

970 010719

PROFFERS

These Proffers are made as of the 6th day of May, 1997, by JOHN B. **BARNETT, JR.** (“the Owner”), together with his successors and assigns, who owns certain real property shown on James City County Real Estate Tax Map 23-2 as a portion of parcel 1-66.

RECITALS

A. The Owner is owner of certain real property in James City County, Virginia (“the County”), more particularly described as follows:

All that certain tract of land containing 10.00 acres, more or less, now or formerly situate in Powhatan District, James City County, Virginia, as shown and set forth on a drawing entitled “REZONING MAP FOR LANDS OWNED BY JOHN B. BARNETT, JR.” dated 3/24/97 made by Steven O. Wigley of AES, a copy of which plat is attached hereto and made a part hereof marked as Exhibit “A.”

The aforesaid real estate is herein referred to as “the Property.”

B. The County’s Comprehensive Plan Land Use Map specifically designates the Property as “Mixed Use” expressly providing:

Williamsburg Soap and Candle Factory For that area currently zoned M-1 (as of May, 1991) located adjacent to Richmond Road, the principal suggested uses are a mixture of limited industrial and commercial uses.

C. The Property is and has been since the inception of zoning in the County zoned M-1; however, the M-1 zoning district as currently written does not permit generally or specially indoor theaters, museums and public meeting halls.

D. The Owner has requested that the Property be rezoned from the Limited Business/Industrial, M-1 district to the Mixed Use, MU district to permit the construction of indoor theaters, museums and public meeting halls and other uses.

E. The provisions of the County Zoning Ordinance may be deemed inadequate for the

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orderly development of the Property.

F. The Owner desires to offer to the County certain proffers on the development of the Property not generally applicable to land zoned MU for the protection and enhancement of the community and to provide for the high quality and orderly development of the Property.

G. NOW, THEREFORE, for and in consideration of the approval by the County of the rezoning of the Property and pursuant to Section 15.1-491.1 *et seq* of the Code of Virginia, 1950, as amended, (“the Virginia Code”), and Section 20-16 of the County Code (“the County Code”), the Owner agrees that he will meet and comply with all of the following proffers in developing the Property. In the event that the requested rezoning is not approved and these proffers are not accepted by the County, these proffers shall thereupon become null and void.

PROFFERS

1. **USES:** The uses to be permitted on the Property are more particularly described on a list entitled “Permitted Uses On The Property” attached hereto and made a part hereof marked as Exhibit “B.”

2. **CONCEPTUAL PLAN OF DEVELOPMENT:** The Property shall be developed in accordance with a drawing entitled “CONCEPTUAL PLAN - WILLIAMSBURG MUSIC THEATER, OWNER/DEVELOPER: JOHN BARNETT, JR.” attached hereto and made a part hereof marked as Exhibit “C” (“the Conceptual Plan of Development”). The Owner shall provide for the approximate location of proposed streets, the approximate location of areas of open space, and the approximate location of areas for buildings and parking all as approximately shown on the Conceptual Plan of Development. Site constraints including, but not limited to, topography, finished grades, wetlands, steep slopes, utility and drainage easements, and soils may warrant deviations from the Conceptual Plan of Development. The County’s Planning Director shall

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permit deviations from the Conceptual Plan of Development if such deviations do not: (1) conflict with the other requirements of these proffers, the Virginia Code and the County Code; or (2) change the general character or content of the Conceptual Plan of Development; or (3) result in any change of major external access points.

3. **TREE RETENTION AREAS:** In the area adjacent to and parallel with the westerly boundary line of the Property, to a depth of 100 feet, as shown on the Conceptual Plan of Development, the Owner shall provide for the preservation of existing trees, to the end that said area shall be left in its existing natural wooded state. Notwithstanding the aforesaid, dead, diseased or dying trees or trees weakened by age, storm or other injury and dead, diseased or dying shrubbery may be removed. Furthermore, selective clearing may be performed within said area to allow for an attractive appearance, to remove trees that might become a hazard to visitors and to enhance the growth potential of trees to remain. The existing native mulch layer and existing grade around trees in said area shall be retained. Finally, additional mulch and understory planting may be added.

Notwithstanding the aforesaid, nature trails, footpaths, roads, bridges, utility crossings, stormwater structures and stormwater management facilities may be permitted in said tree retention area provided they are approved by the County's Planning Director and a replanting plan for disturbed areas is approved by the County's Planning Director. Any roads and bridges constructed in said area must also be approved by the adjoining property owners.

