



**AGENDA
REGULAR MEETING
FREDERICK COUNTY BOARD OF SUPERVISORS
THURSDAY, NOVEMBER 12, 2015
7:00 P.M.
BOARD ROOM, COUNTY ADMINISTRATION BUILDING
107 NORTH KENT STREET, WINCHESTER, VIRGINIA**

Call To Order

Invocation

Pledge of Allegiance

Adoption of Agenda:

Pursuant to established procedures, the Board should adopt the Agenda for the meeting.

Consent Agenda:

(Tentative Agenda Items for Consent are Tabs: A, I, and R)

Citizen Comments (Agenda Items Only, That Are Not Subject to Public Hearing.)

Board of Supervisors Comments

Minutes: (See Attached)----- A

1. Work Session with Economic Development Authority of October 28, 2015.

County Officials:

1. Resolution of Appreciation of Human Resources Director Paula Nofsinger.
(See Attached) ----- B
2. Committee Appointments. (See Attached)----- C
3. Request from Commissioner of the Revenue for Refund. (See Attached) -- D

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4. Snowden Bridge School/Park Site – Request for Public Hearing on Conveyance of Portion to School Board. **(See Attached)**----- E
5. Procedure to Fill Soon to be Vacant Stonewall District Seat. **(See Attached)** ----- F
6. Memorandum Re: FY 2015-2016 Budget Resolution Re-Adoption. **(See Attached)** ----- G
7. Memorandum Re: Proposed 2016 Legislative Initiatives. **(See Attached)** ----- H

Committee Reports:

1. Transportation Committee. **(See Attached)**----- I

Planning Commission Business:

Public Hearing:

1. Rezoning #09-15 Artillery Business Center Submitted by Pennoni Associates, to Revise Proffers Associated with Rezoning #07-08. This Revision Relates Specifically to the Transportation Proffers. The Properties are Located East and Adjacent to Shady Elm Road Approximately 4,500 Feet South of the Intersection of Shady Elm Road and Apple Valley Drive. The Properties are Identified with Property Identification Numbers 75-A-1 and 75-A-1F in the Back Creek Magisterial District. **(Continued Public Hearing from October 28, 2015 Board Meeting.) (See Attached)** ----- J
2. Conditional Use Permit #03-15 for Gary Rogers Arghyris, for Cottage Occupation (Sale of Sheds). The Property is Located at 1518 Fairfax Pike, White Post, Virginia and is Identified with Property Identification Number 87-A-12D in the Opequon Magisterial District. **(See Attached)**----- K
3. Rezoning #07-15 Woodside Land Company, LLC., Submitted by GreyWolfe, Inc., to Rezone 20 Acres of Property from RA (Rural Areas) District to M2 (Industrial General) District with Proffers. The Property is Located on the Southern Side of Route 669 (Woodbine Road) about 2000' East of Route 11 and Adjacent to the Winchester & Western Railroad and is Identified by Property Identification Number 34-A-6D in the Stonewall Magisterial District. **(See Attached)** ----- L

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4. Rezoning #08-15 McCann Office Park, Submitted by GreyWolfe, Inc., to Rezone 154.923 Acres as follows: 43.76 Acres from RA (Rural Areas) District to RA (Rural Areas) District with Proffers, 6.180 Acres from RA (Rural Areas) District to B2 (General Business) District, 11.729 Acres from RA (Rural Areas) District to M1 (Light Industrial) District and 93.246 Acres from RA (Rural Areas) District to OM (Office-Manufacturing Park) District with Proffers. The Property is Located on the Southeastern Side of Martinsburg Pike (Route 11) and Old Charlestown Road (Route 761) and is Identified by Property Identification Numbers 44-A-25A, 44-A-25B and 44-A-40 in the Stonewall Magisterial District. **(See Attached)** ----- M
5. Ordinance Amendment to the Frederick County Code – Chapter 165 Zoning, Article IV Agricultural and Residential District; Part 401 – RA Rural Areas District §165-401.03 Conditional Uses. Article II Supplementary Use Regulations, Parking Buffers, and Regulations for Specific Uses; Part 204 - Additional Regulations for Specific Uses, §165-204.18 Storage Facilities, Self-Service. Revision to the Frederick County Zoning Ordinance to Include the Self-Storage Facilities as a Conditional Use in the RA (Rural Areas) Zoning District. **(See Attached)** --- N
6. Ordinance Amendment to the Frederick County Code – Chapter 165 Zoning, Article X Board of Zoning Appeals; Part 1001 - Board of Zoning Appeals §165-1001.02 Powers and Duties. Article I General Provisions, Amendments, and Conditional Use Permits; Part 101 – General Provisions §165-101.02 Definitions and Word Usage. Revision to the Frederick County Zoning Ordinance to Revise and Update the Variance Requirements per the Code of Virginia. **(See Attached)** ----- O
7. Ordinance Amendment to the Frederick County Code – Chapter 165 Zoning, Article IV Agricultural and Residential District; Part 401 – RA Rural Areas District, §165-401.07 Setback Requirements. Revision to the Frederick County Zoning Ordinance to Revise the Setback from Parcels within Agricultural and Forestal Districts in the RA (Rural Areas) District. **(See Attached)** ----- P

Other Planning Items:

1. Consideration for Inclusion of Parcels of Less Than 5 Acres Into the 2015-2020 Agricultural and Forestal Districts. **(See Attached)**----- Q
2. Road Resolution - Santa Maria Estates – Knock Lane. **(See Attached)** ----- R

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Board Liaison Reports (If Any)

Citizen Comments

Board of Supervisors Comments

Adjourn

CONSENT AGENDA

A

**FREDERICK COUNTY BOARD OF
SUPERVISORS' MINUTES**

**WORK SESSION WITH THE
ECONOMIC DEVELOPMENT AUTHORITY**

October 28, 2015

A Work Session of the Frederick County Board of Supervisors and Frederick County Economic Development Authority was held on Wednesday, October 28, 2015 at 5:30 P.M., in the Board of Supervisors' Meeting Room, 107 North Kent Street, Winchester, VA.

