

A G E N D A
JAMES CITY COUNTY PLANNING COMMISSION
JANUARY 12, 2004 - 5:30 P.M.

1. ROLL CALL
2. PRESENTATIONS
 - A. Resolution – In Recognition of Mr. John F. Hagee
 - B. Site Plan Review Process Update
3. MINUTES
 - A. November 3, 2003
 - B. December 8, 2003
4. COMMITTEE AND COMMISSION REPORTS
 - A. Development Review Committee Report
 - B. Policy Committee – By-law Changes
 - C. Other Committees
5. PUBLIC HEARINGS
 - A. Z-9-03 - Williamsburg Community Chapel Rezoning
Z-12-03 - Jamestown Hundred Proffer and Master Plan Amendment
SUP-20-03 - Jamestown Hundred Master Plan Amendment
 - B. Z-11-03 & MP-11-03 - Stonehouse Modifications
 - C. Z-14-03 & MP-01-04 Powhatan Secondary Proffer Amendment
 - D. SUP-23-03 - Nice Office Building
 - E. SUP-22-03 - Busch Oktoberfest Expansion
 - F. AFD-12-86 – Gospel Spreading Church – Gilley Addition
 - G. Z-8-03 & MP-9-03 - Norge Neighborhood
 - H. Z-13-03 & MP-12-03 & SUP-29-03 Michelle Point
 - I. SUP-24-03 - Communications Tower - 3135 Forge Road
SUP-27-03 - Communications Tower - 129 Industrial Boulevard
SUP-28-03 - Communications Tower - 137 Industrial Boulevard

SUP-25-03 - Communications Tower - 9320 Merrimac Trail
SUP-26-03 - Communications Tower -1204 Jolly Pond Road
6. PLANNING COMMISSION CONSIDERATION
 - A. RESOLUTION - ZONING ORDINANCE AMENDMENT
7. PLANNING DIRECTOR’S REPORT
8. ADJOURNMENT

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

1. ROLL CALL
A. Joe Poole, III
John Hagee
Donald Hunt
Peggy Wildman
George Billups
Joseph McCleary
Wilford Kale

ALSO PRESENT
Leo Rogers, Deputy County Attorney
O. Marvin Sowers, Jr., Planning Director
David Anderson, Planner
Toya Ricks, Administrative Services Coordinator

2. MINUTES

The Commission approved the minutes of the October 6, 2003 meeting with a unanimous voice vote.

3. COMMITTEE AND COMMISSION REPORT

A. DEVELOPMENT REVIEW COMMITTEE (DRC)

Mr. John Hagee, Chairman of the Development Review Committee, presented the report. The committee heard two cases last Wednesday. The first was a fourteen lot subdivision in Kingsmill and the second was a seventy-five lot subdivision in Monticello Woods. Both cases were approved.

In a unanimous voice vote the Commission approved the DRC report.

B. OTHER COMMITTEES

Mr. Joe McCleary, Chairman of the Comprehensive Plan Steering Committee, presented the report. Mr. McCleary, Mr. Joseph Barra, Community Participation Team Chairman, Mrs. Tammy Rosario, Senior Planner, and Mr. Patrick Foltz, Development Management Technician, attended the Virginia Municipal League (VML) Annual Conference in Roanoke on October 23, 2003. They were presented with the VML President's award for entrepreneurial government on behalf on the County. The award was in recognition of the outstanding job done by the entire County, the entire County staff and principally the planning staff who led the update of the Comprehensive Plan. The Presidents award is the most prestigious award given by VML. There were seventy-five candidates nominated for this award. It was a great honor to be one of those there to receive it.

Mr. Marvin Sowers thanked the Planning Commission and the Steering Committee. He also added that this is the first time this award has been given for a Comprehensive Plan. In addition Dr. Lisa Curry has been named the Virginia Citizens Planner Association's Citizen Planner of the Year. All the members of the Planning Commission as well as most of the Planning Commissioners in the State are members of this organization so Dr. Curry is very distinguished to be recognized by that group. She served on three committees: the Development Potential Analysis Committee, the Community Participation Team, and Steering Committee. Congratulations to Dr. Curry.

Mr. McCleary asked Mr. Sowers to comment on an article in Saturday's Virginia Gazette "Planners to step it up for approvals". Mr. McCleary stated that the planning staff has been reviewing this process for a while.

Mr. Sowers stated that it has been a while since planning staff had looked at its various processes and that it is something that every organization needs to do periodically. The current project is looking at the site plan review process, in particular the administrative aspects of that process and how Planning works with the

local development community

Mr. Sowers pointed out some errors in the article. First, this review is only dealing with the site plan review process and does not also include a review of other processes as the article states. Also, it does not include typical permits that most people are familiar with for example someone seeking to add a deck to their home. The site plan process mainly deals with shopping centers and multi-family developments.

Also, it was unfortunate that the newspaper did not contact staff. They would have found out that instead of a 6-8 week review time period, staff returned plan comments back in less than 30 days in 90% of the cases last fiscal year. This was despite having to update the comprehensive plan and losing 2 senior planners.

Mr. A. Joe Poole, III felt it lamentable that both sides were not covered more fairly. He also felt it is incredibly irresponsible that staff was not contacted. He appreciated the opportunity Mr. Sowers provided to clarify some of those points.

Mr. Poole, III said that we are all excited and thrilled about the awards. It represents a lot of hard work on the part of the staff, Steering Committee, Citizens Participation Team, Board of Supervisors, and citizenry so we all share in the success.

4. PUBLIC HEARINGS

A. CASE NO. SUP-16-03 Williamsburg Winery – Gabriel Archer Tavern

Mr. David Anderson stated that Mr. Vernon Geddy, on behalf of Patrick Duffeler, has applied for a special use permit for the continued operation of a restaurant, Gabriel Archer Tavern, at the Williamsburg Winery. Mr. Geddy has requested a deferral of this case until December for more time to work on outstanding issues related to this application. At this time staff recommends deferral of this case until the December Planning Commission meeting.

Mr. McCleary asked Mr. Sowers about the request for deferral. He would have no problem with an applicant requesting any number of deferrals but in fact this is a delinquency on this part of this applicant.

Mr. Sowers stated that there are a number of items staff would like the applicant to address before the Commission is asked to take action on the special use permit. The applicant has agreed with the County what those items are; which include items like connecting to public sewer and paying for prior utility services and testing the water. They have tested their water and filed a plan for sewer. Today the County received partial payment toward back services fees. Therefore progress is being made.

Mr. Hunt asked what the back services fees covered.

Mr. Sowers answered that they were for utility services used by the applicant but not paid for.

Mr. Kale inquired as to whether or not the applicant was currently in violation of any County Codes.

Mr. Leo Rogers said that they are working to correct those violations. They are connecting to the sewer system, which is required. The current restaurant that is operating right now is operating without a special use permit, which is required. They also have the problem of getting sewer service without paying the connection fee and without paying for the sewer service. Building and Fire inspectors have been out to verify that the operations are consistent with the code. For the most part everything that they are doing is consistent with the code. Also the Health Department and the Department of Agricultural have submitted letters to indicate that the winery's operation is currently consistent with the code. The applicant is aware that they are expected to be prepared to present their case in December.

Mr. Kale stated that he hopes there will be no outstanding County violations when the case is heard next month. He does not feel it would be fair to other applicants and citizens who work diligently to prepare

their cases for public hearing.

Mr. Rogers indicated that staff has identified with the applicant certain things that are expected to be done prior to the case coming to the Planning Commission. Some of the items will be satisfied with the development of the expansion to the tavern, and zoning issues are expected to be resolved with this case. The sewer issues should all be resolved prior to coming to the Planning Commission. The public water issue will be addressed with the Certificate of Occupation. Mr. Rogers pointed out that the Winery has been very cooperative in working with staff to resolve these issues.

Mr. A. Joe Poole, III opened the public hearing.

Hearing no requests to speak, Mr. Poole, III deferred the case until the December 8th meeting of the Planning Commission.

B. Z-8-03 & MP-9-03 – Norge Neighborhood

Mr. David Anderson stated that Mr. Pete Henderson, on behalf of Henderson, Inc., has applied to rezone approximately 22.4 acres from A-1, General Agricultural to Mixed Use with proffers. The area is located in the 7100 block of Richmond Road and off of Nina Lane. The applicant has requested that the case be deferred until December in order to allow for more time to address outstanding issues. Staff recommends deferral.

Mr. Hunt asked if there will be an access off of Route 60.

Mr. Sowers answered that there will be access off of Route 60.

Mr. Poole inquired about the nature of the outstanding issues.

Mr. Sowers stated that there are issues with the roads as well as some issues with layout and school impacts.

Mr. McCleary added that the developer has held two community meetings to get feedback from the community. He thought they had been very responsible.

Ms. Wildman wanted to know if the developer would be continuing the same style of buildings in a manner consistent with the Norge area.

Mr. Sowers stated that he did not know.

Mr. A. Joe Poole, III opened the public hearing.

Hearing no requests to speak, Mr. Poole, III deferred the case until the December 8th meeting of the Planning Commission.

C. SUP-20-03 & Z-9-03 –Community Chapel/Jamestown Hundred.

Mr. David Anderson stated that Mr. Craig Covey has applied, on behalf of Williamsburg Community Chapel to rezone 1.21 acres of the 15.12 acres to R-2, General Residential Cluster with Proffers. The purpose of this rezoning is for the infill development of four single-family residential lots in the adjacent Jamestown Hundred subdivision. The property is located to the rear of the Chapel and is located at 3899 John Tyler Highway.

The proposal also requires a special use permit because the gross density of the proposal exceeds 1 unit per acre. In the R-2 zoning district residential cluster developments with a maximum gross density of more than 1 unit per acre require a special use permit.

The application has been submitted in cooperation between Williamsburg Community Chapel and Hampton Roads Development, the developer of the Jamestown Hundred subdivision. The agreement allows the chapel to potentially construct an access road to the rear of the chapel property from Eagle Way to accommodate a future expansion. It should be noted that the expansion of the church and the construction of the access road would require a special use permit. The Planning Commission will have an opportunity to review this aspect of the agreement when the special use permit is brought forward.

This infill development will raise the density of Jamestown Hundred from 1.4 units per acre to 1.45 units per acre. In order to achieve this density the applicant has proffered a cash contribution for recreation facilities and staff has added a condition requiring relocation of required street trees to the recreation lot.

In order to be consistent with the surrounding area the applicant has requested that the buffer behind the infill lots be thirty-five feet. This requires a reduction in the perimeter buffer. The reduction will simply reduce the area where accessory structures can be located on the infill lots from 5 feet from the rear of the property line to 20 feet. Staff feels the reduction is acceptable because at least a 35 foot buffer consistent with the existing buffer will still be provided. Furthermore staff concurs with the request since the property owners on both sides of the buffer are cooperating in the application.

Due to the small nature of this infill development impacts to traffic, public schools, water, sewer and emergency services are minimal. Therefore impact studies were not required with this proposal. The applicant has proffered a cash contribution for water impacts, the Route 5 transportation district, and for recreation.

The proposed zoning designation, density, and use are all consistent with the Comprehensive Plan and with the adjacent Jamestown Hundred Subdivision. In addition, the Comprehensive Plan encourages infill development. Staff recommends the approval of the proposal with the proffers and conditions.

Mr. Kale asked if the Commissioners would be obligating themselves to approve the proposed later special use permit for the chapel expansion and access road by approving this application.

Mr. Rogers answered that with approval of this application the Commission would be approving a plan of development. Therefore they would be indicating that they would be favorably disposed to approve a later application that is required as long as the later application is consistent with that plan.

Mr. Hagee confirmed that this would be no more than the access to Eagle Way.

Mr. Rogers said that this was correct and that it could also be limited as a part of the consideration of this case.

Mr. McCleary stated that the access to Eagle Way would be an advantage to the County because it cuts down on traffic problems.

Mr. A. Joe Poole, III opened the public hearing.

Mr. Craig Covey, President of Hening-Vest-Covey-Chenault, represented Williamsburg Community Chapel. Approximately 1 year ago the Chapel considered a plan to expand to provide additional space for its out-source services. They realized that any development would require turning lane off of Route 5 and majority clearing of trees along Route 5. In looking at public health, safety and general welfare of the community it seemed another way to provide access and egress might be through a connection to Eagle Way. They have indicated a proposed 50 foot right-of-way and worked with staff and the Board of Supervisors by exchanging easements. The two property owners are now working to adjust the two property lines and provide sufficient land to the developer so that he can provide 3 additional lots. Jamestown Hundred has 106 lots approved but were only able to plat 105. The Chapel property will allow for the platting of the last lot plus 3 additional lots. There would still be the open space conservation area between the Chapel and the same 35 feet of buffer.

Mr. McCleary thought the Chapel appeared to be divided into two halves. The front half is the

building and paved parking lot and the other is a gravel parking lot and a grassy area some of which will be swamped with the developer. Mr. McCleary asked if any future expansion will include trying to preserve the amount of impervious cover.

Mr. Covey stated the conceptual plan has the back section of the property for overflow parking that will be gravel so that they can continue to recharge the groundwater. There will be some parking and additional paving in the area near the structure. The provisions of the Chesapeake Bay Ordinance and the 60/40 ratio will be met.

Mr. Covey addressed Mr. Kale's question concerning the future expansion of the Chapel. The thinking at this time is to add the road now. Therefore a site plan application would be brought forward showing the access to the church property. At a subsequent time the Chapel will file for the expansion to the Chapel.

Mr. Billups wanted to clarify the nature of the future expansion.

Mr. Covey said that there are no final plans but they have looked at the extension of the existing structure toward the rear of the site creating a new sanctuary which would allow the front to be converted to potentially some recreation and youth type services.

Mr. Poole asked if the applicant is comfortable with the conditions outlined by staff.

Mr. Covey stated that they were in favor of proceeding that way.

Mr. Stephen Bacon, 3220 Reades Way, stated they chose their particular lot because there would be no neighbors behind or in front of them. The site agent representing Virginia Enterprises assured them that nothing would be built across the street or in the 19 ½ acre conservancy adjacent to Eagle Land Williamsburg Chapel. Upon opening the newspaper on Saturday he found out that the builder, without consulting the property owners, struck a deal to develop lots 4 & 5 and 11 & 12 to construct four more houses. They could then manipulate zoning laws to sell the property in the conservancy to the Chapel. Just over a year ago Virginia Enterprises tried to acquire land from the church to make lot 5 larger to accommodate a larger home and the church said no. It makes no sense that three months ago Virginia Enterprises stopped construction on phase 3 in Jamestown Hundred. What does make sense is that by delaying construction on phase 3 Virginia Enterprises assures itself sole representation of the Homeowners Association for another 2 to 3 years because there will not be 80% occupancy to allow property owners to act alone as the Homeowners Association. That fits into the timeline of the Chapel. The underhandedness continued when only 5 property owners received notification of the hearing a week ago out of 50 families. We are the neighbors of the Williamsburg Community Chapel not Virginia Enterprises. He urged the Chapel to reconsider their application until they can sit down with the real homeowners of Jamestown Hundred and work out a solution.

Mr. Bacon suggested several solutions. One would be to install a traffic light. Another is to sit down with the Homeowners Association. Will the Chapel be agreeable to letting the homeowners run a road connecting their Eagle Way project for the folks who live in phase 3? Perhaps a park area will suit both the Chapel and the homeowners. He would prefer a true green space that both could use. Mr. Bacon urged the members to do the right thing without wasting court time with injunctions and lawsuits.

Ms. Debra Gillilan, of lot 100 in Jamestown Hundred, stated that she is five homes away from the referenced property. Ms. Gillilan provided a copy of the brochure given to homeowners that indicated the conservancy space in green. The subdivision is still being marketed that way today. She opposed the proposal. Ms. Gillilan does not believe that the \$620 proffered for recreation was adequate. A picnic table could not be purchased for this amount. She also questioned why Virginia Enterprises is not willing to follow the streetscape guidelines listed in the Comprehensive Plan. Instead they intend to transfer required trees to the recreation lot. Ms. Gillilan said there is no recreation lot, there is no lot where the children can play, no picnic table. She asked if they planned to dig up trees for this transfer. She also felt that \$750 per lot is not enough for impacts to water. Significant plumbing repairs could not be obtained at that price. Ms. Gillilan asked if the 42.9 acres of open space includes the land given away for the access road. She encouraged the Commission to vote no.

Mr. Anderson indicted that the amount of money proffered for the recreation lot was derived from the Park and Recreation Comprehensive Plan. Also in lieu of providing actual recreation facilities for smaller developments, which these 4 infill lots are considered, they outline specific dollar amounts. The recreation area will be in the next phase of development.

Mr. Hagee asked for the location of the area to be developed.

Mr. Covey indicated the location on the plan.

Mr. Hagee asked about rights of the Chapel to access Reades Way and if the land adjacent to the Chapel will be part of the conservation area.

Mr. Anderson answered that there is currently no right to access Reades Way and that the land would be part of the conservation area along with additional areas that are not currently part of the Williamsburg Chapel property.

Mr. Doug Harshbarger, 3252 Reades Way, stated that he was appointed by the homeowners to be their liaison with Hampton Roads Development. He was told by the developer that there are no plans for recreation facilities on the recreation lots. He observed tonight that the left hand turn onto Reades Way may stack up about 10 cars, on Sunday mornings there are considerably more than 10 cars backed up on Route 5. He feels the proposal only moves the congestion from in front of the Chapel to in front of Eagle's Way. Mr. Harshbarger stated that a drawing provided to him by the developer shows a watershed area in the vicinity of St. Eric's Turn. He also questioned the need for a variance to reduce the buffer to 20 feet when the application states that there will be a 35 foot buffer.

Hearing no other requests to speak, Mr. Poole, III closed the public hearing.

Mr. Hunt asked what buffering rules govern Williamsburg Community Chapel.

Mr. Anderson said that it is 35 feet to the back of the Chapel property. He also explained that when Jamestown Hundred was approved there was a 35 foot buffer requirement. Since then the ordinance has changed. There is now a 35 foot perimeter buffer and a 35 foot yard requirement. There is no provision to get a waiver or a reduction to the yard requirement so the applicant is requesting a reduction in the perimeter buffer. But in effect they are still providing the 35 foot that is there currently. This proposal pushes the yard requirement back further on the lots. Therefore; future owners of these lots will only able to locate accessory structures 20 feet from the back property line instead of 5 feet. The buffer will remain at 35 feet.

Mr. Hagee asked to see the sales brochure referred to by Ms. Gillilan.

Mr. Billups asked if the existing infrastructure for the 4 infill lots were sufficient to build 4 homes.

Mr. Anderson confirmed that the additional land would be required to be acceptable under the ordinance.

Mr. Poole was very sympathetic that members of the community were given some sort of expression from an entity and then found it to be different in the field. He does not feel it's limited to real estate transactions; however it is particularly egregious when it becomes ones home. Mr. Poole felt a lot of important questions were raised tonight. He would like to see a discussion between the applicant and the homeowners before Commissioners make a recommendation on the application.

Mr. Sowers assured the members that staff was not aware of the disparities before the meeting. An attempt would have been made by staff to try to bring the two sides to together.

Mr. Poole expressed concern that only adjacent property owners immediately adjacent to property receive written notification. He reiterated that he would like to see some sort of discussion outside of this meeting before it comes to the Commission.

Mr. Kale concurred with Mr. Poole and asked that those discussions include the developer. He felt the developer has allowed the Williamsburg Community Chapel, which has an excellent reputation in this community, to carry some water that is dirty perhaps not as clean as the Chapel may have thought it was. He stated that the developer has as much as if not more to gain in the long run with the proposal.

Mr. Billups wanted to see any grandfather clauses or other legal protections that were granted to the association even though the Comprehensive Plan has been updated.

Mr. Hunt would like to see some accommodations made but does not want to see another traffic light installed on Route 5 unless it was absolutely necessary.

Mr. McCleary echoed Mr. Kale's sentiments that the developer should have been in attendance at tonight's meeting. He reminded members and citizens that the Commissioners cannot force them to participate in any discussions.

Mr. Hagee felt it unfortunate that the developer was not present. He thought the proposed access road has a lot of very practical assets. He would like to see that worked out. Mr. Hagee said that there were some clear misrepresentations and that the homeowners may have an opportunity to gain some amenities in negotiations with the applicants. He suggested that homeowners focus their thought on what they absolutely want.

Mr. McCleary commended the Chapel for attempting to mitigate traffic impacts.

Mr. McCleary moved to defer the application.

Mr. Kale seconded the motion.

Mr. Poole urged all parties to get together and to involve staff if possible.

In a roll unanimous roll call vote, the application was deferred.

6. PLANNING DIRECTOR'S REPORT

Mr. Sowers presented the report. He pointed out that there will be a very lengthy agenda for December's meeting. He indicated that he has had some discussions with Commissioners on how to proceed and for recommendations.

The Commission discussed possible solutions.

Mr. Kale asked if any of the cases were nearing the cut off date to be heard by the Commission.

Mr. Rogers answered that 100 days after a case is ready to be heard there needs to be a decision made. After that time the case must go to the Board of Supervisors with the assumption that a favorable recommendation was made by this Commission. That has never happened and the Board has the option of referring the case back to the Commission.

Mr. Hunt asked those Commissioners who attended the Norge Neighborhood meetings if there were any objections by residents.

Mr. McCleary said there were some in the first meeting that were addressed in a satisfactory manner at the second meeting.

Mr. Poole motioned to reschedule the December 8th meeting to 5:30pm and continue without breaking for dinner. If necessary the meeting will be adjourned until December 11th at 7:00 pm.

Mr. McCleary seconded the motion.

In a unanimous voice vote the December meeting was rescheduled.

Mr. Hagee informed the members that he does not intend to seek reappointment when his term expires in January.

7. ADJOURNMENT

There being no further business, the November 3, 2003, meeting of the Planning Commission was adjourned approximately at 8:45p.m.

A. Joe Poole, III, Chairman

O. Marvin Sowers, Jr., Secretary

A REGULAR MEETING OF THE PLANNING COMMISSION OF THE COUNTY OF JAMES CITY, VIRGINIA, WAS HELD ON THE EIGHTH DAY OF DECEMBER, TWO-THOUSAND AND THREE, AT 5:30 P.M. IN THE COUNTY GOVERNMENT CENTER BOARD ROOM, 101-C MOUNTS BAY ROAD, JAMES CITY COUNTY, VIRGINIA.

- | | | | |
|----|---|---|--------------------------------|
| 1. | <u>ROLL CALL</u>
A. Joe Poole, III
John Hagee
Donald Hunt
Joseph McCleary
Wilford Kale
George Billups | <u>ALSO PRESENT</u>
Leo Rogers, Deputy County Attorney
O. Marvin Sowers, Jr., Planning Director
Toya Ricks, Administrative Services Coordinator
Christopher Johnson, Senior Planner
Karen Drake, Senior Planner
Matthew Arcieri, Planner
Sarah Weisiger, Planner | <u>ABSENT</u>
Peggy Wildman |
|----|---|---|--------------------------------|

2. MINUTES

The Commission approved the appended minutes of the September 8, 2003 meeting with a unanimous voice vote.

3. COMMITTEE AND COMMISSION REPORT

A. DEVELOPMENT REVIEW COMMITTEE (DRC)

Mr. John Hagee, Chairman of the DRC, presented the report. The DRC granted a waiver to allow the sidewalk and fence of The Old Point National Bank, which will be located at Monticello Road and Ironbound Avenue, to encroach into a 50' setback. The setback will not exist after Ironbound Road is realigned. A sixty-eight lot section in the Wellington Subdivision was deferred until the January meeting to allow the applicant more time to address environmental issues. Colonial Heritage Phase 2, Section 1 was granted preliminary approval pending agency review and comments. The Wythe Will Distribution Company was granted approval for multiple entrances and a building larger than 100,000 square feet. An encroachment into the landscape setback by a stormwater basin was resolved by the relocation of key plant materials.

In a unanimous voice vote the Commission approved the DRC report.

B. POLICY COMMITTEE

Mr. Wilford Kale, Chairman of the Policy Committee, notified members that a proposed by-law amendment was distributed with this month's packets regarding nominating procedures. The amendment will be considered at the January meeting. Members must have thirty days to consider any proposed changes. Mr. Joe McCleary, Chairman of the Nominating Committee, felt an amendment was needed to allow all members to participate in the nominating process.

C. OTHER COMMITTEES

Mr. McCleary, Chairman of the Comprehensive Plan Steering Committee, pointed out that Virginia Municipal League (VML) magazines were distributed to Commission members. The magazine highlighted the VML President's Award given to the County for the Comprehensive Plan update.

4. PUBLIC HEARINGS

- A. CASE NO. Z-9-03 Williamsburg Community Chapel Rezoning.
 CASE NO. Z-12-03 Jamestown Hundred Proffer and Master Plan Amendment.
 CASE NO. SUP-20-03 Jamestown Hundred Master Plan Amendment.

Mr. Arcieri stated that Mr. Craig Covey, on behalf of Williamsburg Community Chapel and Hampton Roads Development, has requested the case be deferred until the January 12th meeting of the Planning Commission. The applicants have been working to resolve issues with the residents of Jamestown Hundred. The applicants have not had time to revise and resubmit the proposal. Staff concurred and recommended deferral.

Mr. McCleary advised the Commissioners that the two sides have had two meetings to resolve their differences.

Mr. A. Joe Poole, III opened the public hearing.

Hearing no other requests to speak, Mr. Poole, III deferred the case until the January 12th meeting of the Planning Commission and kept the public hearing open.

- B. CASE NO. Z-11-03 & MP-11-03 Stonehouse Planned Community.

Ms. Karen Drake stated that staff recommended the case be deferred until the January 12th Planning Commission meeting. This will allow staff and the applicant to resolve outstanding issues regarding the Stonehouse Master Plan, Stormwater Management Master Plan, and Master Water and Sewer Plan and ensure coordination of responsibilities between the two primary property owners.

Mr. Kale asked for elaboration on the Master Plan problems.

Ms. Drake stated that the problems are due to a lack of materials not disagreement between staff and the applicant. The two parties have a meeting scheduled to discuss some of the issues.

Mr. A. Joe Poole, III opened the public hearing.

Hearing no other requests to speak, Mr. Poole, III deferred the case until the January 12th meeting of the Planning Commission and kept the public hearing open.

- C. CASE NO. Z-10-03 & MP-10-03 Hiden Property and Master Plan Amendment.

Mr. Christopher Johnson presented the staff report. Mr. Marc Bennett has applied on behalf of Powhatan Crossing, Inc. to rezone the Hiden property from PUD-R, Planned Unit Development, Residential, with Proffers to PUD-R, Planned Unit Development, Residential, with amended Proffers. The request seeks to amend the proffers and master plan to redefine the road alignment and acknowledge all streets as private in Area Two for the development of 400 age-restricted units.

The applicant has proposed changes to Proffer No. 4, Monticello Avenue Greenbelt, to allow selected hand clearing and trimming of trees and other plants, the planting of new landscaping, and the installation of landscaped berms within the 150-foot greenbelt subject to approval by the Planning Director. Also, in accordance with County Code the applicant proposed changes to Proffer No. 15, Private Streets, to include a note on the master plan, and provided a proffer to indicate that all streets within Area 2 shall be private and conform to Virginia Department of Transportation construction standards.

Staff found the revised proffers and master plan consistent with the surrounding zoning and developments and consistent with the Comprehensive Plan. Staff recommended approval of the master plan changes and acceptance of the amended proffers.

Mr. Poole asked for background on the select hand clearing request.

Mr. Johnson said that the request was due to the number of down trees caused by Hurricane Isabel and reminded members the clearing would be subject to Planning Director approval.

Mr. A. Joe Poole, III opened the public hearing.

Mr. Vernon Geddy represented the applicant and stated the applicant agreed with Mr. Johnson's report.

Mr. George Billups asked the applicant if they had received feedback from the Friends of Powhatan Creek regarding changes to the conservation area.

Mr. Geddy said that this amendment does not change the conservation area.

Hearing no other requests to speak, Mr. Poole, III closed the public hearing.

Mr. Hagee made a motion to approve the application.

Mr. McCleary seconded the motion.

Mr. Poole was pleased that there would be oversight by the Planning Director of the hand clearing.

In a unanimous roll call vote the application was approved (6-0). AYE: Poole, McCleary, Hagee, Hunt, Kale, Billups (6); NAY: (0). Absent: Wildman

D. CASE NO. SUP-19-03 Christian Life Center.

Ms. Karen Drake presented the staff report. Mr. Marc Bennett has applied on behalf of the Christian Life Center for a Special Use Permit to allow for a two phased expansion of the church's facilities. A Special Use Permit is required for houses of worship in R-8, Rural Residential Districts. The Phase I expansion includes the construction of a separate two-story, maximum 5,000 square foot/floor building for youth fellowship. Phase I also includes construction of thirty-one additional parking spaces and a second exit from the property onto Longhill Road. The Phase II expansion includes a three-story, maximum 20,244 square foot/floor expansion of the existing three-story church facility where the main sanctuary is located. The Phase II building expansion would provide additional classroom, nursery and fellowship space.

Staff found the Christian Life Center's proposed expansion to be consistent with the existing church, surrounding development, zoning and the 2003 Comprehensive Plan. Staff recommended approval with the conditions listed in the staff report.

Ms. Drake also pointed out changes to two of the special use conditions that were distributed to members before the meeting.

Mr. Kale questioned the need for an additional thirty-one parking spaces.

Ms. Drake said the new spaces would accommodate growth at the church.

Mr. Kale stated concern that the right-only turn lane did not allow for traffic to merge. He asked if there had been any consideration given to this issue.

Mr. Bennett, AES Consulting Engineers, stated that there was a need to have that lane as close as possible to the existing lane from Lafayette High School. Mr. Bennett also stated a willingness to discuss that issue with the Virginia Department of Transportation.

Mr. McCleary asked if the present entrance in front of Lafayette High School was signalized.

Mr. Bennett answered no. He did not know when or if it would be.

Mr. Billups wanted to know if the intended use of the second building had been outlined.

Ms. Drake said the second building would be used for youth fellowship activities. If the Center decided to expand to provide full-time day-care or school facilities they would require a new special use permit application.

Mr. Bennett added that there have been some discussions about having a daycare center sometime in the future. However, the applicant understood the requirement for a new application at that time.

Mr. A. Joe Poole, III opened the public hearing.

Hearing no other requests to speak, Mr. Poole, III closed the public hearing.

Mr. Hagee made a motion to approve the application.

Mr. McCleary seconded the motion.

Mr. Poole was pleased with the addition of condition Number 4 regarding the landscape buffer and appreciated the applicant's flexibility on that issue.

In a unanimous roll call vote the motioned passed 6:0. AYE: Poole, McCleary, Hagee, Hunt, Kale, Billups (6); NAY: (0). Absent Wildman.

E. CASE NO. SUP-22-03 & HW-2-03 Busch Gardens Oktoberfest Expansion.

Mr. Matthew Arcieri stated that Mr. Ronnie Orsborne, on behalf of Busch Entertainment Corporation, requested deferral of the case until the January 12th meeting to resolve some uncertainties regarding the specifics of the proposed building. Staff concurred with the recommendation.

Mr. A. Joe Poole, III opened the public hearing.

Hearing no other requests to speak, Mr. Poole, III deferred the case until the January 12th Planning Commission meeting and kept the public hearing open.

F. CASE NO. SUP-21-03 Milanville Kennels.

Mr. Matthew Arceiri presented the staff report. Mark and Elizabeth Illman applied for a special use permit to construct and operate a kennel at the rear of their existing residence on 2878 Monticello Avenue. Approval of this case would allow the applicant to construct a 7,000 square foot, single story kennel which would contain a maximum of eighty dogs and twenty cats. Operating hours for the kennel would be 7:00 a.m. to 7:00 p.m., Monday through Saturday and 3:00 p.m. to 5:00 p.m. on Sunday.

The new kennel would be constructed to match the existing single family residence. The nearest residence is approximately 400 feet south of the proposed kennel. Much of the noise impacts on this site have been mitigated by placing the kennel on a large property distanced from most nearby residences. In addition the applicant has proposed several other ways to address noise that have been reflected in the conditions.

Staff found the proposal to be consistent with the surrounding zoning and development and, with the proposed conditions, consistent with the Comprehensive Plan. Staff, therefore, recommends approval of this application with the attached conditions.

Mr. A. Joe Poole, III opened the public hearing.

Mr. Greg Davis, Kaufman and Canoles, represented the Illman's. The proposed kennel would be relatively small according to the American Board and Kennel Association standards.