4. **TRAFFIC STUDY; TRAFFIC IMPROVEMENTS:** The access to the Property shall be in the approximate location shown on the Conceptual Plan of Development and shall be limited to one access on U. S. Route 60. The Owner has commissioned, at his expense, and provided to each of the County and the Virginia Department of Transportation ("VDOT"), a

traffic study for the intersection of U. S. Route 60 and Route 607 and the entrance to the Property on U. S. Route 60 entitled "Traffic Impact Study For Old Dominion Opry At Richmond Road/Croaker Road, James City County, Virginia" prepared by Dexter B. Williams and dated March 12, 1997 ("the Traffic Study"). The Traffic Study and the improvements recommended therein shall be reviewed and approved by the County and VDOT prior to final site plan approval. After said approval, the Owner shall, if not previously constructed by others, construct said improvements recommended in the Traffic Study or guarantee the construction of the same with corporate surety or cash bond in accordance with the applicable standards of the County and VDOT all prior to the issuance of certificates of occupancy for the prescribed improvements. Any existing traffic sensors imbedded in existing pavement to be disturbed will be replaced at the expense of the Owner.

5. **LANDSCAPING AND BERMS:** Development of the Property shall include the following:

- **Parking Lot Buffer:** Adjacent to and parallel with U.S. Route 60, the Owner shall provide a 3' high landscaped berm commencing approximately 355 feet east of the westerly property line of the Property and extending approximately 120 feet toward the easterly property line of the Property. The berm shall be landscaped as necessary with evergreen and deciduous shrubs and trees to be approved by the County's Planning Director to provide an effective visual screen between the adjacent portion of the parking lot and U.S. Route 60.
- **Landscaping for Entranceway:** The traffic islands along the easterly boundary of the Property shall be landscaped in accordance with a landscape plan prepared by a Certified Landscape Architect and approved by the County's Planning Director. The plan shall provide for a homogeneous mixture of evergreen and deciduous ground covers, low shrubs (18" - 24"), medium shrubs (2' - 4'), ornamental trees such as Crepe Myrtle and Dogwood, and large deciduous and evergreen trees. Pockets shall be provided for inclusion of annuals and/or perennials into the overall scheme. Notwithstanding the aforesaid, all such plantings shall be positioned to buffer the parking lot on the Property from U.S. Route 60 but not obstruct visibility from U.S. Route 60 of the structure

contemplated in the Conceptual Plan of Development.

6. **SHARED PARKING:** Barnett Development Company, Inc. (“the Company”), owns the parcel adjacent to and on the easterly side of the Property which adjacent property is designated as parcel 67 on the James City County tax map 23-2. In an effort to limit unnecessary clearing, grading and installation of impervious cover on the Property, the Company agrees to make its existing parking shown on a drawing entitled “EXISTING PARKING AT WILLIAMSBURG SOAP AND CANDLE FACTORY, OWNER/DEVELOPER: JOHN BARNETT, JR.” attached hereto and made a part hereof marked as Exhibit “D” available to the Property when not needed for its own use. The Company joins in these proffers solely for the purpose of evidencing its consent to the terms of this proffer.

GENERAL PROFFERS

7. **HEADINGS:** All section and subsection headings of these proffers are for convenience only and are not part of these proffers.

8. **SEVERABILITY OF PROVISIONS:** If any clause, sentence, paragraph, section or subsection of these proffers shall be adjudged by any Court of competent jurisdiction to be invalid for any reason, including a declaration that it is contrary to the Constitution of the Commonwealth or of the United States, or if the application thereof to the Owner or to any government agency or circumstance is held invalid, such judgment or holding shall be confined in its operation to the clause, sentence, paragraph, section or subsection hereof or the specific application thereof, directly involved in the controversy in which the judgment or holding shall have been rendered or made, and shall not in any way affect the validity of any other clause, sentence, paragraph, section or subsection hereof, or affect the validity of the application thereof to the Owner or to any other government agency, person or circumstance.

JUL-8 5 0254

John B. Barnett Jr.
JOHN B. BARNETT, JR.

BARNETT DEVELOPMENT COMPANY, INC.

By: John B. Barnett Jr.
President

STATE OF VIRGINIA

COUNTY OF JAMES CITY, to-wit:

The foregoing instrument was acknowledged before me this 7th day of May, 1997 by JOHN B. BARNETT, JR, individually and as President of and acting on behalf of BARNETT DEVELOPMENT COMPANY, INC.