PRESENT

Chairman Richard C. Shickle; Charles S. DeHaven, Jr.; Gene E. Fisher; Robert A. Hess; Gary A. Lofton; and Robert W. Wells.

ABSENT

Jason E. Ransom (Arrived at 5:35 P.M.)

EDA MEMBERS PRESENT

J. Stanley Crockett, Chairman; John R. Riley, Jr., Vice-Chairman; Dennis McNutt; and Bob Claytor

EDA MEMBERS ABSENT

Doug Rinker and James Longerbeam

OTHERS PRESENT

Brenda G. Garton, County Administrator; Kris C. Tierney, Assistant County Administrator; Jay E. Tibbs, Deputy County Administrator; Roderick B. Williams, County Attorney; Patrick E. W. Barker, Executive Director of the EDA; Wendy May, Marketing Manager; Sally Michaels, Existing Business Coordinator; Donna McIlwee, Administrative Assistant; and Eric Lawrence, Director of Planning.

CALL TO ORDER

Chairman Shickle called the work session to order. He then turned the meeting over to Director Barker.

Director Barker began with a review of the EDA's purpose, which includes:

- Increasing tax revenues for Frederick County.
- Increase income to its citizens.
- Sustain and enhance an environment which facilitates profit for the business community.

He next touched on the core strategic areas:

- Talent engagement, which encouraged awareness, up-skilling, retention and attraction of workforce to address current and projected needs.
- Business retention to create an effective business environment which fosters the growth and prosperity of existing business and to communicate availability of supporting resources.
- Business attraction to expand the commercial and industrial tax base through strategic business targets.

At the conclusion of the overview, Director Barker turned the presentation over to the EDA chairman J. Stanley Crockett.

Chairman Crockett asked the Board of Supervisors for their vision for economic development in Frederick County. He stated the EDA was looking for a road map and marching orders from the Board regarding what they would like to see.

Chairman Shickle stated he would like to see job creation as one of the EDA's purposes. He went on to say that he wanted the EDA to create jobs and job creation was something the Board expects. He wanted to keep the county from exporting labor to other localities.

Supervisor Hess stated that increased incomes spoke largely to the quality of life in the community. He stated he would like to see increasing incomes listed as number one on the list.

Chairman Shickle stated he would like to see people live and work here and not commute out of the area.

Vice-Chairman DeHaven stated the EDA should continue its efforts with existing business groups. He noted it was important to stay in touch with the existing business

community. He concluded by saying the slow and steady growth was better than big pushes.

Supervisor Lofton stated he would like to see some type of vehicle to allow small businesses to expand delivery of products beyond Frederick County.

Director Barker advised there were programs at the state level.

Supervisor Lofton asked if we were comfortable that the county has 25% of space available to fit the required commercial development.

Director Barker responded that it was difficult to say yes or no; however, he was pretty comfortable saying the county could accommodate parcels of less than 20 acres unless they had drastic infrastructure needs.

Supervisor Lofton asked if the Board was comfortable with the EDA buying property for commercial development.

Chairman Shickle stated that was the purpose behind getting the Robinson School property into the hands of the EDA.

Supervisor Lofton agreed.

Vice-Chairman DeHaven stated the difficult issue was the competition with the private sector.

Chairman Shickle suggested having measurables under the topics of land, transportation, agribusiness, and talent. This could be a framework for a future meeting.

EDA Vice-Chairman John R. Riley, Jr. stated water should be included as part of the infrastructure discussion and should be part of the dialogue going forward.

Vice-Chairman suggested broadening that discussion to include power, communications, etc.

Supervisor Hess asked about adjacent jurisdictions and how they can partner with us.

Supervisor Fisher noted the Winchester Regional Airport was an asset. He suggested looking at the development of property adjacent to the airport.

Chairman Shickle advised the EDA should work more on the purpose to make sure it agrees, add to the list of enhancements, and measure those things that can be measured.

There being no further discussion, the work session was adjourned at 6:20 p.m.

B

**RESOLUTION OF APPRECIATION
PAULA A. NOFSINGER,
HUMAN RESOURCES DIRECTOR
FREDERICK COUNTY**

WHEREAS, Paula A. Nofsinger served the employees of Frederick County, Virginia, for over nine years as Director of Human Resources; and

WHEREAS, during her tenure Mrs. Nofsinger oversaw and implemented the following initiatives: electronic time keeping, paid time off program, revision of HR policies, and compensation survey; and

WHEREAS, in addition to the above accomplishments, Mrs. Nofsinger worked through the employee wellness committee to implement an employee wellness program which was approved by the American Heart Association as Fit Friendly and received gold medal recognition; and

WHEREAS, in December 2013 Mrs. Nofsinger achieved certification as a Senior Professional in Human Resources (SPHR).

NOW, THEREFORE BE IT RESOLVED, that the Frederick County Board of Supervisors extends its sincerest thanks to Paula A. Nofsinger and wishes her all of the best in her future endeavors.

BE IT FURTHER RESOLVED, that this resolution be spread across the minutes of the Frederick County Board of Supervisors for all citizens to reflect upon the accomplishments of this public servant.

ADOPTED this 12th day of November, 2015.

Richard C. Shickle
Chairman

Gene E. Fisher
Shawnee District Supervisor

Robert A. Hess
Gainesboro District Supervisor

Blaine P. Dunn
Red Bud District Supervisor

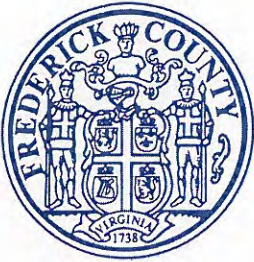
Robert W. Wells
Opequon District Supervisor

Charles S. DeHaven, Jr.
Stonewall District Supervisor

Gary A. Lofton
Back Creek District Supervisor

Brenda G. Garton
Clerk

C



COUNTY of FREDERICK

Brenda G. Garton
County Administrator

540/665-6382

Fax 540/667-0370

E-mail: bgarton@fcva.us

MEMORANDUM

TO: Board of Supervisors
FROM: Brenda G. Garton, County Administrator
DATE: November 5, 2015
RE: Committee Appointments

Listed below are the vacancies/appointments due through January, 2016. As a reminder, in order for everyone to have ample time to review applications, and so they can be included in the agenda, please remember to submit applications prior to Friday agenda preparation. Your assistance is greatly appreciated.

