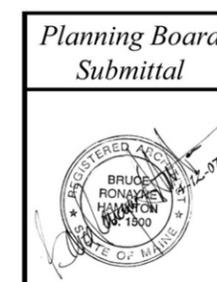
3 ENTRY FRONT VIEW
1/8" = 1'-0"



Image intended to show building character. Does not match orientation to elevations shown.



1 FRONT ELEVATION - ENTRY
1/8" = 1'-0"

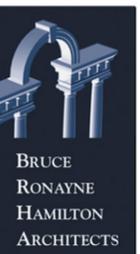


RITE AID (STORE 03278-09)

33 DEPOT ROAD
FALMOUTH, MAINE
APRIL 12, 2007

ARCHITECTURE
LAND PLANNING
INTERIOR DESIGN
3D VISUALIZATION

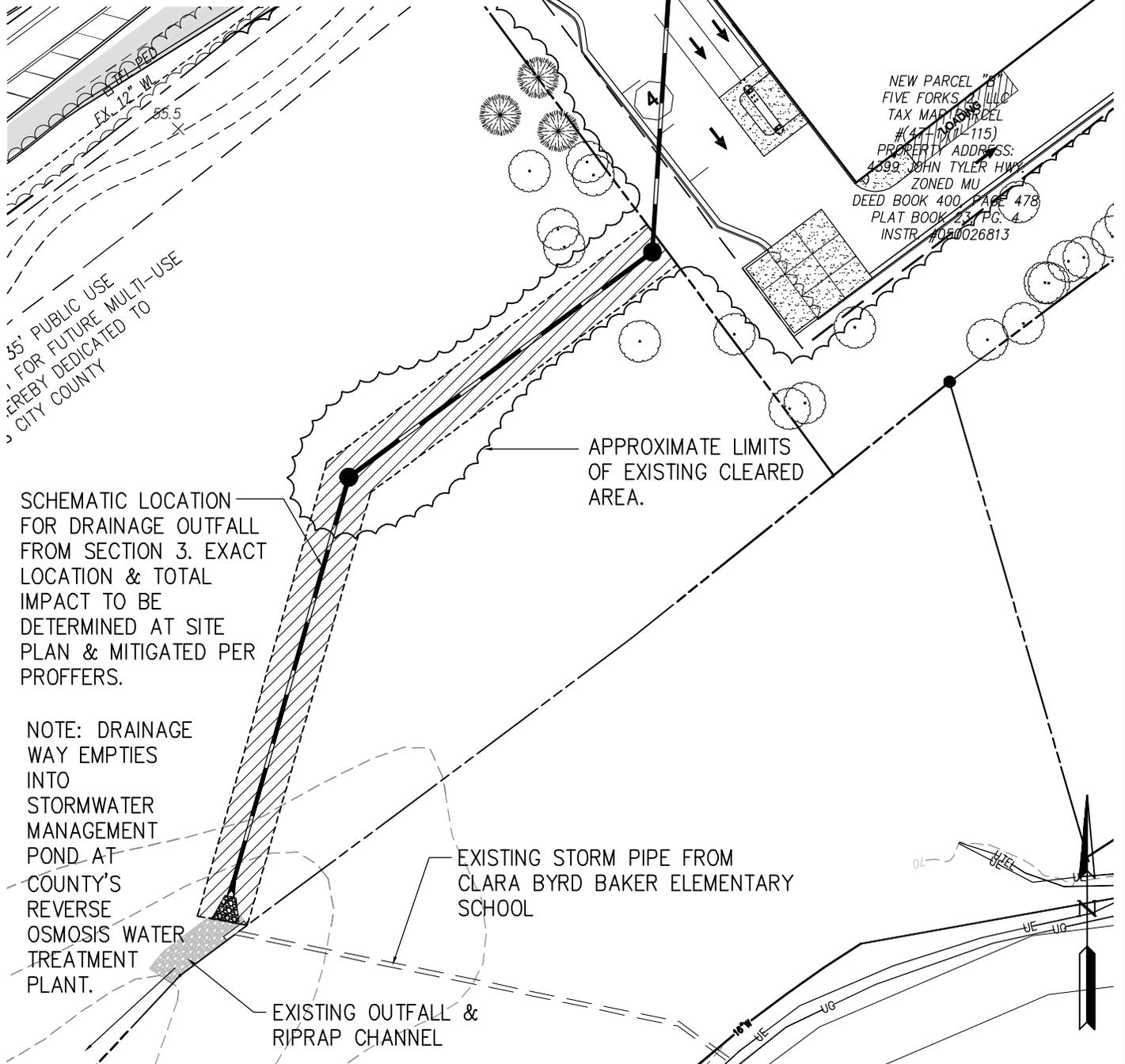
833 TURNPIKE ROAD P.O. BOX 104
NEW IPSWICH NEW HAMPSHIRE 03071