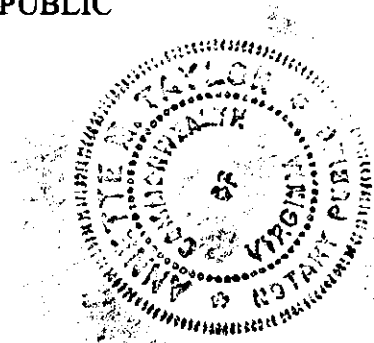
I was commissioned a notary public as Annette M. Taylor

Annette S. Dilbert
NOTARY PUBLIC

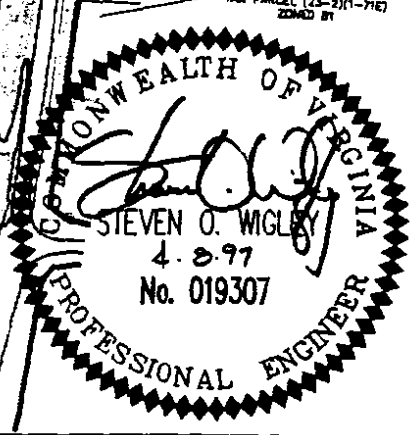
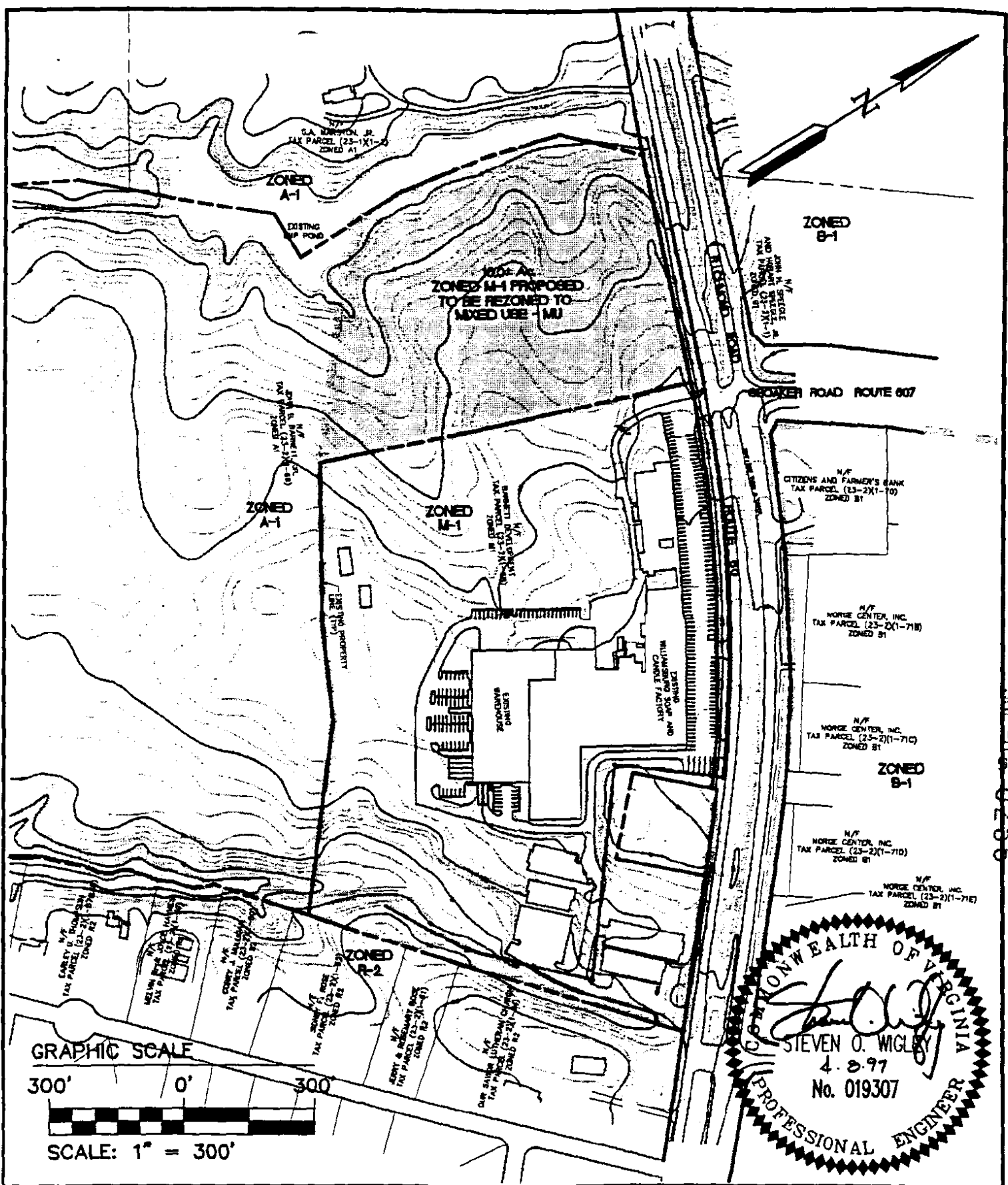
My commission expires: 11-30-99

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JUL-86 0255



04.18.97-16:46 68834M05



AES Consulting Engineers Engineers, Surveyors, Planners Williamsburg, Virginia

EXHIBIT "A"
 REZONING MAP FOR LANDS OWNED BY
 JOHN B. BARNETT, JR.
 JAMES CITY COUNTY

POWHATAN DISTRICT

MARCH 24, 1997
 VIRGINIA

III-86-0256

Exhibit "B"

Permitted Uses On The Property

Accessory structures, as defined in section 20-2.