VACANCIES/OTHER

Social Services Board

Susan W. Marsh – Stonewall District Representative
160 Canterbury Lane
Winchester, VA 22603
Term Expires: 09/28/15
Four year term

(Ms. Marsh does not wish to be reappointed.) *(Members serve a four year term and are limited to two consecutive terms.)*

Parks and Recreation Commission

Martin J. Cybulski – Red Bud District Representative
134 Likens Way
Winchester, VA 22602
Term Expires: 04/28/18
Four year term

(Mr. Cybulski has resigned.)

Northwestern Community Services Board

Ryan Clouse – Frederick County Representative
111 Rebecca Drive
Winchester, VA 22602
Term Expires: 12/31/15
Three year term

(Mr. Clouse will resign at the end of his term.)

Blaine J. “Jack” Alkire – Frederick County Representative
313 Frasher Drive
Clearbrook, VA 22624
Term Expires: 12/31/17
Three year term

(Mr. Alkire has resigned.)

(The Northwestern Community Services Board is composed of representatives from each of the jurisdictions within the planning district. The county has three seats on the Northwestern Community Services Board. Members serve a three year term and are limited to three consecutive terms.)

NOVEMBER 2015

ShawneeLand Sanitary District Advisory Committee

Marianne Biviano
109 Doe Trail
Winchester, VA 22602
Phone: (540)535-6574
Term Expires: 11/09/15
Two year term

(The ShawneeLand Sanitary District Advisory Committee is comprised of five members made up of resident property owners and serve a two year term.)

Handley Regional Library Board

Nancy L. Comer – Frederick County Representative
100 Tyler Court
Stephens City, VA 22655

Phone: (540)869-4026
Term Expires: 11/30/15
Four year term

(Ms. Comer has served two full terms and is not eligible for reappointment.)
(The County has five seats on the Handley Regional Library Board. As stated in the library by-laws, members serve a four year term and are limited to two consecutive terms.)

DECEMBER 2015

Northern Shenandoah Valley Regional Commission

Robert A. Hess - Board of Supervisors Representative
Term Expires: 12/31/15

(Elected Officials serve their elected term of office while others serve a three year term. Current County representatives on the Commission are Supervisors DeHaven and Robert Hess, County Administrator Brenda Garton, and Planning Director Eric Lawrence. Assistant County Administrator Kris Tierney serves as the alternate.)

JANUARY 2016

Frederick-Winchester Service Authority

Gene E. Fisher – Frederick County Representative
Term Expires: 01/10/16
Three year term

(The county has three representatives on the Service Authority as is in accordance with the Joint Agreement and Memorandum of Understanding with the City of Winchester. Members serve a three year term.)

Parks and Recreation Commission

Ronald Madagan – Opequon District Representative
120 West Street
Stephens City, VA 22655
Phone: (540)869-4733
Term Expires: 01/14/16
Four year term

Planning Commission

Greg L. Unger – Back Creek District Representative
668 German Road
Stephens City, VA 22655
Phone: (540)869-2606
Term Expires: 01/26/16
Four year term

Kevin W. Kenney – Gainesboro District Representative
292 Thwaite Lane
Winchester, VA 22603
Phone: (540)662-5390
Term Expires: 01/26/16
Four year term

H. Paige Manuel – Shawnee District Representative
118 Armstrong Place
Winchester, VA 22602
Phone: (540)667-6831
Term Expires: 01/26/16
Four year term

BGG/tjp

D



COUNTY OF FREDERICK

Roderick B. Williams
County Attorney

540/722-8383
Fax 540/667-0370
E-mail rwillia@fcva.us

MEMORANDUM

TO: Ellen E. Murphy, Commissioner of the Revenue
Frederick County Board of Supervisors

CC: Brenda G. Garton, County Administrator

FROM: Roderick B. Williams, County Attorney

DATE: November 2, 2015

RE: Refund – Carrier Enterprise LLC



I am in receipt of the Commissioner's request, dated October 30, 2015, to authorize the Treasurer to refund Carrier Enterprise LLC in the amount of \$106,515.68, for business license taxes in 2013. This refund resulted from Carrier Enterprise LLC doing business as a wholesaler rather than a retail operation. The Taxpayer filed as a retail establishment for the 2013 year. Previous adjustment was applied to 2010 & 2011.

The Commissioner verified that documentation and details for this refund meet all requirements. Pursuant to the provisions of Section 58.1-3981(A) of the Code of Virginia (1950, as amended), I hereby note my consent to the proposed action. The Board of Supervisors will also need to act on the request for approval of a supplemental appropriation, as indicated in the Commissioner's memorandum.

Roderick B. Williams
County Attorney

Attachment



Frederick County, Virginia
Ellen E. Murphy
Commissioner of the Revenue
107 North Kent Street
Winchester, VA 22601
Phone 540-665-5681 Fax 540-667-6487
email: emurphy@co.frederick.va.us



October 30, 2015

TO: Rod Williams, County Attorney
Cheryl Shiffler, Finance Director
Frederick County Board of Supervisors
Jay Tibbs, Secretary to the Board
Brenda Garton, County Administrator

FROM: Ellen E. Murphy, Commissioner of the Revenue

RE: Exoneration Carrier Enterprise LLC tax year 2013

Please approve a refund of \$106,515.68 gross for business license taxes for 2013 based on state determination as was previously submitted for Carrier Enterprises LLC doing business as a wholesaler rather than a retail operation. Such previous adjustment was applied to 2010 and 2011. Taxpayer filed as a retail establishment for the 2013 year. A smaller bill has been generated for a wholesale license tax.

The Commissioner, staff and the County Attorney have worked on this appeal. Staff has verified all required data and the paperwork is in the care of the Commissioner of the Revenue.