Mr. Davis recognized neighbors in the audience in support of the application as well as a petition contained in the staff report.

Mr. Davis stated that the applicant objects to the condition requiring an Archeological study. The disturbed area would be less than ½ acre and the cost of the study would be capital intensive.

Mr. Poole asked how many estimates were sought to perform the study.

Mr. Davis said three consultants gave estimates.

Mr. McCleary asked Mr. Rogers if the members could waive such a condition.

Mr. Rogers indicated that any of the conditions could be waived. He also added that the Board of Supervisors has taken a policy position that they would like to see the studies performed.

Mr. Kale wanted to know the proximity of the property owned by the neighbor in attendance at the meeting. He also asked for the location of the free standing sign. Mr. Kale asked if the applicant would be willing to stop work if an artifact were discovered during foundation prep if a waiver was granted.

Mr. Davis stated that the client would be willing to stop work and proceed according to policies.

Mr. Hunt wanted to know if any documentation existed that indicated the presence of any artifacts.

Mr. Billups wondered if the applicant had considered having college students perform the testing.

Mr. Davis said that the major component of the cost was the level of detail required in the report not the actual field work.

Hearing no other requests to speak, Mr. Poole, III closed the public hearing.

Mr. Sowers clarified that the condition requiring an Archeological study is not arbitrary on the part of staff and is recommended for all cases located in designated High Sensitivity areas by the County Archaeological Assessment.

Mr. Poole stated concerns about waiving Archeological study requirements. He felt staff made reasonable concessions by limiting the study to only the area to be disturbed.

Mr. McCleary noted that the Historic Route 5 Association had no objections to the application.

Mr. Hunt wanted to see some type of waiver perhaps with a condition of some oversight or review.

Mr. Billups asked if it was possible to produce a summary report. This would reduce the financial burden on the homeowners but still that give members something in writing.

Mr. Davis said there is a lesser survey called a Phase 1A which is mostly historical research requiring no physical review of the site. Mr. Davis thought the County might have already performed a Phase 1A study in this area.

Mr. Sowers agreed added that additional research for this site would still be needed for a 1A study.

Mr. McCleary agreed with Mr. Hunt and suggested voting on a motion to delete condition 7 prior to a motion to vote on the application.

Mr. Kale recommended a certified Archeologist provide oversight in the field. He also asked Mr. Sowers where the results of a study are kept.

Mr. Sowers said they are sent to the Virginia Department of Historical Resources and if necessary forwarded for the National Register.

Mr. McCleary felt the area to be disturbed is minimal and that a Phase 1, 2, or 3 study was not needed.

Mr. Hagee agreed with Mr. McCleary. He thought it was important not to destroy what was in the ground but it is still possible to still utilize the land above.

Mr. Poole was concerned that once the building was in place the opportunity to locate anything significant would be lost. He also felt it dangerous to waive a policy adopted by the elected officials.

Mr. Sowers gave the options that could be exercised if something of significance were found.

Mr. Rogers pointed out that staff could require that an Archeologist be on site but would have no ability to enforce a particular course of action if something were found.

Mr. Billups and Mr. Rogers discussed the act of overriding Board policy.

Mr. Hunt made a motion to remove condition #7.

Mr. McCleary seconded the motion.

In a roll vote motioned passed (4:2). AYE: (4) McCleary, Hagee, Hunt, Kale; NAY: (2) Billups, Poole. Absent: Wildman

Mr. McCleary motioned to approve the application with condition #7 removed.

Mr. Kale seconded motion.

In a roll call vote motion passed 4:2; AYE: (4) McCleary, Hagee, Hunt, Kale; NAY: (2) Billups, Poole. Absent Wildman.

G. CASE NO. SUP-16-03 Williamsburg Winery – Gabriel Archer Tavern.

Ms. Sarah Weisiger presented the staff report. Mr. Vernon Geddy, III has applied, on behalf of Williamsburg Farms, Inc., for a special use permit for the continued operation of a restaurant, Gabriel Archer Tavern, at the Williamsburg Winery. A restaurant is a specially permitted use in the R-8, Rural Residential district in which the property is located. The restaurant has operated since 1996 without a special use permit.

Staff found the proposal acceptable from a land use perspective. Provided that the sewer connection to the Tavern is operational prior to the Board of Supervisors meeting in January, staff recommended approval of the application with the attached conditions.

Mr. Kale asked about the conditions relative to hours of operation.

Ms. Weisiger said they represent the current operating hours.

Mr. A. Joe Poole, III opened the public hearing.

Mr. Patrick Duffeler, President of Williamsburg Winery and Vice-President, Williamsburg Farms, stated he was available for questions.

Mr. Poole asked if the applicant expected to have the sewer connection completed by the Board of Supervisors meeting in January.

Mr. Duffeler stated that they were not aware of any current violations. He also stated that many of the regulations currently in existence regarding wineries did not exist when the Williamsburg Winery first opened. Mr. Duffeler expected all violations to be resolved.

Hearing no other requests to speak, Mr. Poole, III closed the public hearing.

Mr. Hunt made a motion to approve the application.

Mr. Kale seconded the motion.

In a unanimous roll call vote the motion passed (6-0). AYE: Poole, McCleary, Hagee, Hunt, Kale, Billups (6); NAY: (0). Absent Wildman.

H. CASE NO. MP-9-03 & Z-8-03 Norge Neighborhood Site.

Ms. Sarah Weisiger stated that the applicant has requested deferral until the January meeting. Staff agreed with the request. Ms. Weisiger also stated that the applicant asked if members had any additional comments not included in the staff report.

Mr. McCleary informed members that he attended two community meetings held by the applicant. He felt the applicant was responsive to concerns and ideas from the neighbors. Mr. McCleary thought the only area of dispute concerned the types of uses to be allowed in the commercial areas.

Mr. Hagee felt this proposal is an ideal use of the property.

Mr. A. Joe Poole, III opened the public hearing.

Hearing no other requests to speak, Mr. Poole, III deferred the case until the January 12th meeting and kept the public hearing open.

Mr. Poole stated his concerns for additional residential construction in this area given the uncertainty of the impact the Colonial Heritage project will have on the infrastructure in the area.

Mr. Billups felt the Comprehensive Plan should be used as the guideline for determining the types of uses allowed in the area.

Mr. Hunt supported light commercial uses in the front of the property.

5. 2004 PLANNING COMMISSION CONSIDERATION

Mr. O. Marvin Sowers, Jr. presented the calendar. The calendar lists the Planning Commission and Development Review Committee meeting dates. It also highlights some important deadlines associated with those meeting dates.

Mr. Kale made a motion to approve the calendar.

Mr. McCleary seconded the motion.

In unanimous voice vote the Commission approved the 2004 calendar.

6. PLANNING DIRECTOR'S REPORT

Mr. O. Marvin Sowers, Jr. presented the report. He pointed out the Fire Department's upcoming application for the construction and operation of four Communications Towers to support the new emergency

communicating system.

Mr. Hunt asked why two of the towers were significantly shorter than the other two.

Mr. Marc Bennett, AES Consulting Engineers, thought that due to their close proximity the two shorter towers will be able to work together therefore requiring less height.

Mr. McCleary asked if the towers will be required to meet the performance standards previously set by the County.

Mr. Sowers said that the standards will be considered.

Mr. Poole felt necessary allowances should be made in the interest of public health and safety.

Mr. Sowers suggested rescheduling the January 12th meeting to 5:30 p.m. due to the heavy caseload expected.

The members of the Commission approved beginning the January 12, 2004 meeting to 5:30.

Mr. Poole informed the members that he had accepted, on their behalf, a Certificate of Appreciation from the James City County Board of Supervisor's Chairman, Mr. Jay Harrison. The certificate was given in appreciation of the work performed by the Planning Commission.

7. ADJOURNMENT

There being no further business, the December 8, 2003, meeting of the Planning Commission was adjourned at approximately at 7:30 p.m.

A. Joe Poole, III, Chairman

O. Marvin Sowers, Jr., Secretary

RESOLUTION OF APPRECIATION

MR. JOHN F. HAGEE

WHEREAS, Mr. John Hagee has served the citizens of James City County as a member of its Planning Commission from January 1989 to January 2003; and

WHEREAS, Mr. John Hagee served on the Planning Commission Development Review Committee; and

WHEREAS, he was elected Chairman of the Development Review Committee February 2000 and served as its chair until January 31, 2004; and

WHEREAS, Mr. John Hagee also served on James City County's 1997 and 2003 Comprehensive Plan Steering Committees and was the Committee Chairman during the 1997 Comprehensive Plan update; and

WHEREAS, The 2003 Comprehensive Plan Steering Committee received the 2003 Virginia Municipal League President's Award.

NOW, THEREFORE, BE IT RESOLVED that the Planning Commission of James City County, Virginia does hereby extend its appreciation to

MR. JOHN F. HAGEE

BE IT FURTHER RESOLVED that the Planning Commission wishes to express its gratitude to Mr. John Hagee for fourteen (14) years of dedicated service to the citizens of James City County.

ATTEST:

O. Marvin Sowers, Jr.
Secretary

A. Joe Poole, III
Chairman, Planning Commission

Adopted by the Planning Commission on this 12th day of January 2004

MEMORANDUM

DATE: January 12, 2004

TO: Members of the Planning Commission

FROM: Christopher Johnson, Senior Planner

SUBJECT: Site Plan Review Process

As reported at the December 8, 2003, Planning Commission meeting, the County created two committees to review and identify potential improvements in the Site Plan Review Process. The committees were comprised of members from County staff, reviewing agencies and representatives from the development community. The committee met seven times during November and December 2003.

Staff is recommending that a six month trial pilot program be initiated in order to gain perspectives on the strengths and weaknesses of implementation of the report's findings. Following this trial period, staff will return to the Planning Commission with a final recommendation as to how we should proceed. Some of the recommendations will require technology improvements which will require additional time before they can be implemented.

There is a strong possibility that implementation of these changes will ultimately require additional staffing. The pilot program should give us more of an idea of the staffing requirements. At the conclusion of the trial program, staff will forward a report to the Planning Commission and Board of Supervisors which would allow the appropriate decision-makers to decide which benefits from the pilot program were worthwhile and worthy of any potential additional funding necessary to carry the program in to the future.

MEMORANDUM

DATE: January 12, 2004

TO: The Planning Commission

FROM: Toya L. Ricks, Administrative Services Coordinator

SUBJECT: By-Law Amendments

Attached is a revised copy of the Planning Commission's By-Laws, introduced at the December 8, 2003 Planning Commission meeting, which have been updated to reflect changes by the Nominating Committee. Commissioners have had the required 30 days to review the changes.

**JAMES CITY COUNTY
DEVELOPMENT REVIEW COMMITTEE REPORT**

FROM: 12/1/2003

THROUGH: 12/31/2003

I. SITE PLANS

A. PENDING PRELIMINARY APPROVAL

SP-144-98	Williamsburg Pottery Warehouse/Retail Building
SP-116-99	New Town, Wmbg./JCC Courthouse SP Amendment
SP-087-01	The Vineyards Ph. 3 at Jockey's Neck
SP-089-01	Ewell Station Storm Water Management Fac. Mod.
SP-116-01	Powhatan Secondary - Ph. 7, Sanitary Sewer Ext.
SP-112-02	Ford's Colony Recreation Park
SP-045-03	Noah's Ark Vet Hospital SP Amendment
SP-052-03	Kingsmill Access Ramp for Pool Access Bldg.
SP-056-03	Shell Building - James River Commerce Center
SP-063-03	District Park Sports Complex Parking Lot Expansion
SP-077-03	JCC Courthouse Bioretention Demonstration Project
SP-079-03	Tequila Rose Walk-in Cooler
SP-082-03	Williamsburg Winery-Gabriel Archer Tavern
SP-086-03	Colonial Heritage Golf Course
SP-087-03	Busch Gardens Maintenance Storage Building
SP-095-03	KTR Stonemart
SP-105-03	Colonial Heritage Construction Office
SP-108-03	Fieldstone Parkway Extension
SP-127-03	New Town - Old Point National Bank
SP-129-03	Busch Gardens Oktoberfest Expansion
SP-131-03	Colonial Heritage Ph. 2, Sec. 1
SP-132-03	Windy Hill Market Gas Pumps & Canopy SP Amendment
SP-136-03	GreenMount Industrial Park Road Extension
SP-139-03	New Town Block 8, Ph. 1
SP-140-03	Pocahontas Square
SP-141-03	Colonial Heritage - Ph. 2, Sec. 3
SP-142-03	St. Bede's - Lighting
SP-143-03	New Town - United Methodist Church
SP-144-03	Building Specialities Warehouse Expansion
SP-145-03	Williamsburg National 13 Course Expansion
SP-147-03	J.H. Fisher Offices and Warehouse
SP-148-03	Marketplace Shoppes Ph. 4 SP Amendment
SP-149-03	Quality Inn Kingsmill - Breakfast Room
SP-150-03	Windsormeade Marketplace

B. PENDING FINAL APPROVAL

SP-027-02	120' Stealth Tower--3900 John Tyler Highway
SP-061-02	Powhatan Plantation Recreation Bldg Amd

EXPIRE DATE

6/13/2004
6/18/2004

Tuesday, January 06, 2004

Page 1 of 4

SP-144-02	J.W. Crossing, Ph. 2	2/20/2004
SP-005-03	Hankins Farm Water and Sewer Extension	5/27/2004
SP-009-03	Energy Services Group Metal Fabrication Shop	11/14/2004
SP-015-03	Monticello Woods Community Center	4/10/2004
SP-035-03	Prime Outlets, Ph. 5-A & 5-B - SP Amendment	4/30/2004
SP-049-03	James River Commerce Center Columbia Drive	5/19/2004
SP-050-03	Wmbg-Jamestown Airport T-Hanger & Parking Exp.	7/29/2004
SP-053-03	George Nice & Sons Fill Project	8/ 8/2004
SP-066-03	Colonial Heritage Ph. 1, Sec.1, SP Amendment	6/20/2004
SP-075-03	James City County Fire Station No.2	7/14/2004
SP-089-03	Ford's Colony - Country Club Redevelopment Plans	8/ 4/2004
SP-091-03	Colonial Heritage Ph. 1, Sec. 5	8/ 4/2004
SP-092-03	Ford's Colony - Westbury Park, Recreation Area #2	9/ 8/2004
SP-107-03	Colonial Heritage Golf Maintenance Facility	9/24/2004
SP-112-03	Faith Baptist Church Recreation Building	11/19/2004
SP-114-03	Thayer-Smith Self Storage	10/ 2/2004
SP-116-03	Kingsmill - Armistead Point	11/19/2004
SP-128-03	Monster Storage	12/ 5/2004
SP-130-03	Wythe-Will Distributing Company, LLC	11/12/2004
SP-134-03	Ironbound Center 4	12/15/2004
SP-135-03	Custom Culinary Connections	12/ 2/2004
SP-138-03	New Town - Prudential-McCardle Office Building	12/29/2004

C. FINAL APPROVAL

DATE

SP-030-03	Old Capitol Lodge Site Plan Amendment	12/ 3/2003
SP-097-03	Colonial Heritage Boulevard, Ph. 2	12/15/2003
SP-118-03	New Town Block 2 Amendment	12/18/2003
SP-122-03	St. Bede's Catholic Church Prayer Garden	12/29/2003
SP-126-03	Busch Gardens - Italy Bridge Renovation	12/ 8/2003
SP-133-03	CoreSix Precision Glass Employee Recreation Area	12/ 2/2003
SP-137-03	Williamsburg Winery Sewer Collection System	12/ 4/2003
SP-146-03	CoreSix Precision Glass SP Amendment	12/29/2003

D. EXPIRED

EXPIRE DATE

II. SUBDIVISION PLANS

A. PENDING PRELIMINARY APPROVAL

S-062-98	Ball Metal Conservation Easement
S-104-98	Skiffes Creek Indus. Park, VA Trusses, Lots 1,2,4
S-013-99	JCSA Mission Bank ROW Acquisition
S-074-99	Longhill Station, Sec. 2B
S-110-99	George White & City of Newport News BLA
S-091-00	Greensprings West, Plat of Subdv Parcel A&B
S-032-01	Subdivision and BLE Plat of New Town AssociatesLLC
S-008-02	James F. & Celia Ann Cowles Subdivision
S-031-02	Bruce's Super Body Shop, Lot 2 subdivision
S-086-02	The Vineyards Ph. 3 BLA Lots 1, 5-9, 52
S-008-03	Norge-Fenton Mill BLA
S-058-03	Ford's Colony - Sec. 10, 171-172
S-062-03	Hicks Island - Hazelwood Subdivision
S-063-03	102 Lands End BLA + BLE
S-066-03	Stonehouse, BLA & BLE Parcel B1 and Lot 1, Sec. 1A
S-067-03	Ford's Colony Sec. 33, Lots 1-49
S-083-03	Columbia Drive Subdivision
S-086-03	James River Commerce Center Stormwater Mgt.
S-091-03	Village Housing at the Vineyards Ph. 3, Lot 36- 37
S-094-03	Brandon Woods Parkway ROW
S-097-03	Stonehouse Community Recreation Center 2-D
S-098-03	Stonehouse Glen, Sec. 1
S-099-03	Wellington, Sec. 5
S-100-03	Colonial Heritage Ph. 2, Sec. 1
S-101-03	Ford's Colony - Sec. 35
S-106-03	Colonial Heritage Ph. 2, Sec. 3
S-107-03	Stonehouse Conservation Easement Extinguishment
S-108-03	Leighton-Herrmann Family Subdivision
S-109-03	Eagle Tree Farms Lot 13 Resubdivision
S-113-03	7260 Osprey Drive Subdivision
S-114-03	New Town - Block 2, Parcel F
S-115-03	Eagle Tree Farm Lot 12
S-116-03	Stonehouse Glen, Sec. 2

B. PENDING FINAL APPROVAL

	EXPIRE DATE	
S-037-02	Village Housing at the Vineyards, Ph. 3	5/ 5/2004
S-039-02	Powhatan Secondary, Ph. 6-C	5/ 8/2004
S-052-02	The Retreat--Fence Amendment	6/18/2004
S-076-02	Marion Taylor Subdivision	10/ 3/2004
S-094-02	Powhatan Secondary Ph. 7-C	12/30/2004
S-112-02	Kensington Woods	2/ 6/2004

S-015-03	Season's Trace Winter Park Lots 51-74	4/15/2004
S-021-03	Stonehouse Sec. 2-C Easements	5/ 2/2004
S-033-03	Fenwick Hills, Sec. 2	10/31/2004
S-044-03	Fenwick Hills, Sec. 3	6/25/2004
S-049-03	Peleg's Point, Sec. 5	7/ 3/2004
S-055-03	Colonial Heritage Ph. 1, Sec. 5	8/ 4/2004
S-056-03	Colonial Heritage Ph. 1, Sec. 4	9/23/2004
S-057-03	Ford's Colony - Sec. 34	8/19/2004
S-068-03	Williamsburg Farms	12/18/2004
S-073-03	Colonial Heritage Ph. 2, Sec. 2	10/ 6/2004
S-076-03	Wellington, Sec. 4	11/ 3/2004
S-077-03	James Terrace, Sec. 10, Lots 4-6	10/ 1/2004
S-078-03	Monticello Woods - Ph. 2	11/ 3/2004
S-084-03	Liberty Property Limited Partnership	10/23/2004
S-092-03	Plat of Subdivision and BLA Ford's Colony	11/ 4/2004

C. FINAL APPROVAL

DATE

S-107-02	Greensprings West, Ph. 3-C	12/ 3/2003
S-041-03	Williamsburg Physicians Center - Parcel D	12/ 2/2003
S-047-03	Greensprings West Ph. 4C	12/ 1/2003
S-059-03	Colley Avenue Associates, LLC (Green Cove)	12/17/2003
S-071-03	Fire Station 2 BLE	12/22/2003
S-082-03	Monticello Woods - Lots 6-18, 31-38, 113 & 130	12/17/2003
S-085-03	Stonehouse at Williamsburg LLC	12/ 3/2003
S-093-03	Neck-O-Land Acres, Lots 1 & 2	12/ 1/2003
S-096-03	James F. Cowles Subdivision Plat 1	12/12/2003
S-103-03	903 Penniman Road BLA	12/ 4/2003
S-104-03	8631 Croaker Rd. - P.W. Development, Inc.	12/15/2003
S-105-03	94 Meadowcrest Trail BLE	12/ 3/2003
S-110-03	Ford's Colony - Parcel D-2, Part 1 BLA	12/11/2003
S-111-03	Ford's Colony - Sec. 10A, Lot 1	12/12/2003
S-112-03	Ford's Colony Sec. 1 Block D Lots 2A, 2B, 2&3 BLE	12/11/2003

D. EXPIRED

EXPIRE DATE

DEVELOPMENT REVIEW COMMITTEE ACTION REPORT
Meeting of January 7, 2004

Case No. S-112-02

Kensington Woods Overhead Utility Waivers

Mr. Henry Stephens of Associated Developers, Inc. has applied for a waiver to allow the extension of overhead power across Lake Powell Road as part of the proposed forty lot Kensington Woods subdivision at 2705 Lake Powell Road. The parcel is further identified as parcel (1-16) on James City County Tax Map (48-3). The Subdivision Ordinance requires DRC review for utility waivers.

DRC Action: The DRC recommended approval of the waiver.

Case No. S-101-03

Ford's Colony Section 35

Mr. Charles Records of AES Consulting Engineers, on behalf of Realtec Inc., submitted a subdivision plan proposing a 98 single family lots on 417.8 acres on Centerville Road. The parcels for subdivision are further identified as parcels (1-1), (1-1B), (1-2), and (1-3) on James City County Tax Map (36-2). The proposed development requires DRC review as it proposes more than fifty lots and for two waiver requests.

DRC Action: The DRC recommended approval of the Cul-De-Sac length waiver request, recommended deferral of the Septic System Waiver request, and recommended deferral for preliminary approval.

Case No. SP-143-03

New Town United Methodist Church

Mr. Mark Richardson of AES Consulting Engineers, on behalf of the Board of Missions of United Methodist Church, submitted a site plan proposing the construction of a house of worship in New Town. The parcel is located at 5209 Monticello Avenue and is further identified as parcel (1-48) on James City County Tax Map (38-4). DRC review is necessary because the church proposes offsite parking in the existing Williamsburg/James City County Courthouse parking lot.

DRC Action: The DRC unanimously voted to permit off site parking by the New Town United Methodist Church on the adjacent Williamsburg James City Courthouse property in accordance with the existing agreement.

Case No. S-106-03/SP-141-03 Colonial Heritage Phase 2, Section 3

Mr. Richard Smith of AES Consulting Engineers, on behalf of U.S. Homes, submitted a subdivision plan proposing a 66-lot subdivision in Phase 2 of Colonial Heritage. The 66 lots are further divided into 45 single family lots and 21 attached townhouse units. The proposed subdivision is located off Richmond Road via Colonial Heritage Boulevard. The parcel is further identified as parcel (1-32) on James City County Tax Map (24-3). DRC review is required for all major subdivisions with fifty or more lots.

DRC Action: The DRC recommended that preliminary approval be granted subject to resubmittal of plans which address agency comments.

Case No. SP-140-03 Pocahontas Square

Mr. Scott Acey of MSA, on behalf of RML III Corporation, has submitted a plan for 96 townhomes on 13.7 acres. The proposed development is located at 8844 Pocahontas Trail. The site is further identified as parcels (1-4), (1-5A), and (1-5) on James City County Tax Map (59-2). DRC review is required for all subdivisions or site plans proposing fifty or more units.

DRC Action: The DRC deferred the case until their Jan. 28 meeting.

B Y L A W S

PLANNING COMMISSION

COUNTY OF JAMES CITY, VIRGINIA

ARTICLE I. OBJECTIVES

This Commission was established by the Board of Supervisors of James City County on April 13, 1953, to direct the development of James City County and ensure its prosperity, health, safety, and general welfare, in accordance with the provision of Chapter 22, Title 15.2, Article 2, Code of Virginia, and all amendments or changes.

ARTICLE II. MEMBERSHIP

The Planning Commission shall consist of 7 or 9 members, each appointed by the Board of Supervisors for a term of four years.

ARTICLE III. MEETINGS

1. All regular meetings of the Planning Commission of James City County shall be open to the public.
2. Regular meetings of the Commission may be called by the Chair or by two members upon written request to the Secretary. The Secretary shall mail to all members, at least five days in advance of a special meeting, a written notice fixing the time, place and the purpose of the meeting.
3. Written notice of a special meeting is not required if the time of the special meeting has been fixed at a regular meeting, or at a previous special meeting at which all members were present.
4. The Planning Commission may adjourn any regular, adjourned regular, special or adjourned special meeting to a time and place specified in the Order of Adjournment. When a regular or adjourned regular meeting is adjourned as stated in this paragraph, the resulting adjourned meeting is a regular meeting for all purposes. When an Order of Adjournment of any meeting fails to state the hour at which the adjourned meeting is to be held, it shall be held at the hour specified for regular meetings. Adjourned special meetings will be considered special meetings for all purposes and all regulations concerning special meetings must apply.
5. A quorum of the Commission shall consist of a majority of the members of the Commission. No action of the Commission shall be valid unless authorized by a majority vote of those present and voting.
6. The annual meeting for the election of officers (Chair and Vice Chair) shall be held at the regular meeting in February of each year and the newly elected officers shall preside at the regular meeting in February. Prior to the February meeting, the Nominating Committee shall propose nominations for Chair and Vice Chair. Additional nominations may be made during the election process at the February meeting. When a vacancy occurs for the Chair or Vice Chair, an election shall be held on the next regular meeting date.
7. All minutes and records of the Commission of its meetings, resolutions, transactions and votes, shall be kept by the Secretary. The Secretary shall be from the Planning Division.

ARTICLE IV. MATTERS PENDING BEFORE THE COMMISSION

1. All matters which require an advertised public hearing in accordance with Section 15.2-2204 of the Code of Virginia, as amended, and which meet submittal requirements filed at least six weeks before the regular meeting in the Planning Division, are to be placed on the agenda for the advertised public hearing. All other matters filed at least 15 days before the regular meeting in the Planning Division are to be placed on the agenda. Any matter not placed on the agenda can be considered at the meeting by a majority vote of the Commission.
2. For each public hearing notices shall be forwarded to the Commission members 15 days prior to the public hearing.

ARTICLE V. HEARINGS

1. Advertised public hearings shall be scheduled during a regular meeting, except in the event of a joint public hearing between the Planning Commission and the Board of Supervisors.
2. For each public hearing item, it shall be the policy of the Commission that presentations by staff, applicants, individuals or groups be limited as follows:
 - a. Presentations by staff and applicants should be limited to 15 minutes each;
 - b. Comments by individuals should be limited to 5 minutes each;
 - c. Comments by citizen groups should be limited to 10 minutes each; provided, however, citizen groups, staff, and applicants may speak for more than 15 minutes with approval of the Chairperson of the Planning Commission at least one week in advance of the meeting; and
 - d. At a meeting, the above time limits (a, b & c) may be extended by approval of at least two-thirds of the commission members present.

ARTICLE VI. VOTING

1. No member present shall abstain from voting on a roll call vote unless a member has a conflict of interest in the matter being voted upon.
2. In reporting a vote to the Board, the Secretary shall indicate (in writing) the recorded roll call vote.

ARTICLE VII. DUTIES

A. CHAIR

The Chair shall have the following duties:

1. Preside at meetings and hearings of the Commission;
2. When authorized by the Commission, the Chair shall execute in its name all its obligations;

3. The Chair or his designee shall represent the Commission and keep them informed when not in session;
4. The Chair shall nominate all members of committees and subcommittees; and
5. The Chair or his appointee shall act as liaison with the Williamsburg and York County Planning Commissions.

B. VICE CHAIR

The Vice Chair shall perform the duties of the Chair during the absence or disability of the Chair.

C. SECRETARY (Director of Planning)

The Secretary shall have the following duties:

1. Keep a record of all regular, adjourned regular, special, and adjourned special meetings and public hearings and transcribe in a minute book of the Commission;
2. Make all notices of all meetings required to be sent under these Bylaws to Commission members;
3. Have charge of all official books, papers, maps, and records of the Commission and shall conduct all official correspondence relative to hearings, meetings, resolutions, decisions, and other business of the Commission;
4. Receive minutes of all committee meetings and preserve these as records of the Commission; and
5. The Secretary shall notify the Vice Chair, by telephone or in person, on the day the Chair informs him that he will not be present at a scheduled meeting. It is the duty of the Secretary to brief the Vice Chair on items to come before the Commission when he presides.

D. MEMBERSHIP

Members of the Planning Commission shall have the following duties:

1. Attend regular, adjourned regular, special and adjourned special meetings and public hearings;
2. Attend regular committee meetings to which the member is appointed;
3. Represent the Planning Commission at Board of Supervisors meetings in rotation; and
4. Attend ad-hoc committee meetings as agreed to by the Planning Commission.

ARTICLE VIII. COMMITTEES

1. The Director of Planning or his designee shall serve as an ex officio member of all standing and special committees.

2. All committee reports written or oral are considered a permanent record of the Commission.
3. The following committees and their Chair shall be appointed by the Chair within sixty days after the Chair takes office:
 - a. Development Review Committee. This Committee shall be composed of at least four members and have the following responsibilities:
 1. Review those applications for subdivisions which must receive Commission approval, receive and review staff reports on them, and make recommendations to the Commission; and
 2. Review those site plan applications which must receive Commission approval, receive and review staff reports on them, and make recommendations to the Commission.
 - b. Policy Committee. This Committee shall be composed of at least four members and shall have the following responsibilities:
 1. Address long-range planning goals and explore strategies for achieving them; and
 2. Address ways to maintain and improve working relationships between the Commission, other County organizations, as well as with surrounding jurisdictions and organizations involved in planning initiatives.
 - c. Leadership Committee. This committee shall be composed of four members, including but not limited to the Chair and Vice Chair of the Planning Commission and the Chair of the Development Review Committee and Policy Committee. The Leadership Committee shall have the following responsibilities:
 1. Review policies and procedures under which the Planning Commission operates and recommend changes to make the Commission more effective, efficient, and better recognized by the public and elected officials; and
 2. Review concerns raised regarding the conduct of the Commission.
 - d. Nominating Committee. This Committee shall be comprised of all members of the Planning Commission, excluding the Chair, who shall not be eligible for membership on the Nominating Committee. The Vice-Chair of the Planning Commission shall be Chair of the Nominating Committee.

ARTICLE IX. PARLIAMENTARY AUTHORITY AND ORGANIZATIONAL PROCEDURE

The rules contained in the last revised edition of Robert's Rules of Order to the extent that such rules are not in conflict with these Bylaws shall apply at all meetings of the Commission and its committees.

ARTICLE X. AMENDMENT

Amendments may be made to these Bylaws by a two-thirds (2/3) vote of the voting members only after a minimum 30 days' prior notice is given and only at a regular scheduled meeting.

Adopted November 28, 1978

Amended July 10, 1990

Amended May 12, 1992

Amended March 8, 1994

Amended May 4, 1998

Amended June 1, 1998

Amended June 3, 2002

Amended August 5, 2002

Amended January 12, 2004

A. Joe Poole, III, Chair
Planning Commission

**REZONING 9-03/REZONING 12-03/SPECIAL USE PERMIT 20-03. Williamsburg Community Chapel Rezoning/Jamestown Hundred Proffer and Master Plan Amendment
Staff Report for January 12, 2004, 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

Planning Commission: November 3, 2003 - 7:00 p.m. Building C Board Room (deferred)
December 8, 2003 - 5:30 p.m. Building C Board Room (deferred)
January 12, 2004 - 5:30 p.m. Building F Board Room
Board of Supervisors: February 10, 2004 - 7:00 p.m. Building F Board Room (tentative)

SUMMARY FACTS

Applicant: Craig G. Covey, Hening-Vest-Covey-Chenault
Land Owner: Williamsburg Community Chapel
Proposed Use: Infill development of four single-family residential lots in the Jamestown Hundred Subdivision
Location: 3899 John Tyler Highway; Berkeley District
Tax Map/Parcel No.: (46-1)(1-2A)
Primary Service Area: Inside
Parcel Size: 1.21 acres out of 15.12 total acres
Existing Zoning: R-8, Rural Residential
Proposed Zoning: R-2, General Residential, Cluster with Proffers
Comprehensive Plan: Low Density Residential
Surrounding Zoning: North (across John Tyler Highway): R-8, Rural Residential
South and West: R-2, General Residential
East: R-1, Limited Residential
Staff Contact: David Anderson Phone: 253-6685

STAFF RECOMMENDATION:

The applicant has requested that the Planning Commission defer this case until the February 2, 2004 Planning Commission Meeting in order to allow more time to resolve outstanding issues between the residents of Jamestown Hundred, the Williamsburg Community Chapel, and Hampton Roads Development, Inc. Staff concurs with the request.