Apartments.

Arts and crafts shops.

Automobile rental.

Automobile repair and service including tire, transmission, glass, body and fender, and other automotive products sales (new and/or rebuilt) and service with major repair under cover and storage of parts and vehicle storage screened from adjacent property by landscaping and fencing.

Automobile service stations; if fuel is sold, then in accordance with section 20-38.

Banks and other similar financial institutions.

Barber and beauty shops.

Book stores.

Business, professional and governmental offices.

Cabinet and upholstery shops.

Candy stores.

Carpet stores.

Contractor offices, equipment storage yards, shops and warehouses with storage under cover or screened with landscaping and fencing from adjacent property.

Data processing centers.

Department stores.

Dressmaking stores.

Drug stores.

Dry cleaners and laundries.

JUL-8 6 0257

Employment services or agencies.

Farmer's markets.

Feed, seed and farm supply stores.

Florist stores.

Food processing and storage, but not the slaughter of animals.

Food processing and storage in a residence.

Framing stores.

Furniture stores.

Furrier stores.

Greeting card stores.

Heavy equipment sales and service, with major repair under cover or screened with landscaping and fencing from adjacent property.

Home appliance sales and service.

Houses of worship and cemeteries accessory hereto.

Hotels, motels, tourist homes and convention centers.

Ice cream stores.

Indoor sport facilities, health clubs, exercise clubs and fitness centers.

Indoor theaters, museums and public meeting halls.

Industrial and technical training schools.

Janitorial service establishments.

Jewelry sales and service.

Locksmith shops.

Lumber and building supply with storage limited to a fully enclosed building or screened with landscaping and fencing from adjacent property.

Machinery sales and service with major repair under cover.

JUL-87 0258

Manufacture and assembly of musical instruments, toys, novelties and rubber and metal stamps.

Manufacture and bottling of soft drinks and wine.

Manufacture and processing of textiles and textile products.

Manufacture, compounding, assembly or treatment of products made from previously prepared paper, plastic, metal, textiles, tobacco, wood, paint, fiber glass, glass, rubber, leather, cellophane, canvas, felt, fur, horn, wax, hair and yarn.

Manufacture, compounding, processing or packaging of cosmetic, toiletry and pharmaceutical products.

Manufacture of carpets and carpet yarns.

Manufacture of pottery and ceramic products, using kilns fired only by gas or electricity.

Manufacture or assembly of appliances, tools, firearms, hardware products and heating, cooling or ventilating equipment.

Manufacture or assembly of electronic instruments, electronic devices or electronic components.

Manufacture or assembly of medical, drafting, metering, marine, photographic and mechanical instruments.

Music and record stores.

Nonemergency medical transport.

Off-street parking as required by section 20-53.

Pet stores.

Plant and garden supply stores.

Plumbing and electrical supply with storage limited to a fully enclosed building or screened with landscaping and fencing from adjacent property.

Printing and publishing establishments,

Private streets within "qualifying industrial parks" in accordance with section 20-55.

Processing, assembly and manufacture of light industrial products or components, with all storage, processing, assembly and manufacture conducted indoors and under cover, with no dust, noise, odor or other objectionable effect.

JUL-85 0259

- Research, development and design facilities or laboratories
- Restaurants, tea rooms and taverns.
- Retail food stores, bakeries and fish markets.
- Security service offices.
- Shoe stores.
- Sporting goods stores.
- Stamp and coin stores.
- Tailor shops.
- Taxi service.
- Telephone exchanges and telephone switching stations.
- Timbering in accordance with Section 20-43.
- Tobacco and pipe stores.
- Toy stores.
- Travel bureaus.
- Veterinary offices.
- Warehouse, storage and distribution centers with storage under cover or screened with landscaping and fencing from adjacent property.
- Water impoundments, new or expansion of.
- Water well drilling establishments.
- Wearing apparel stores.
- Welding and machine shops with storage limited to a fully enclosed building or screened with landscaping and fencing from adjacent property.
- Yard good stores.