Please also approve a supplemental appropriation for the Finance Director on this refund.

Exoneration is \$106,515.68.

Date: 10/22/15

Cash Register: COUNTY OF FREDERICK

Time: 08:56:49

Cashier:

Customer Name: CARRIER ENTERPRISE LLC

Total Transactions: 962

Customer Transactions: 4

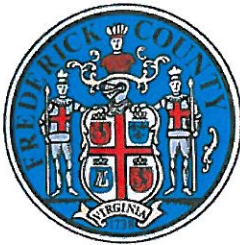
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Opt	Dept	Trans	Ticket No.	Tax Amount	Penalty/Int	Amount Paid
-	BL2013	1	00032430001	\$25,833.97-	\$2,866.81-	\$28,700.78-
-	BL2013	2	00032430002	\$25,833.97-	\$312.96-	\$26,146.93-
-	BL2013	3	00032430003	\$25,833.97-	\$.00	\$25,833.97-
-	BL2013	4	00032430004	\$25,834.00-	\$.00	\$25,834.00-

Total Paid : \$106,515.68

F3=Exit F14=Show Map# F15=Show Balance F18=Sort-Entered F21=CmdLine

E



COUNTY OF FREDERICK

Roderick B. Williams
County Attorney

540/722-8383
Fax 540/667-0370
E-mail:
rwillia@fcva.us

MEMORANDUM

TO: Board of Supervisors

FROM: Roderick B. Williams
County Attorney

DATE: November 4, 2015

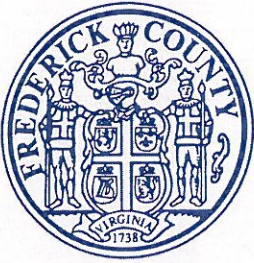
RE: Snowden Bridge school/park site – request for public hearing on conveyance of portion to School Board

The Board of Supervisors is respectfully requested to schedule a public hearing on December 9, pursuant to Va. Code § 15.2-1800(B), on the approval of the disposition to the School Board of the 20-acre portion of the Snowden Bridge school/park site, currently held jointly by the School Board and the County.

By way of background, as part of the 2003 rezoning of Stephenson Village, now known as Snowden Bridge, the owner proffered to dedicate 20 acres to the School Board and 24 acres to the County for use as a school site and ball fields site, respectively. Earlier this year, the School Board and the County accepted the dedication of a 44-acre parcel for this purpose. The parcel is identified as Tax Parcel Number 44-A-292. In order to facilitate the owner's disposition of the parcel, the dedication did not delineate, at the time of acceptance, the respective portions of the parcel and instead dedicated the parcel to the School Board and the County jointly and severally as an undivided parcel. The School Board and the County have now had prepared a subdivision of the parcel and the conveyance of its respective portions, one to the School Board and one to the County.

Virginia Code § 15.2-1800(B) requires that the local governing body conduct a public hearing before conveying an interest in real property. Because the subdivision entails a conveyance of the County's undivided interest in the school portion to the School Board (in exchange for the School Board's conveyance of its undivided interest in the ball fields portion to the County, consistent with the proffers), the requirement of § 15.2-1800(B) applies. Therefore, a public hearing to satisfy that requirement is requested for the Board's next meeting.

F



COUNTY of FREDERICK

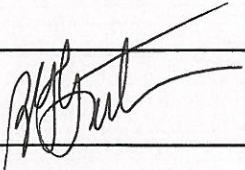
Brenda G. Garton
County Administrator

540/665-6382

Fax 540/667-0370

E-mail: bgarton@fcva.us

MEMORANDUM

TO:	Board of Supervisors
FROM:	Brenda G. Garton, County Administrator 
SUBJECT:	Process to Fill Soon to be Vacant Stonewall District seat
DATE:	November 5, 2015

As the Board is aware, Supervisor DeHaven's election to the office of Chairman-At-Large will result in a vacancy in the Stonewall District seat effective January 1, 2016. In anticipation of this upcoming vacancy, a process is being recommended whereby the Board will seek applications from residents of the Stonewall District who are interested in being considered to fill this vacancy. The appointee would serve until a special election is held to fill the remainder of the unexpired term, December 31, 2017.

Interested residents of the Stonewall District would be asked to complete the attached data sheet and return it to the County Administrator's Office, along with a letter of interest, resume, or any other information they believe would be beneficial to the Board's deliberations. Any applications received would be forwarded to the Chairman and Chairman-elect. Everyone submitting an application would be provided with the contact information for each board member. It would be the responsibility of each applicant to contact the members of the Board.

The deadline to submit an application is **Wednesday, November 25, 2015 at 12:00 p.m.**

It is the Board's intent to select a replacement at its December 9, 2015 regular meeting.

Applications will be available through the County website at www.fcva.us/stonewallbos or may be picked up in person at the County Administrator's Office, 107 N. Kent Street, Winchester, VA.

Staff is seeking Board action to approve this process.

BGG/jet

Attachment

**INFORMATIONAL DATA SHEET
FOR
FREDERICK COUNTY BOARD OF
SUPERVISORS STONEWALL DISTRICT
INTERIM APPOINTMENT**

I, _____, a resident of the Stonewall District, would like to serve on the Board of Supervisors as the interim representative to the Stonewall District.