**Z-11-03 & MP-11-03. Stonehouse Planned Community Amendment
Staff Report for the January 12, 2004, 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

County Government Complex
Planning Commission: December 8, 2003, 5:30 p.m. Building C Board Room (Deferred)
January 12, 2004, 5:30p.m. Building F Board Room
Board of Supervisors: February 10, 2004, 7:00p.m. Building F Board Room (Tentative)

SUMMARY FACTS

Applicant: Mr. Greg Davis, Kaufman & Canoles

Land Owner: Ken McDermott, Stonehouse at Williamsburg, LLC

Proposed Use: To amend the master plan and proffers for the Stonehouse Planned Community by realigning Fieldstone Parkway, shifting residential densities and rezoning some landbays to residential. There is no proposed increase to the total number of approved residential units within the Stonehouse Planned Community.

Location: 9235 Fieldstone Parkway & 9186 Mount Zion Road
Stonehouse District

Tax Map/Parcel: (4-4)(1-29) and a portion of (6-4)(1-1)

Primary Service Area: Inside

Parcel Size: 209 acres out of 2,182 acres

Existing & Proposed Zoning: Planned Unit Development Residential & Commercial with Proffers

Comprehensive Plan: Low Density Residential & Mixed Use

Surrounding Zoning: North & East: New Kent County—Agricultural Zoning
James City County rural lands zoned A-1
PUD-R: Stonehouse
South: PUD-R: Stonehouse
West: Interstate 64 and
PUD-C: Stonehouse Commerce Park

Staff Contact: Karen Drake - Phone: 253-6685

STAFF RECOMMENDATION

The applicant has requested the Planning Commission defer this case until the February 2, 2004 Planning Commission Meeting to allow more time to resolve outstanding issues regarding the Stonehouse master plan and proffers. Staff concurs with the request.

Attachment:

1.) Deferral Request Letter

KAUFMAN & CANOLES

— | A Professional Corporation | —
Attorneys and Counselors at Law

Timothy O. Trant, II

757 / 259-3800



4801 Courthouse St.
Ste 300
Williamsburg, VA 23188
757 / 259-3800
fax: 757 / 259-3823
totrant@kaufcan.com

December 23, 2003

Via Hand Delivery & Facsimile (757) 253-6850

Karen Drake
Senior Planner
James City County
101-E Mounts Bay Road
Williamsburg, VA 23185

Re: *Stonehouse at Williamsburg, LLC*
Application for Rezoning and Master Plan Amendment of a portion of Stonehouse
James City County Case No's. Z-11-03 & MP-11-03
Our Matter No. 100281

Dear Ms. Drake:

The above-referenced case is scheduled to be presented to the James City County Planning Commission at its meeting on January 12, 2004. The applicant hereby respectfully requests deferral of the case to the February 2, 2004 Planning Commission meeting, in order to provide the applicant additional time to respond to the various comments received from the Planning Staff.

If you have any questions, please do not hesitate to contact me.

Very truly yours,

Timothy O. Trant, II

xc: Kenneth G. McDermott (via Federal Express)
Mark Rinaldi (via hand delivery)
Gregory R. Davis, Esq.
Paul W. Gerhardt, Esq.
Alvin P. Anderson, Esq.

#6050057 v1

**REZONING 14-03/MASTER PLAN 1-04. Powhatan Secondary Proffer Amendment
Staff Report for January 12, 2004, 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

Planning Commission: January 12, 2004 - 5:30 p.m. Building F Board Room
Board of Supervisors: February 10, 2004 - 7:00 p.m. Building F Board Room (tentative)

SUMMARY FACTS

Applicant: Alvin P. Anderson, Kaufman & Canoles, P.C.

Land Owner: Lawrence E. Beamer, Powhatan Enterprises, Inc.

Proposed Use: Amendment to the existing Powhatan Proffers to allow commercial/office development generating up to 1,504 vehicles per day on the commercial/office parcel

Location: 4501 News Road; Berkeley District

Tax Map/Parcel No.: (38-3)(1-31)

Primary Service Area: Inside

Parcel Size: 11.6 acres

Existing Zoning: R-4, Residential Planned Community District, with proffers

Proposed Zoning: R-4, Residential Planned Community District, with proffers

Comprehensive Plan: Low Density Residential

Surrounding Zoning: North, South, East and West: R-4, Residential Planned Community District

Staff Contact: David Anderson Phone: 253-6685

STAFF RECOMMENDATION:

The proposed proffer amendment is consistent with surrounding zoning and development and compatible with the Comprehensive Plan. The attached proffers adequately address any potential impacts associated with the proposal. Staff recommends the Planning Commission approve the proposal with the attached proffers.

Description

Alvin P. Anderson of Kaufman & Canoles, P.C. has applied on behalf of Lawrence E. Beamer, President of Powhatan Enterprises, Inc., to amend the existing Powhatan Proffers. The amendment seeks to delete the last sentence in existing Proffer 20 which states, “No commercial uses shall be permitted on the Commercial/Office area if the ITE trip generation for such commercial use per square foot exceeds the ITE trip generation for office per square foot.” Effectively, the last sentence in existing Proffer 20 limits any commercial development on the Commercial/Office area significantly since very few commercial developments generate traffic equivalent to or less than office developments. The applicant proposes the following language to replace the last sentence in existing Proffer 20, “Without additional traffic studies reviewed and approved by the Planning Director, no commercial and/or office uses shall be permitted on the Property if the ITE trip generation for such commercial and/or office uses exceeds 1,504 vehicles per day.” Currently, per the adopted Master Plan of Powhatan, the Commercial/Office area is limited to a development level not to exceed the traffic generation of 93 townhouse units, equivalent to 744 vehicle trips per day. The applicant arrives at the generation rate of 1,504 vehicles per day by transferring traffic generation from 95 approved off-site townhouse units that were never built. 95 townhouse units generate 760 vehicle trips per day, bringing the total on that parcel to the proposed traffic generation cap of 1,504 vehicles per day. This amendment applies only to the Commercial/Office parcel located at 4501 News Road.

Surrounding Zoning and Development

The Commercial/Office parcel is zoned R-4, Residential Planned Community District, with proffers. Land to the north, south, east, and west of this parcel is also zoned R-4, Residential Planned Community District. Additionally, the land is governed by the adopted Powhatan Proffers. Surrounding development includes Powhatan Place townhouses, Monticello Marketplace, and the Marketplace Shoppes. Commercial developments, including a gas station, a bank, and several fast food restaurants, have been developed in the surrounding area. Due to the like zoning designation of the surrounding area and the commercial nature of surrounding development, staff believes the proposal is consistent with surrounding zoning and development.

Comprehensive Plan

The Commercial/Office parcel is designated Low Density Residential on the 2003 Comprehensive Plan Land Use Map. Examples of acceptable land uses within this designation include single-family homes, duplexes, cluster housing, recreation areas, schools, churches, community-oriented public facilities, and very limited commercial establishments. Although the proposed amendment of Proffer 20 will permit more intense commercial uses than what is currently permitted on the site, the applicant has proffered out several of the intense commercial uses which are generally permitted in the R-4 zoning district. Those uses that have been proffered out include fast food restaurants, automobile service stations, private clubs, civic or service clubs, lodges, fraternal organizations, public billiard parlors, arcades, pool rooms, bowling alleys, dance halls, and other centers of amusements. Staff feels that this proffer substantially limits the intensity of commercial development of this site. Although the parcel’s commercial/office designation is technically inconsistent with the Comprehensive Plan, the parcel was planned for nonresidential usage as part of an overall master plan. The area has developed in accord with that master plan and is non-residential. Therefore, staff believes the proposal is compatible with the 2003 Comprehensive Plan.

Traffic Generation

As stated previously, this amendment raises the permitted traffic generation of this parcel from 744 vehicles per day to 1,504 vehicles per day. While this increase potentially doubles the allowable traffic generation, staff does not believe it will have an appreciable impact. Although traffic generation on Monticello Avenue and News Road has been increasing, adequate capacity exists to accommodate the impact of development

of this parcel. Furthermore, the increase in traffic generation on this parcel is actually a reallocation of already permitted traffic generation from the overall Powhatan development. The total traffic generation for the overall development is not increasing. Finally, staff believes that traffic generation numbers for this parcel will be less than that which is projected under the ITE due to the intense commercial nature of surrounding development and the competing uses which comprise surrounding development.

Additional Impacts

The applicant has proffered several desirable conditions for development of this parcel which would not otherwise be achieved through a by right development of this parcel. Most importantly, these include limiting access to the existing curb cuts on News Road, enhanced landscaping along News Road, and assurance of architectural compatibility with Monticello Marketplace and the Marketplace Shoppes. Staff believes these proffers adequately mitigate any potential negative impacts associated with development of a more intense commercial use on the Commercial/Office parcel, and are extremely important in preserving the character of the area.

STAFF RECOMMENDATION:

The proposed proffer amendment is consistent with surrounding zoning and development and compatible with the Comprehensive Plan. The attached proffers adequately address any potential impacts associated with the proposal. Staff recommends the Planning Commission approve the proposal with the attached proffers.

Dave Anderson

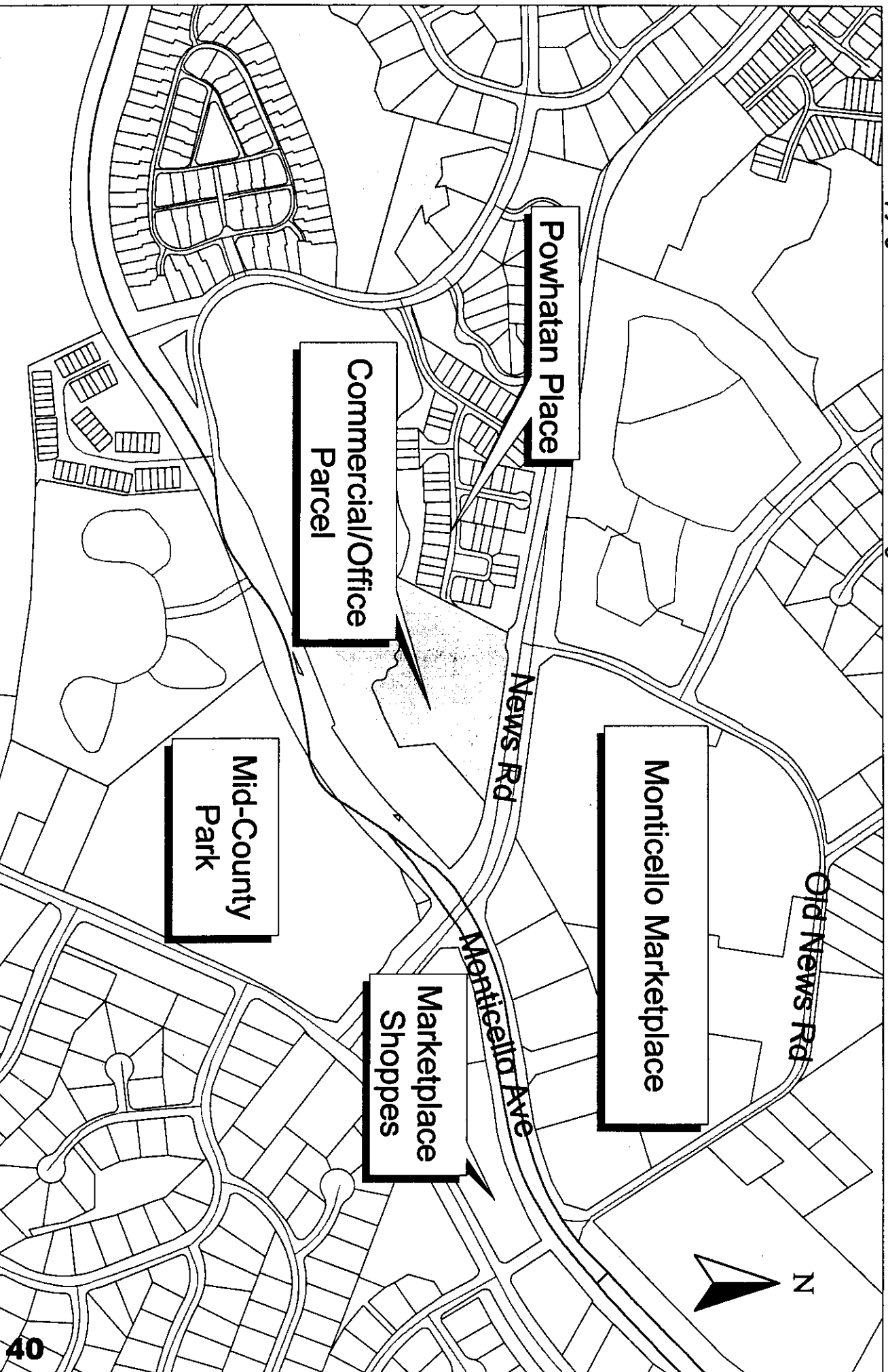
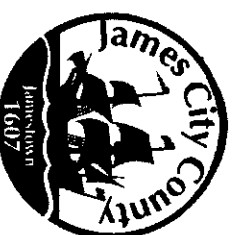
Attachments:

1. Location Map
2. Proffers
3. Plan of Development Powhatan of Williamsburg Secondary

Case No. Z-14-03/MP-1-04, Powhatan Enterprises Proffer Amendment - Location Map

Aerial View Copyright 2002 Commonwealth of Virginia

300 0 300 600 Feet



SUPPLEMENTAL PROFFERS
FOR THE POWHATAN "COMMERCIAL/OFFICE PARCEL"

THESE SUPPLEMENTAL PROFFERS are made as of this 5th day of January, 2004, by **POWHATAN ENTERPRISES, INC.**, a Virginia corporation (together with its successors and assigns, "Powhatan") (index as a "grantor"); and the **COUNTY OF JAMES CITY, VIRGINIA** (the "County") (index as the "grantee").

RECITALS

R-1. Powhatan is the owner of certain real property in James City County, Virginia, a portion of which is more particularly described on **EXHIBIT A** attached hereto and made a part hereof (the "Property").

R-2. The Property is subject to the proffers (the "Existing Proffers"), dated March 11, 1996, of record in the Clerk's Office of the Circuit Court for the City of Williamsburg and County of James City, Virginia (the "Clerk's Office") in Deed Book 803, at page 740. The Existing Proffers are made a part hereof and incorporated by reference.

R-3. The Property is also subject to a plan of development entitled "Exhibit F Master Plan of Powhatan" prepared by Langley and McDonald, P.C., dated July, 1982, last revised on February 29, 1996 (the "Existing Plan of Development"), a copy of which is on file with the County's Director of Planning.

R-4. Powhatan desires to amend the Existing Proffers and the Existing Plan of Development which changes only pertain to the Property.

R-5. Powhatan has reduced the allowable townhouse density within the News Road Corridor by a total of 188 units which development would have otherwise generated 1,504

vehicle trips per day pursuant to the Institute of Transportation Engineers ("ITE"). Based upon that reduction in townhouse density, the Existing Proffers, the Existing Plan of Development and the notes thereon, Powhatan, without further traffic studies, reviewed and approved by the Planning Director, is seeking to develop the Property with commercial and/or office uses which do not exceed a total of 62,000 square feet provided the ITE trip generation for such use(s) does not exceed 1,504 vehicles per day; however, the last sentence of proffer 20 of the Existing Proffers may conflict with the intended use by stating: "No commercial uses shall be permitted on the "Commercial/Office" area if the ITE trip generation for such commercial use per square foot exceeds the ITE trip generation for office use per square foot."

R-6. Powhatan has applied for a proffer amendment solely to allow commercial and/or office development on the Property without further traffic studies provided that the aggregate amount of square feet of commercial and/or office floor area does not exceed 62,000 square feet and provided further that the ITE trip generation for the commercial and/or office uses does not exceed 1,504 vehicles per day.

R-7. The provisions of the Zoning Ordinance, Section 24-1, et seq., may be deemed inadequate for protecting and enhancing orderly development of the Property. Accordingly, Powhatan, in furtherance of its application, desires to proffer certain additional conditions which are specifically limited solely to those set forth herein in addition to the regulations provided for by the Zoning Ordinance for the protection and enhancement of the development of the Property, in accordance with the provisions of Section 15.2-2296 *et seq.* of the Code of Virginia (1950), as amended (the "Virginia Code") and Section 24-16 of the Zoning Ordinance.

R-8. The County constitutes a high-growth locality as defined by Section 15.2-2298 of the Virginia Code.

NOW, THEREFORE, for and in consideration of the approval by the Board of Supervisors of the County of the proffer amendments set forth above and the approval of these Supplemental Proffers and all related documents described herein, and pursuant to Section 15.2-2296, et seq., of the Virginia Code, Section 24-16 of the Zoning Ordinance, Powhatan agrees that all of the following conditions shall be met and satisfied in developing the Property.

PROFFERS:

PROFFERS APPLICABLE TO THE PROPERTY

1. Application of Existing Proffers and Existing Plan of Development.

Development and use of the Property shall hereafter be subject to and in accordance with the Existing Proffers as amended hereby and the Existing Plan of Development as amended hereby, which are both incorporated herein by reference.

2. **Amended Plan of Development.** Powhatan will also develop the Property in accordance with a plan of development entitled "Plan of Development, Powhatan of Williamsburg Secondary, James City County, Virginia" prepared by Landmark Design Group dated January 6, 2004 ("the Amended Plan of Development").

3. **Amended Proffer.** The last sentence of proffer number 20 of the Existing Proffers is deleted and in lieu of the sentence deleted, the following sentence is substituted:

"Without additional traffic studies reviewed and approved by the Planning Director, no commercial and/or office uses shall be permitted on the Property if the ITE trip generation for such commercial and/or office uses exceeds 1,504 vehicles per day."

4. **Landscaping of the Property.** Powhatan agrees to provide enhanced landscaping along the frontage of the Property adjacent to News Road which landscaping shall exceed the number of plants otherwise required by the requirements currently in effect by a factor of fifteen percent (15%). A landscaping plan shall be submitted to the Planning Director for review and approval before final site plan approval.

5. Limitation on Number of Curb Cuts. Access to News Road to the Property shall be limited to no more than two (2) curb cuts at existing locations; however, with the review and approval of the Planning Director, said locations may be changed but not increased in number.

6. Architectural Compatibility. Architectural elevations shall be submitted to the Planning Director for review and approval solely to determine the general compatibility of all buildings on the property with the design and materials of that currently in place at the Monticello Marketplace and the Marketplace Shoppes.

7. Sidewalk. Powhatan shall either construct a sidewalk parallel to and along the front property line of the Property within the existing right of way of News Road or, in the alternative, provide a bond in form and amount acceptable to the County to guarantee construction of the same when, as and if sidewalks are constructed on the adjacent properties. Provided, however that the sidewalk otherwise herein required shall be constructed not later than the time when a certificate of occupancy is issued for any building on the Property.

8. Prohibited Uses. The following uses which are generally permitted in the Residential Planned Community, R-4 zoning district are hereby prohibited:

- automobile service stations
- private clubs, civic or service clubs, lodges and fraternal organizations
- public billiard parlors, arcades, pool rooms, bowling alleys, dance halls and other centers of amusement
- fast food restaurants

9. Supplemental Proffers and Amended Plan of Development. These Supplemental Proffers and the Amended Plan of Development amend and supplement the Existing Proffers and the Existing Plan of Development but only as to the Property. No other amendment to the Existing Proffers and/or the Existing Plan of Development is intended or accomplished hereby. To the extent that the Amended Plan of Development or the provisions of these Supplemental Proffers conflict with the provisions of the Existing Plan of Development or the Existing

Proffers, the Amended Plan of Development and these Supplemental Proffers shall govern, but only as to the Property.

10. Recitals. The Recitals set forth above shall be included and read as a part of these Proffers and are incorporated by reference.

WITNESS the following signatures, thereunto duly authorized:

POWHATAN ENTERPRISES, INC.

By:


Lawrence E. Beamer, President

COMMONWEALTH OF VIRGINIA
COUNTY OF JAMES CITY, to wit:

The foregoing instrument was acknowledged before me this 4th day of January, 2004 by Lawrence E. Beamer, President of Powhatan Enterprises, Inc., a Virginia corporation, on its behalf.


NOTARY PUBLIC

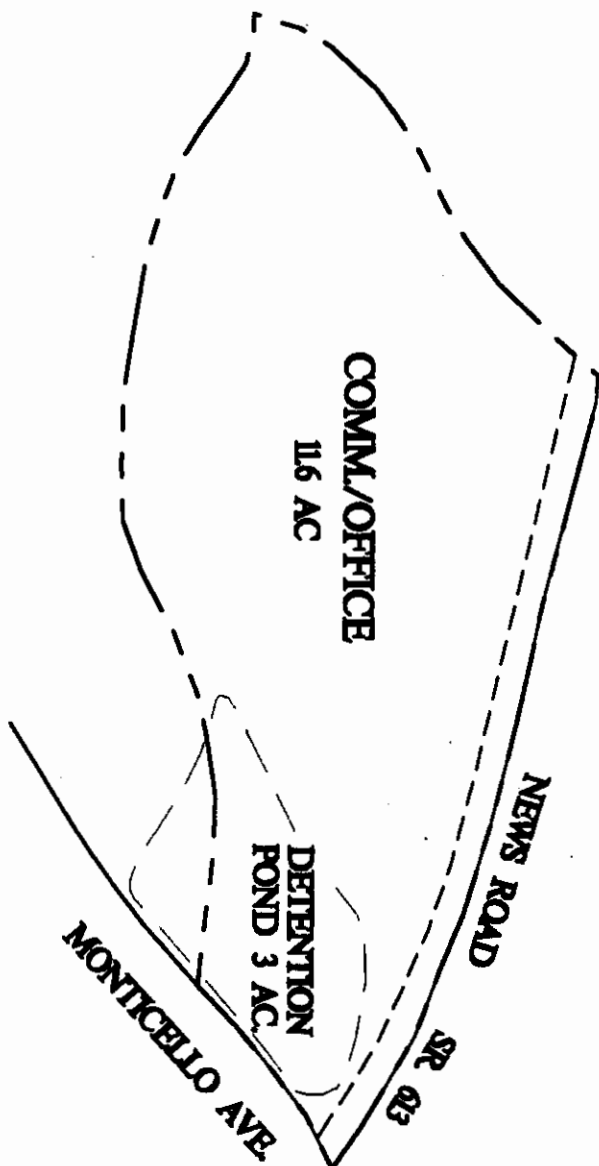
My commission expires: Commission Expires Dec. 31, 2005

#6048867v4

EXHIBIT A

All that certain piece or parcel of land shown and set forth as "Comm./Office, 11.6 AC" including but not limited to the area designated as "Detention Pond, 3 AC" on that plan of development entitled "Exhibit "F," Master Plan of Powhatan" prepared by Langley and McDonald, P.C. dated July 1982 with revisions dated 6/2/86, 6/6/86, 6/10/86, 1/26/87, 3/30/89, 11/25/94, 12/15/95 and 2/29/96.

NOTE 1: WITHOUT ADDITIONAL TRAFFIC STUDIES REVIEWED AND APPROVED BY THE PLANNING DIRECTOR, NO COMMERCIAL AND/OR OFFICE USES SHALL BE PERMITTED ON THE "COMMERCIAL/OFFICE" PROPERTY IF THE TRIP GENERATION FOR SUCH COMMERCIAL AND/OR OFFICE USES EXCEEDS 1,504 VEHICLE TRIPS PER DAY."



PLAN OF DEVELOPMENT
POWHATAN OF WILLIAMSBURG SECONDARY
JAMES CITY COUNTY, VIRGINIA JANUARY 6, 2004
SCALE: 1"=200'

LANDMARK
DESIGN GROUP
Architects, Planners, Engineers

4202 Sandstone Road
 Suite 100
 Williamsburg, VA 23186
 Tel: (757) 333-8777
 Fax: (757) 333-8844
 Email: landmarkdesigngroup.com

Project Number: 1780041

Dwg. File No.:
 14960W

SPECIAL USE PERMIT– SUP-23-03. David A. Nice Builders Expansion

Staff Report for January 12, 2004, Planning Commission Public Hearing

This 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 Center

Planning Commission:

January 12, 2004, 5:30 p.m

Board of Supervisors:

February 10, 2004, 7:00 p.m.

SUMMARY FACTS

Applicant:

Mike Suerdieck

Land Owner:

David A Nice Builders, Inc.

Proposed Use:

A 797 square foot addition to an existing contractor's office

Location:

4575 Ware Creek Road

Tax Map/Parcel No.:

(14-1)(1-15B)

Primary Service Area:

Outside

Parcel Size:

0.93 acres

Existing Zoning:

A-1, General Agricultural District

Comprehensive Plan:

Rural Lands

Surrounding Zoning:

All surrounding parcels are zoned A-1.

Staff Contact:

Sarah Weisiger, Planner

Phone: 253-6685

Staff Recommendation:

Staff believes that this request does not set a precedent for future expansion requests in areas designated Rural Lands. The unique zoning history coupled with the physical aspects of the site and proposed addition help mitigate the impacts of this use. Staff therefore recommends approval of this special use permit with the conditions attached to this report.

Description of the Project

The applicant proposes to add a second floor to an existing addition on a contractor's office located at 4575 Ware Creek Road. The proposed 797 square foot addition would include three offices and a conference room and make the total size of the office 4,415 square feet. The second story exterior would match the color and materials of the building. The applicant states that the addition will provide more space to accommodate the existing staff of 20 employees.

When the building at 4575 Ware Creek Road was first used as an office, contractor's offices were a permitted use in the A-1, General Agricultural District. In 1999, when the applicant sought to construct a one-story addition, a SUP was required because contractor's offices had become a specially permitted use in the A-1 District. At that time, SUP-26-99 was approved to allow the addition. This application seeks to amend a condition of that SUP which limited the size of the expansion.

A warehouse for the business and two single family residences are located on the adjacent 25.4 acre parcel. SUP-19-93 permitted the construction and use of the warehouse.

Surrounding Zoning and Development

The site is surrounded by parcels zoned A-1 General Agricultural. Several single-family residences on one to three acre parcels are located nearby on Ware Creek Road. Behind the office on a separate parcel, there is a warehouse belonging to David Nice Builders. Across Ware Creek Road, a large lot is used for agriculture and is also wooded. Staff believes that the proposed expansion given its size and scale, is compatible with the surrounding zoning and development.

Utilities

The property is served by private well and septic systems. Because of the number of current employees, the Health Department has noted that they may require an expansion of the septic drainfield. The Health Department will review the project at the site plan stage.

Access

The property shares a driveway with the nearby warehouse and two single-family residences at 4571 Ware Creek Road. Virginia Department of Transportation has reviewed the proposal and recommends that the entrance be paved a minimum of 25 feet from the edge of roadway pavement. The applicant states that the area is currently paved. The entrance will also be reviewed at the time of site plan review.

Comprehensive Plan

The property is designated Rural Lands on the Comprehensive Plan Land Use Map. Rural Lands are located outside of the Primary Service Area where utilities and urban services do not exist and are not planned for the future. Appropriate primary uses include agricultural and forestal activities, scattered houses or recreational and public uses on spacious sites with natural and rural surroundings. Non-residential uses may

also be considered, including uses which require very low intensity settings relative to the site in which it will be located. Staff believes that contractor's offices are not consistent with the Rural Lands designation. However, the contractor's office is an existing use and has been in the area for over 15 years. Also, the addition will not enlarge the building's footprint nor change the structure's residential character; these are factors that will help mitigate the impacts of this use. Staff believes that while this application does not alter the character of the area, further expansions of this use may begin to undermine the rural character of the area.

Recommendation:

Staff believes that the unique zoning history coupled with the physical aspects of the proposed addition will help mitigate the impacts of this use within an area designated Rural Lands. Staff recommends that the Planning Commission approve this special use permit with the following conditions:

1. If construction has not commenced on the project within twelve (12) months from the issuance of the special use permit, the permit shall become void. Construction shall be defined as obtaining permits for building construction and a final framing inspection of the addition.
2. The addition shall not exceed 800 square feet in size and shall be designed and constructed as a second-story addition only as shown in the attached drawings prepared by Mike Suerdieck, and entitled "Office 2nd Level Addition", Sheets T-1, A-1, and A-2, and dated December 14, 2001.
3. There shall be no more than 20 persons employed on the property.
4. The building materials and colors of the addition shall match that of the existing office building. The colors and building materials for the addition shall be submitted to and approved by the Planning Director prior to final site plan approval.
5. This Special permit is not severable. The invalidation of any word, phrase, clause, sentence, or paragraph shall not invalidate the remainder.

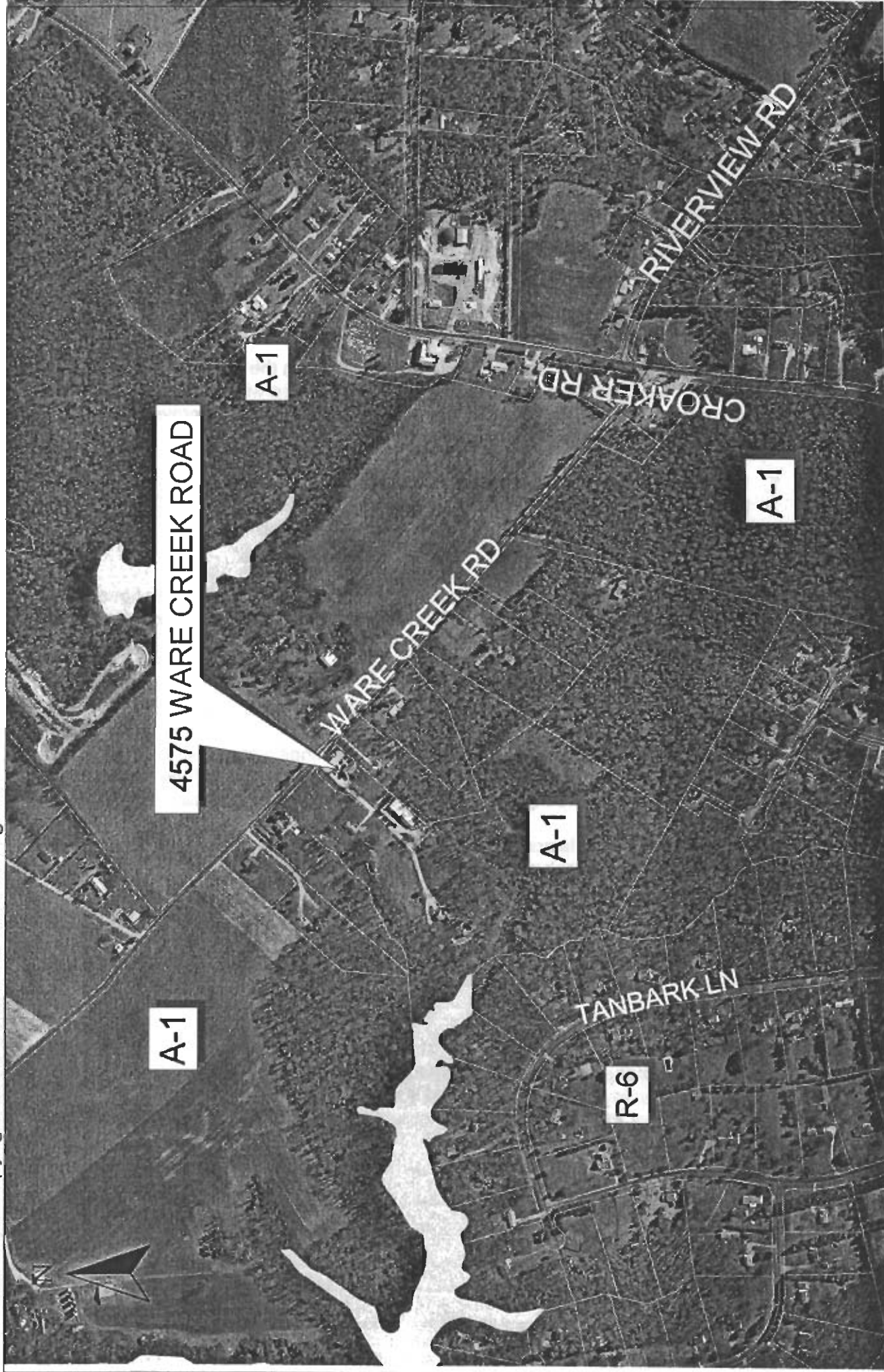
Sarah Weisiger

Attachments:

1. Location Map
2. Photo of existing addition with rendering of proposed addition
3. Boundary survey showing location of addition, 12/2/2003.
4. Building Floor Plan and Elevation entitled "Office 2nd Level Addition" Sheets, T-1, A-1, and A-2.