JUL-85 0260

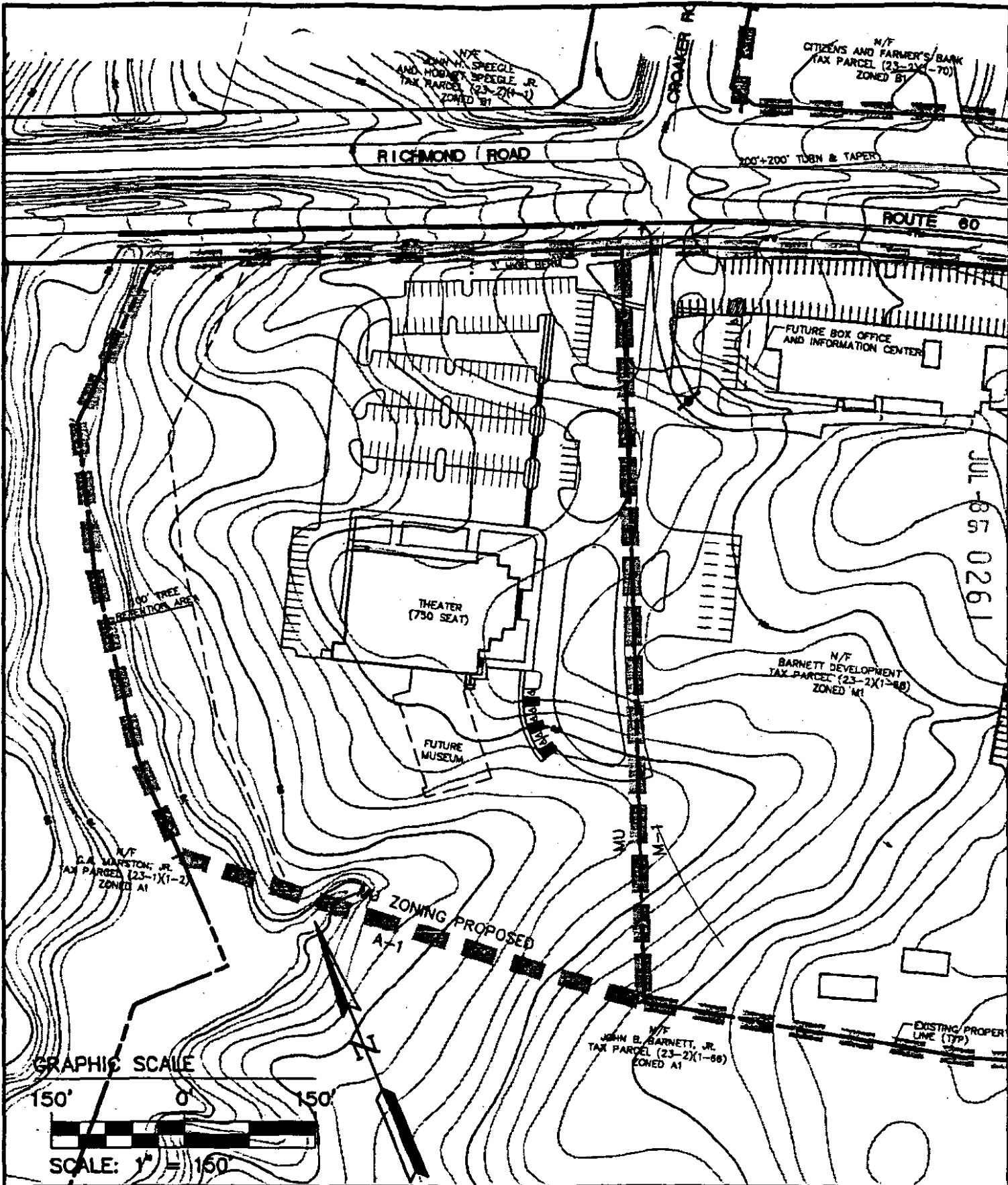
PLAT ATTACHED

VIRGINIA: City of Williamsburg and County of James City, to Wit:
 In Clerk's Office of the Circuit Court of the City of Williamsburg and County of James City, this 8th day of July, 1997. This *Proffer*
 was presented with certificate annexed and
 recorded to record at 3:36 o'clock
 Tester: Helene S. Ward, Clerk
 by *[Signature]*
 Deputy Clerk

68834M03

04.18.97-11:28

DPW



Consulting Engineers

Engineers, Surveyors, Planners

Williamsburg, Virginia

EXHIBIT "C"

CONCEPTUAL PLAN - WILLIAMSBURG MUSIC THEATER

OWNER/DEVELOPER: JOHN BARNETT, JR.