As a brief personal introduction to the other Board members, please fill out the information requested below for their review prior to filling the appointment. **(Please Print Clearly. Thank You.)**

Name: _____ **Home Phone:** _____

Address: _____ **Office Phone:** _____

_____ **Cell/Mobile:** _____

_____ **Fax:** _____

Employer: _____ **Email:** _____

Occupation: _____

Civic/Community Activities: _____

Will You Be Able To Attend The Board's Regularly Scheduled Meetings On: the second and fourth Wednesdays of each month _____ **Yes:** _____ **No:** _____

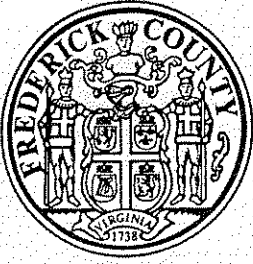
Do You Foresee Any Possible Conflicts Of Interest Which Might Arise By Your Serving On The Board? **Yes:** _____ **No:** _____ **Explain:** _____

Additional Information Or Comments You Would Like To Provide (If you need more space, please use the reverse side or include additional sheets):

Applicant's Signature: _____ **Date:** _____

Please submit form to:
Frederick County Administrator's Office
107 North Kent Street
Winchester, VA 22601
or email to: bgarton@fcva.us or
jtibbs@fcva.us
(03/04/15)

G




COUNTY of FREDERICK

Brenda G. Garton
County Administrator

540/665-6382
Fax 540/667-0370
E-mail: bgarton@fcva.us

MEMORANDUM

TO:	Board of Supervisors
FROM:	Brenda G. Garton, County Administrator 
SUBJECT:	FY 2015-2016 Budget Resolution Re-Adoption
DATE:	November 5, 2015

In preparation for the upcoming budget process, staff was reviewing the pertinent documents to include the FY 2015-2016 budget resolution. In reviewing the document, a typographical error was discovered whereby the phrase "and funds appropriated" was accidentally omitted. Attached you will find a corrected copy of the resolution with the phrase properly inserted.

Staff is seeking Board action on this revised resolution. It should be noted this correction does not affect any of the dollar amounts or tax rates within the budget resolution.

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

BGG/jet

Attachment

FY 2015-2016 BUDGET RESOLUTION

WHEREAS a notice of public hearing and budget synopsis has been published and a public hearing held on March 25, 2015, in accordance with Title 15.2, Chapter 25, Section 15.2-2506, of the Code of Virginia, 1950 as amended.

THEREFORE BE IT RESOLVED by the Board of Supervisors of the County of Frederick, Virginia, that the budget for the 2015-2016 Fiscal Year as advertised in The Winchester Star on March 16, 2015, be hereby approved in the amount of \$368,820,813.

BE IT FURTHER RESOLVED that the County of Frederick budget for the 2015-2016 fiscal year be adopted **and the funds appropriated** as follows:

General Operating Fund	154,813,644
Regional Jail Fund	20,063,860
Landfill Fund	6,086,520
Division of Court Services Fund	620,639
Shawneeland Sanitary District Fund	811,026
Airport Operating Fund	2,283,228
Lake Holiday Sanitary District Fund	800,570
EMS Revenue Recovery Fund	1,501,000
Economic Development Authority Fund	573,198
School Operating Fund	148,028,927
School Debt Service Fund	15,236,485
School Capital Projects Fund	500,000

School Nutrition Services Fund	6,626,934
School Textbook Fund	1,900,544
NREP Operating Fund	5,259,238
NREP Textbook Fund	40,000
Consolidated Services/Maintenance Fund	3,600,000
School Private Purpose Funds	75,000

BE IT FURTHER RESOLVED that the Board of Supervisors of the County of Frederick, Virginia, does herein adopt the tax rates for the 2015 assessment year as follows:

Property Taxes – Rates per \$100 of assessed value

56 cents	Applied to real estate, including mobile homes
\$4.86	Applied to personal property including business equipment
\$2.25	Applied to personal property on one vehicle to volunteer firefighters that are approved and registered with the Frederick County Fire and Rescue Department
1 cent	Applied to airplanes
Zero tax	Applied to antique vehicles and mopeds
\$2.00	On declining values to be applied to machinery and tools. The declining values are 60% for year one, 50% for year two, 40% for year three, and 30% for year four and all subsequent years.
\$2.00	On apportioned percentage of book values to be applied to Contract Classified Vehicles and equipment

Business and Professional Occupational License Rates

Contractors	16 cents per \$100 of gross receipts
-------------	--------------------------------------

Retail	20 cents per \$100 of gross receipts
Financial, Real Estate, and Professional Services	58 cents per \$100 of gross receipts
Repair, personal and business services and all other businesses and occupations not specifically listed or exempted in the County Code	36 cents per \$100 of gross receipts
Wholesale	5 cents per \$100 of purchases

The tax rates for other businesses and occupations specifically listed in the County Code are also unchanged.

Other General Taxes

Meals tax	4% of gross receipts
Transient Occupancy tax	2% of gross receipts
Vehicle License Taxes	\$25 per vehicle and \$10 per motorcycle

Sanitary Landfill Fees

\$47	Per ton for commercial/industrial
\$42	Per ton for construction demolition debris
\$14	Per ton for municipal waste
\$32	Per ton for municipal sludge
\$12	Per ton for Miscellaneous Rubble Debris

Shawneeland Sanitary District Taxes

\$190	Unimproved Lots
\$560	Improved Lots

Lake Holiday Sanitary District Taxes

\$678

Buildable Lots

\$264

Unbuildable Lots

Star Fort Subdivision Taxes/Fees

\$60 Per Lot

Street Light Fees

Oakdale Crossing and Fredericktowne \$60 annually

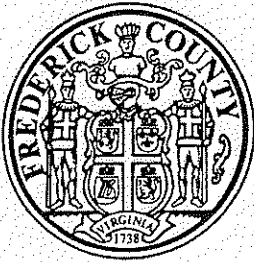
Green Acres \$25 annually

BE IT FURTHER RESOLVED that appropriations are hereby authorized for the central stores fund, special welfare fund, comprehensive services fund, county health insurance fund, school health insurance fund, length of service fund, special grant awards fund, employee benefits fund, maintenance insurance fund, development project fund, sales tax fund, commonwealth sales tax fund, unemployment compensation fund, Forfeited Assets Program, and Four-For-Life and Fire Programs equal to the total cash balance on hand at July 1, 2015, plus the total amount of receipts for the fiscal year 2015-2016. The Fire Company Capital appropriation will include the current year appropriation plus any unused funds at the end of the fiscal year 2015.

BE IT FURTHER RESOLVED that funding for all outstanding encumbrances at June 30, 2015, are re-appropriated to the 2015-2016 fiscal year to the same department and account for which they are encumbered in the 2014-2015 fiscal year.