GRAPHIC SCALE



SCALE: 1" = 60'



NEW PARCEL "B"
FIVE FORKS
TAX MAP PARCEL #47-10-115
PROPERTY ADDRESS: 4399 JOHN TYLER HWY
ZONED MU
DEED BOOK 400, PAGE 478
PLAT BOOK 23, PG. 4
INSTR. #050026813

55' PUBLIC USE
FOR FUTURE MULTI-USE
HEREBY DEDICATED TO
CITY COUNTY

SCHEMATIC LOCATION FOR DRAINAGE OUTFALL FROM SECTION 3. EXACT LOCATION & TOTAL IMPACT TO BE DETERMINED AT SITE PLAN & MITIGATED PER PROFFERS.

NOTE: DRAINAGE WAY EMPTIES INTO STORMWATER MANAGEMENT POND AT COUNTY'S REVERSE OSMOSIS WATER TREATMENT PLANT.

EXISTING STORM PIPE FROM CLARA BYRD BAKER ELEMENTARY SCHOOL

EXISTING OUTFALL & RIPRAP CHANNEL



CONSULTING ENGINEERS
WILLIAMSBURG • RICHMOND • GLOUCESTER • FREDERICKSBURG

5248 Olde Towne Road, Suite 1
Williamsburg, Virginia 23188
(757) 253-0040 Fax (757) 220-8994

GOVERNOR'S GROVE SECTION 3

COUNTY CASE Z-0002-2009/MP-0002-2009

ADDENDUM NO. 2

PROJECT DESCRIPTION

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 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 special use permit 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 a special use permit for the accessory apartment. During staff's site visit on July 10, 2009, framing, plumbing and HVAC equipment installation appeared to be completed. The applicant has 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 a special use permit 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% maximum. The maximum livable area of the apartment was determined by adding the floor area as stated in the homes 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 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 onsite. 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 HOA restrictions preventing the addition of an accessory apartment.

COMPREHENSIVE PLAN

Land Use Map

Designation	<p>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.</p> <p>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.</p>
Goals, strategies and actions	<p><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.</p> <p>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.</p>

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 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 770sf apartment in Page Landing and in 2002 denied a 400sf 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 a Special Use Permit 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 principle 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 principle residence and more closely resembles a duplex. The Board approved one other Special Use Permit 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 similar sized accessory apartment 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 areas and subdivisions in the County. However, should the Commission recommend approval of the application, staff recommends such approval be contingent upon the conditions listed below:

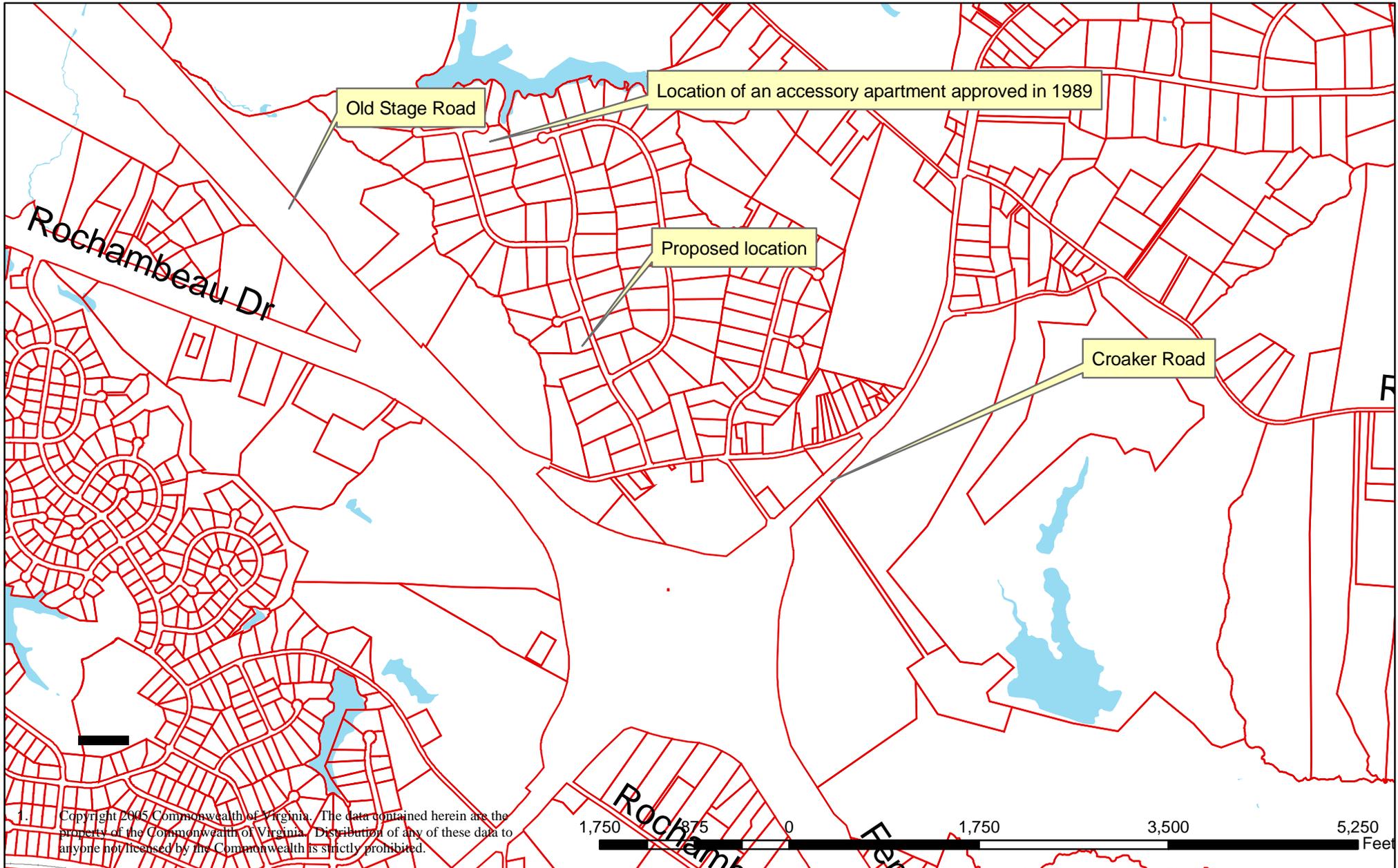
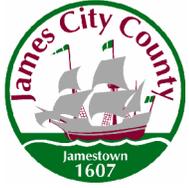
1. This Special Use Permit shall be valid for a single accessory apartment, within the confinements of the existing principle dwelling's attic and not to exceed 35% of the total floor area of the dwelling.
2. The permitted accessory apartment shall be part of the owner occupied residential structure 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 special use permit, the accessory apartment shall receive a Certificate of Occupancy, or the special use permit shall become void.
5. A door providing direct internal access between the accessory apartment and the primary dwelling shall be maintained at all times.
6. This special use permit is not severable and any invalidation of any word, phrase or sentence shall invalidate the remainder.

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 & stairs
7. Location map

SUP-0012-2009

101 Birch Circle Accessory Apartment



Development Review Committee Actions Report
July 29, 2009

SP-0060-2007 Pleasant Hill Car Wash

Mr. Doug Harbin, Wayne Harbin Builders Inc., has requested a modification to DRC approved elevations for a proposed carwash at 7152 Richmond Road. The applicant is proposing a roof color of ash gray, rather than hunter green as originally approved by the DRC. As the original elevations were not approved administratively, the proposed modifications were brought back to the DRC for a consistency determination.

DRC Action: The DRC approved of the roof color modification from hunter green to ash gray.

PLANNING DIRECTOR'S REPORT

August 2009

This report summarizes the status of selected Planning Division activities during the past month.

- **New Town.** The Design Review Board met in July to consider numerous items. Sign submittals were included for Bank of America, BB&T, and the Patriots Park office building (on Discovery Park Boulevard). Three flag poles were also approved for the entrance to WindsorMeade Villas. Finally, the DRB considered elevations and site plans for three single family detached houses in Section 7 (these are the first of this housing type proposed in New Town). The houses were in a unique location with front access and significant environmental features in the rear so the guidelines needed to be looked at closely and balanced with actual conditions. DRB ended up provisionally approving the lots, but noted some additional design work and information should be brought to the August meeting.
- **Policy Committee Meetings.** The Policy Committee developed a draft CIP ranking criteria document, which went to the Board of Supervisors on July 14. No additional Committee meetings have been scheduled. Modifications are underway to the CIP application, which gets completed by Department and Division managers.
- **Steering Committee.** The Steering Committee held its final meeting on June 25, where the draft Comprehensive Plan was unanimously approved. The Planning Commission held two work sessions in July to go through an overview of the plan and discuss the following sections: introduction, environment, economic development, housing, demographics, population needs, public facilities. A joint work session with the Board of Supervisors was held on July 28 to review the plan, Planning Commission discussion items, and the implementation guide. Additional work sessions will be scheduled to discuss land use, transportation, parks and recreation, and community character.
- **Monthly Case Report.** For a list of all cases received in the last month, please see the attached document.
- **Board Action Results** – July 14th & July 28th
 - SUP-0008-2009 CVS at Norge - Adopted 3-2 (McGlennon, Icenhour – No)
 - S-0012-2009 Chanco's Grant Vacation of Recreation Area Designation – Deferred

Allen J. Murphy, Jr.