Case No. SUP-23-03 Nice Builders Expansion 4575 Ware Creek Road

Aerial View Copyright 2002 Commonwealth of Virginia





DAVID A. NICE Builders, Inc.

4571 Ware Creek Road, Williamsburg, VA 23188

(757) 566-3032 - FAX (757) 566-4686 - www.davidnicebldrs.com

Re: David A. Nice Builders, Inc. Office Addition
4571 Ware Creek Road
Williamsburg, VA 23188



Submitted 12/3/2003

1) (3.2)

NJE

JOSEPH M. WENZEL:
(14-1) (3-1)

EXIST
1-STORY
FRAME HOUSE

$\Delta: 19^{\circ} 47' 06''$
 $R: 22500'$
 $L: 77.70'$
 $T: 39.24'$
 $C: 77.31'$

$\Delta = 19^{\circ} 47' 06''$
 $R = 175.00'$
 $L = 60.43'$
 $T = 30.52'$
 $C = 60.13'$
 $CB = 1139^{\circ} 47' 51'' E$

$\Delta = 90^{\circ} 00' 24''$
 $P = 24.95'$
 $L = 39.24'$
 $T = 25.00'$
 $C = 35.32'$
 $CB = 585^{\circ} 21' 40''$

$N 49^{\circ} 35' 00'' E -$

Property of David A. Nice Builders, Inc.
0.68 acres

Ex. Storage Shed

**Proposed
Addition above
1st floor on rear
of Building**

290 40°

1995

EXISTING FRUIT W.F.

**Property of Simmons
Residential Use**

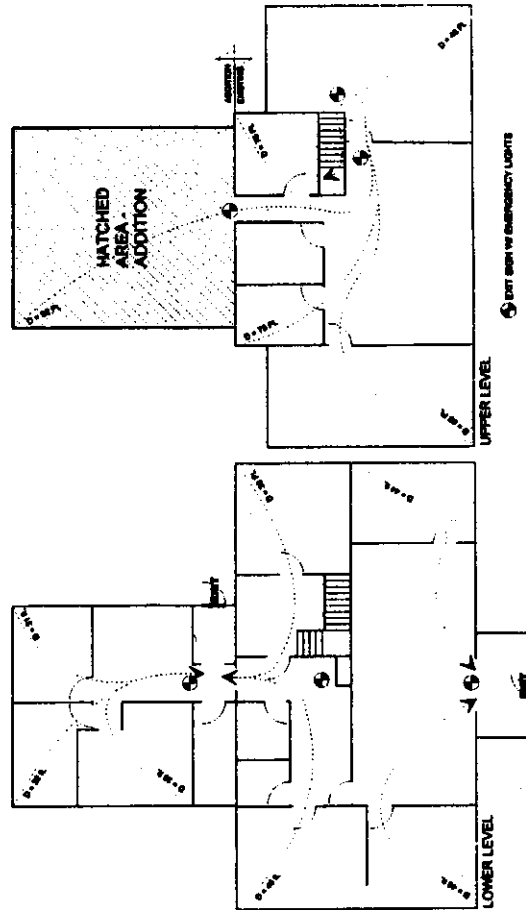
**Proposed 2nd Floor Addition to
DAVID A. NICE BUILDERS, INC. OFFICES
4571 Ware Creek Road
Williamsburg, VA 23188**

Drawn by:
Mike Suerdieck, Project Coordinator 12/2/2003

OFFICE 2nd FLOOR ADDITION

Project Description

This project consists of adding a second level above the existing rear wing of the office building of David A. Nice Builders, Inc. The rear wing was constructed in 2000 with the framing of the roof joist designed to become the future floor joist of a second level. The addition shall be wood framed with wood siding and a single roof to match the rest of the office building. The additional area will be used for meetings and general office workspace. No site work will be required for this addition. New Addition will not extend beyond the existing foot print of the building.



MEANS OF EGRESS

SIZE OF BUILDING
Existing: 3,818 Sq. Ft.
Proposed Addition: 797 Sq. Ft.
TOTAL PROPOSED: 4,615 Sq. Ft.

TABLE OF CONTENTS

T1	TITLE PAGE
A1	FLOOR PLAN / SECTION
A2	EXTERIOR ELEVATIONS

CONTRACTOR
DAVID A. NICE BUILDERS, Inc.
4571 Ware Creek Road, Williamsburg, VA 23188
(757) 844-3032 - FAX (757) 844-4454 - www.davidanicebuilders.com

PROJECT
Office 2nd Level Addition
4571 Ware Creek Road
Williamsburg, VA 23188

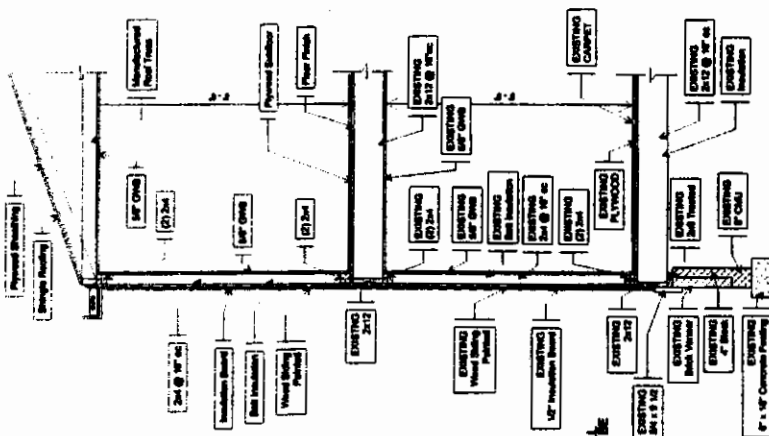
DRAWN BY
Mike Suerdick
DATE
12/14/2001

T1

PROJECT
Office 2nd Level Addition
4571 Ware Creek Road
Williamsburg, VA 23188

DRAWN BY
Mike Suerdick
DATE
12/14/2001

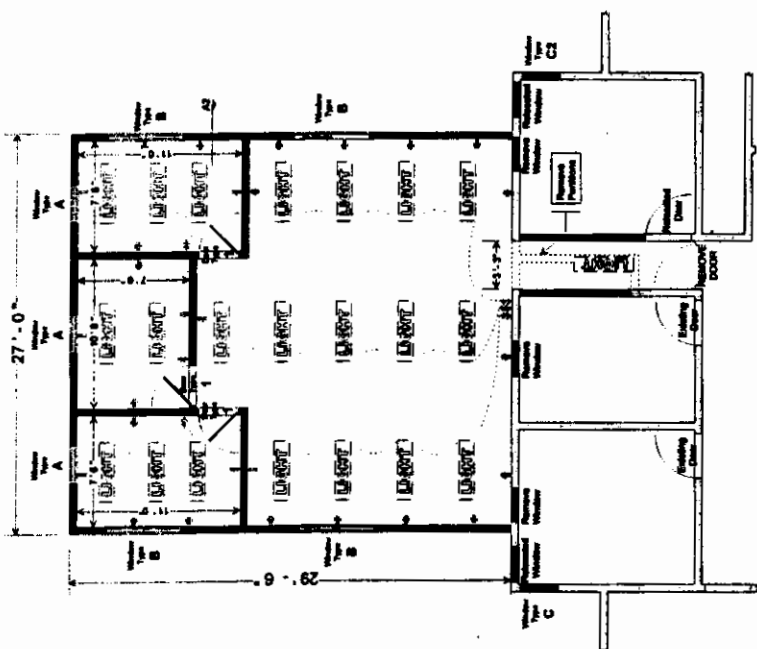
A



WALL SECTION

NOTE: INSULATION RATINGS
UNDER FLOOR INSULATION: R=19
WALL INSULATION: R=19
CEILING(ROOF) INSULATION: R=39

NOTE: ALL FRAMING MATERIALS SHALL COMPLY WITH CODE. BRACKETS SHALL BE SOUTHERN YELLOW PINE



Door Type 1	2'-5" x 6'-5" Wood Frame, Wood Door w/ Privacy Lever Lockset	Walls Carpet - Standard Short Twist Weave Carpet 30oz. Commercial Grade	Painted GWB	Partitions Existing Partition	Partitions New Wood Framed Partition (2x4 @ 16" oc. Typical a.u.o.)
Window Type A	2'-5" x 4'-0" Single Casement Window	Walls Carpet - Standard Short Twist Weave Carpet 30oz. Commercial Grade	Painted GWB	Partitions Existing Partition	Partitions New Wood Framed Partition (2x4 @ 16" oc. Typical a.u.o.)
Window Type B	5'-0" x 4'-0" Double Casement Window	Walls Carpet - Standard Short Twist Weave Carpet 30oz. Commercial Grade	Painted GWB	Partitions Existing Partition	Partitions New Wood Framed Partition (2x4 @ 16" oc. Typical a.u.o.)
Window Type C	2'-5" x 4'-0" Custom Fixed Window	Walls Carpet - Standard Short Twist Weave Carpet 30oz. Commercial Grade	Painted GWB	Partitions Existing Partition	Partitions New Wood Framed Partition (2x4 @ 16" oc. Typical a.u.o.)

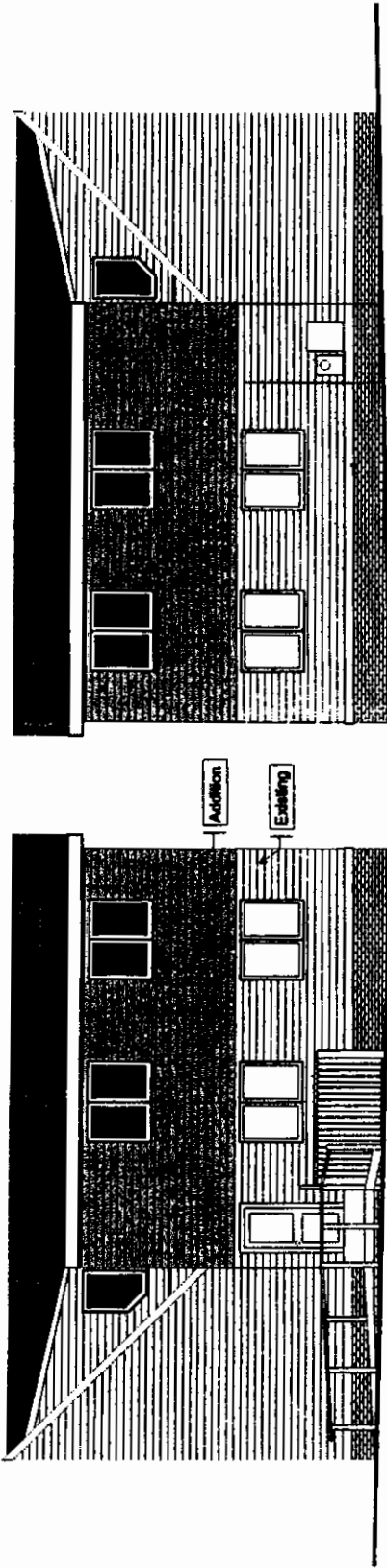
A2

DRAWN BY
Mike Suerdick
DATE
12/14/2001

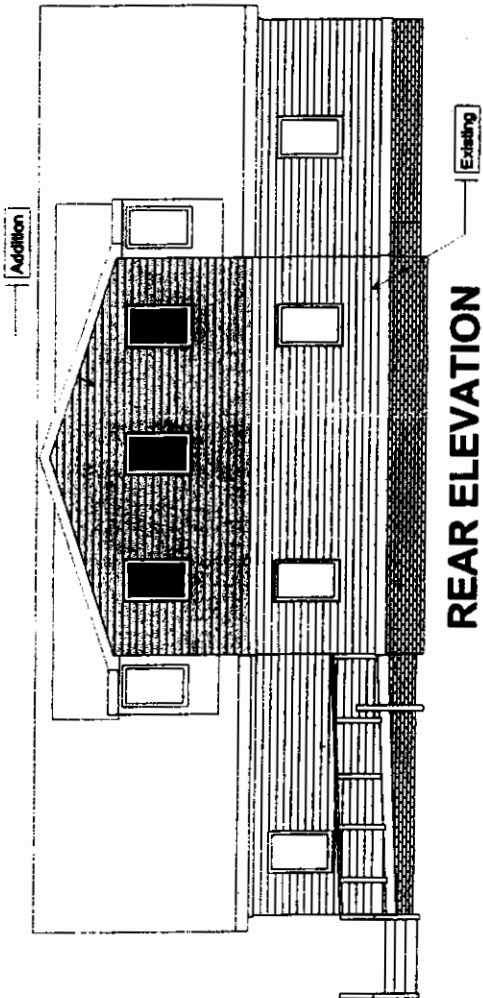
PROJECT
Office 2nd Level Addition
4571 Ware Creek Road
Williamsburg, VA 23188

CONTRACTOR
DAVID A. NICE Builders, Inc.
4571 Ware Creek Road, Williamsburg, VA 23188
(757) 544-3032 - FAX (757) 544-4484 - www.davidnicebuilders.com

SIDE ELEVATIONS



REAR ELEVATION



**Special Use Permit 22-03 & Height Waiver 2-03 Busch Gardens Oktoberfest Expansion
Staff Report for January 12, 2004 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

Planning Commission:

Building F Board Room; County Government Complex

December 8, 2003, 5:30 p.m. (Applicant deferred)

January 12, 2004 - 5: 30 p.m.

Board of Supervisors:

February 10, 2004 - 7 pm.

SUMMARY FACTS

Applicant:

Ronnie Orsborne of LandMark Design Group

Land Owner:

Busch Entertainment Corporation

Proposal:

Busch Gardens would like to erect an approximately 40,000 square foot pre-manufactured metal building. A height limitation waiver is also requested from the Board of Supervisors as the proposed building would have exterior elements exceeding 60 feet in height above grade.

Location:

7851 Pocahontas Trail, Roberts District

Tax Map/Parcel No.:

(51-4)(1-9)

Primary Service Area:

Inside

Parcel Size:

Approximately 2 out of 381.71 total acres

Existing Zoning:

M-1, Limited Business/Industrial District

Comprehensive Plan:

Limited Industry

Surrounding Zoning:

The site is completely contained within Busch Gardens which is zoned M-1, Limited Business/Industrial.

Staff Contact:

Ellen Cook Phone: 253-6685

RECOMMENDATION

Staff finds that the proposed building would have minimal impact on surrounding areas due to its location well within Busch Gardens property lines, and well below the height of existing adjacent rides. Any potential impact will be further minimized by conditions limiting the maximum height of all building elements and ensuring that any site lighting does not create glare that affects surrounding areas. Therefore, staff recommends approval of this special use permit with the attached conditions.

Project Description

Mr. Ronnie Orsborne of LandMark Design Group has applied on behalf of Busch Entertainment Corporation for a special use permit to allow the construction of an approximately 40,000 square foot pre-manufactured metal building to be located within Busch Gardens. A special use permit is required for any commercial building or group of buildings which exceeds 10,000 square feet of floor area.

The proposed building would be located in the Oktoberfest area of the Country of Germany. The site of the proposed building was previously the “Wild Izzy,” (or “Wild Maus”) which is leaving the park at the close of the 2003 season. The proposed pre-manufactured metal building would have a peak height of 35 feet above grade, and house a state-of-art amusement attraction. Exterior building theming, which would require a height limitation waiver as described below, would be reminiscent of elements of the European countryside, and would be of a style and character in keeping with the Country of Germany.

Height Waiver

The applicant has also requested a height limitation waiver from the Board of Supervisors. On property zoned M-1, structures may be constructed up to 60 feet as a matter of right; however, structures in excess of 60 feet may be constructed only if specifically approved by the Board. The applicant has requested that a height limitation waiver be granted to allow for the construction of themed elements up to 80 feet tall that would be added to the exterior of the proposed building to enhance guest experience. It is expected that the majority of the themed structure would be approximately 50 feet above grade with two or three areas approaching 75 feet above grade. Projected sight lines, as shown on “Busch Gardens Oktoberfest Expansion Sight Lines” Exhibits 1 and 2, indicate that these elements would have minimal visual impact on surrounding areas. In addition, the proposed elements would be well below the peak height of other rides, including the Alpegeist roller coaster, in the attraction’s immediate vicinity.

Section 24-419 of the James City County Zoning Ordinance states that structures in excess of 60 feet in height from grade may be erected only upon the granting of a height limitation waiver by the Board of Supervisors upon finding that:

1. Additional setbacks have been provided; however the Board may waive additional setbacks for structures in excess of 60 feet;

Staff comment: The proposed building is 450 feet from the nearest boundary line and over 2,500 feet from the Pocahontas Trail right-of-way. The Zoning Ordinance requires a 73 foot setback for a structure that is 80 feet tall. Therefore, the setbacks are well in excess of those required by the Zoning Ordinance.

2. Such structure will not obstruct light from adjacent property;

Staff comment: Given the 450 foot distance to the nearest property line, staff finds that the proposed buildings would not obstruct light from adjacent property.

3. Such structure will not impair the enjoyment of historic attractions and areas of significant historic interest and surrounding developments;

Staff comment: The closest historic attraction is Carter’s Grove Country Road, which is 650 feet from the proposed expansion. Projected sight lines shown in the Exhibits referenced above indicate that the building would have minimal visual impact from Carter’s Grove Country Road. Staff finds that the proposal would not interfere with enjoyment of historic attractions or areas of significant historic interest.

4. Such structure will not impair property values in the area;

Staff comment: According to Real Estate Assessments, there has been no appreciable decrease in the property values of surrounding homes when previous attractions were constructed.

5. Such structure is adequately designed and served from the standpoint of safety and that the county fire chief finds the fire safety equipment installed is adequately designed and that the structure is reasonably well located in relation to fire stations and equipment, so as to offer adequate protection to life and property;

Staff comment: Fire protection will be provided to the proposed site by means of a sprinkler system and onsite fire hydrants. In addition, the project is subject to a full County review process; staff feels confident this will ensure the proposed building is adequately designed from a safety standpoint.

6. Such structure will not be contrary to the public health, safety and general welfare.

Staff comment: Staff feels that this attraction within the existing park will not adversely effect the public health, safety or general welfare.

Surrounding Zoning and Development

To the west of Busch Gardens is Kingsmill, a planned community zoned R-4, and Carter's Grove Country Road, on land owned by the Colonial Williamsburg Foundation. To the north of the park is the Anheuser- Busch Brewery on land zoned M-2, General Industrial. To the east of Busch Gardens is Route 60, the CSX rail lines, Route 143, and the Williamsburg Country Club and Golf Course. To the south is Grove, which contains residentially zoned properties. Staff feels that since the proposed building is within the existing theme park it is compatible with surrounding land uses.

Access and Traffic

This SUP would not change any access into or out of Busch Gardens. The proposed building and the amusement attraction it contains would, in and of itself, likely have minimal impact on the total amount of traffic that is generated by Busch Gardens. Staff finds that traffic impacts from this proposal would be minimal.

Comprehensive Plan

The 2003 James City County Comprehensive Plan designates the Busch Gardens property as Limited Industry. Limited Industry designates sites within the Primary Service Area for warehousing, office, service industries, light manufacturing plants, and public facilities that have moderate impacts on the surrounding area. In the consideration of acceptable land uses for Limited Industry areas, dust, noise, odor, and other adverse environmental effects, not size, are primary considerations.

Although an amusement attraction is not a traditional form of industrial development, it will not create dust, odor or other adverse environmental effects. In addition, noise will be kept to a minimum since the attraction is completely contained within the building, and the building's external park sound system would be equivalent to the system already in place at the site . For these reasons, staff feels that the proposed use is consistent with the intended uses in the Comprehensive Plan designation.

Busch Gardens is also located along the Pocahontas Trail (Route 60 East) Community Character Corridor. The proposed building, located within the park and 2,500 feet from Pocahontas Trail, will not intrude upon buffers or any landscaping along the Community Character Corridor. Therefore, staff believes the proposal would not have adverse effects on the Community Character Corridor.

RECOMMENDATION

Staff finds that the proposed building would have minimal impact on surrounding areas due to its location well within Busch Gardens property lines, and well below the height of existing adjacent amusement attractions. Any potential impact will be further minimized by conditions limiting the maximum height of all building elements and

ensuring that any site lighting does not create glare that affects surrounding areas. Therefore, staff recommends approval of this special use permit with the following conditions.

1. This Special Use Permit shall be limited to the construction of an approximately 40,000 square foot building, which is generally located as shown on "BGW Oktoberfest Expansion: Sight Lines" prepared by LandMark Design Group, dated November 10, 2003, with minor changes approved by the DRC.

2. A lighting plan shall be submitted to, and approved by, the Planning Director or his designee prior to the issuance of a final Certificate of Occupancy. The plan shall indicate no glare outside the property lines: "glare" shall be defined as more than 0.1 footcandle at the Busch Gardens property line.

3. All elements of this building shall be limited to a maximum height of 80 feet above grade.

4. Construction on this project shall commence within thirty-six (36) months from the date of approval of this special use permit or this permit shall be void. Construction shall be defined as obtaining permits for building construction.

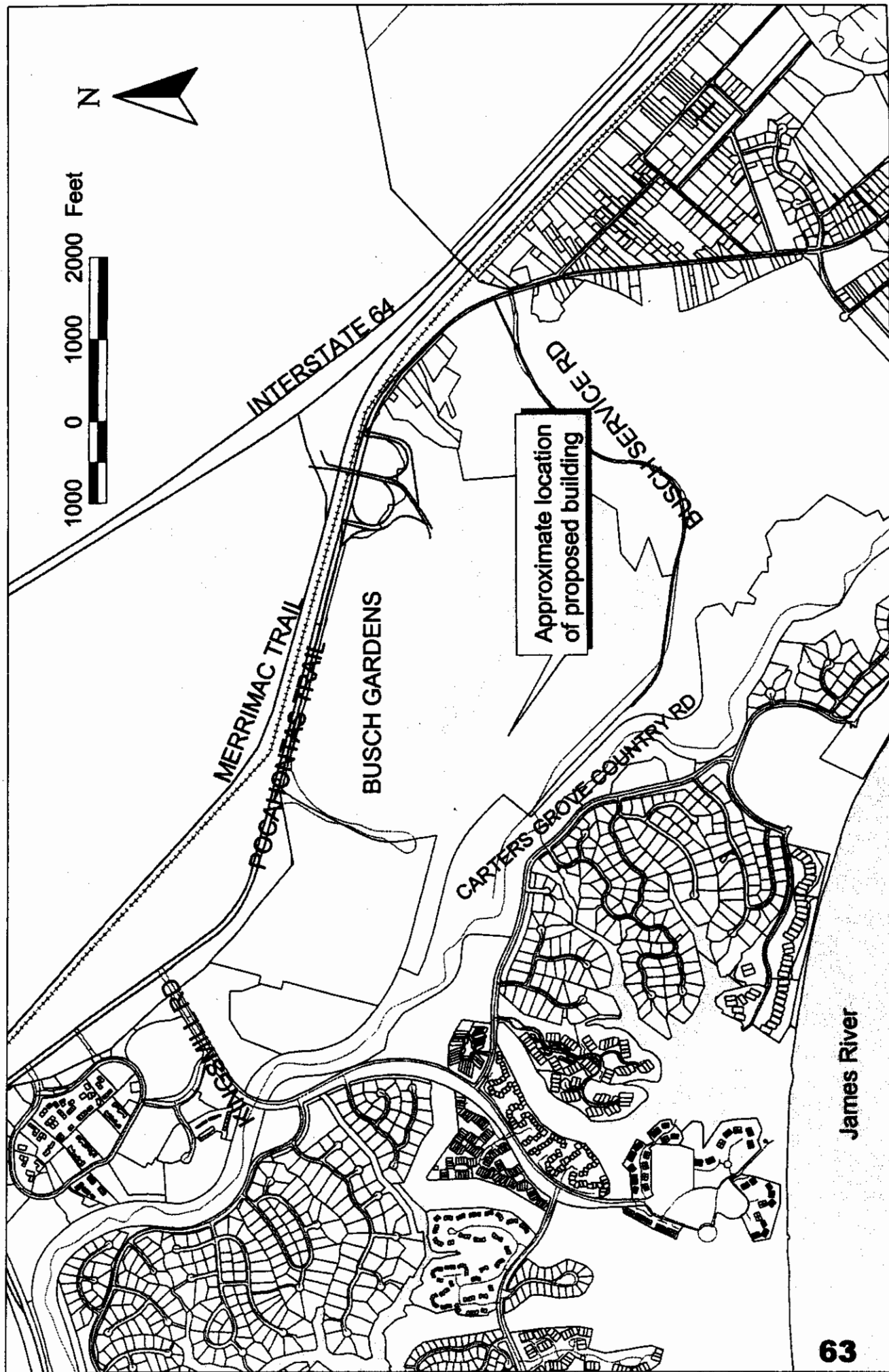
5. This special use permit is not severable. Invalidation of any word, phrase, clause, sentence, or paragraph shall invalidate the remainder.

Ellen Cook

Attachments:

1. Location Map
2. **Site Line Exhibit**

Case No. SUP-22-03/HW-2-03, Busch Gardens Oktoberfest Expansion

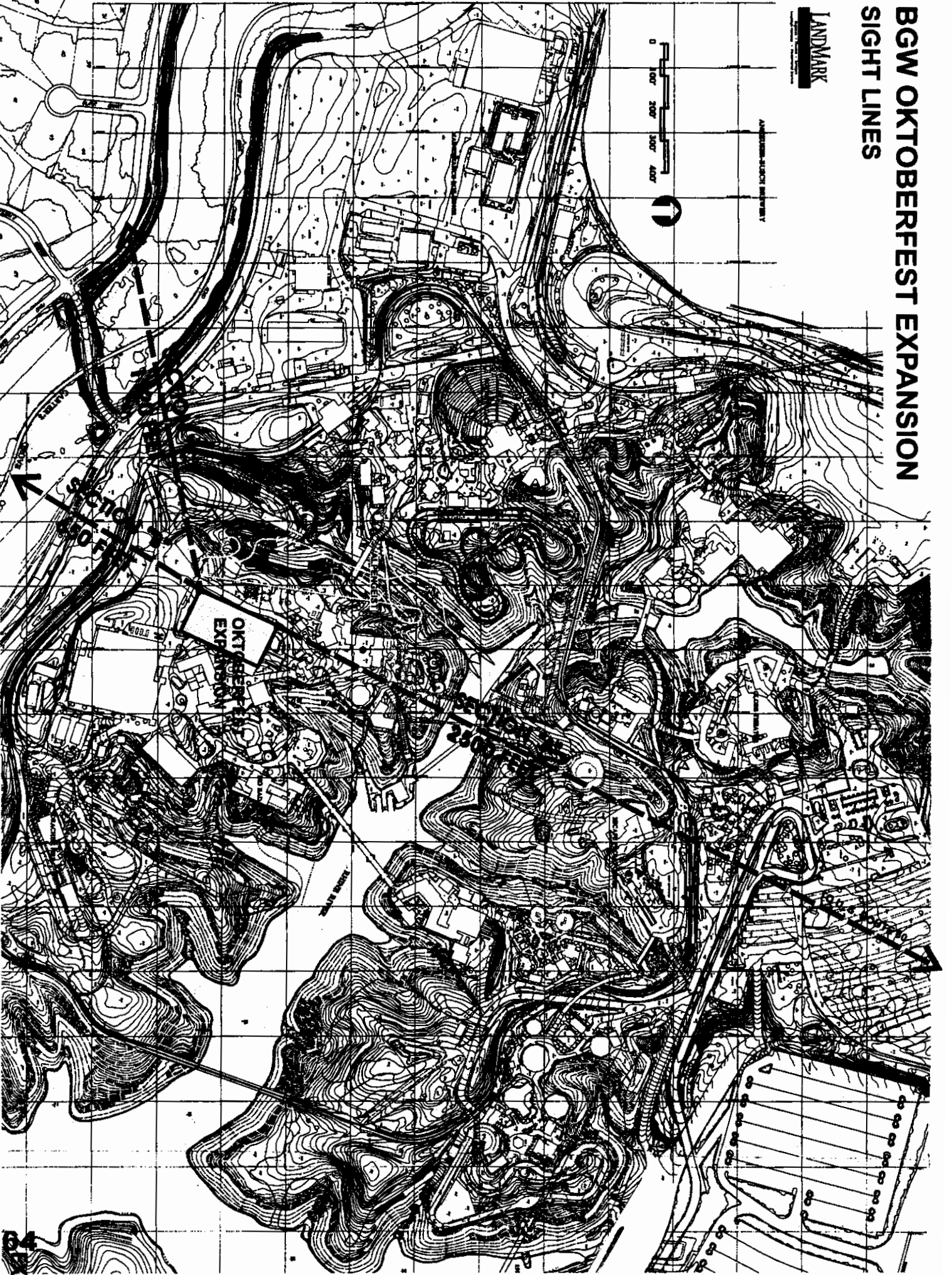


BGW OKTOBERFEST EXPANSION SIGHT LINES

LANDMARK
SIGHT LINES

LANDMARK-SIGHT LINES

0 100' 200' 300' 400'



Agricultural and Forestal District AFD-12-86. Gospel Spreading Church AFD - (Gilley Addition)

Staff Report January 12, 2004, Planning Commission Public Hearing

This report is prepared by the James City County Planning Division to provide information to the AFD Advisory Committee, 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:

AFD Advisory Committee:	County Government Center December 16, 2003 – 4:00 p.m. Bldg. E. (Approved)
Planning Commission:	January 12, 2004 – 5:30 p.m. Bldg. F Board Room
Board of Supervisors:	February 10, 2004 – 7:00 p.m. Bldg. F Board Room

SUMMARY FACTS

Applicant:	Mr. Robert E. Gilley
Land Owner:	Mr. Robert E. Gilley
Proposed Use:	Addition of parcel to Gospel Spreading Church Agricultural and Forestal District
Location:	Along the west side of Mill Creek from an area adjacent to 223 Gatehouse Boulevard extending approximately two miles downstream to the Colonial Parkway.
Tax Map/Parcel No.:	(48-3)(1-42)
Primary Service Area:	Inside
Parcel Size:	71.33 acres
Existing Zoning:	R-8, Rural Residential
Comprehensive Plan:	Conservation Area
Surrounding Zoning:	North: R-8: Parcels fronting Lake Powell Rd South: R-8: Colonial Parkway, National Park Service East: R-8: Gospel Spreading Church Farm and AFD West: R-8, A-1: Gospel Spreading Church AFD R-1: Peleg's Point
Staff Contact:	Sarah Weisiger, Planner Phone: 253-6685

Staff Recommendation:

This parcel would not be suitable in isolation for agricultural or forestal uses. However, because the existing Agricultural and Forestal District consists of marsh, farm land and forests and surrounds most of the proposed area, staff recommends approval of the addition of this parcel to the Gospel Spreading Church AFD. On December 16, 2003,

the AFD Advisory Committee recommended approval by a vote of 5-0 (1 abstention, 4 members absent.)

District History

On August 13, 2002, the Gilley Agricultural and Forestal District, AFD-13-86, was terminated because the district had fallen to less than 200 acres, the minimum size for an AFD. The parcels from the Gilley District were transferred to the Gospel Spreading Church Agricultural and Forestal District, AFD-12-86. The Gospel Spreading Church AFD was renewed at that time and includes a total of ten parcels with 1,121.54 acres. The District is located on both sides of Treasure Island Road, on both sides of Mill Creek to the west and includes parcels on Neck O'Land Road.

Site Description

The property in the proposed addition consists of approximately 71.33 acres along Mill Creek beginning near the Colonial Parkway, and is located generally west or south of the creek for approximately two miles upstream. It is located within the Primary Service Area (PSA). All of the parcel is in tidal marsh and located within the Resource Protection Area (RPA) of the Chesapeake Bay Preservation area. The parcel does not abut any state roads.

The tidal marsh is inundated by brackish water two times daily. The soil of the proposed addition, Levy silty clay, is continuously saturated with water. The proposed area has no developable land or land of agricultural or forestal significance. However, the land is contiguous with land in the AFD district that is owned by the applicant and has agricultural or forestal significance.