BE IT FURTHER RESOLVED that the construction fund projects are appropriated as a carryforward in the amount that equals the approved original project cost, less expenditures and encumbrances through June 30, 2015.

H



COUNTY of FREDERICK

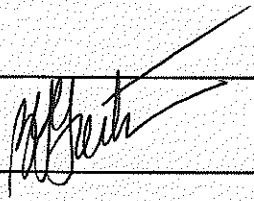
Brenda G. Garton
County Administrator

540/665-6382

Fax 540/667-0370

E-mail: bgarton@fcva.us

MEMORANDUM

TO:	Board of Supervisors
FROM:	Brenda G. Garton, County Administrator 
SUBJECT:	Proposed Legislative Initiatives for 2016 General Assembly Session
DATE:	November 5, 2015

Attached for the Board's consideration is the list of Proposed Legislative Initiatives for 2016, which reflects input from the Department Directors and Constitutional Officers. If the Board has additional items you would like to include you may do so at the meeting. Staff is seeking Board approval of the proposed initiatives.

Following Board approval we will share a copy with our Senator Vogel and Delegates Minchew, LaRock, and Collins.

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

BGG/jet

Attachment

PROPOSED LEGISLATIVE INITIATIVES
FREDERICK COUNTY, VIRGINIA
2016

1. **Machinery and Tools/BPOL Taxes** – Frederick County opposes any efforts to restrict local government revenue sources. Machinery and Tools Tax (M&T) represents \$5.7 million for the County and Business and Professional License Tax (BPOL) generates \$6 million in revenues.
2. **Education Funding** – The County supports full funding for the Virginia Standards of Quality.
3. **Cost of Competing** – The County supports full reinstatement of the COCA (Cost of Competing Adjustment) for teachers and support staff.
4. **Line of Duty Act** – The County supports legislative action on recommendations to JLARC Report on Virginia's Line of Duty Act that would improve the program's design and implementation.
5. **Tax Exemptions** – Frederick County supports reverting authority to the locality to continue existing tax exemptions previously granted by the General Assembly, prior to January 1, 2003.
6. **Water Treatment Nutrient Allocations** – The County opposes any reallocation of existing State Water Control Board (SWCB) approved nutrient allocations.
7. **Extension of Annexation Moratorium** – The County supports extending the state's annexation moratorium for an additional two years.
8. **High Speed Internet Availability** - The County supports efforts that would improve access to high speed Internet for its citizens and businesses.
9. **Changes to Legal Notices** – With limited readership of the legal notices published in area newspapers, localities should be allowed to provide notice electronically and not be required to subsidize newspapers.
10. **Unfunded Mandates** – The County opposes the enactment of any new mandates on local governments or school systems unless state appropriations are made to fully fund those mandates.
11. **Funding for State Mandated Positions** -- The state should meet its full funding obligations for constitutional officers and other state mandated positions.
12. **Funding for Jails** – The state should fully fund any increased costs or operational issues faced by local or regional jails when a change to the definition of state-responsible prisoner or other term results in an increase.
13. **FOIA Rules** – The County supports enactment of a FOIA provision to prohibit the release of home address, certification, and other personal information of law enforcement officers. The County opposes the expansion of FOIA rules to provide for the release of County Administrator

working papers and any requirement that the evaluation of the County Administrator and County Attorney take place in a public meeting.

14. **District Courts** – The County supports legislation to increase the salaries and staffing of district courts in order to bring them on par with employees of circuit courts and other state agencies.
15. **Election Costs and Districts** – The County supports legislation that would decrease the costs of elections to localities and the provision of adequate funding to localities for optical scan and other voting equipment and registrar costs. The County also supports legislation to minimize and/or eliminate split voting precincts.
16. **Concussion Protocol for Parks and Recreation** – The County supports the implementation of a baseline information system, in addition to doctors and trainers, as a means of clearing athletes to return to the field of play following a concussion.
17. **Interest on Tax Refunds** – The County supports legislation to eliminate the payment of interest on tax refunds resulting from taxpayer error.
18. **School Bus Cameras** – School Bus Cameras Legislation needs to be written to conform with the legislation for red light cameras.
19. **Qualified Contractors for Methamphetamine Remediation** – The County supports legislation to require the use of a qualified contractor to remediate structures where the production of Methamphetamine was known to have taken place. Virginia lags behind other states, including West Virginia, in addressing this issue.
20. **Transient Occupancy Tax** – Frederick County requests to be added to State Code §58.1-3819. Transient Occupancy Tax, as one of the localities authorized to levy a transient occupancy tax not to exceed five percent.

CONSENT AGENDA

I



COUNTY of FREDERICK

Department of Planning and Development

540/ 665-5651

Fax: 540/ 665-6395

MEMORANDUM

TO: Board of Supervisors

FROM: John A. Bishop, AICP, Deputy Director - Transportation *JB*

RE: Transportation Committee Report for Meeting of October 26, 2015

DATE: November 3, 2015

The Transportation Committee met on October 26, 2015 at 8:30 a.m.

Members Present

Chuck DeHaven (voting)
Gene Fisher (voting)
James Racey (voting)
Barry Schnoor (voting)
Jason Ransom (Voting)
Gary Oates (liaison PC)

Members Absent

Mark Davis (liaison Middletown)
Lewis Boyer (liaison Stephens City)

*****Items Requiring Action*****

NONE

*****Items Not Requiring Action*****

1. Rail Access Funds Application for Trex

Staff outlined that Trex is seeking a \$300,000 grant from the Virginia Department of Rail and Public Transportation to construct a rail spur on their property south of Shawnee Drive. Staff noted that, unlike the highway access program through

VDOT, this is not a County application but did require a County resolution of support.

Motion by Mr. Racey and seconded by Mr. Ransom to recommend the Board adopt the resolution of support. Passed unanimously.

This item was approved by the Board at their October 28, 2015 meeting.

2. Revenue Sharing Application

Staff presented the following to the committee.