POWHATAN DISTRICT

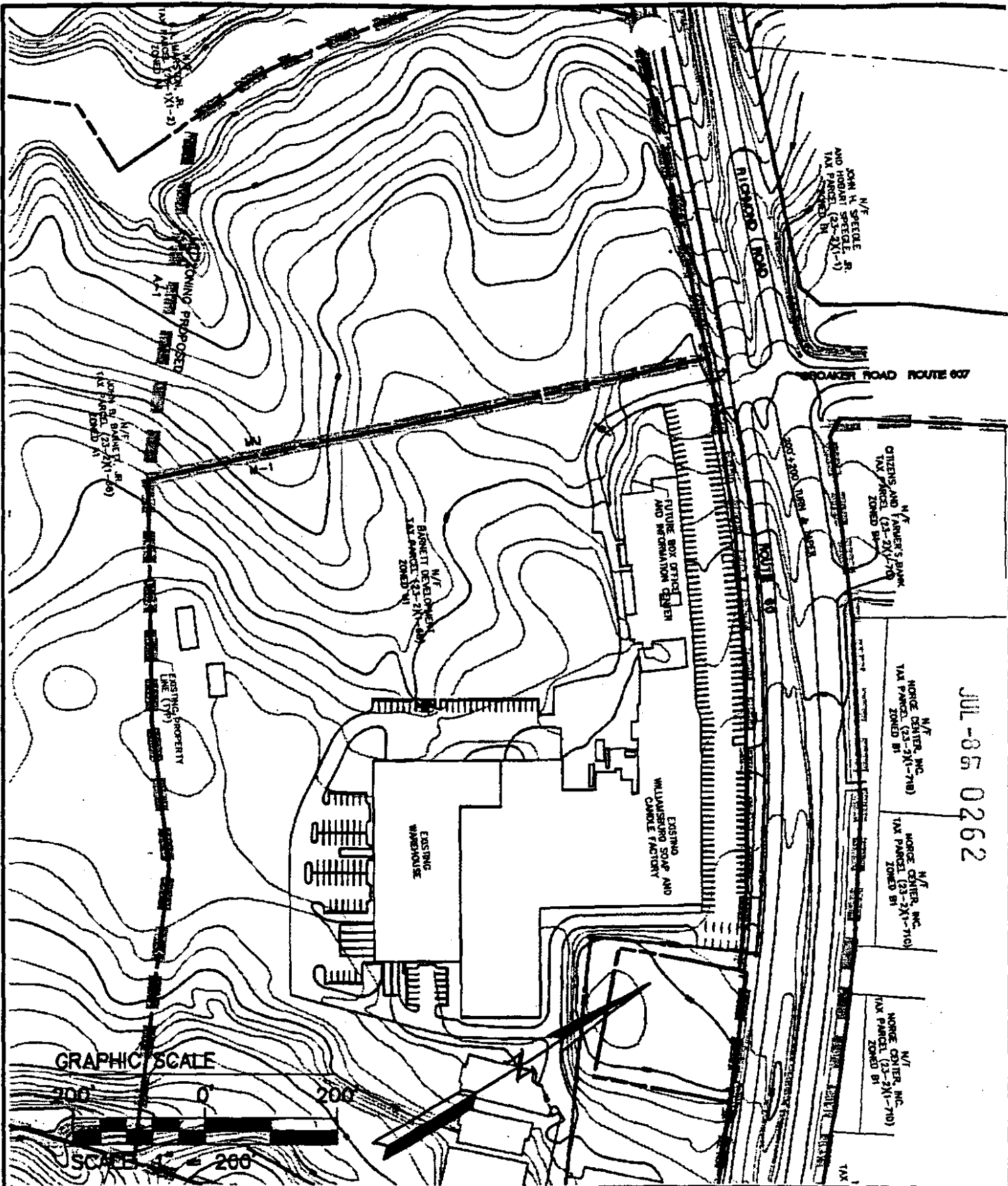
JAMES CITY COUNTY

VIRGINIA

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04.21.97-08:48

DPW



JUL-85 0262

AES Consulting Engineers **Engineers, Surveyors, Planners** **Williamsburg, Virginia**

EXHIBIT "D"
EXISTING PARKING AT WILLIAMSBURG SOAP AND CANDLE FACTORY
OWNER/DEVELOPER: JOHN BARNETT, JR.

John B. Barnett, Jr.
Post Office Box 455
Norge, Virginia 23127
(757) 564-3354

April 29, 1997

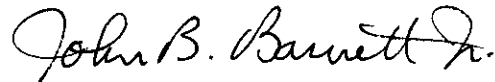
James City County
Department of Development Management
Post Office Box 8784
Williamsburg, Virginia 23187-8784

RE: *Case No. Z-3-97, Williamsburg Music Theater*

Dear Gentlemen:

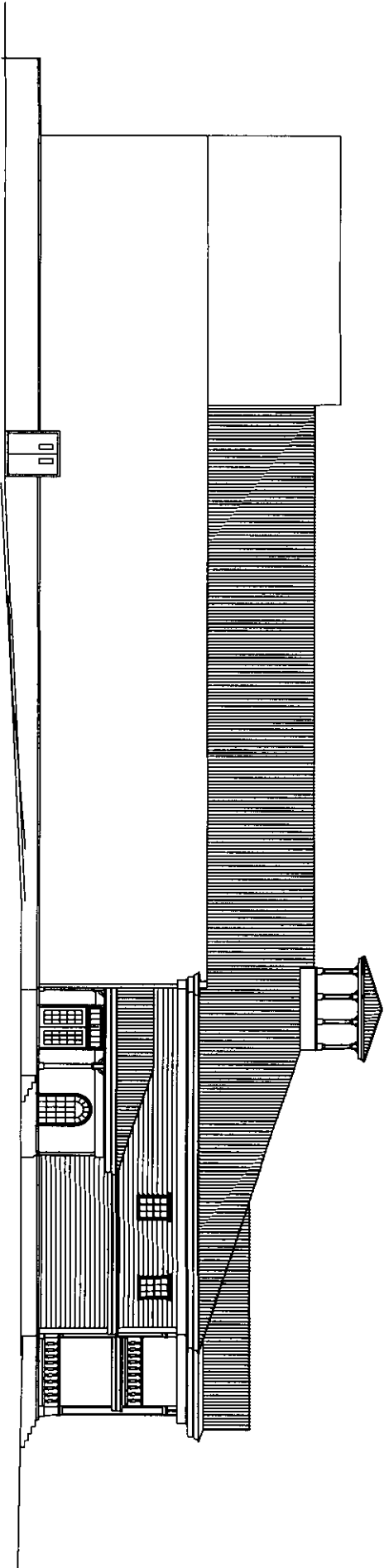
I have been requested to provide Proffers relating to exterior building materials, roof lines, wall articulations, window placements, etc. Unfortunately, my plans are not yet in a position to make the requested Proffer; however, I am prepared to represent to you by this letter that the exterior elevation of the building proposed by me will be constructed substantially in the manner shown on the exhibit attached to and made a part of this letter. If you have any questions, please do not hesitate to call.

Very truly yours,

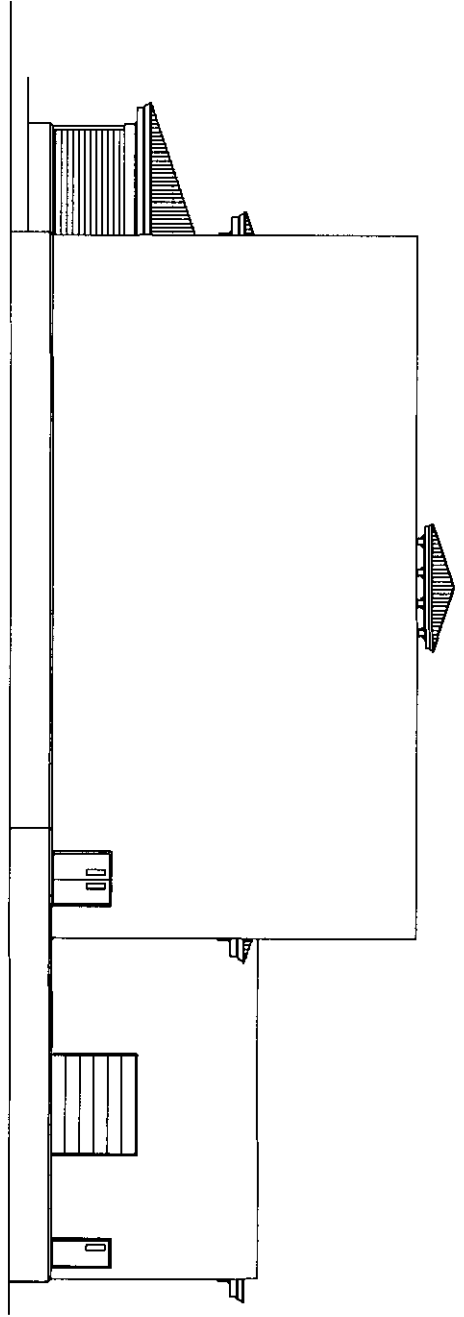


John B. Barnett, Jr.