Surrounding Zoning and Development

To the east, the land across Mill Creek from the proposed addition is zoned R-8 and is part of the Gospel Spreading Church AFD; it is undeveloped and has marsh, fields and woods. The land north of the creek is also zoned R-8 and consists of marsh and seven single family homes on lots of more than six acres that front on Lake Powell Road. To the west, the properties adjacent to the marsh are mostly wooded and undeveloped; five of these parcels are already part of the Gospel Spreading Church AFD. The properties to the west are accessed from Neck O'Land Road and are zoned A-1, R-1, and R-8. The Colonial Parkway is located to the south of the proposed addition.

Comprehensive Plan

The proposed Agricultural and Forestal District addition is designated Conservation Area on the Comprehensive Plan Land Use Map. Lands designated for conservation are intended to remain in their natural state. Preferred land uses for conservation areas include hunting and fishing clubs, fish and game preserves parks, and other open space that complement the natural environment. The surrounding parcels are designated Low Density Residential, Conservation, or, in the case of the Gospel Spreading Church Farm, Rural Lands. The Colonial Parkway is designated Park, Public or Semi-Public Open Space. Staff finds that placing property in the AFD would be consistent with the goals for Conservation Areas.

Recommendation:

The proposed addition meets the minimum area and proximity requirements for inclusion into the AFD. The existing Gospel Spreading Church AFD contains 1121.54 acres. If the 71.33 acre addition is approved, the District will have 1192.87 acres. Because the property is adjacent to several parcels within the AFD and because staff believes that inclusion in the District will not be detrimental to the environment, staff recommends approval of this addition to the District. On December 16, 2003, the AFD Advisory Committee recommended approval by a vote of 5-0 (1 abstention, 4 members absent). This addition would be subject to the conditions of the existing district which are:

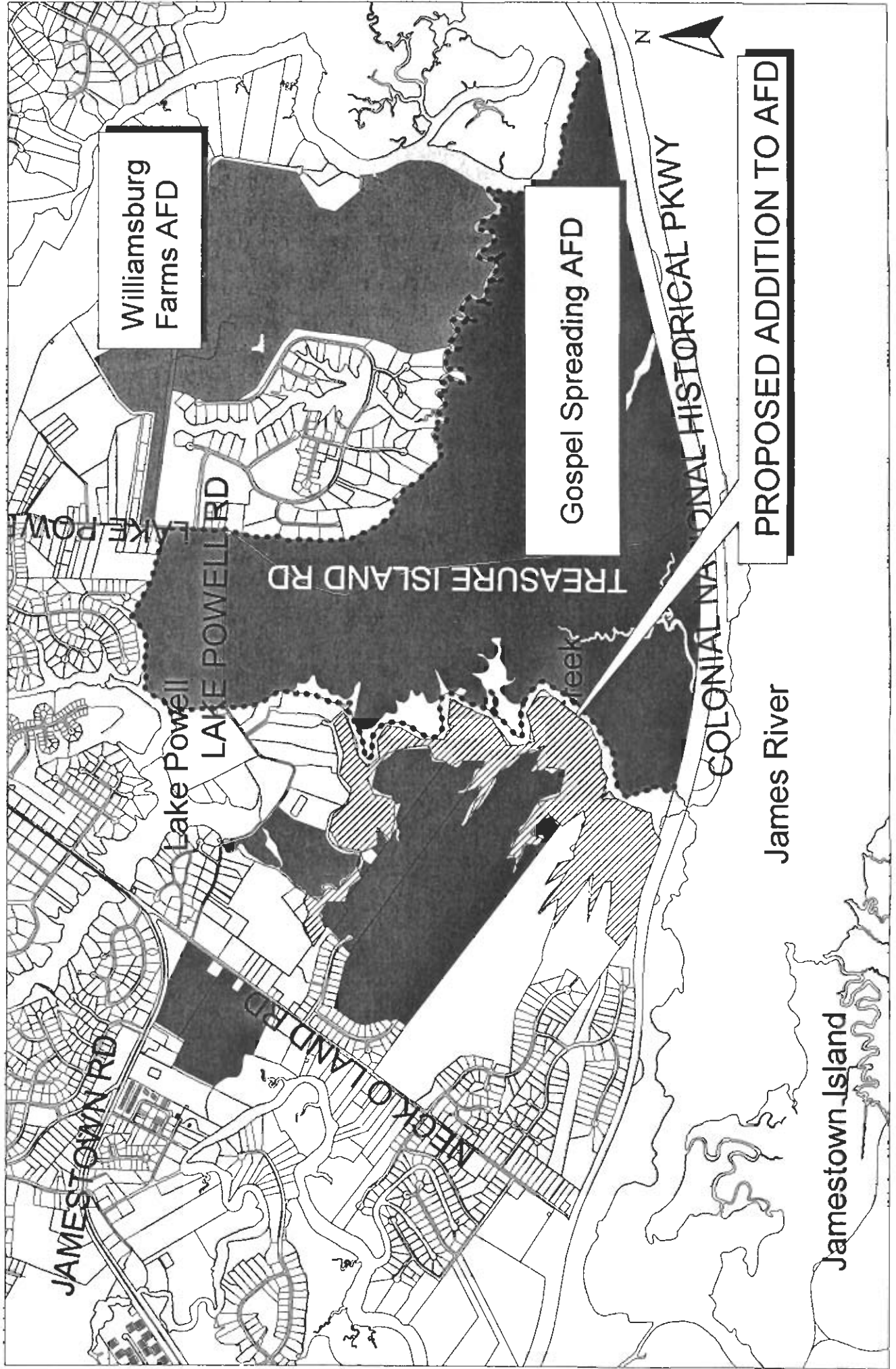
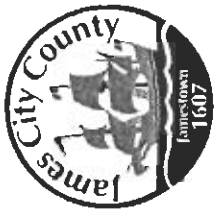
1. The subdivision of land is limited to 25 acres or more, except where the Board of Supervisors authorizes smaller lots to be created for residential use by members of the owner's immediate family. Parcels of up to 5 acres, including necessary access roads, may be subdivided for the siting of communications towers and related equipment, provided: a) The subdivision does not result in the total acreage of the District to drop below 200 acres; and b) The subdivision does not result in a remnant parcel of less than 25 acres.
2. No land outside the Primary Service Area (PSA) and within the Agricultural and Forestal District may be rezoned, and no application for such rezoning shall be filed earlier than six months prior to the expiration of the district. Land inside the Primary Service Area (PSA) and within the Agricultural and Forestal District may be withdrawn from the District in accordance with the Board of Supervisors' policy pertaining to Withdrawal of Lands from Agricultural and Forestal Districts Within the Primary Service Area, adopted September 24, 1996.
3. No special use permit shall be issued except for agricultural, forestal or other activities and uses consistent with the State Code Section 15.2-4301 et. seq. which are not in conflict with the policies of this District. The Board of Supervisors, at its discretion, may issue special use permits for wireless communications facilities on AFD properties which are in accordance with the County's policies and ordinances regulating such facilities.

Sarah Weisiger
Planner

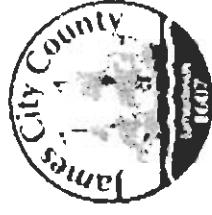
Attachments:

1. Location Map – with surrounding AFD parcels
2. Aerial photo
3. US Geological Survey Topographical map showing parcel

AFD-12-86. Gospel Spreading Church AFD Gilley Addition



Case No. AFD-12-86. Gospel Spreading Farm - Gilley Additon



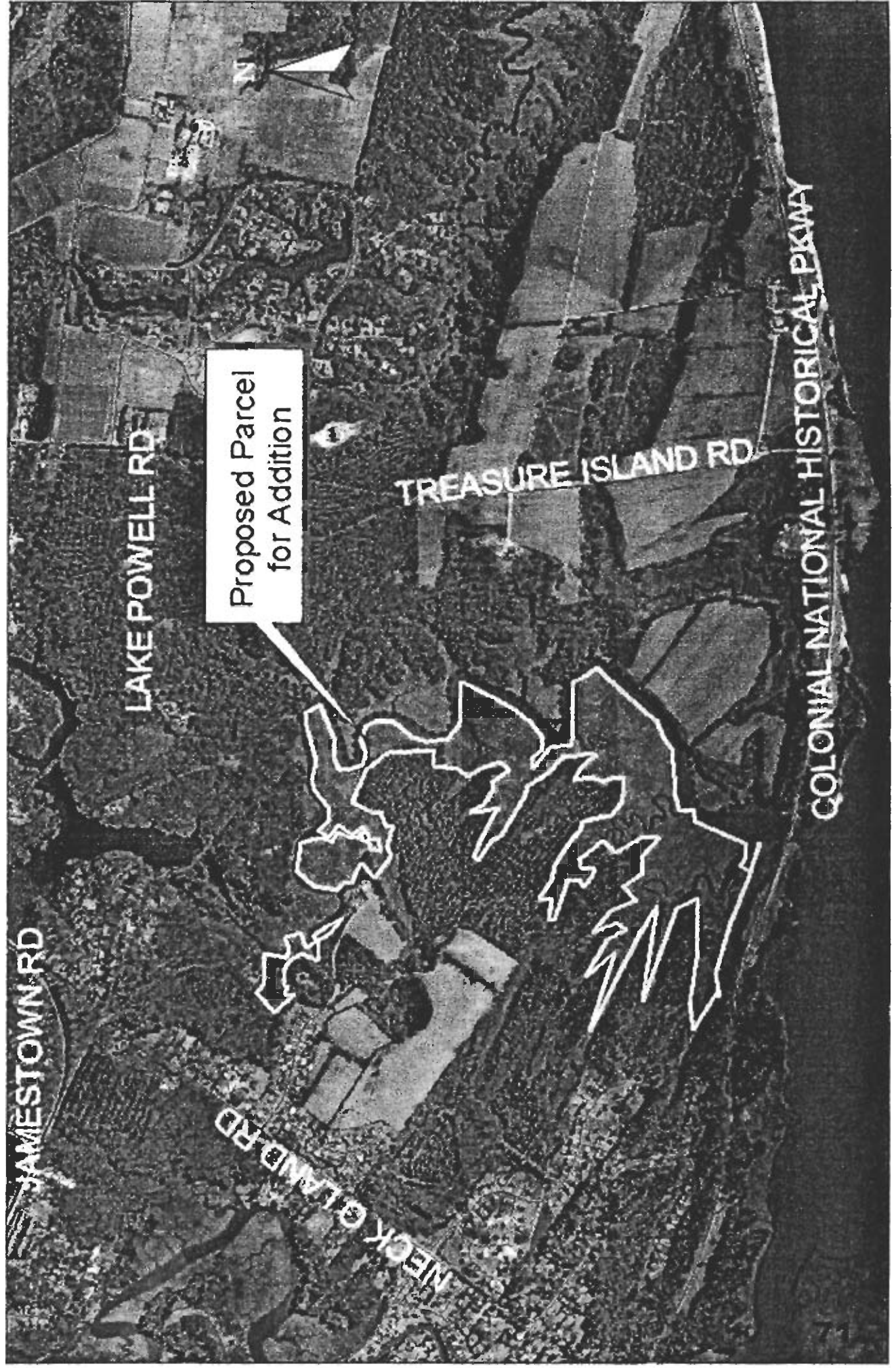
4000 Feet

2000

0

2000

Aerial View Copyright 2002 Commonwealth of Virginia



SURRY QUADRANGLE

VIRGINIA

7.5 MINUTE SERIES (TOPOGRAPHIC)

UNITED STATES

DEPARTMENT OF THE INTERIOR

GEOLOGICAL SURVEY

43 WILLIAMSBURG 4.3 MI FIVE FORKS 0.3 MI 44 76°45' 45 WILLIAMSBURG 2.3 MI 47



AREA NEXT TO
MILL CREEK -
PROPOSED ADDITION
TO AFD-12-86
12/1/2003

Master Plan MP- 9- 03 / Rezoning Z- 8- 03. Norge Neighborhood Site
Staff Report for January 12, 2004, Planning Commission Public Hearing

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

PUBLIC HEARINGS:

Planning Commission:

County Government Complex
November 3, 2003, 7:00 p.m. (Deferred)
December 8, 2003, 5:30 p.m. (Deferred)
January 12, 2004, 5:30 p.m. Building F Board Room
February 10, 2004 (tentative)

Board of Supervisors:

SUMMARY FACTS

Applicant:

V. Marc Bennett on behalf of Pete Henderson of Henderson, Inc.

Land Owners:

Evelyn H. Anderson (co-executor)
George C., Jr. and Sharyn L. Ford

Legal Address, Tax Map,
Area and Existing Zoning:

7145 Richmond Rd., 15.1 acres; (23-2)(1-50); A-1
7147 Richmond Rd., 1.0 acre; (23-2)(1-49); A-1
75 Nina Lane, 3.2 acres; (23-2)(1-50C); A-1
126 Rondane Place, portion of 5.8 acres; (23-2)(1-51); R-2 & A-1

Proposal:

To rezone approximately 22.1 acres to allow for the construction of 80 multi-family units and two single family houses having a gross density of 4.0 dwelling units and with office/commercial space along Richmond Road with up to 32,670 square feet on 1.50 acres.

Primary Service Area:

Inside

Proposed Zoning:

MU, Mixed Use with proffers

Comprehensive Plan:

Low Density Residential

Surrounding Zoning:

North and West: Kristiansand subdivision, R-2;
North and East: Kristiansand Office, LB; Norge Center, B-1
East: Hill Pleasant Farm, A-1
South: Colonial Heritage development, MU
Southeast: Williamsburg Dodge, auto dealership, B-1

Staff Contact:

Sarah Weisiger, Planner Phone: 253-6685

Staff Recommendation:

Staff recommends that the Planning Commission approve this rezoning application because with the proffered conditions, it meets the expectations outlined in the Comprehensive Plan for residential development and limited commercial development within areas designated Low Density Residential on the Land Use Map. The applicant has addressed the concerns raised in

the staff report for the December 8, 2003, Planning Commission meeting sufficiently to support the residential density and commercial development proposed.

Description of Project

Marc Bennett, on behalf of Pete Henderson of Henderson, Inc., has submitted an application to rezone approximately 22.1 acres located on Richmond Road (Route 60) on the south side of Norge, from A-1, General Agricultural, and R-2, General Residential, to MU, Mixed Use with proffers.

The applicant proposes to use the assembled parcels to form a Mixed Use zoning district which would include a condominium community with 80 multi-family units, 2 single family houses and a maximum of 1.5 acres of office/commercial area allowing 32,670 square feet of floor space and a maximum height of 45 feet. The proposed development would include the removal of two single-family houses, while two existing single family houses, off-site, would remain and would be surrounded by the proposed development.

The applicant does not currently have an identified commercial/office use for the site. Proposed uses for the site are those in the B-1, General Business zoning district with the exception of hotels, motels, fast food restaurants, retail food stores and several other uses.

The applicant proposes to have one or possibly two vehicular entrances from Richmond Road to access the multi-family units and the commercial/office parcel, and a shared private drive from Nina Lane to access the existing and proposed single family homes. A pedestrian/emergency access connection would extend between the multi-family units and the single-family units off of Nina Lane. Other pedestrian connections would connect the various portions of the development to Nina Lane.

Existing Zoning and Development:

Along Richmond Road, the parcels at the front of the proposed area of development currently include a house fronting Richmond Road and a house off of Nina Lane; the land is zoned A-1, General Agricultural. The largest parcel to the west is flat and open with steep forested ravines around its edges; it is zoned A-1. The rear parcel has a house that is accessed from Kristiansand, but would not be included in the development. The part of the rear parcel to be rezoned and purchased for the development is a steep wooded section along a stream; it is zoned R-2, General Residential.

Proffers:

The Mixed Use zoning district allows for up to 18 dwelling units per acre and permits 84 different commercial/office/light industrial uses. The MU District also requires only 10% of developable area to be reserved for open space. Staff evaluates the proffers and master plan in a rezoning case using the expectations for development in the Comprehensive Plan. As discussed in a later section of this report, this land is designated Low Density Residential in the Comprehensive Plan, which recommends a maximum of 4 dwelling units per acre, large amounts of open space, and very limited commercial development. The applicant has submitted voluntary proffers to offset the impacts of this development and to limit uses within the proposed zoning district. These proffers will be discussed throughout this report.

Surrounding Zoning and Development:

Kristiansand, located north of the proposed development, includes approximately 200 single-family houses and is zoned R-2. Residential density in the area of Kristiansand adjacent to the proposed development is 2.7 dwelling units per acre. The newer area of Kristiansand to the west has larger lots with a density of approximately 1.7 dwelling units per acre. To the south, an adjacent subdivision in Colonial Heritage will have a density of 2.7 units per acre. To the east, across Richmond Road and across the CSX railroad tracks, there is a large farm which is part of the Hill Pleasant Farm Agricultural and Forestal District; it is zoned A -1, General Agricultural.

Non-residential development is located to the north and south along Richmond Road and Nina Lane. The Kristiansand Office Park across Nina Lane from the development has eight offices; it is zoned LB, Limited Business. A small strip shopping center on the corner of Richmond Road faces Nina Lane. Adjacent to the proposed commercial/office parcel on Richmond Road, is the Norge Center which contains several offices. To the south of the site is a recently constructed car dealership. These nearby parcels on Richmond Road are zoned B-1, General Business.

Staff finds that most of the potential commercial uses for the Norge Neighborhood site would be consistent with the surrounding office, residential and small retail development. Staff also finds that although the proposed residential area has a higher gross density at 4.0 dwelling units per acre than that of surrounding residential development, the higher density would be sufficiently offset by the plan's provision of approximately 40% net developable open space and several other design features discussed throughout this report.

Utilities:

James City Service Authority (JCSA) would provide water and sewer service to the development. The owner has proffered that water conservation standards shall be submitted to and approved by JCSA prior to final site plan or subdivision approval. The owner has proffered a cash contribution for alternative water sources or other projects related to improvements to the JCSA water system.

The owner has also proffered a per dwelling unit cash contribution for sewer system improvements unless the owner upgrades, at its expense an existing sewer lift station. It is not clear that the capacity of the existing sewer facility, JCSA Lift Station 6-5, will be able to handle both Norge Neighborhood and adjacent parts of Colonial Heritage. A proposed JCSA Lift Station 9-9, which could possibly serve this development, has been designed, but not constructed. Proffer #4 states that a building permit for the development cannot be issued unless construction of Lift Station 9-9 has begun or an analysis of Lift Station 6-5 demonstrates that capacity is sufficient. Staff believes the proffer on sewer service is adequate and that development will not be able to occur prior to capacity being available.

Public Facilities:

Per the "Adequate Public School Facilities Test" policy adopted by the Board of Supervisors, all special use permit or rezoning applications should pass the test for adequate public school facilities. A proposed rezoning will pass the test if the schools which would serve the future development currently have adequate design capacity to accommodate the existing student population plus the additional school children generated by the development. For purposes of this policy, the schools shall be deemed adequate if the projected student population does not exceed 100% of the design capacity at the time of the application's review.

If any of the applicable public schools which would serve the future residential development exceed 100% of the design capacity, then the application will not pass the test for adequate school facilities. However, if the affected public schools currently exceed design capacity, but the school's student population will be brought under design capacity within three years of the time of the application's review through either physical improvements programmed in the Capital Improvements Plan (CIP), and/or through a redistricting plan that was approved by the School Board prior to the application, then the application will be deemed to have passed the test.

Based on information provided by the applicant in its community impact study for the project, the impact to the schools of construction of the proposed units will generate students at the following schools as shown below:

<u>Schools</u>	<u>Current 2003</u> <u>Enrollment</u>	<u>Design capacity</u>	<u>Addition of Students from</u> <u>Norge Neighborhood Site</u>
Norge Elementary	639	760	11
Toano Middle School	842	775	5
Lafayette High	1428	1250	7

Staff finds the estimate of the number of students to be in keeping with the type of condominium units proposed in the materials submitted with the rezoning application. In the fiscal impact study section, construction investment for the condos is projected to be \$187,500 per unit. The figure of twenty-three students is derived from a County average per unit for mid- to upper-priced condos. It would appear the number is acceptable, given the type and proposed selling price of the units.

The applicant maintains and staff concurs that there is capacity for the projected student population at the elementary level, but the high school and middle school capacity is exceeded. In the Community Impact Study, the applicant points out that the James City County Board of Supervisors has voted to purchase land for a third high school. However, no physical improvements have been programmed into the Capital Improvement Plan to bring the high schools or Toano Middle School under design capacity by 2007. Therefore, this proposal does not pass the adequate public facilities schools test.

The applicant has proposed a cash proffer to mitigate impacts of the development on the County. The funds may be used for any project in the County's capital improvement plan, for emergency services, school uses, off-site road improvements, library uses, and public use sites.

Fiscal Impact:

The fiscal impact study for the Norge Neighborhood Site, prepared by The Wessex Group, Ltd (TWG), estimates that the development would incur costs of \$414,000 per year to the County and produce an estimated \$284,000 annually in revenues. The annual fiscal impact of the proposal would be a net deficit of \$131,000. This study was based almost exclusively on the fiscal impacts of residential construction and the impact of a resident population on revenue and expenditures in the County. The study does not factor in retail tax revenue, for example, from the commercial/office part of the rezoning.

As noted under the section on public facilities, the owner has proposed a cash proffer to mitigate community impacts of the development on the County. The proffer would be at

\$750.00 per dwelling unit, for a one time total of up to \$61,500. An additional \$250 per unit for a total of \$20,500 has been proffered to offset impacts on County recreation facilities.

Environmental:

The properties in this rezoning are all located within the Yarmouth Creek watershed. Staff has pointed out that the “Yarmouth Creek Watershed Plan Draft Report” (adopted by the James City County Board of Supervisors in October of 2003) identified conditions on site needing action or protection. These include special stormwater criteria, potential stream restoration for one of the streams ranked medium priority, and an identified shell marl deposit.

The banks along the two perennial streams will be subject to the Chesapeake Bay Preservation Area (CBPA) ordinance amendments as of January 1, 2004. The site plan for any rezoning that receives approval after that date will have to provide 100 foot Resource Protection Area (RPA) buffers for these streams. The owner has proffered to place a conservation easement of a similar width, as shown on the Master Plan. This means that both an easement and the RPA buffer will be placed on the steep wooded areas above the streams. The proffer is acceptable, but it must be noted that the CBPA ordinance requirements would supersede activities otherwise granted in the conservation easement by the proposed proffer.

The owner has proffered environmental protections beyond what is required under County ordinances. The stream to the west had been identified in the Yarmouth Creek Watershed Report as a distressed area due to uncontrolled run-off from earlier development in the watershed. The owner has proffered to provide a stream stabilization plan in the area indicated on the Master Plan. In addition, the owner will incorporate infiltration/recharge BMP(s) into the stormwater system, and/or preserve special onsite Hydrological soils, and/or use an existing BMP at Williamsburg Dodge for stormwater management for the front of the site. By utilizing one or all of these, staff believes that the developer will be able to provide stormwater management without using large BMPs and will in turn provide more open space for the development. Staff welcomes the changes in these proffers to provide guarantees that the work will be planned, bonded and constructed at the time of the development.

Staff notes that for development on steep slopes (25%) such as those shown on Units #11 and #12 and adjacent to the stormwater facility in the area “Potential SWM Dam Location”, a waiver must be granted by the Environmental Division. Nothing in this report should be interpreted as approving a waiver of ordinance requirements.

As stated in the Comprehensive Plan, unusual environmental protection is one way a development may be considered to go beyond one dwelling unit per acre in a Low Density Residential area. The applicant has improved its proposal for environmental protection. Staff now believes that the rezoning application as currently proposed does provide unusual environmental protections.

Condominium Association:

The applicant has proffered to have a condominium owners’ association which will be responsible for maintenance of open space, private roads, sidewalks and other common elements. The association shall participate in cost sharing agreements with the commercial parcel owner or owner association to maintain any stormwater facilities or roads shared by both properties. Staff is satisfied with the proposed changes to the proffers clarifying the ownership

of common space and the procedure of review of change to any cost-sharing agreements between the association and the owner or the commercial parcel.

Open Space:

Innovative open space design is one of the other ways that a plan can achieve density as high as four dwelling units per acre in a Low Density Residential area on the Comprehensive Plan Land Use Map. The Cluster Overlay district in the County's zoning ordinance spells out open space requirements for cluster development of up to four dwelling units per acre within Low Density Residential areas. Open space should be 40% of net developable lands to be set aside permanently and maintained for conservation and recreation purposes. This Master Plan provides approximately 40% of open space in developable areas including perimeters within the multi-family area (the Master Plan table gives a figure of 52% for the entire development including single family and commercial.) Although the land is not dedicated to remain or is proffered as open space, a Master Plan cannot be significantly altered without a rezoning amendment.

Staff finds that if developable open space in the multi-unit area is not reduced in the course of planning and development, this proposal will satisfy open space standards sufficiently to support the proposed density.

Streetscapes, Berms and Lighting

The applicant has proffered to place a landscaped berm in the perimeter setback area between Kristiansand and the multi-family area. A berm in this area may eliminate some of the car headlights from shining on to neighboring properties. Outdoor lighting standards have also been proffered to limit the height and amount of glare from street light poles and from lights mounted on the backs of buildings. Beyond the streetscapes discussed above, no landscaping beyond general landscaping requirements has been shown on the master plan or is proffered. There will be some further discussion of this in the section on setback modifications. Staff finds the berm and lighting proffers to be a positive contribution to the plan.

The applicant has proffered to provide streetscape landscape treatments along internal streets, along the shared driveway from Nina Lane, and along one side of the pedestrian/emergency access shown. Staff believes that the submitted proffers are adequate.

Sidewalk and Pedestrian Connections

The provision of good pedestrian connections within a development and to adjacent properties is an important part of mixed use and residential cluster development and of meeting the goals of innovative open space design. As this proposal lacks vehicular connections with neighboring properties, safe sidewalk and bicycle connections are important to the integration of the project with the existing neighborhood and surrounding areas. Safe areas to walk can reduce the need for vehicle trips to nearby shops and offices thereby reducing the impact on Richmond Road traffic movements.

This Master Plan shows sidewalks on both sides of internal streets (except for the open space area in the center) and sidewalk and multi-use connections to the shared driveway on to Nina Lane. The owner has proffered a sidewalk to the commercial parcel and to Nina Lane and along Nina Lane. Staff agrees that sidewalks and pedestrian connections are necessary in these areas and are an essential factor in providing good open space design. Staff finds that

the design of sidewalk and pedestrian connections and the proffered assurances for their installation are acceptable.

Traffic Impacts/Access:

The area of the proposed re-zoning is on Richmond Road, or Route 60, between Route 199 at Lightfoot and Croaker Road. The part of Richmond Road in front of the proposed development does not have a median, but does have a middle turn lane and two west bound and two east bound lanes for a total of five lanes. CSX Railroad tracks run parallel to Richmond Road in this area on the north side of the road; there is a grade crossing on a dirt road across from the site.

The owner has proffered one entrance to the multi-family and commercial site with a possible direct entry from Richmond Road for the commercial/office parcel. A traffic impact assessment was prepared by DRW Consultants, Inc. in August of 2003 for the rezoning of the property. According to the report and additional information requested by and provided to staff, the level of service for a single entrance on to Richmond Road in 2008 will be a "C" for left turns in the AM and PM peak hours and a "B" for right turns. The owner has also proffered a shared driveway for vehicular access to the existing and proposed single family houses and for pedestrian access to the multi-family area.

The Virginia Department of Transportation (VDOT) has reviewed the traffic impact study for the project. Based on the development assuming 15,000 square feet of retail specialty shops and 80 multi-family units, VDOT recommends that the development provide a 200 foot right taper lane on Richmond Road at the entrance. This has been proffered by the applicant and staff believes that the taper lane would adequately address the impacts under these assumed conditions.

However, if a proposed commercial/office use has a higher trip generation than that found in the traffic impact study, the owner proffers to submit an updated traffic impact study and implement the recommendations of the study prior to issuance of certificate of occupancy for the parcel. The changes to Proffer #14 for the submittal of traffic impact studies in the case of land uses on the commercial site with higher vehicle trip generation rates are acceptable to staff.

Private Streets and Parking:

The applicant has proffered to provide private streets in keeping with VDOT construction standards and to deposit \$8,500 into a maintenance reserve fund maintained by the Association.

The applicant proposes to provide two parking spaces per unit on driveways, in garages and in off-street parking areas for a total of 160 spaces for the multi-family area. The Zoning Ordinance has no specific parking designation for multi-family condominiums; the configuration of the condominiums, with four units per building, meet the definition of an apartment house defined as "a building used or intended to be used as the residence of three or more families living independently of each other." Therefore, the multi-family area of this development would require 2.2 parking spaces per unit. The applicant has requested a waiver from the minimum off-street parking requirements to provide a minimum of 2.0 parking spaces per unit instead of 2.2 spaces per unit. Staff supports this request based on the parking requirements at an existing condominium development, La Fontaine Condominiums. (At the time of re-zoning in 1993 for La Fontaine, the applicant proffered a minimum of 2.0 parking spaces per unit.)

Staff is concerned that should additional parking be required, the amount of open space provided would fall below 40% of the multi-family area. As discussed in the section of the report on open space, this plan could support the proposed density if the amount of developable open space remains above 40%.

Recreation:

The applicant has provided a 1.5 acre neighborhood recreation area which currently consists of an open field and a multi-use path connection to Nina Lane. In addition to the provision of a gazebo/shelter in the recreation area, the applicant proffers a cash contribution of \$250 per unit for use by the County for recreation capital improvements. Staff finds that the recreation amenities and proffered cash contributions satisfy the County's Recreation Proffer policy.

Comprehensive Plan Designation:

County expectations for residential development, commercial development and development in Community Character Areas and Corridors are provided in the James City County Comprehensive Plan.

The Comprehensive Plan Land Use map designates all of the parcels included in this proposal as Low Density Residential. Low density areas are suitable for residential developments with overall densities of one dwelling unit per acre. In order to encourage high quality design, development with density up to four units per acre is recommended if the development offers benefits such as mixed cost housing, affordable housing, protection of wildlife habitats, adequate recreational areas, superior open space design, and superior environmental protections. According to the Plan, very limited commercial establishments are recommended for Low Density Residential areas. Commercial and residential areas in a Community Character Area should follow the design guidelines for the area.

Staff is generally satisfied with the shape of the residential development as shown on the Master Plan. The open space, small stormwater facility, conservation areas, pedestrian connections and the manner in which the proposed single family area blends in with existing homes show superior design. The applicant has worked to improve commitments to include these environmental protections with the current proposal, enough to make it possible for staff to recommend the proposed maximum density of four dwelling units per acre in a Low Density Residential area.

The proposed commercial uses (B-1 uses with some exceptions) have been limited somewhat since the previous proposal which, in part, prompted staff to recommend denial of this rezoning. The timing and volume of commercial development are very important within the County. The designation for this property, Low Density Residential, was deliberately done in order to balance large unimproved commercially zoned lots in nearby Norge with the character of Norge. Staff had recommended, originally, a restriction of commercial uses for this site to permit Limited Business, LB, uses rather than General Commercial, B-1, uses to keep the proposal more consistent with the Comprehensive Plan. The most significant difference between the permitted uses in LB and the proposed uses is that of restaurants, tea rooms and taverns. With regard to restaurants, the applicant has proffered to limit the site to only one restaurant with a maximum floor area of 3,000 square feet and no fast food restaurants. Staff supports this proposal and, in addition, believes that the superior commercial site design review proffered will sufficiently mitigate the visual impacts of the development.

Community Character is important to the citizens of the County and reflected in the Comprehensive Plan. Guidelines for site layout, architectural features and landscaping within Norge and Toano are spelled out in the Community Character section of the Comprehensive Plan and have been incorporated into several of the County Zoning ordinance. The applicant has proffered to submit a conceptual plan for the commercial parcel that will be reviewed and approved for general consistency with the architectural character of the Norge Community Character area, and in keeping with provisions for commercial development in Neighborhood Commercial areas and consistent with the landscape ordinance for development on major corridors. Staff requested that these items be included in the proposal, and is generally satisfied.

Perimeter Setback Modification Requests:

The applicant has requested modification to perimeter setback requirements. Mixed Use districts require a fifty foot perimeter setback from all adjacent properties. Setbacks shall be left in an undisturbed state and/or planted with additional or new landscape trees, shrubs and other vegetative cover. It is possible to get a modification from the zoning requirement under at least one of the following conditions:

1. the proposed setback is for the purpose of integrating proposed mixed use development with adjacent development;
2. the proposed setback substantially preserves, enhances, integrates and complements existing trees and topography;
3. the proposed setback is due to unusual size, topography shape or location of the property or other unusual conditions, excluding proprietary interests of the developer.