Each year, the County applies for funding through the State Revenue Sharing program. Currently, the maximum application amount is \$10 million. This is a dollar for dollar matching program, so an application for \$10 million in funding would be in support of \$20 million in projects. Staff is seeking a resolution of support for a total application amount of \$10 million to support the following projects:

1. \$500,000.00 in balance to complete funds for Route 11 North between Exit 317 and Route 37. Proffer funds to provide the match.
2. \$550,000.00 in balance to complete and right-of-way funds for Renaissance Drive. Expected match from Artillery Development.
3. \$8,950,000.00 in minor design and construction funding for Jubal Early Extension and interchange with Route 37. Expected match from Willow Run Development.

Motion by Mr. Racey and seconded by Mr. Fisher to recommend the Board approve the above applications.

This item was approved by the Board at their October 28, 2015 meeting.

3. Eastern Road Plan update

Staff provided a current copy of the transportation section of the Comprehensive Plan to begin discussion of its update as part of the overall update. Items that were noted to focus on are as follows:

- A. Discuss and evaluate the use of complete streets language.
- B. Traffic calming strategies in neighborhoods.
- C. Careful review of map projects to make sure they match recent actions and that they still make sense.
- D. Notation of key connections and projects.

- E. Staff noted there are items that will likely benefit from greater detail given the requirements of House Bill 2 project applications.

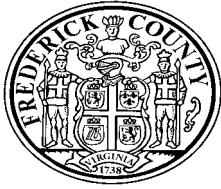
4. House Bill 2 update and next steps

Staff updated the committee on the status of the House Bill 2 applications and noted that the County now needs to begin preparing for the next round of applications. Items noted that will help in that process are as follows.

- A. Coordination with EDC on their strategic plan to make sure key projects are highlighted due to economic development being a key scoring component for our area.
- B. Additional detail in the comprehensive plan to support projects.
- C. Ongoing and aggressive review of other plans that can provide support for key projects in the documentation of the application.

5. Other

J



REZONING APPLICATION #09-15

Artillery Business Center – Proffer Amendment

Staff Report for the Board of Supervisors

Prepared: October 29, 2015

Staff Contact: John A. Bishop, AICP, Deputy Director-Transportation

	<u>Reviewed</u>	<u>Action</u>
Planning Commission:	10/21/15	Public Hearing Held; Recommended Approval
Board of Supervisors:	10/28/15	Opened Public Hearing, Tabled to 11/12/15
Board of Supervisors	11/12/15	Pending

PROPOSAL: To amend proffers on 57.6+/- acres made up of parcels 75-A-1 and 75-A-1F. The rezoning would modify proffers approved by the Board of Supervisors on February 18, 2008 as part of Rezoning Application #07-08. The proffer revisions address the timing and commitments for transportation proffers.

LOCATION: The property is located approximately 1,500 feet south of Route 37 on the east side of Shady Elm Drive (Rt. 651) and across from Soldier's Rest Lane.

STAFF CONCLUSIONS FOR THE 11/12/2015 BOARD OF SUPERVISORS MEETING:

At the October 28, 2015, Board of Supervisors meeting, staff presented this information and noted that updated proffers are being developed that staff has not yet been able to review those proffers. The Board heard the item and then opened the public hearing and then voted to table the item and continue the public hearing to November 11, 2015. As of the date of this report, updated proffers have not been received.

This is an application to modify proffers on 57.6+/- acres of land currently zoned M1, (Light Industrial).

Please note that this report responds to the most recent proffer draft dated October 5, 2015.

The proposed modified proffers replace transportation commitments for improvements to Shady Elm Road, \$250,000.00 in cash transportation proffers, and right-of-way provision across 74-A-68 with a commitment to participate in revenue sharing to complete Renaissance Drive from its existing terminus near Prosperity Drive to Shady Elm Road. Building permits are limited to 2 on the property (1 per parcel) until such time as the applicant enters into a revenue sharing agreement with the County.

A motion was made, seconded, and passed to recommend approval by the Planning Commission with a suggestion that the Applicant include within the proffers a deadline for road construction to reflect 24 to 36 months.

While there are still items that could potentially lead to the ultimate roadway being delayed in its construction such as the right-of-way acquisition process or potential difficulties achieving a rail crossing, the proffer modifications return equivalent value to provisions that are being replaced and move forward the implementation of the Comprehensive Plan and the Eastern Road Plan.

Following the required public hearing, a recommendation regarding this rezoning application to the Board of Supervisors would be appropriate. The applicant should be prepared to adequately address all concerns raised by the Board of Supervisors.

This report is prepared by the Frederick County Planning Staff to provide information to the Planning Commission and the Board of Supervisors to assist them in making a decision on this application. It may also be useful to others interested in this zoning matter. Unresolved issues concerning this application are noted by staff where relevant throughout this staff report.

	<u>Reviewed</u>	<u>Action</u>
Planning Commission:	10/21/15	Public Hearing Held; Recommended Approval
Board of Supervisors:	10/28/15	Opened Public Hearing, Tabled to 11/12/15
Board of Supervisors:	11/12/15	Pending

PROPOSAL: To amend proffers on 57.6+/- acres made up of parcels 75-A-1 and 75-A-1F. The rezoning would modify proffers approved by the Board of Supervisors on February 18, 2008 as part of Rezoning Application #07-08. The proffer revision addresses the timing and commitments for transportation proffers.

LOCATION: The property is located approximately 1,500 feet south of Route 37 on the east side of Shady Elm Drive (Rt. 651) and across from Soldier's Rest Lane.