Case Type	Case Number	Case Title	Address	Description	Planner	District
Conceptual Plans	C-0033-2009	Powhatan Parkway Cell Tower	4445 POWHATAN PKWY	Proposal for a 120' cell tower on parcel owned by Hospice Care of Williamsburg at the end of Powhatan Parkway, Performed Balloon test, Planning Director determined it was not camouflaged, therefore a Special Use Permit is needed	Leanne Reidenbach	Powhatan
	C-0034-2009	Sunrise Food Mart	4854 LONGHILL ROAD	This application is to add a drive through window	Jason Purse	Powhatan
	C-0035-2009	Freedom Market	5534 CENTERVILLE RD	This application proposes a small convenience market with fuel sales	Luke Vinciguerra	Powhatan
	C-0036-2009	Sale and Repair of Lawn Equipment	8231 RICHMOND ROAD	Construction of a lawn equipment sale and repair as well as retail sales of plant and garden supplies	David German	Stonehouse
	C-0037-2009	Woods Family Subdivision, Hicks Island Road	8443 HICKS ISLAND RD	Subdivision of a single parcel for a family subdivision	Kathryn Sipes	Stonehouse
	C-0038-2009	New Town Shared Parking Update	5206 MONTICELLO AVENUE	Shared parking update	Leanne Reidenbach	Berkley
	C-0039-2009	Alternative Waste Solutions Contractor's Warehouse	6266 CENTERVILLE RD	Storage of dumpsters and a personal residence on site	Leanne Reidenbach	Powhatan
Site Plan	SP-0060-2009	Prudential Towne Realty, Attached Porch		Applicant proposes adding an attached porch to an existing building. Porch would be placed upon an existing concrete pad.	Terry Costello	
	SP-0061-2009	Centerville - Jolly Pond Intersection Improv		Project consists of widening Centerville Road for a northbound left turn lane, widening Jolly Pond Road for an east bound left turn lane, and potential signalization of the intersection	Leanne Reidenbach	
	SP-0062-2009	Williamsburg Landing - Woodhaven Exp	5560 WILLIAMSBURG LANDING DR	17,888 square foot total additions to various components of assisted living facility. Includes 6 new units and 11 new parking spaces	Leanne Reidenbach	Jamestown
	SP-0063-2009	Crowne Plaza Deck SP Amend	6945 POCAHONTAS TR	Addition of deck and pergola in courtyard area to facility	Jose Ribeiro	Roberts
	SP-0064-2009	Busch Gardens Italy Pasture Storage Container SP Amend	7851 POCAHONTAS TR	Add 40 x 8 storage container	Brian Elmore	Roberts

Site Plan	SP-0065-2009	Williamsburg Community Chapel SP Amend for Staff Parking	3899 JOHN TYLER HGWY	Applicant proposes 12 new parking spaces. The amendment would reduce impervious cover by 225 square feet	Jennifer VanDyke	Berkley
	SP-0066-2009	SP Amendment - Pleasant Hill Station Car Wash	7152 RICHMOND ROAD	Adjustment of self serve bays on the car wash building. Adjustment of sidewalk to 4' along Richmond Road	Luke Vinciguerra	Stonehouse
	SP-0067-2009	Busch Gardens Royal Palace Sprinkler SP Amend	7851 POCAHONTAS TR	Installing a sprinkler system in an existing building	Jason Purse	Roberts
Special Use Permit	SUP-0013-2009	Cardinal Acres Duplex	CARDINAL ACRES DR	Build duplex unit consistent with neighboring properties	Sarah Propst	Berkley
	S-0039-2009	Hull & Allen BLA	2201 JOLLY POND ROAD	Boundary line adjustment between Hull and Allen properties. Hull is purchasing 12.16 acres from Allen	Terry Costello	Powhatan
	S-0040-2009	Tajoch 2 LLC ROW Acquisition	3800 LONGHILL ROAD	Right of way acquisition at intersection of Longhill and Centerville	Leanne Reidenbach	Powhatan
	S-0041-2009	Joel Barber ROW Acquisition	5553 CENTERVILLE RD	Right of way acquisition at the intersection of Centerville and Longhill	Leanne Reidenbach	Powhatan
	S-0042-2009	Kingsmill Quarterpath Trace Village BLA	108 EDWARD WAKEFIELD	Boundary Line adjustment	Brian Elmore	Roberts

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