The applicant's requests for setback modifications are stated in a letter attached to this report, Staff recommendations are summarized below:

Richmond Road setback reduced to 35' in order to be more visible to the road. Staff: Recommends approval. Proffer #7 offers commercial design review that, staff believes, will integrate the site with the adjacent development and is therefore acceptable.

Richmond Road commercial parcel side yard line with 7151 Richmond Road, Norge Center, reduced to 35' to better integrate with neighboring commercial area. Staff: Recommends approval. The modification will better integrate the development with adjacent commercial/office development. (The Master Plan shows a 20' setback with Norge Center; staff recommends the 35' setback as originally requested by the applicant.)

Entrance road area adjacent to of Williamsburg Dodge at 7101 Richmond Road reduced to 35' because of unusual shape of property. Staff: Recommends approval. Staff supports the modification because the enhanced landscaping proposed for the entrance road in Proffer #19 will adequately integrate the development with the adjacent property.

Multi-family section of parcel adjacent to rear or west of 7101 Richmond Road, Williamsburg Dodge to 35' as reduced setback of proposed development will not be detrimental to car dealership. Staff: Recommends approval. Staff supports the modification because the enhanced landscaping in Proffer #19 will adequately integrate the development with the adjacent property.

Area of single-family residences reduced to setbacks as shown on the master plan.

Staff: Recommends approval. The reduced setback will better integrate this residential portion of the mixed use district with the existing houses and nearby neighborhood.

In summary, staff recommends approval of the above setback modifications requested by the applicant.

RECOMMENDATION:

Staff recommends acceptance of the above recommendation for setback modifications to the perimeter areas.

Staff recommends the granting of a parking waiver request allowing a minimum of 2.0 parking spaces per unit in the multi-family area.

Staff believes that this proposal addresses earlier staff concerns regarding the applicant's commitment to provide environmental protection, superior open space design, and superior pedestrian connections. The proposal is consistent with surrounding development and therefore staff recommends approval of this rezoning application and acceptance of the voluntary proffers.

Sarah Weisiger
Planner

Attachments:

1. Location Map
2. Master Plan (separate cover)
3. Applicant letter for request for modification of perimeter setback requirement
4. Proffers

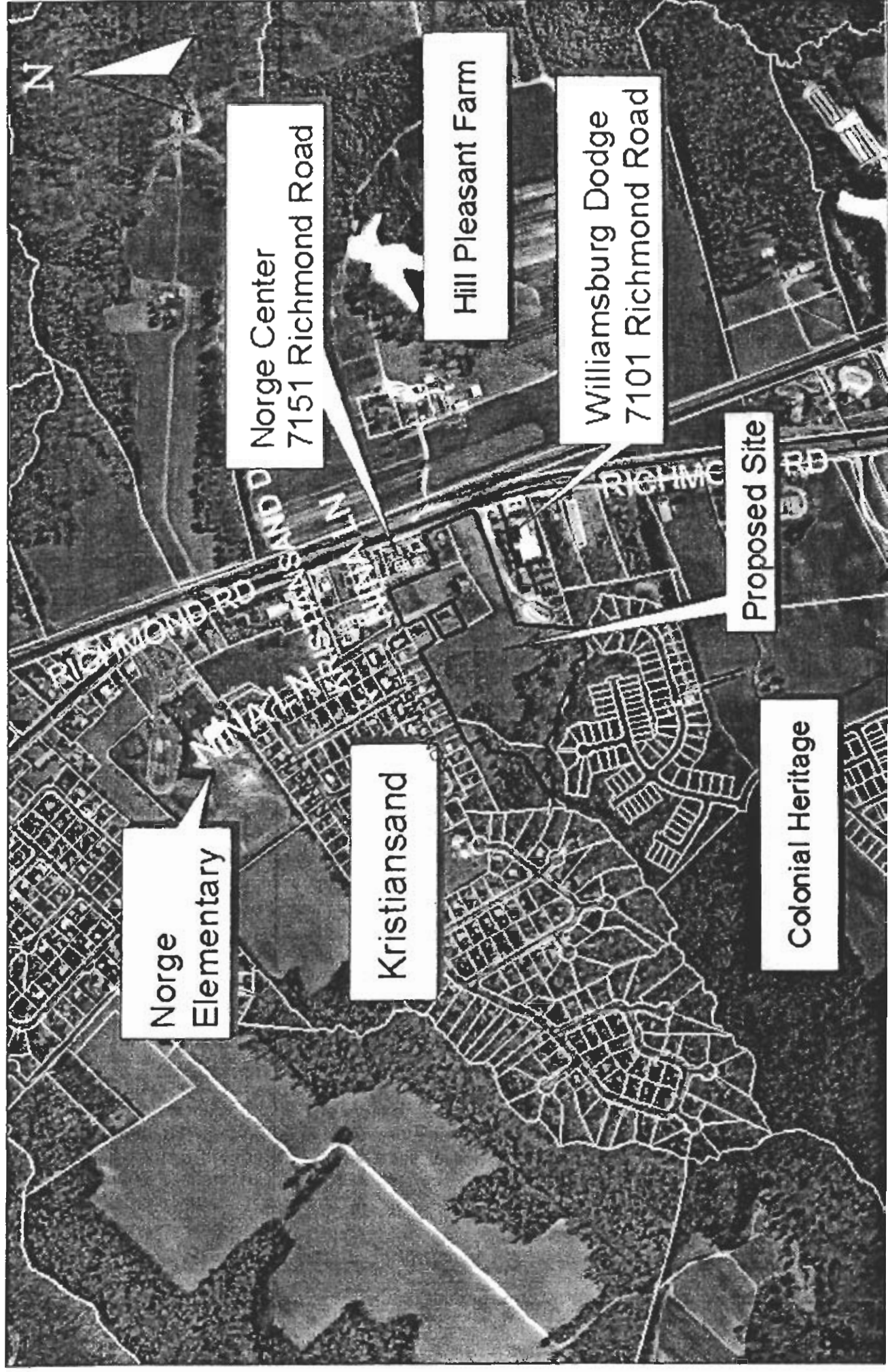
Case No. Z-8-03/MP-9-03

Norge Neighborhood Site

Aerial Imagery Copyright 2002 Commonwealth of Virginia



500 0 500 1000 Feet



October 13, 2003

Mr. O. Marvin Sowers Jr.
Planning Director
James City County
Department of Planning
P.O. Box 8784
Williamsburg, Virginia 23187-8784



**RE: Request for Modification, Norge Neighborhood site
AES Project No. 9286**

Dear Mr. Sowers:

AES, on behalf of our client, Henderson Inc., is requesting a modification of the James City County Ordinance Sec. 24-527(b) in accordance with Sec. 24-527(d) for the proposed Norge Neighborhood site at Richmond Road (Route 60) just south of Nina Lane. The site is being rezoned to Mixed Use and is currently zoned R-2 and A-1.

Sec. 24-527 (b) states "For commercial, industrial, office, residential and mixed uses a setback of 50 feet shall be maintained from the perimeter of a mixed use district. The setback shall be left in its natural undisturbed state and/or planted with additional or new landscape trees, shrubs and other vegetative cover such that the setback serves to minimize the visual intrusion and other negative impacts of new development or redevelopment on adjacent development." We request multiple reductions of the perimeter buffers. For clarity of these setback-buffer modifications please refer to the attached the Master Plan.

We request that the perimeter setback be reduced to 35' along the site's frontage on Richmond Road and next to the existing B-1 commercial developments per 24-96(a), (d)(1). Paragraph 24-527 (c) (1) suggests that such modifications could be approved "for the purposes of integrating the proposed mixed use development with adjacent development." For a commercial business to survive it needs to be visible from the road. We request reduction of two-perimeter 50' buffer that will diminish or prevent visibility from Richmond Road. It has been our intent to continue to treat Richmond Road corridor as a commercial center with mixed commercial serving the area. This is an effort to link the commercial portion of the Norge Neighborhood site to the adjacent commercial properties through inter-parcel connection and visibility.

In addition we request the buffer to be reduced to 35' along our property adjacent to the Williamsburg Dodge property zoned B-1 on the southern boundary of the property. We feel that our development will not be detrimental to an auto dealership. We will provide 35-foot transitional screening per 24-99(d)(4) a.

Colonial Heritage has provided a 50' buffer long the southern boundary with our development. In order to provide our SWM/BMP in the best location on our site we request a reduction of the 50' width to accommodate this facility. The intent of the buffer requirements will still be met through the use of enhanced screening measures where necessary and maintaining an average of 50-feet buffer in this area.

We request a reduction of the setbacks associated with the proposed two single family detached residences. Our intent is to provide residential transition between the zoned Mixed Use development of Colonial Heritage, the zoned R-2 Kristinsand, and the 2 one-acre lots zoned A-1. Per 24-99(d)(1)(b) we request reduction and no landscaping requirement along Nina Lane and the existing 50' access easement.

Thank you for your consideration of this Request for Modification.

Sincerely,

AES Consulting Engineers

A handwritten signature in black ink, appearing to read "Thomas W. Derrickson". The signature is fluid and cursive, with a large initial "T" and "D".

Thomas W. Derrickson C.L.A.
Landscape Architect/Land Planner

cc: Mr. Vernon Geddy, III

PROFFERS

THESE PROFFERS are made this 5th day of January, 2004 by Evelyn H. Anderson, individually and as co-executor of the estate of Frederick A Hoar, Marie A. Hovland, as co-executor of the estate of Frederick A Hoar and George Ford and Sharyn Ford, husband and wife (together with their respective successors in title and assigns, the "Owner") and Littlefeet, LLC, a Virginia limited liability company ("Buyer").

RECITALS

A. Evelyn H. Anderson, individually and as co-executor of the estate of Frederick A Hoar, Marie A. Hovland, as co-executor of the estate of Frederick A Hoar are the owners of three contiguous tracts or parcels of land located in James City County, Virginia, one with an address of 7147 Richmond Road, Williamsburg, Virginia and being Tax Parcel 2320100049, the second with an address of 7145 Richmond Road, Williamsburg, Virginia and being Tax Parcel 2320100050, and the third with an address of 75 Nina Lane, Williamsburg, Virginia and being Tax Parcel 2320100050C (the "Hoar Property").

B. George Ford and Sharyn Ford, husband and wife are the owners of a tract or parcel of land located in James City County, Virginia, with an address of 126 Rondane Place, Williamsburg, Virginia and being Tax Parcel 2320100051 (the "Ford Property").

B. Buyer has contracted to purchase the Hoar Property and a portion of the Ford Property as shown on the Master Plan (defined below) conditioned upon the rezoning of the Property.

C. The Hoar Property is now zoned A-1. The Ford Property is now zoned R-2. The Hoar Property and the portion of the Ford Property shown on the Master Plan are hereinafter called the "Property". Owner and Buyer have applied to rezone the Property from A-1 and R-2 to MU, Mixed Use District, with proffers.

D. Buyer has submitted to the County a master plan entitled "Master Plan for Rezoning of Norge Neighborhood Site" prepared by AES Consulting Engineers dated September 17, 2003 and revised October 13, 2003 and November 17, 2003 and December 29, 2003 (the "Master Plan") for the Property in accordance with the County Zoning Ordinance.

E. 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 15.2-2297 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.

CONDITIONS

1. **Density.** There shall be no more than 82 residential dwelling units on the Property, consisting of no more than two single family dwelling units located in the portion of the Property with a Master Plan area designation of "A" and no more than 80 multi-family dwelling units located in the portion of the Property with a Master Plan area designation of "B". All multi-family units on the Property shall be developed as a condominium project pursuant to the Virginia Condominium Act. The residential portions of the Property shall have an overall density of no more than four dwelling units per acre. The portion of the Property with a Master Plan area designation of "E, G" (the "Commercial Parcel") shall have a total maximum building coverage of 20%, no single building shall have a footprint of more than 3,000 square feet unless otherwise approved by the Director of Planning based on building architecture with varied roof lines, wall articulations, window placements and other features to reduce the mass and unbroken building lines that may occur in certain standard commercial building designs and no structure shall exceed two and one-half stories and 45 feet in height. There shall be no more than one restaurant on the Commercial Parcel and any restaurant shall contain no more than 3,000 square feet of floor area.

2. Condominium Owners Association. There shall be organized a condominium owner's association as required by the Virginia Condominium Act (the "Association") in accordance with Virginia law in which all condominium unit owners in the Property, by virtue of their property ownership, shall be members. The articles of incorporation, bylaws and condominium declaration (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, sidewalks, and all other common elements (including open spaces) 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. 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. The Association and the owner of the Commercial Parcel and/or a property owners association formed for the Commercial Parcel shall enter into a costs sharing agreement setting forth the responsibilities of the respective parties with respect to the

maintenance of the portion of the private driveways and stormwater maintenance facilities utilized by both properties. Such agreement shall be subject to the approval of the County Attorney and shall not be amended without the prior approval of the Planning Director.

3. **Water Conservation.** Water conservation standards for the Property shall be submitted to and approved by the James City Service Authority 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. The standards shall be approved by the James City Service Authority prior to final site plan or subdivision approval.

4. **Sewer Service.** The County shall not be obligated to issue any building permits for structures on the Property until either: (i) the developer of the Colonial Heritage project and the County and/or the James City Service Authority ("JCSA") have entered into an agreement providing for the construction of proposed Regional Lift Station 9-9 and its associated cross country gravity sewer lines and the removal of Lift Stations 6-3 and 6-5 and construction has commenced; or (ii) a detailed

capacity analysis of existing Lift Station 6-5 accounting for flows reserved by the Colonial Heritage project and identifying the upgrades necessary to serve the development of the Property is submitted to and approved by the JCSA and Owner makes the necessary upgrades to existing Lift Station 6-5 at its expense.

5. Cash Contributions for Community Impacts. (a) A contribution of \$750.00 for each dwelling unit on the Property shall be made to the 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 in whole or in part by the physical development and operation of the Property.

(b) A contribution of \$427.00 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 unless Owner, at its expense, upgrades an existing Lift Station 6-5 as provided in Section 4(ii) above to serve the Property in which case no additional contribution shall be required. The JCSA may use these funds for development of sewer system improvements or any project related to improvements to the JCSA sewer system, the

need for which is generated in whole or in part by the physical development and operation of the Property.

(c) A contribution of \$750.00 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 in whole or in part by the physical development and operation of the Property, including, without limitation, for emergency services, school uses, off-site road improvements, library uses, and public use sites.

(d) Owner shall make a contribution to the County of \$250.00 for each residential lot or unit shown on a final development plan for the Property for use by the County for recreation capital improvements.

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

(f) The per unit contribution(s) paid in each year pursuant to this Section shall be adjusted annually beginning January 1, 2005 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.

6. **Streetscapes.** The Owner shall provide and install streetscape improvements along both sides of the internal streets and the shared private driveway and on one side of the pedestrian/emergency access shown on the Master Plan in

accordance with the County's Streetscape Guidelines Policy. The streetscape improvements shall be shown on development plans for the Property and submitted to the Director of Planning for approval during the site plan approval process. Streetscape improvements shall be either (i) installed within six months of the issuance of a certificate of occupancy for any residential units in adjacent structures or, in the case of the streetscape improvements along one side of the pedestrian emergency access, within six months of the construction thereof or (ii) bonded in form satisfactory to the County Attorney prior to the issuance of a certificate of occupancy for any residential units in adjacent structures or, in the case of the streetscape improvements along one side of the pedestrian emergency access, at the time of completion of the construction thereof.

7. Commercial Design Review. Prior to the County being obligated to grant final development plan approval for any of the buildings on the Commercial Parcel, there shall be prepared and submitted to the Director of Planning for approval conceptual site plan, including dumpster locations, architectural and landscaping plans, including architectural elevations, for the Director of Planning to review and approve for general consistency with the architectural character of the Norge Community Character Area and the provisions of Section 24-370 (c) and 24-96 (d) (1) of the Zoning Ordinance as in effect on the

date hereof. The Director of Planning shall review and either approve or provide written comments setting forth changes necessary to obtain approval within 45 days of the date of submission of the plans in question. Final plans and completed buildings shall be consistent with the approved conceptual plans.

The design of the entrance into the Commercial Parcel from the main entrance drive into the Property shall be subject to the review for traffic safety and approval by the Director of Planning prior to final site plan approval.

8. **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.

9. **Environmental Protections.** (a) The Owner and/or the owners association shall grant, free of charge, to a County approved land conservation entity and/or the County a conservation easement with terms consistent with these Proffers over the area designated on the Master Plan as Conservation Area generally in the locations shown on the Master Plan. The exact boundaries of the Conservation Area shall be shown on subdivision plats and/or site plans of the Property. The conservation easement over the Conservation Area shown on each individual

subdivision plat or site plan shall be granted at the time of final approval thereof by the County. The Conservation Area shall remain undisturbed and in its natural state, preserving indigenous vegetation except as set forth below. With the prior approval of the County Engineer or his designee on a case by case basis, (i) dead, diseased and dying trees or shrubbery and invasive or poisonous plants may be removed from the Conservation Area; (ii) select hand clearing and pruning of trees shall be permitted in the Conservation Area to permit sight lines or vistas, (iii) utilities, pedestrian paths, trails and bridges may intrude into or cross the Conservation Area, (iv) stream restoration work shall be permitted in the Conservation Area and (v) stormwater BMPs may be located in the Conservation Area but shall not be located in nor impact the channel flow of perennial streams unless specifically approved by the Environmental Division. If vegetation is removed from the Conservation Area by development activities it shall be replaced by indigenous vegetation that is equally or more effective in retarding runoff, preventing erosion and filtering nonpoint source pollution. Except for existing utilities and to the extent reasonably feasible, new utility crossings shall be generally perpendicular through the Conservation Area and Owner shall endeavor to design utility systems that do not intrude into the Conservation Area. The Conservation Area shall be maintained by Owner unless the

County approved land conservation entity or the County assumes responsibility therefor under its easement or the Conservation Area is conveyed to an owners association, at which time the association shall assume responsibility for its maintenance. The Conservation Area shall be exclusive of lots or dwelling units.

(b) In order to achieve superior environmental protection, Owner shall utilize some combination of (i) an on-site infiltration/recharge BMP(s), and/or (ii) upgrading and using the existing BMP pond on the adjacent Williamsburg Dodge property as a regional facility and/or (iii) save existing onsite Hydrologic Soil Group A and B soils in the stormwater management system for the Property. The foregoing items shall be in addition to and shall not preclude use of an on-site BMP pond. The stormwater management plan for the Property shall be subject to the approval of the Director of the Environmental Division.

(c) Owner shall submit a streambed stabilization plan for the area shown on the Master Plan as "Area of Streambed Restoration" for review and approval by the Environmental Division prior to land disturbing activities for buildings 11 through 14 as shown on the Master Plan. The approved streambed stabilization plan shall either be (i) implemented or (ii) bonded in form satisfactory to the County Attorney prior to issuance of any land disturbing permits for buildings 11 through 14.

10. Entrance/Taper. Except as provided below, there shall be one entrance into the Property to and from Route 60 in the general location shown on the Master Plan. The Commercial Parcel shall not have direct access to Route 60 unless due to the unique nature of a proposed use or uses on the Commercial Parcel the Director of Planning and Virginia Department of Transportation approve a direct access. The portion of the Property with a Master Plan designations of "A" shall be served by a private shared driveway off Nina Lane as shown on the Master Plan. A eastbound right turn taper 200 feet in length on Route 60 shall be constructed at the entrance to the Property from Route 60. The taper proffered hereby shall be constructed in accordance with Virginia Department of Transportation standards and shall be completed prior to the issuance of the first certificate of occupancy. All signage along the Route 60 frontage of the Property shall be subject to review and approval of the Director of Planning in accordance with provisions of Section 24-69 of the Zoning Ordinance.

11. Sidewalk Connections. There shall be sidewalks on the Property generally in the locations shown on the Master Plan, including the internal sidewalk connection to the Commercial Parcel and to Nina Lane and along the Nina Lane frontage of the Property. Sidewalks along the entrance road shall be installed at the time of road construction. Otherwise, sidewalks shall be

installed prior to issuance of certificates of occupancy for adjacent dwelling units. There shall be no fence, gate, sign or structure to restrict pedestrian access to any of such sidewalks.

12. Pedestrian Path/Emergency Access. There shall be a multi-use path at least 12 feet in width, six feet paved and six feet of soil - reinforced earth shoulders, installed on the Property generally as shown on the Master Plan to provide pedestrian access and emergency vehicular access to and from the Property and Nina Lane. The path shall be located on property owned by the Association and shall be maintained by the Association. 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 for any residential units in the adjacent buildings.

13. Private Streets. All streets on the Property shall be private and shall conform to VDOT construction standards. Owner shall deposit into the maintenance reserve fund maintained by the Association the amount of \$8,500.00 and shall provide evidence of such deposit to the Director of Planning at the time of final site plan or subdivision approval.

14. Commercial Uses. Except as further limited below, uses on the Commercial Parcel shall be limited to those uses permitted by right in the B - 1 zoning district under the James City County Zoning Ordinance as in effect as of the date of these proffers.

The following uses, otherwise permitted by right in the B - 1 zoning district, shall not be permitted on the Commercial Parcel:

- automobile service station
- fast food restaurant
- hotels, motels, tourists homes and convention centers
- indoor sports facilities
- indoor theaters
- lumber and building supply
- machinery sales and service
- marinas, docks, piers, yacht clubs, boat basins, and servicing, repair and sales facilities for the same
- marine or waterfront businesses to include the receipt, storage and transshipment of waterborne commerce or seafood receiving, packing or distribution
- public billiard parlors, arcades, pool rooms, bowling alleys, dance halls and other indoor centers of amusement
- radio and television stations and accessory antenna or towers and tower mounted wireless communications facilities
- retail food stores
- telephone exchanges and telephone switching stations
- wholesale and warehousing

If any use is proposed to locate on the Commercial Parcel with a materially higher trip generation based on ITE trip generation figures than the specialty retail (ITE Code 814) use used in the traffic impact study submitted herewith performed by DRW Consultants, Inc., then Owner shall submit with its proposed site plan an updated traffic impact study to the Director of Planning and VDOT based on the proposed use for their review and approval and shall implement the recommendations of the approved updated study prior to issuance of certificate of occupancy for the Commercial Parcel.

15. Landscaped Berm. There shall be a landscaped berm from two to six feet in height located between the multi-family

development on the Property and the Kristiansand subdivision, with the location and dimensions of the berm and the landscaping to be located thereon to be consistent with the detail and notes provided on the Master Plan and to be shown on development plan for the Property to be reviewed and approved in the plan review process.

16. Lighting. Street light poles at the Route 60 entrance and along the access drive extending the depth of the Commercial Parcel shall not exceed 20 feet in height. All other street light poles on the Property shall not exceed 15 feet in height. All building mounted external lights along the backs of the buildings on the Property shall be recessed fixtures with no globe, bulb or lens extending below the casing or otherwise unshielded by the case so that the light source is visible from the side of the fixture. These lights shall be shown on a lighting plan to be submitted to and approved by the Director of Planning and shall indicate that no glare defined as 0.1 footcandle or higher is cast off the Property onto adjacent properties.

17. Shared Driveway. There shall be a shared driveway at least 10 feet in width with at least a four inch stone base and one and one-half inches of asphalt serving the two single family residential lots on the Property generally as shown on the Master Plan with the design of the shared driveway to be approved by the

Director of Planning. The shared driveway shall be installed before the earlier of (i) final subdivision plat approval for the two single family lots or (ii) issuance of 40 certificates of occupancy for more than 40 multi-family units. Prior to final approval and recordation of the subdivision plat for those lots, Owner shall submit an instrument to the County Attorney for approval, setting forth provisions (i) creating the necessary easements for the shared driveway, (ii) for the permanent care and maintenance of the shared driveway, and (iii) establishing the method of assessing each lot for its share of the costs of administering, maintaining and replacing the shared driveway. The approved instrument shall be recorded with the final subdivision plat.

18. Recreation. Owner shall install a shelter/gazebo generally as shown on the Master Plan prior to issuance of a certificate of occupancy for any of the condominium units on the Property.

19. Landscaped Setbacks. The 35 foot landscaped setback shown on the Master Plan parallel to the entrance road and adjacent to the Williamsburg Dodge property shall contain the equivalent amount of landscaping as if the setback was fifty feet in width. The 35 foot landscaped setback adjacent to buildings 19 and 20 shall contain enhanced landscaping consisting of 125% of the landscaping otherwise required by the Zoning Ordinance and

clearing of the trees between 35' and 50' shall be the minimum necessary to properly install the buildings and appurtenances.

WITNESS the following signatures.

Evelyn H. Anderson *by Susanna B. Hickman her attorney in fact*

Evelyn H. Anderson, individually
and as co-executor of the estate of
Frederick A Hoar

Marie A. Hovland *by Susanna B. Hickman her attorney in fact*

Marie A. Hovland, as co-executor of
the estate of Frederick A Hoar

George Ford *by [Signature] HER ATTORNEY IN FACT*

George Ford

Sharyn Ford *by [Signature] HER ATTORNEY IN FACT*

Sharyn Ford

Littlefeet, LLC

By: [Signature]

Title: Member

STATE OF VIRGINIA AT LARGE
CITY/COUNTY OF Williamsburg, to-wit:

The foregoing instrument was acknowledged this 5th
day of January, 2004, by Evelyn H. Anderson, individually
and as co-executor of the estate of Frederick A Hoar, by Susanna B. Hickman, her attorney in fact

[Signature]
NOTARY PUBLIC

My commission expires: 12/31/04.

STATE OF VIRGINIA AT LARGE
CITY/COUNTY OF Williamsburg, to-wit:

The foregoing instrument was acknowledged this 5th day of January, 2004, by Marie A. Hovland, as co-executor of the estate of Frederick A Hoar, by Susanna B-Hickman, her attorney in fact

Vern M. Deady, III
NOTARY PUBLIC

My commission expires: 12/31/04.

STATE OF VIRGINIA AT LARGE
CITY/COUNTY OF Williamsburg, to-wit:

The foregoing instrument was acknowledged this 5th day of January, 2004, by George Ford and Sharyn Ford, husband and wife, by John Wilson, their attorney in fact.

Vern M. Deady, III
NOTARY PUBLIC

My commission expires: 12/31/04.

STATE OF VIRGINIA AT LARGE
CITY/COUNTY OF Williamsburg, to-wit:

The foregoing instrument was acknowledged this 5th day of January, 2004, by John Wilson, as member of Littlefeet, LLC on behalf of the company.

Vern M. Deady, III
NOTARY PUBLIC

My commission expires: 12/31/04.

**REZONING 13-03/MASTER PLAN 12-03/SPECIAL USE PERMIT 29-03. MICHELLE POINT
Staff Report for the January 12, 2004 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

Planning Commission:
Board of Supervisors:

Building F Board Room; County Government Complex

January 12, 2004, 5:30 p.m.
February 10, 2004, 7:00 p.m.

SUMMARY FACTS

Applicant: Jay Epstein of Health-E-Community Enterprises

Land Owner: Michelle Point, LLC

Proposal: 90 single family houses and 20 townhouses, with 20% affordable housing.

Location: 9001 Barhamsville Road, Stonehouse District

Tax Map/Parcel: (12-1)(1-3)

Parcel Size: 38.58 acres

Proposed Zoning: R-5, Multifamily Residential, Cluster, with proffers

Existing Zoning: A-1, General Agricultural District

Comprehensive Plan: Low Density Residential

Primary Service Area: Inside

STAFF RECOMMENDATION

Staff finds the Master Plan and proffers are consistent with surrounding development and zoning, and consistent with the Comprehensive Plan. Staff finds that the Zoning Ordinance criteria for the granting of a special use permit with regard to additional density has been satisfactorily met, and that the waiver request for the right-of-way buffer has been sufficiently supported by proffers. Therefore, staff recommends approval of the Rezoning, Special Use Permit and buffer waiver request. Finally, staff recommends that any action on this case be contingent upon the resolution of any remaining emergency crossover issues.

Staff Contact:

Ellen Cook, Planner

Phone: 253-6685

Proffers: Are signed and submitted in accordance with the James City County Proffer Policy.

Project Description

Jay Epstein of Health-E-Community Enterprises has submitted an application to rezone 38.58 acres located on Barhamsville Road (Route 30) across from Stonehouse Commerce Park from A-1, General Agricultural District to R-5, Multifamily Residential District, Cluster, with proffers.

If approved, the applicant would use the parcel to create a mixed income development, with 20% affordable housing. The development, to be known as Michelle Point, would consist of 110 units, 90 single family detached and 20 single family attached (townhouses). The project is possible through financing and/or support from state and federal funding sources and private partnership funding through the Member Banks of the Federal Home Loan Bank System.

The parcel is wooded except for the eastern portion of the site, which has been used for agricultural activities and is open.

Density

According to the Cluster provisions of the Zoning Ordinance, residential cluster developments of one unit per acre or less may be permitted in areas designated low density residential on the comprehensive land use map. However, the Ordinance permits additional density up to four units per acre upon the issuance of a special use permit, and implementation of various policies or other measures. The applicant has proposed a net density of 3.6 DU/Acre. In accordance with Section 24-549 of the Zoning Ordinance, the applicant has provided for the following:

For Density greater than 1 DU/Acre up to 2 DU/Acre:

- Implementation of the County's Streetscape Guidelines.
- Implementation of the County's Archaeological Policy.
- Provision of sidewalks on one side of all internal streets.
- Provision of Recreation Facilities as recommended in the County's Comprehensive Parks and Recreation Master Recreation Plan.
- Implementation of the County's Natural Resources Policy.

For Density from 2 DU/Acre up to 3 DU/Acre:

- Provision of pedestrian trails connecting cul-de-sacs and recreation facilities.
- Construction of curb and gutter streets.

In addition, Cluster provisions state that at its discretion, the board of supervisors may award density bonuses to a gross allowable base density of two dwelling units per acre for the following items, provided that no total density exceeds four dwelling units per acre in areas designated low density residential on the comprehensive plan land use map. To achieve a density above 3 DU/Acre, the applicant has provided for the following:

For Density above 3 DU/Acre:

- 0.5 DU/Acre for every 10% of the total number of dwelling units dedicated to affordable housing. *The applicant is proposing twenty percent affordable housing.*
- For a 0.5 DU/Acre total density bonus: *Provision of superior layout and quality design which incorporates environmentally sensitive natural design features such as preserving scenic vistas, preservation of natural areas as suggested by the Natural Resources Inventory, protection of wildlife habitat corridors, and the creation of buffer areas around RMA wetlands, and sustainable building practices.*
- For a 0.5 DU/Acre total density bonus: *Provision of superior layout and quality design which incorporates community design features such as interconnected streets, multiple entrance/exit points*

to the development, a mixture of unit types and/or unit prices, and group or shared parking.

Staff Conclusions: Staff feels that the applicant has satisfied the requirements for a density up to 3 DU/Acre in accordance with Section 24-549 of the Zoning Ordinance, and has made sufficient provisions for implementation through inclusion on the Master Plan and/or in the proffers, as appropriate. In addition, staff feels that the applicant has met and exceeded the requirements for a density above 3 DU/Acre through provision of affordable housing, and by incorporating sustainable building practices, a mixture of unit types and prices, and other quality design features. Therefore, staff recommends approval of density bonuses up to the allowable 4 DU/Acre be permitted.

PUBLIC IMPACTS

1. Archaeology

The subject property is not located within an area identified as a highly sensitive area in the James City County archaeological assessment “Preserving Our Hidden Heritage: An Archaeological Assessment of James City County, Virginia.”

Proffers: To meet the density provisions of the Cluster District, the applicant has provided a proffer implementing the County’s Archaeological Policy. A Phase I study of the site has been completed.

Staff Conclusions: Staff feels that the proffer implementing the County’s Archeological Policy sufficiently addresses protection of the County’s archeological resources.

2. Fiscal Impact

Based on the fiscal impact analysis submitted by the applicant, the proposed development would result in a negative net fiscal impact. The analysis indicates that the County would be required to spend an additional \$410,900 per year once this development is built out and occupied.

	Year 1	Year 2	Year 3	Buildout
Net Fiscal Impact	\$26,200	\$141,700	- (\$207,800)	- (\$410,900)

Proffers: The applicant is proffering \$750 per non-affordable unit (\$66,000 for 88 units) for use for projects in the County’s capital improvements plan to mitigate impacts on County emergency, school, library and other services.

Staff Conclusions: James City County Financial and Management Services has reviewed the Fiscal Impact Statement submitted with these applications and concurs that this development would result in a negative fiscal impact. This impact would be partially off-set by the proffered contributions.