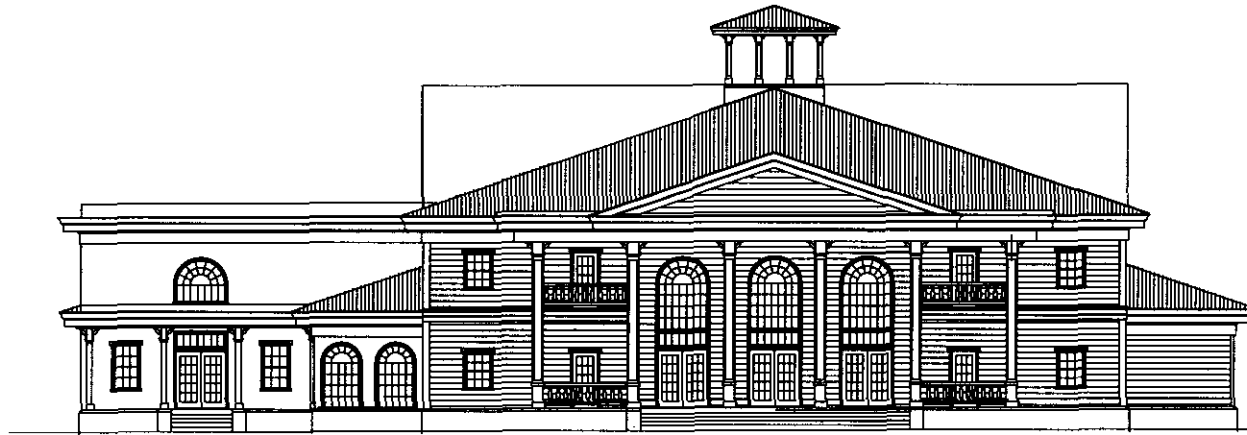
JBBjr/asg
Enclosures



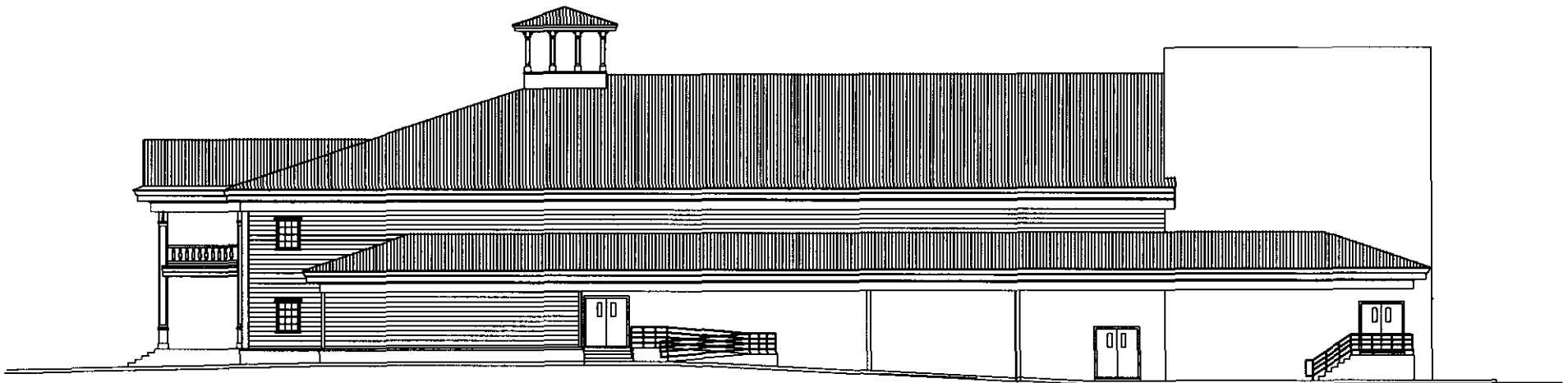
WEST ELEVATION



NORTH ELEVATION



SOUTH ELEVATION



EAST ELEVATION

COMMONWEALTH OF VIRGINIA



RETURN TO:
ATTORNEY
G. C

OFFICIAL RECEIPT
WILLIAMSBURG/JAMES CITY COUNTY CIRCUIT
DEED RECEIPT

DATE: 07/08/97 TIME: 15:36:18 ACCOUNT: B30CLR970010719 RECEIPT: 97000017759
CASHIER: CHB REG: WB04 TYPE: OTHER PAYMENT: FULL PAYMENT
INSTRUMENT : 970010719 BOOK: PAGE: RECORDED: 07/08/97 AT 15:36
GRANTOR: BARNETT, JOHN B, JR EX: N LDC: CD
GRANTEE: JAMES CITY COUNTY EX: N PCT: 100%

AND ADDRESS :
RECEIVED OF : JCCO DATE OF DEED: 05/06/97

CHECK : \$22.00
DESCRIPTION 1: 10.00 AC JOHN B BARNETT JR PROFFERS
2:

CONSIDERATION:	.00	ASSUME/VAL:	.00	MAP:	
CODE DESCRIPTION	PAID	CODE DESCRIPTION	PAID		
301 DEEDS	21.00	145 VSLF	1.00		

TENDERED : 22.00
AMOUNT PAID: 22.00
CHANGE AMT : .00

CLERK OF COURT: HELENE S. WARD