3. Housing

The proposed development would have of a total of 110 units, consisting of 90 single family detached units and 20 single family attached (townhouse) units. Twenty percent of the units (22 of 110) would be affordable as specified in the proffer. Buyers of these units would need to meet specific financial requirements, with household incomes that would not exceed 80% of the median household income found in the Metropolitan Statistical Area. The remaining eighty percent of the units would be sold at market values, estimated to range between \$149,000 per unit and \$170,000 per unit; these prices are below the average sales price of a new home in James City County. All housing units would be constructed using sustainable methods, creating energy savings and a healthier indoor environment for the occupants.

Proffers: Eleven of the lots with single family detached units would be offered for sale at a price at or below \$110,000, and eleven of the townhouse units would be offered for sale at a price at or below \$99,300 (both of these prices are subject to adjustment as set forth in the proffer).

Staff Conclusions: Staff supports the affordable housing component of this proposal and believes that the overall development would increase housing choice within the County.

4. Environmental Impacts

Watershed: Ware Creek

The applicant projects that this site will meet or exceed its required 10 points for satisfaction of Chesapeake Bay water quality requirements through a combination of on-site structural best management practices, generally as shown on the Master Plan, through the placement of easements over sufficient qualifying on-site undisturbed natural open space and through the treatment of previously untreated flows from adjacent off-site development.

Proffers: All land designated on the Master Plan as “Approx. Limits of 25% Slopes (Undevelopable) Wetlands and Floodplain Areas Contained Within Limits” would be granted to the County or a land conservation entity as a conservation easement.

Environmental Staff Conclusions: Environmental issues related to this rezoning application have been resolved.

5. Public Utilities

The property is located inside the Primary Service Area and will be served by public water and sewer. The basic design and layout of the water distribution system is acceptable to the James City Service Authority. Sanitary sewer could either be provided by constructing an on-site pump station that would force the project’s sewer flows directly to the 24-inch HRSD force main located at the entrance of Stonehouse Commerce Park, or by collecting the sewer flows by gravity line and extending off-site gravity sewer from Michelle Point to the existing Fenwick Hills pump station located along Old Stage Road. Both the HRSD force main and the Fenwick Hills pump station have sufficient excess capacity.

Proffers:

- Pump Station or Gravity System. If, as of the date of approval of the requested rezoning of the Property, JCSA has acquired all necessary easements to provide access for gravity sewer lines from the Property to the existing Fenwick Hills pump station, the Owner shall utilize such gravity sewer to the Fenwick Hills pump station. If, as of the date of approval of the requested rezoning of the property, JCSA has not acquired all necessary easements to provide access for gravity sewer lines from the Property to the existing Fenwick Hills pump station, the Owner shall utilize an on-site pump station feeding into the Hampton Roads Sanitation District force main along Route 30.
- Water Conservation. That appropriate water conservation measures be developed and submitted to the JCSA for review and approval prior to any site plan approval.
- Contribution. \$750 per non-affordable unit contribution to JCSA (total of \$66,000 for 88 units).

JCSA Comments: In terms of sewer, the pump station option would represent increased long-term maintenance costs to the JCSA; off-setting these costs is not addressed in the proffer. In the past the JCSA has not provided or acquired easements for private development. Currently, all parties are working on a procedure to install gravity sewer line.

6. Schools**Adequate Public Facilities Test**

Per the “Adequate Public Facilities Test” policy adopted by the Board of Supervisors, all special use permit or rezoning applications should pass the test for adequate public school facilities. With respect to the test, the following information is offered by the applicant:

<u>Schools serving Michelle Point</u>	<u>2003 Enrollment</u>	<u>Design Capacity</u>
Stonehouse Elementary	525	588
Toano Middle School	783	775
Lafayette High School	1,478	1,250

The applicant expects this project to generate 22 elementary students, 12 middle school students and 15 high school students. This would bring enrollment at Stonehouse up to 547, enrollment at Toano up to 795, and enrollment at Lafayette up to 1,493. Enrollments at these levels would exceed the design capacities of Toano and Lafayette Schools.

Proffers: The applicant has not provided a proffer that specifically addresses schools.

Staff Conclusions: Based on the Board of Supervisors policy, the development does not pass the adequate public facilities schools test. However, the applicant has provided a proffer (described in the Fiscal Impact Section above) to help offset the cost of County services, and would be providing 20% affordable housing.

7. Traffic and Access

The traffic impact study provided with this application indicates that this development would generate approximately 77 AM peak hour vehicle trips and approximately 102 PM peak hour vehicle trips, and that the existing traffic conditions provide ample capacity for a development of this size.

The development would have access to and from the eastbound lanes of Barhamsville Road (Route 30). The study indicates that the entrance sight distance as proposed is adequate. In accordance with the recommendations of the VDOT Road Design Manual, a 150' right turn taper would be constructed at the development entrance. Emergency access would be provided through a connection with Highfield Drive to the south, and, as requested by the Fire Department, by a gravel emergency-only crossover from the westbound traffic lanes of Barhamsville Road.

Traffic Proffers:

- Barhamsville Road Entrance. The proffer provides for a 150 foot right turn taper.
- Crossover. Emergency-only gravel crossover, with signage, for emergency vehicle access from westbound Barhamsville Road traffic lanes, as approved by VDOT and the Fire Department.

VDOT Comments: Agreed on the technical merits and general conclusions of the traffic study. VDOT has tentatively approved the emergency crossover concept.

Staff Conclusions: While the emergency crossover concept has been approved, VDOT is still reviewing whether adequate sight distance can be achieved with the entrance in its current configuration as shown on the

Master Plan, or whether the entrance would need to be shifted slightly to the east. Staff recommends that any action on this case be contingent upon the resolution of any remaining crossover issues.

Right-of-Way Buffer Waiver Request

The applicant has requested a waiver from the buffer requirements of Sec. 24-544 of the Zoning Ordinance to allow the minimum right-of-way buffer along Route 30 to be reduced from 150 feet to 90 feet in some areas, primarily to the northeast and east of the townhouse units. It is possible to get a waiver from the zoning requirement under at least one of the following conditions:

1. The development is less than five acres and a majority of the development's units are dedicated to affordable housing; or
2. The developer demonstrates that due to natural or protected features, or due to adjoining physical features, a reduced buffer will screen the development effectively as a full buffer; or
3. The developer demonstrates that the development will be adequately screened and buffered from the road using berms and landscaping. Such a request shall be supplemented with a landscaping plan and/or planting plan with photos of the existing site.

Proffer: The applicant has proffered a variable width buffer along Route 30 that would place supplemental landscaping consisting of at least 125% of Zoning Ordinance requirements in areas where the buffer was less than 150 feet, in accordance with a plan approved by the Director of Planning.

Staff Recommendation: Given the proffered supplemental landscaping, staff recommends approval of the waiver request.

Comprehensive Plan

- ♦ The Comprehensive Plan designates Barhamsville Road (Route 30) as a Community Character Corridor. The applicant has requested a waiver to allow the buffer to be reduced from 150 feet to 90 feet in some areas, as described above.
 - **Staff Comments:** The majority of the site would have a 150 foot buffer, which on the western portion of the site would preserve the wooded character and screen the single family

detached units, while preserving the open space qualities of the field on the eastern portion of the site. For those areas with less than 150' of buffer, the proffered supplemental landscaping would help screen the development from the road. Therefore, staff feels that the proposal is generally in accordance with the Community Character Corridor objectives of the Comprehensive Plan.

- ◆ The James City County Comprehensive Plan Land Use Map designates this property for Low Density Residential development. One of the Goals in the Housing section of the Comprehensive Plan is to increase the availability of affordable housing.
 - **Staff Comments:** Low-density residential developments 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 dwelling units in the proposed development, and the degree to which the development is consistent with the Comprehensive Plan. In order to encourage higher quality design, a residential community with gross density greater than one unit per acre and up to four units per acre may be considered only if it offers particular public benefits to the community. Examples of such benefits include mixed-cost housing, affordable housing, unusual environmental protection, or development that adheres to the principles of open space development design. Depending on the extent of benefits, developments up to four units per acre will be considered for a special use permit. The location criteria for low density residential require that these developments be located within the PSA where utilities are available. Examples of acceptable land uses within this designation include single-family homes, duplexes, cluster housing, recreation areas, schools, churches, community-oriented public facilities, and very limited commercial establishments.
 - **The proposal is generally consistent with both the Land Use and Housing policies of the Comprehensive Plan.**

RECOMMENDATION:

Staff finds the Master Plan and proffers are consistent with surrounding development and zoning, and consistent with the Comprehensive Plan. Staff finds that the Zoning Ordinance criteria for the granting of a special use permit with regard to additional density has been satisfactorily met, and that the waiver request for the right-of-way buffer has been sufficiently supported by proffers. Therefore, staff recommends approval of the Rezoning, Special Use Permit and buffer waiver request. Finally, staff recommends that any action on this case be contingent upon the resolution of any remaining emergency crossover issues.

Ellen Cook

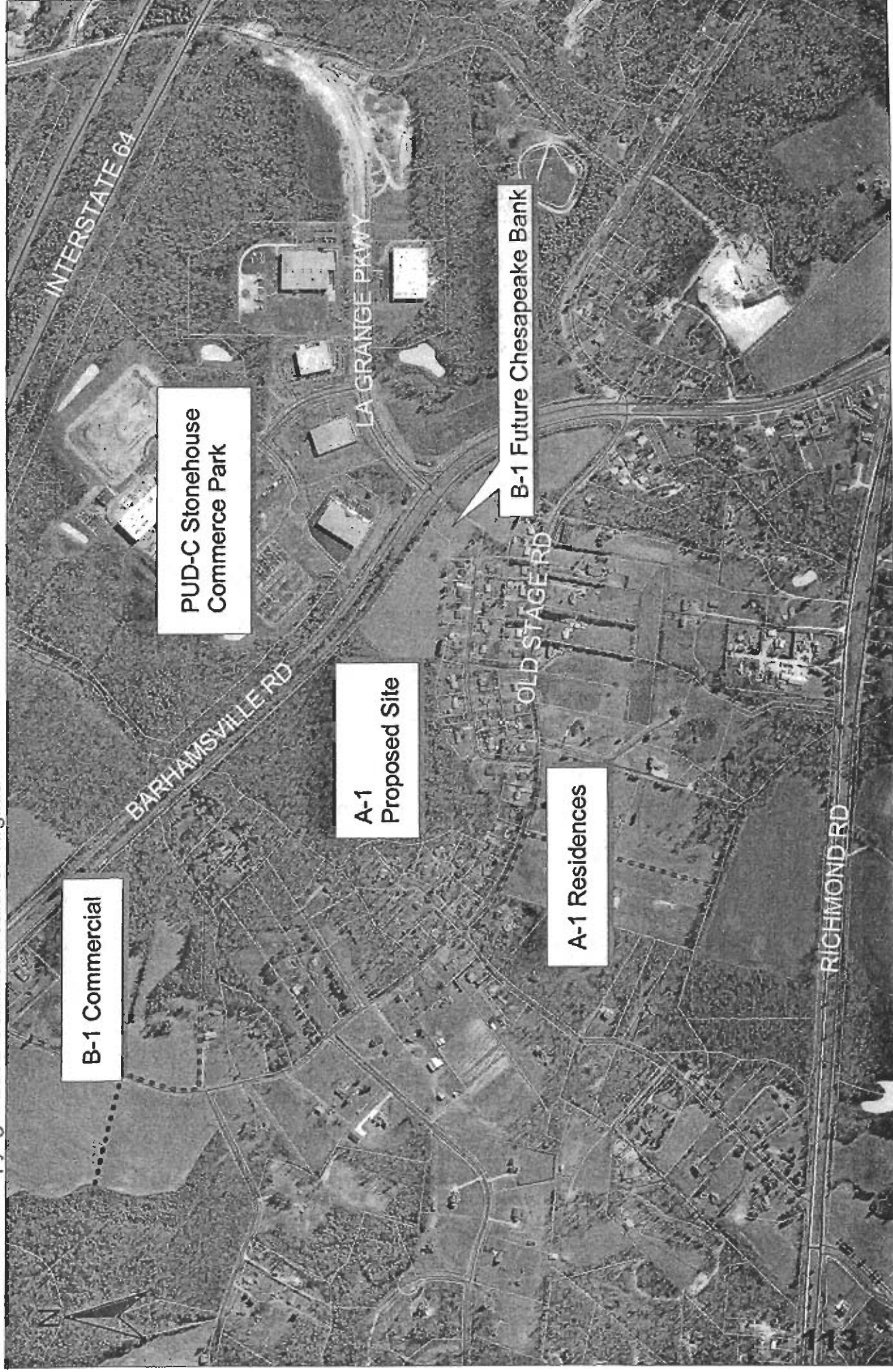
Attachments:

1. Location map
2. Proffers
3. Community Character Corridor Buffer Waiver Request letter
4. Master Plan (Separate Cover)

Case No. Z-13-03/SUP-29-03/MP-12-03, Michelle Point



Aerial View Copyright 2002 Commonwealth of Virginia



PROFFERS

THESE PROFFERS are made this 5th day of January, 2004 by MICHELLE POINT, LLC, a Virginia limited liability company (together with his successors and assigns, the "Owner").

RECITALS

A. Owner is the owner of a tract or parcel of land located in James City County, Virginia, containing approximately 38.58 acres with an address of 9001 Barhamsville Road, James City County, Virginia and being Tax Parcel 1210100003 (the "Property"). The Property is now zoned A-1.

B. Owner has applied to rezone the Property from A-1 to R-5, Multifamily Residential District, with proffers.

D. Owner has submitted to the County a master plan entitled "Plan of Development, Michelle Point, a "Green" Community of Mixed Costs Housing" prepared by LandMark Design Group dated November 26, 2003 and revised December 19, 2003 (the "Master Plan") for the Property in accordance with the County Zoning Ordinance.

E. Owner desires to offer to the County certain conditions on the development of the Property not generally applicable to land zoned R-5.

NOW, THEREFORE, for and in consideration of the approval of the requested rezoning, and pursuant to Section 15.2-2297 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.

CONDITIONS

1. Master Plan. The Property shall be subdivided and 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.

2. Owners Association. There shall be organized an owner's association (the "Association") in accordance with Virginia law in which all property owners in the development, 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 ("Reserve") , 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.

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. Owner shall maintain all common areas on the Property until 90% of the lots/units on the Property have been sold to minimize Association dues during that period so as to not adversely affect purchasers ability to qualify for a home mortgage. At the time Owner's maintenance obligation under this Section ends, there shall be at least \$14,850.00 in the Reserve and Owner shall supply evidence of the same to the Director of Planning.

3. **Water Conservation.** Water conservation standards shall be submitted to and approved by the James City Service Authority 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. The standards shall be approved by the James City Service Authority prior to final site plan or subdivision approval.

4. **Affordable Housing.** A minimum of 11 of the lots with single-family detached dwelling units shall be reserved and offered for sale at a price at or below \$110,000.00 subject to

adjustment as set forth herein. A minimum of 11 of the lots with townhouse dwelling units shall be reserved and offered for sale at a price at or below \$99,300.00 subject to adjustment as set forth herein. The maximum prices set forth herein shall be adjusted annually as of January 1 of each year by increasing such prices by the cumulative rate of inflation as measured by the Consumer Price Index - Urban, U.S. City Average annual average change for the period from January 1, 2004 until January 1 of the year in question. The annual increase shall not exceed five percent (5%). The Director of Planning shall be provided with a copy of the settlement statement for each sale at a price at or below the maximum prices set forth above. Owner shall consult with and accept referrals of, and sell to, potential qualified buyers from the James City County Office of Housing and Community Development on a non-commission basis.

5. Archaeology. A Phase I Archaeological Study for the entire Property shall be submitted to the Director of Planning for review and approval prior to land disturbance. A treatment plan shall be submitted 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 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 III 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 areas. 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 *Standards 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 Property and the clearing, grading or construction activities thereon.

6. **Environmental Protections.** The Owner shall grant, free of charge, to a County approved land conservation entity and/or the County a conservation easement with terms consistent with

these Proffers over the area generally delineated on the Master Plan as "Approx. Limits of 25% Slopes (Undevelopable) Wetlands and Floodplain Areas Contained Within Limits" generally in the locations shown on the Master Plan (the "Conservation Area"). The exact boundaries of the Conservation Area shall be shown on subdivision plats and/or site plans of the Property. The conservation easement over the Conservation Area shown on each individual subdivision plat or site plan shall be granted at the time of final approval thereof by the County. The Conservation Area 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 Conservation Area. With the prior approval of the Environmental Director utilities may intrude into or cross the Conservation Area and clearing and construction activities necessary therefor may take place in the Conservation Area. Pedestrian paths, trails and bridges generally as shown on the Master Plan or included in these Proffers may intrude into or cross the Conservation Area and clearing and construction activities necessary therefor may take place in the Conservation Area. Stormwater BMPs may be located in the Conservation Area but shall not be located in nor impact the channel flow of perennial streams unless specifically approved by the

Environmental Division. The Conservation Area shall be exclusive of lots or dwelling units.

7. Entrance/Taper. There shall be one entrance into the Property from Route 30 generally in the location shown on the Master Plan. The entrance shall have a right turn taper 150 feet in length from eastbound Route 30 into the Property. The taper proffered hereby shall be constructed in accordance with Virginia Department of Transportation ("VDOT") standards and shall be completed prior to final subdivision plat approval.

8. Streetscapes. Streetscape improvements shall be provided and installed along both sides of the internal streets shown on the Master Plan in accordance with the County's Streetscape Guidelines Policy. The streetscape improvements shall be shown on development plans for the Property and submitted to the Director of Planning for approval and may be installed in phases as residential units are constructed. Streetscape improvements shall be either (i) installed or (ii) bonded in form satisfactory to the County Attorney within six months of the issuance of a certificate of occupancy for adjacent residential units.

9. Sidewalks. There shall be sidewalks installed on one side of each of the public streets on the Property and may be installed in phases as residential units are constructed.

Sidewalks shall be installed prior to issuance of certificates of occupancy for adjacent dwelling units.

10. Pedestrian Trail. There shall be a paved walking trail at least six feet in width installed on the Property along its Route 30 frontage generally as shown on the Master Plan. There shall be a soft surface walking trail at least six feet in width installed on the Property in the other locations generally as shown on the Master Plan. The trails shall be located to avoid mature or specimen trees where reasonably feasible. The design and materials of the trail shall be subject to the approval of the Director of Planning. Both trails shall be either (i) installed or (ii) bonded in form satisfactory to the County Attorney prior to final subdivision plat approval.

11. Route 30 Buffer. There shall be a variable width buffer along the Route 30 frontage of the Property ranging from 90 to 150 feet in width 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, taper and the trails as shown generally on the Master Plan, and with the approval of the Development Review Committee, for utilities, sidewalks, trails, lighting, entrance features and signs. Dead, diseased and dying trees or shrubbery, invasive or poisonous plants, windfalls and deadfalls may be removed from the buffer area. In areas where the buffer is less than 150 feet, supplemental landscaping

consisting of at least 125% of Zoning Ordinance requirements shall be installed between the townhouses and Route 30 and adjacent to any pump station located in the buffer to create a visual screen that partially but not completely blocks the view of the townhouses from Route 30 in accordance with a plan approved by the Director of Planning prior to final approval of development plans.

12. Curb and Gutter. All streets on the Property shall be constructed using curb and gutter.

13. Recreation. (a) Owner shall provide the recreational facilities listed below as shown on the Master Plan and make the cash contributions to the County described below before the County is obligated to approve final subdivision plats for more than 30 lots on the Property:

- Parkland, including one playground of at least one acre, with tot lot equipment.
- Cash contribution of \$6,720.00 in lieu of multi-purpose courts.
- One multi-purpose playing field.

(b) All cash contributions proffered by this Proffer 13 shall be used by the County for recreation capital improvements, the need for which is caused in whole or in part by the development of the Property. The exact locations of the facilities proffered hereby and the equipment to be provided at

such facilities shall be subject to the approval of the Development Review Committee. All recreational facilities proffered hereby shall be conveyed to and maintained by the Association and shall be open to all members of the association in good standing.

14. Cash Contributions for Community Impacts. (a) A contribution of \$750.00 for each dwelling unit on the Property other than the 22 units whose prices are restricted pursuant to Proffer 4 above 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 in whole or in part by the physical development and operation of the Property.

(b) A contribution of \$750.00 for each dwelling unit on the Property other than the 22 units whose prices are restricted pursuant to Proffer 4 above 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 in whole or in part by the physical development and operation of the Property, including, without

limitation, for emergency services, school uses, off-site road improvements, library uses, and public use sites.

(c) The contributions described above, unless otherwise specified, shall be payable for each dwelling unit prior to the issuance of a building permit for such unit.

(d) The per unit contribution(s) paid in each year pursuant to this Section shall be adjusted annually beginning January 1, 2005 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.

15. County Trail Easement. Owner shall grant the County an easement 12 feet in width within the existing Virginia Power easement in the buffer along Route 30 for a greenway trail, with the exact location of the easement to be subject to the approval of the Owner, which approval shall not be unreasonably withheld. The County shall be entitled to construct a trail, including necessary bridges, if any, through the easement area and to install passive amenities such as benches, tables, gazebos, educational or descriptive markers or individual fitness stations.

16. Sewer Service. If, as of the date of approval of the requested rezoning of the Property, JCSA has acquired all necessary easements to provide access for gravity sewer lines from the Property to the existing Fenwick Hills pump station, the Owner shall utilize such gravity sewer to the Fenwick Hills pump station. If, as of the date of approval of the requested rezoning of the Property, JCSA has not acquired all necessary easements to provide access for gravity sewer lines from the

Property to the existing Fenwick Hills pump station, the Owner shall utilize an on-site pump station feeding into the Hampton Roads Sanitation District force main along Route 30.

17. Emergency Crossover. Prior to the issuance of any certificates of occupancy for residential units on the Property, there shall be a gravel surface emergency access crossover on Route 30 at the entrance to the Property, with signage to indicate emergency use only and with the design of the crossover being subject to the prior approval of the Fire Department and VDOT.

WITNESS the following signature.

MICHELLE POINT, LLC

By: 

Title: Managing Member

STATE OF VIRGINIA AT LARGE

CITY/COUNTY OF Williamsburg, to-wit:

The foregoing instrument was acknowledged this 5th day of January, 2004, by Jay Epton, as Managing Member of MICHELLE POINT, LLC on behalf of the COMPANY.


NOTARY PUBLIC

My commission expires: 12/31/04.

GEDDY, HARRIS, FRANCK & HICKMAN, L.L.P.

ATTORNEYS AT LAW

1177 JAMESTOWN ROAD

WILLIAMSBURG, VIRGINIA 23185

TELEPHONE: (757) 220-6500

FAX: (757) 229-5342

MAILING ADDRESS:

POST OFFICE BOX 379

WILLIAMSBURG, VIRGINIA 23187-0379

VERNON M. GEDDY, JR.
STEPHEN D. HARRIS
SHELDON M. FRANCK
VERNON M. GEDDY, III
SUSANNA B. HICKMAN

ANDREW M. FRANCK
RICHARD H. RIZK

January 5, 2004

Ms. Ellen Cook
Planner
James City County
101-E Mounts Bay Road
Williamsburg, Virginia 23187

Re: Z-13-03/MP-12-03/SUP-29-03 Michelle Point

Dear Ellen,

I am writing on behalf of the applicant to formally request a waiver pursuant to Section 24-544 (c) of the Zoning Ordinance for the variable width buffer proposed along the Route 30 frontage of the project. We are requesting this waiver pursuant to Subsection 3 of Section 24-544. In support of the request would call your attention to proffer number 11 which requires in areas where the buffer is less than 150 feet, supplemental landscaping consisting of at least 125 percent of zoning ordinance requirements to be installed between the townhouses and/or any pump station and Route 30 to create a visual screen which partially but not completely blocks the view of the development from Route 30, all in accordance with a plan approved by the Director of Planning prior to final approval of development plans. We submit this proffered condition will insure the development will be adequately screened and buffered from the road in question.

Please let me know if you need anything further.

Very truly yours,

GEDDY, HARRIS, FRANCK & HICKMAN, LLP



Vernon M. Geddy, III

VMG/ch

Cc: Mr. Jay Epstein
Mr. Mark Rinaldi

SPECIAL USE PERMITS 24-03, 27-03 and 28-03 JCC Communications Towers
Staff Report for January 13, 2004 Planning Commission Meeting

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

PUBLIC HEARINGS

Planning Commission:

Board of Supervisors:

Building F Board Room; County Government Center

January 13, 2004

7:00 p.m.

February 10, 2004

7:00 p.m.

SUMMARY FACTS

Applicant:

Richard Miller, James City County Fire Chief

Land Owner:

JCC Emergency Operations Center: James City County
Hankins Industrial Park: Nice Commercial Properties LLC
Hankins Industrial Park: Nice Commercial Properties LLC

Proposed Use:

Two communications towers serving as part of the JCC 800-MHz trunked radio system. It has not been determined which site in the Hankins Industrial Park will be used.

Location:

JCC Emergency Operations Center: 3135 Forge Road
Hankins Industrial Park: 129 Industrial Boulevard
Hankins Industrial Park: 137 Industrial Boulevard

Tax Map/Parcel:

JCC Emergency Operations Center: (12-3)(1-27)
Hankins Industrial Park: (12-4) (1-62A)
Hankins Industrial Park: (12-4) (1-62)

Zoning:

JCC Emergency Operations Center: B-1, General Business
Hankins Industrial Park: M-2, General Industrial
Hankins Industrial Park: M-2, General Industrial

Comprehensive Plan:

JCC Emergency Operations Center: Federal, State & County Land
Hankins Industrial Park: General Industry
Hankins Industrial Park: General Industry

Primary Service Area:

All three sites are inside the Primary Service Area

STAFF RECOMMENDATION

The applicant has requested deferral of these three special use permits until February 2, 2004 in order to finalize the locations and site layouts of the communications towers. Staff concurs with this request.

Staff Contact:

Matthew Arcieri, Planner

Phone: 253-6685

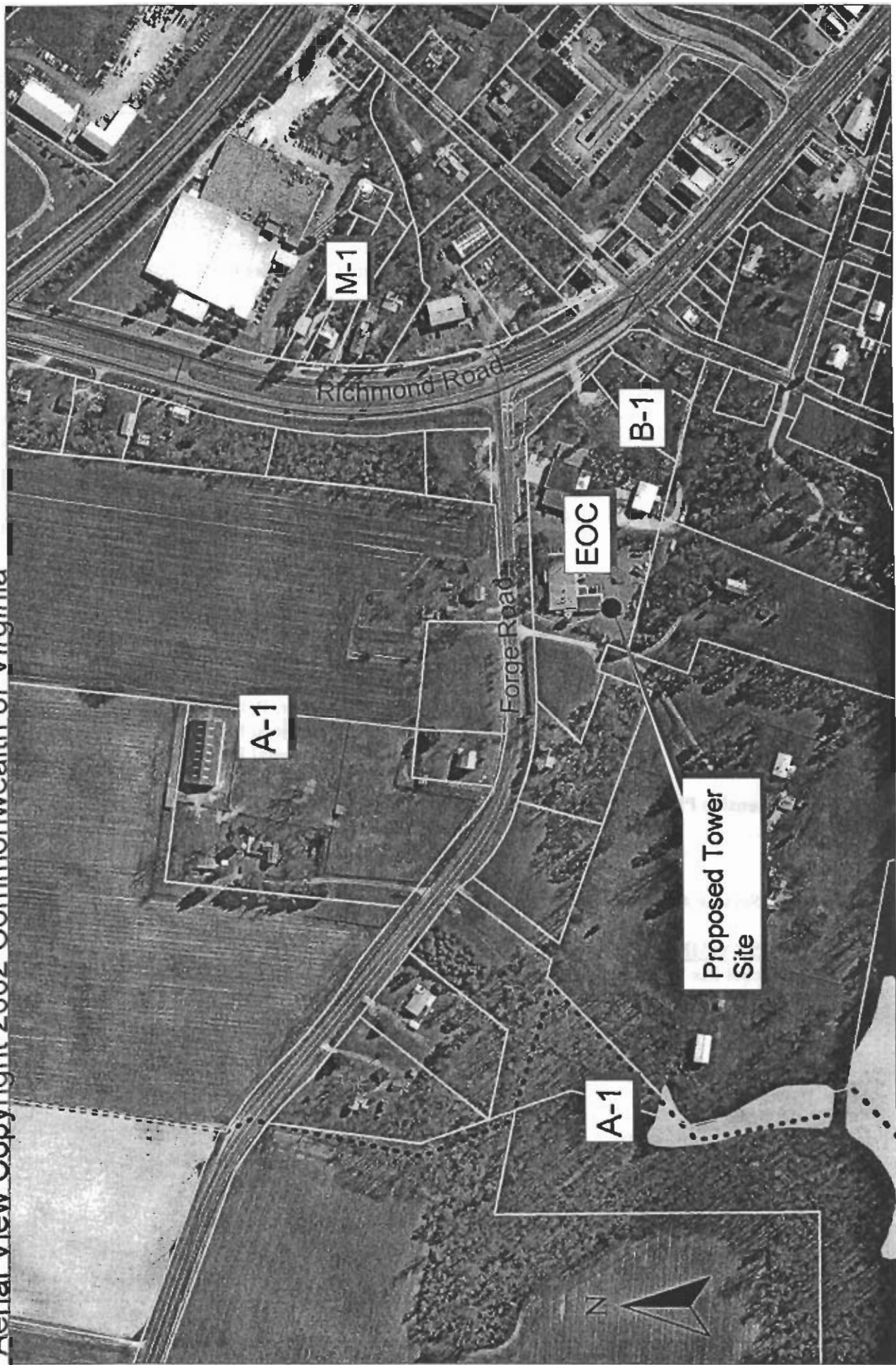
ATTACHMENTS:

1. Location Maps (2)



SUP-24-03, JCC Communication Tower JCC Emergency Operations Center (Forge Road)

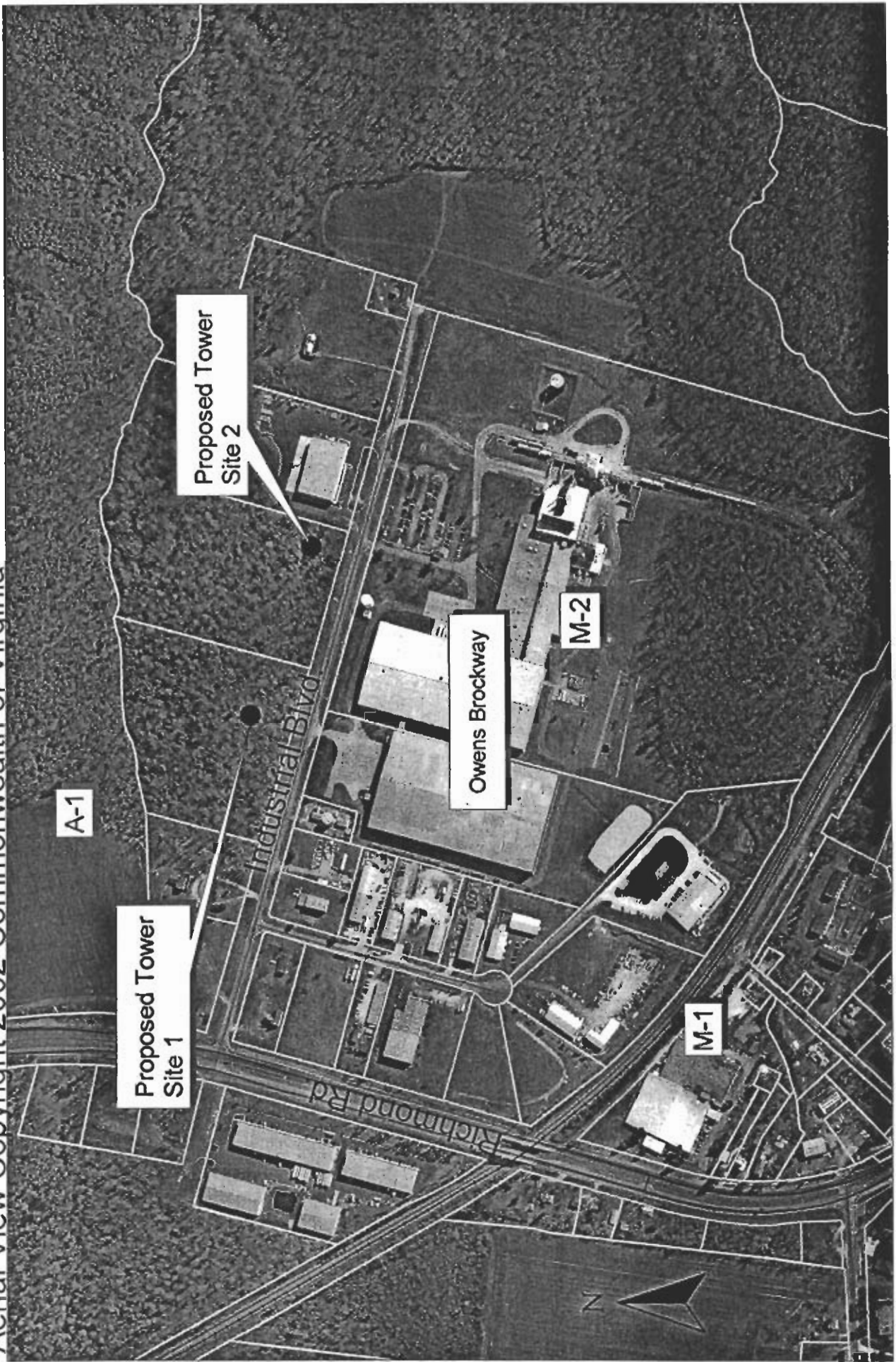
Aerial View Copyright 2002 Commonwealth of Virginia





SUP-27 & 28-03, JCC Communication Tower Hankins Industrial Park (Industrial Blvd.)

Aerial View Copyright 2002 Commonwealth of Virginia



SPECIAL USE PERMITS 25-03, 26-03 JCC Communications Towers

Staff Report for January 13, 2004 Planning Commission Meeting

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

PUBLIC HEARINGS

Planning Commission:

Building F Board Room; County Government Center

January 13, 2004

7:00 p.m.

Board of Supervisors:

February 10, 2004

7:00 p.m.

SUMMARY FACTS

Applicant:

Richard Miller, James City County Fire Chief

Land Owner:

Virginia Peninsula Regional Jail: Virginia Peninsula Regional Jail Authority
Landfill: James City County

Proposed Use:

Two communications towers, 280 feet tall at the Virginia Peninsula Regional Jail and 380 feet tall at the JCC landfill, serving as part of the JCC 800-MHz trunked radio system.

Location:

Virginia Peninsula Regional Jail: Merrimac Trail
Landfill: Jolly Pond Road

Tax Map/Parcel:

Virginia Peninsula Regional Jail: (60-1)(1-11)
Landfill: (30-1)(1-4)

Zoning:

Virginia Peninsula Regional Jail: R-8, Rural Residential
Landfill: A-1, General Agriculture

Comprehensive Plan:

Virginia Peninsula Regional Jail: Federal, State & County Land
Landfill: Federal, State & County Land

Primary Service Area:

Virginia Peninsula Regional Jail: Yes
Landfill: No

STAFF RECOMMENDATION

Staff finds the proposals generally consistent the County's Performance Standards for Wireless Communications Facilities and generally consistent with the 2003 Comprehensive Plan. In such cases where the proposal does not satisfy the criteria, these exceptions have been made in order to design a communication system to serve the larger public safety need. Staff recommends the Planning Commission recommend approval of the two special use permit applications with the attached conditions.

Staff Contact:

Matthew Arcieri, Planner

Phone: 253-6685

PROJECT DESCRIPTION AND PROPOSED OPERATION

In FY 1996, James City County identified the need to replace the multiple radio systems used by various County agencies into one system. A Needs Assessment Study recommended the County seek licensing for a seven-channel trunked radio system in the 800-MHz. band. James City County has partnered with York County on this project in order to share costs and implement a regional system. On August 12, 2003 the Board of Supervisors authorized the County Administrator to enter into a contract with Motorola and York County for the design and implementation of the 800-MHz. trunked radio system.

The new system will require nine communication sites in James City County, York County, Williamsburg and Poquoson linked together by a looped microwave network. Four of these sites will be located in James City County:

- ◆ A 140 foot self supporting tower replacing the existing 190 foot tower at the County Emergency Operations Center on Forge Road;
- ◆ A 280 foot self supporting tower located adjacent to an existing 185 foot tower at the Virginia Peninsula Regional Jail on Merrimac Trail;
- ◆ A 380 foot guyed tower at the James City County Landfill on Jolly Pond Road; and
- ◆ A 380 foot self supporting tower located adjacent to an existing 280 foot tower in the Hankins Industrial Park on Industrial Boulevard.

Attached to each tower will be antenna measuring 13 to 20 feet in height. A portion of the top antenna may be higher than the tower; however the slender nature of the antenna will limit its visibility. All four towers require special use permits. The Fire Department and Motorola are finalizing details for the towers at the EOC and Hankins site and have requested deferral of these cases until the February 2, 2004 Planning Commission. The remainder of this report will only discuss the towers at the landfill and Virginia Peninsula Regional Jail.

PUBLIC IMPACTS

Visual Impacts

- ◆ A Balloon Test was conducted for both towers on December 19, 2003. Photographs from both tests are attached.
- ◆ The balloon for the landfill test was only visible along the interior roads of the landfill. The balloon was not visible along Jolly Pond Road or from any neighborhoods along Centerville Road. The tower will likely only be visible when viewed through the surrounding trees along portions of Jolly Pond Road immediately adjacent the tower site.
- ◆ The balloon test for the Virginia Peninsula Regional Jail site indicates the upper portions of the tower may be visible above the tree line from neighborhoods off of Pocahontas Trail and the GreenMount industrial park. A portion of the tower will also be visible above the treeline on I-64 and from portions of Merrimac Trail adjacent the site.

TOWER POLICY

On May 26, 1998 the James City County Board of Supervisors adopted several performance criteria for Wireless Communications Facilities (a copy of these standards are attached). In accordance with the Zoning Ordinance, it is recommended that all facilities shall substantially meet the provisions of the performance standards.

A. Co-location and Alternatives Analysis

Standards A1 and A2 call for the applicant to investigate and provide verifiable evidence of all possible alternatives for locating prior to making a request to construct new facilities. Working with Motorola and the Planning Division, the applicant worked to identify the potential for replacing existing towers or to co-locate on existing towers. However, given the design location requirements in order for the 800 MHz. system to provide maximum coverage, no opportunities were identified.

Specifically, there are no towers in the vicinity of the landfill site to replace or co-locate on. Although it could be possible to replace the existing jail tower, the additional costs and the logistical difficulties of doing so made this option unfeasible. Given the presence of an existing tower the jail site meets the policy goal to minimize the number of new tower sites in the County.

Standards A3 and A4 call for a new tower to be sited to allow for the construction of a second tower and that all towers be designed to accommodate as many co-locations as possible. Each of the new towers will be able to accommodate two additional antennae. There is ample property surrounding the landfill tower to allow construction of a second tower. The Virginia Peninsula Regional Jail tower would be the second on the property and also satisfies this requirement.

B. Location and Design

Standard B1 states that towers and tower sites should be consistent with existing and future surrounding development and the Comprehensive Plan. Towers should be compatible with the use, scale, height, size design and character of surround existing and future uses while protecting the character of the County's scenic resource corridors and their view sheds. Although the landfill site is inconsistent with this standard the jail site is generally consistent given the existing tower.

Standard B2 states that new towers should have minimal intrusion on residential areas and on scenic resource corridors. The tower should only be visible off-site when viewed through surrounding trees that have shed their leaves. For areas designated rural lands in the Comprehensive Plan within 1,500 feet of the tower these same standards apply. For areas more than 1,500 feet from the towers no more than the upper 25% of the tower should be visible.

Balloon tests for the landfill tower indicate that the tower is not visible from surrounding residential areas or from adjacent property designated rural lands on the Comprehensive Plan. The tower will likely only be visible when viewed through the surrounding trees along portions of Jolly Pond immediately adjacent the site. Staff finds that this tower satisfies criteria B2.

Based on the results from the balloon test the upper portions of Virginia Peninsula Regional Jail tower may be visible above the tree line from neighborhoods off of Pocahontas Trail and the GreenMount industrial park. Despite the presence of the existing tower and that additional negative visual impact is minimal staff finds that this tower does not satisfy criteria B2.

Standard B3 and B4 state that the tower should be less than 200 feet to avoid lighting. Taller heights may be acceptable where views of the towers from residential areas and public roads are very limited. In order to provide the required coverage, the 800 MHz. system requires heights well in excess of those recommended by the County policy (380 feet at the landfill, 280 feet at the Virginia Peninsula Regional Jail). However, as noted above, the visual impacts of the two towers should be very limited, thus staff finds the heights acceptable. All of the towers will be lighted in accordance with FAA regulations; a white strobe during the day and a red beacon light at night.

Standard B5 states that towers should be freestanding and not supported with guy wires. The Virginia Peninsula Regional Jail site meets this requirement; the landfill site does not. In this case, staff believes that a guy tower at the landfill is acceptable. The tower policy was written to encourage towers of less than 200 feet. Given that this tower will be 380 feet tall the guy tower provides a more slender appearance critical to minimizing its visual impact.

C. Buffering

Standard C1 and C2 state that towers should be placed in a manner that maximizes buffering from existing trees, including maintaining a recommended 100 foot wide buffer around the site, and that

access roads should be designed in a manner that provides no off-site view of the tower base and facilities.

The landfill tower has a 300 foot buffer from Jolly Pond Road. A special use permit condition is proposed to limit tree clearing and the placement of the access road in order to minimize visual impacts and satisfy these criteria.

The is adjacent to the jail parking lot and its base will be visible from Merrimac Trail. The tree buffer between the site and I-64 will not be impacted and the base will not be visible from the interstate. While the location of the jail tower does not satisfy the 100 foot wooded buffer standard, given that the tower is to be placed next to an existing tower, there will be minimal new negative visual impact.

COMPREHENSIVE PLAN

- ◆ Both sites are designated State, Federal and County Land
- ◆ **Staff Comments:** Both facilities are consistent with this designation. While the Comprehensive Plan also discusses the placement of towers and wireless communication facilities, it defers to the County's Performance Standards for Wireless Communications Facilities for specific criteria and guidance.

CONCLUSIONS & CONDITIONS

Staff finds the proposal generally consistent the County's Performance Standards for Wireless Communications Facilities and generally consistent with the 2003 Comprehensive Plan. In such cases where the proposal does not satisfy the criteria, these exceptions have been made in order to design a communication system to serve the larger public safety need. Staff recommends the Planning Commission recommend approval of the two special use permit applications with the attached conditions:

Virginia Peninsula Regional Jail Tower

1. This Special Use Permit shall be valid for a total of one (1) tower. The maximum height of the tower shall not be greater than 280 feet. The property shall be developed generally in accordance with the site layout titled "Special Use Permit Plan for Existing Cellular Tower Modification at Virginia Peninsula Virginia Peninsula Regional Jail" dated December 1, 2003, with minor changes approved by the Director of Planning.
2. Existing trees on the Virginia Peninsula Regional Jail site shall be preserved to the maximum extent possible as determined by the Director of Planning.
3. Final building design, location, orientation and construction materials for any supporting structures, such as equipment sheds and huts, shall be approved by the Director of Planning prior to final site plan approval. A gable or shed roof shall be used on all equipment sheds and huts.
4. A final Certificate of Occupancy from the James City County Codes Compliance Division shall be obtained within 24 months of approval of this special use permit, or the permit shall become void.
5. Within 30 days of the issuance of a final Certificate of Occupancy by the James City County Codes Compliance Division, certification by the manufacturer, or an engineering report by a Virginia-registered structural engineer, shall be filed by the applicant indicating the tower height, design, structure, installation and total anticipated capacity of the structure, including number and type of antennas which could be accommodated, demonstrating to the satisfaction of the building official that all structural requirements and other safety considerations set forth in the 2000 International Building Code, or any amendment thereof, have been met.

6. The tower shall have a finish that is grey in color as approved by the Director of Planning. No additional lighting beyond the minimum required by the FAA or FCC shall be allowed on the tower.
7. No advertising material or signs shall be placed on the tower.
8. This special use permit is not severable. Invalidation of any word, phrase, clause, sentence, or paragraph shall invalidate the remainder.

James City County Landfill Tower

1. This Special Use Permit shall be valid for a total of one (1) tower. The maximum height of the tower shall not be greater than 380 feet. The property shall be developed generally in accordance with the site layout titled "Special Use Permit Plan for 380' Cellular Tower James City County Landfill" dated December 1, 2003, with minor changes approved by the Director of Planning.
2. The tower shall be located on the site in a manner that maximizes the buffering effects of the existing trees and minimizes tree clearing as determined by the Director of Planning. Access drives shall be designed in a manner that minimizes off-site view of the tower's base or related facilities as determined by the Director of Planning. A minimum existing tree buffer of 300 feet shall be maintained around the tower. This buffer shall remain undisturbed except for the access drive, guy wires and necessary utilities for the tower.
3. Final building design, location, orientation and construction materials for any supporting structures, such as equipment sheds and huts, shall be approved by the Director of Planning prior to final site plan approval.
4. A final Certificate of Occupancy from the James City County Codes Compliance Division shall be obtained within 24 months of approval of this special use permit, or the permit shall become void.
5. Within 30 days of the issuance of a final Certificate of Occupancy by the James City County Codes Compliance Division, certification by the manufacturer, or an engineering report by a Virginia-registered structural engineer, shall be filed by the applicant indicating the tower height, design, structure, installation and total anticipated capacity of the structure, including number and type of antennas which could be accommodated, demonstrating to the satisfaction of the building official that all structural requirements and other safety considerations set forth in the 2000 International Building Code, or any amendment thereof, have been met.
6. The tower shall have a finish that is grey in color as approved by the Director of Planning. No additional lighting beyond the minimum required by the FAA or FCC shall be allowed on the tower.
7. No advertising material or signs shall be placed on the tower.
8. This special use permit is not severable. Invalidation of any word, phrase, clause, sentence, or paragraph shall invalidate the remainder.

Matthew D. Arcieri

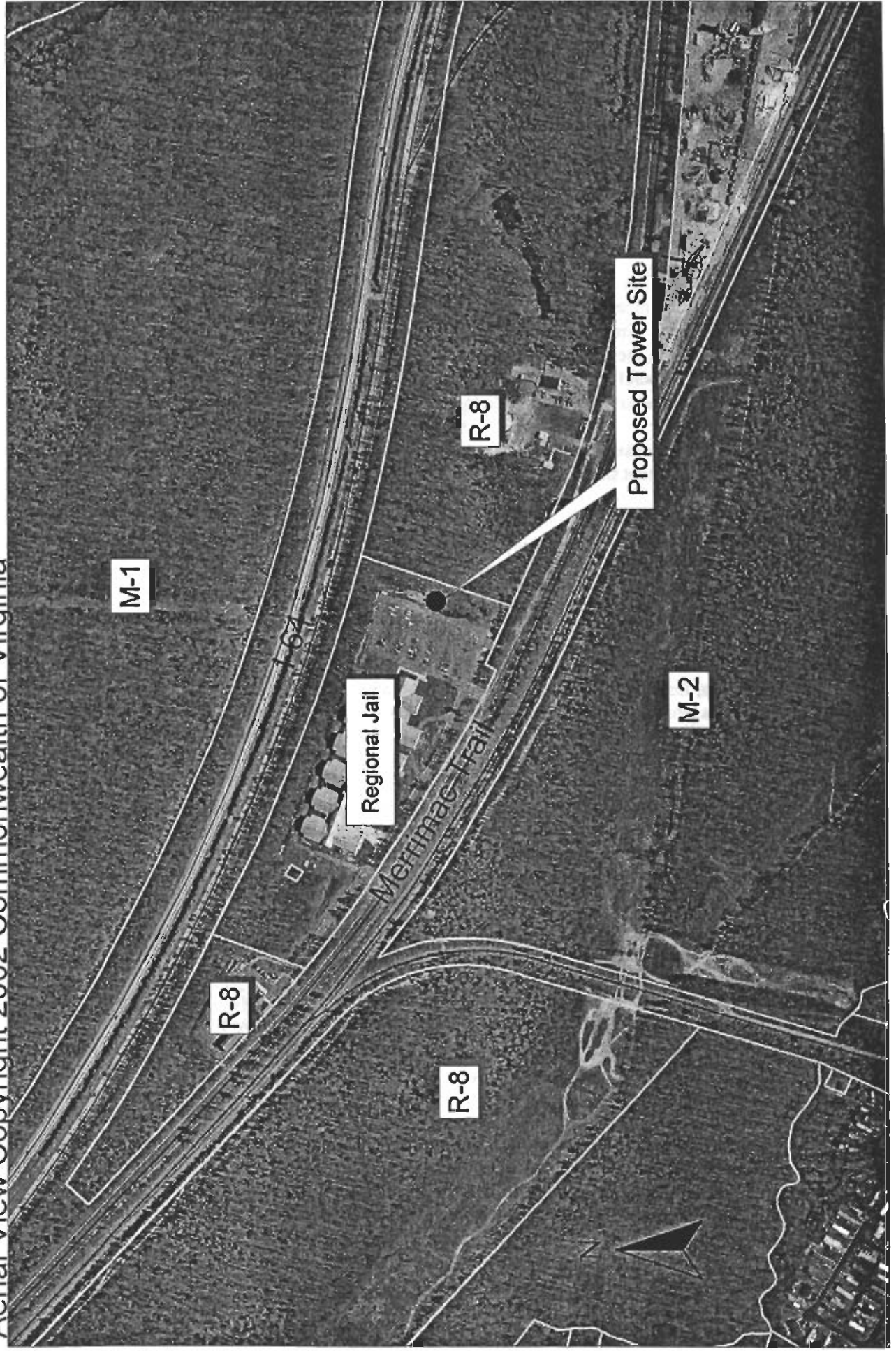
ATTACHMENTS:

1. Location Maps (2)
2. Balloon Test Photos
3. County Performance Standards for Wireless Communications Facilities.
4. Site Layouts (Under Separate Cover)

138 SUP-25-03, JCC Communication Tower Regional Jail (Merrimac Trail)



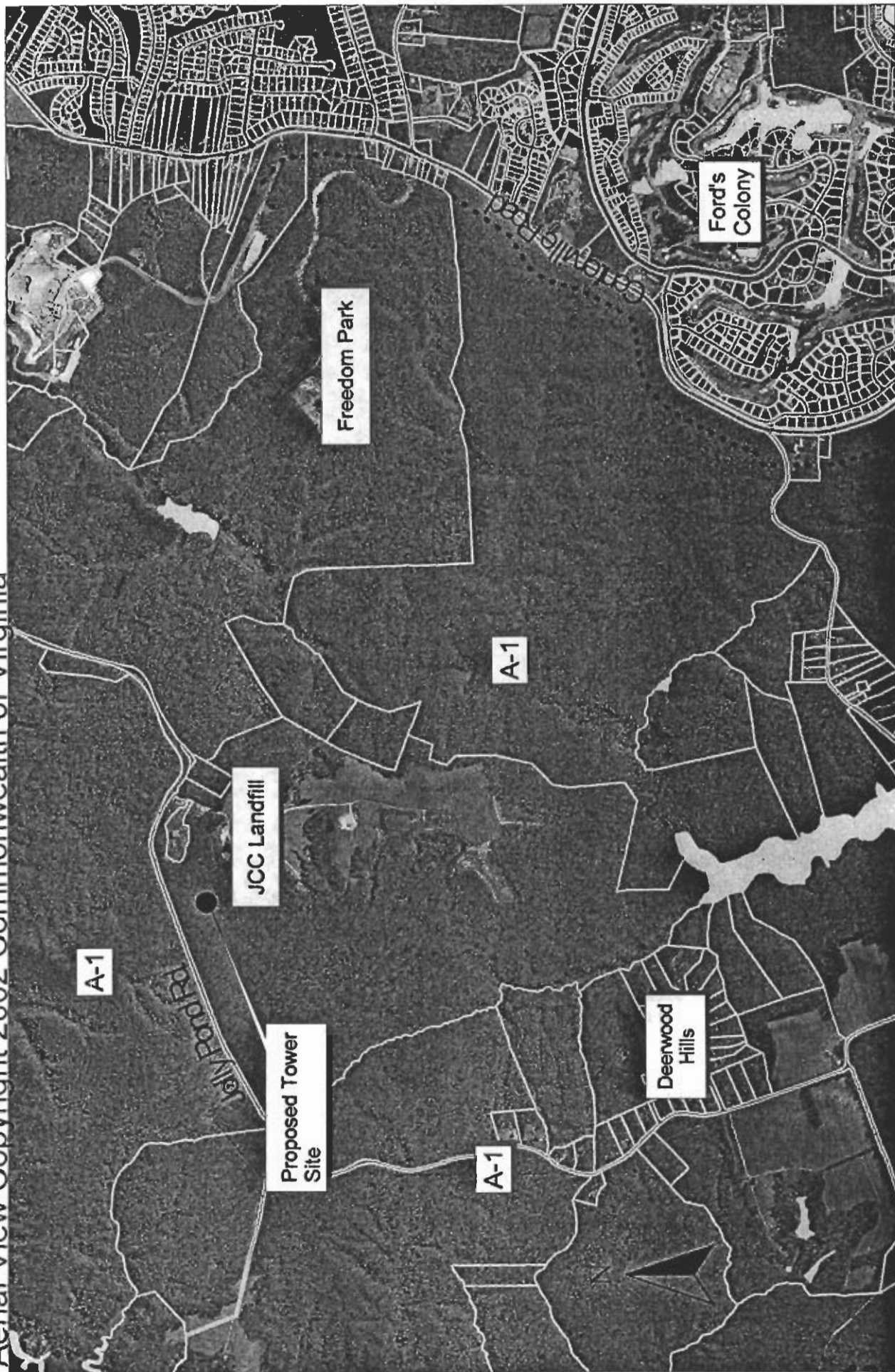
Aerial View Copyright 2002 Commonwealth of Virginia





SUP-26-03, JCC Communication Tower JCC Landfill (Jolly Pond Road)

Aerial View Copyright 2002 Commonwealth of Virginia



Landfill Balloon Test



From Landfill



From Jolly Pond Road

Regional Jail Balloon Test



From I-64 South



From the Juvenile Detention Facility (Merrimac Center)

Regional Jail Balloon Test



From the VDOT Maintenance Facility



From Walmart Distribution Center

Regional Jail Balloon Test



From Jan Rae Circle (Windy Hill)

Landfill Balloon Test



From Landfill



From Jolly Pond Road

PERFORMANCE STANDARDS FOR WIRELESS COMMUNICATIONS FACILITIES
MAY 26,1998

In order to maintain the integrity of James City County's significant historic, natural, rural and scenic resources, to preserve its existing aesthetic quality and its landscape, to maintain its quality of life and to protect its health, safety, general welfare, and property values, tower mounted wireless communications facilities (WCFs) should be located and designed in a manner that minimizes their impacts to the maximum extent possible and minimizes their presence in areas where they would depart from existing and future patterns of development. To implement these goals, the Planning Commission and the Board of Supervisors have adopted these performance standards for use in evaluating special use permit applications. While all of the standards support these goals, some may be more critical to the County's ability to achieve these goals on a case by case basis. Therefore, some standards may be weighed more heavily in any recommendation or decision on a special use permit, and cases that meet a majority of the standards may or may not be approved. The terms used in these standards shall have the same definition as those same terms in the Zoning Ordinance. In considering an application for a special use permit, the Planning Commission and the Board of Supervisors will consider the extent to which an application meets the following performance standards:

A. Collocation and Alternatives Analysis

1. Applicants should provide verifiable evidence that they have cooperated with others in co-locating additional antenna on both existing and proposed structures and replacing existing towers with ones with greater co-location capabilities. It should be demonstrated by verifiable evidence that such co-locations or existing tower replacements are not feasible, and that proposed new sites contribute to the goal of minimizing new tower sites.
2. Applicants should demonstrate the following:
 - a. That all existing towers, and alternative mounting structures and buildings more than 60 feet tall within a three-mile radius of the proposed site for a new WCF cannot provide adequate service coverage or antenna mounting opportunity.
 - b. That adequate service coverage cannot be provided through an increase in transmission power, replacement of an existing WCF within a three mile radius of the site of the proposed WCF, or through the use of a camouflaged WCF, alternative mounting structure, or a building mounted WCF, or a system that uses lower antenna heights than proposed.

The radii of these study areas may be reduced where the intended coverage of the proposed WCF is less than three miles.

3. Towers should be sited in a manner that allows placement of additional WCF facilities. A minimum of two tower locations, each meeting all of the requirements of the Zoning Ordinance and these standards, should be provided at all newly approved tower sites.
4. All newly permitted towers should be capable of accommodating enough antennas for at least three service providers or two service providers and one government agency. Exceptions may be made where shorter heights are used to achieve minimal intrusion of the tower as described in Section B.2. below.

B. Location and Design

1. Towers and tower sites should be consistent with existing and future surrounding development and the Comprehensive Plan. While the Comprehensive Plan should be consulted to determine all applicable land use principles, goals, objectives, strategies, development standards, and other policies, certain policies in the Plan will frequently apply. Some of these include the following: (1) Towers should be compatible with the use, scale, height, size, design and character of surrounding existing and future uses, and such uses that are generally located in the land use designation in which the tower would be located; and (2) towers should be located and designed in a manner that protects the character of the County's scenic resource corridors and historic and scenic resource areas and their view sheds.
2. Towers should be located and designed consistent with the following criteria:

Proposed Location of Tower

Impact Criteria

- a. Within a residential zone or residential designation in the Comprehensive Plan

Use a camouflaged design or have minimal intrusion on to residential areas, historic and scenic resource areas or roads in such areas, or scenic resource corridor

For areas designated rural lands in the Comprehensive Plan that are within 1500 feet from the tower, the same standards apply. For rural lands more than 1500 feet from the tower, no more than the upper 25% of the tower should be visible

- b. Within a historic or scenic resource area or within a scenic resource corridor

Same criteria as above

- c. Within a rural lands designation in the Comprehensive Plan

Same criteria as above

- d. Within a commercial or in an industrial designation in the Comprehensive Plan

Same criteria as above

Notes for the above table:

1. Exceptions to these criteria may be made on a case by case basis where the impact of the proposed tower is only on the following areas: (1) An area designated residential on the Comprehensive Plan or zoning map which is not a logical extension of a residential subdivision or which is a transitional area between residential and nonresidential uses, (2) a golf course or a golf course and some combination of commercial areas, industrial areas, or utility easements, provided the tower is located on the golf course property, or (3) a scenic easement.
2. A tower will meet the minimal intrusion criteria if it is not visible off site above the tree line. Such tower should only be visible off-site when viewed through surrounding trees that have shed their leaves.
3. Camouflaged towers having the design of a tree should be compatible in scale and species with surrounding natural trees or trees native to Eastern Virginia.

4. Towers should be less than 200 feet in height in order to avoid the need for lighting. Taller heights may be acceptable where views of the tower from residential areas and public roads are very limited. At a minimum, towers 200 feet or more in height should exceed the location standards listed above.
5. Towers should be freestanding and not supported with guy wires.

C. Buffering

1. Towers should be placed on a site in a manner that takes maximum advantage of existing trees, vegetation and structures so as to screen as much of the entire WCF as possible from view from adjacent properties and public roads. Access drives should be designed in a manner that provides no view of the tower base or related facilities.
2. Towers should be buffered from adjacent land uses and public roads as much as possible. The following buffer widths and standards should be met:
 - a. In or adjacent to residential or agricultural zoning districts, areas designated residential or rural lands on the Comprehensive Plan, historic or scenic resource areas, or scenic resource corridors, an undisturbed, completely wooded buffer consisting of existing mature trees at least 100 feet wide should be provided around the WCF.
 - b. In or adjacent to all other areas, at least a 50 foot wide-vegetative buffer consisting of a mix of deciduous and evergreen trees native to Eastern Virginia should be provided.

MEMORANDUM

DATE: January 12, 2004
TO: The Planning Commission
FROM: Christy H. Parrish, Senior Zoning Officer
SUBJECT: Case No. ZO-03-03 - Sign Ordinance Revision

Attached is an initiating resolution to allow staff to review Section 24-74 (11), Exemptions, of the Zoning Ordinance to include signs within a nonresidential development in any zoning district which are not visible from a public road or abutting property line be exempted. A public hearing will be scheduled for the Planning Commission on February 2, 2004.

Staff recommends adoption of the attached resolution.


Christy H. Parrish

Attachment:
Resolution

RESOLUTION

INITIATION OF CONSIDERATION OF AMENDMENTS TO THE ZONING ORDINANCE

WHEREAS, the Planning Commission of James City County, Virginia, is charged by Virginia Code §15.2-2223 to prepare and recommend to the Board of Supervisors various land development plans and ordinances, specifically including a zoning ordinance and necessary revisions thereto as seem to the Commission to be prudent; and

WHEREAS, on August 12, 2003, the Board of Supervisors adopted the 2003 Comprehensive Plan; and

WHEREAS, in order to make the Zoning Ordinance more consistent with the Comprehensive Plan, public review and comment of draft amendments is required, pursuant to Virginia Code §15.2-2285; and

WHEREAS, the Planning Commission is of the opinion that the public necessity, convenience, general welfare, or good zoning practice warrant the consideration of amendments.

NOW, THEREFORE, BE IT RESOLVED that the Planning Commission of James City County, Virginia, does hereby request staff to initiate review of Section 24-74 (11), Exemptions, of the Zoning Ordinance to include signs within a nonresidential development in any zoning district which are not visible from a public road or abutting property line be exempted. The Planning Commission shall hold at least one public hearing on the consideration of amendments of said Ordinance and shall forward its recommendation thereon to the Board of Supervisors in accordance with law.

A. Joe Poole, III
Chairman, Planning Commission

ATTEST:

O. Marvin Sowers, Jr.
Secretary

Adopted by the Planning Commission of James City County, Virginia, this 12th day of January, 2004.

zoneordamend.res

PLANNING DIRECTOR'S REPORT

January 2004

This report summarizes the status of selected Planning Division activities during the last 30 days.

1. Planning Commission Appointments. The terms of Commissioners John Hagee and Peggy Wildman will expire on January 31, 2004. Mr. Hagee has stated that he does not wish to seek reappointment, while Ms. Wildman has expressed a desire to be reappointed. Staff wishes to thank both Commissioners for their service.
2. Planning Commission Officers. Under the by-laws, the Commission is scheduled to elect a Chairman and Vice Chairman for 2004 at its February 2 meeting. The newly elected Chairman will then be responsible for appointing Commissioners to the Policy Committee and the Development Review Committee.
3. Planning Commission By-laws. At its December 8, 2003 meeting, a proposal was introduced to amend the by-laws to restructure the Commission's Nominating Committee. The amendments will be considered at the Commission's January 12, 2004 meeting.
4. Secondary Road Plan. The Board of Supervisors held a work session on the FY-05 Plan on December 16. Because of State funding limitations, the plan is very similar to the current plan, with only one new project. That project includes paving of another section of Racefield Drive. The proposed plan is available on the County website at: <http://www.james-city.va.us/archive/bosagendas/121603ws.html>.
5. Upcoming Cases. New cases that are tentatively scheduled for the February 2nd, Planning Commission meeting include:

CASE NO. Z-15-03/MP-13-03/HW-2-03. STONEHOUSE STATION AT NORGE. Ms. Lou Rowland has applied on behalf of Stonehouse Station L.P. to rezone approximately 10.167 acres from B,-1 General Business to R-5, Multifamily Residential, with proffers. The site is generally located at **7721 Croaker Road**. Up to 104 apartments are proposed for construction which is approximately 10.23 units an acre. The site is designated for Moderate Density Residential development on the James City County Comprehensive Plan Land Use Map. Recommended uses on property designated for Moderate Density Residential include townhouses, apartments, and attached cluster housing, with a minimum density of 4 dwelling units per acre, up to a maximum of 12 units per acre, depending on the character and density of surrounding development. Ms. Rowland has also requested a Height Limitation Waiver from the Board of Supervisors to allow for the construction of structures which exceed 35 feet in height. The three properties are inside the County's Primary Service Area and can be further identified as parcel (1-21) on the James City County Real Estate Tax Map No. (13-4).

CASE NO. SUP-30-03 CHESAPEAKE BANK. Mr. Marshall Warner has applied for a Special Use Permit on behalf of Chesapeake Bank and property owner Cap Care Group, Inc. to allow the construction of a bank on approximately 1.4 acres out of 53.44 total acres at **6601 Richmond Road**. The property can be further identified as Parcel (1-35) on James City County Real Estate Tax Map No. (24-3). The property is zoned B-1, with Proffers, and is designated Mixed Use on the Comprehensive Plan Land Use Map.

O. Marvin Sowers, Jr.