MAGISTERIAL DISTRICT: Back Creek

PROPERTY ID NUMBERS: 75-A-1 and 75-A-1F

PROPERTY ZONING: M1 (Light Industrial)

PRESENT USE: Vacant/Agricultural

ADJOINING PROPERTY ZONING & PRESENT USE:

North:	M1 (Light Industrial)	Use:	Industrial
South:	RA (Rural Areas)	Use:	Agricultural
East:	B3 (Industrial Transition)	Use:	Commercial/Vacant
West:	RA (Rural Areas)	Use:	Agricultural
	M1 (Light Industrial)		Vacant

REVIEW EVALUATIONS:

Virginia Dept. of Transportation: *Please see attached communication dated October 13, 2015 and September 25, 2015, from Lloyd A. Ingram, VDOT Land Development Engineer.*

Frederick County Attorney: *Please see attached communication dated October 21, 2015 and September 28, 2015, from Roderick B. Williams, County Attorney.*

Planning & Zoning:

1) Site History

The original Frederick County zoning map (U.S.G.S. Stephens City Quadrangle) identifies the subject parcels as being zoned A-2 (Agricultural General). The County's agricultural zoning districts were subsequently combined to form the RA (Rural Areas) District upon adoption of an amendment to the Frederick County Zoning Ordinance on May 10, 1989. The corresponding revision of the zoning map resulted in the re-mapping of the subject property and all other A-1 and A-2 zoned land to the RA District. This property was rezoned with proffers to M1, (Light Industrial) District, on February 13, 2008.

2) Comprehensive Policy Plan

The 2030 Comprehensive Plan is the guide for the future growth of Frederick County.

The Frederick County Comprehensive Policy Plan is an official public document that serves as the community's guide for making decisions regarding development, preservation, public facilities and other key components of community life. The primary goal of this plan is to protect and improve the living environment within Frederick County. It is in essence a composition of policies used to plan for the future physical development of Frederick County. *[Comprehensive Policy Plan, p. 1-1]*

Land Use

The property is located within the County's Sewer and Water Service Area (SWSA). The Sewer and Water Service Area defines the general area in which more intensive forms of planned commercial, and industrial development will occur. The Land Use Plan and the Eastern Frederick County Long Range Land Use Plan designate this area for industrial land use. The Plan recognizes the desire to provide for industrial uses along the CSX Railroad.

The application of quality design standards for future development is also an objective of the Plan; in particular, along business corridors. These include landscaping, screening, and controlling the number and size of signs.

Transportation

The Frederick County Eastern Road Plan provides the guidance regarding future arterial and collector road connections in the eastern portion of the County by identifying needed connections and locations. Plans for new development should provide for the right-of-ways necessary to implement planned road improvements and new roads shown on the road plan should be constructed by the developer when warranted by the scale, intensity, or impacts of the development. Existing roads should be improved as necessary by adjacent development to implement the intentions of the plan (*Comprehensive Plan 7-6*).

The Eastern Road Plan of the Comprehensive Policy Plan call for Shady Elm Road to be improved to a major collector road. In addition, a new east and west major collector road connecting Shady Elm Road to Route 11 is identified. The County's Eastern Road Plan further defines the appropriate typical section for these major collector roads as an urban divided four-lane facility.

The Plan also states that proposed industrial and commercial development should only occur if impacted roads function at Level of Service (LOS) Category C or better.

3) Site Suitability/Environment

The site does not contain any environmental features that would either constrain or preclude site development. There are no identified areas of steep slopes, floodplains or woodlands. The Frederick County Engineer has referenced the potential for wetlands to exist on this site based upon the presence of an existing pond. Also, the Frederick County Engineer has identified that a detailed geotechnical analysis will be needed as part of the detailed site plan design as this area is also known for karst topography.

4) Potential Impacts

The primary impact of the proposed proffer revision would be to shift resources from implementing an additional lane of Shady Elm Road and \$250,000 cash proffer for transportation to a commitment to revenue sharing for the full connection of Renaissance Drive.

5) Proffer Statement

Clean and redline versions of the proffer statement are attached to this report.

Changes are as follows:

1. \$250,000 cash proffer toward transportation has been removed.
2. Additional right lane on north bound Shady Elm has been removed.
3. Commitment to enter into revenue sharing agreement to provide local match for the completion of Renaissance Drive from its current terminus to Shady Elm Road has been added.

4. Limitation of 1 building permit per parcel 2 permits total until such time as a revenue sharing agreement has been executed has been added.
5. Right-of-way dedication along Shady Elm Road has been removed due to its completion.
6. Right-of-way obligation across parcel 74-A-68 (Carbaugh) has been removed.
7. Five year limitation on warehouse and distribution has been removed.
8. Internal access road proffer has been removed due to redundancy with the ordinance.

PLANNING COMMISSION SUMMARY AND ACTION FROM THE 10/21/15 MEETING:

Staff reported this rezoning is a proffer modification to Rezoning #07-08 which was approved by the Board of Supervisors on February 18, 2008. The proffer revisions address the timing and commitments for transportation proffers.

Staff explained the proposed proffer modifications replace transportation commitments for improvements to Shady Elm Road, \$250,000 in cash transportation proffers, and the right-of-way provision across parcel 74-A-68 with the commitment to participate in revenue sharing in the completing of Renaissance Drive from the current ending location to Shady Elm Road. Staff noted building permits are limited to two (2) on the property (1 per parcel) until the Applicant enters into a revenue sharing agreement with the County.

Staff noted there are items that could delay the completion of the roadway such as the right-of-way acquisition and acquiring a rail crossing. Commissioner Unger requested that Mr. Bishop clarify the shift in proffers from Shady Elm and cash to the revenue sharing agreement. Mr. Bishop emphasized that the full connection of Renaissance Drive offers greater value to the County than Shady Elm improvements. Commissioner Oates noted a concern about there not being a time requirement for entering into the revenue sharing agreement in addition to the building permit trigger. Mr. Bishop agreed a time frame would be beneficial due to the timeline for availability of funds from VDOT.

A motion was made, seconded, and passed to recommend approval by the Planning Commission with a suggestion that the Applicant include within the proffers a deadline for road construction to reflect 24-36 months.

Absent: Crockett

STAFF CONCLUSIONS FOR THE 11/12/2015 BOARD OF SUPERVISORS MEETING:

At the October 28, 2015, Board of Supervisors meeting, staff presented this information and noted that updated proffers are being developed that staff has not yet been able to review those proffers. The Board heard the item and then opened the public hearing and then voted to table the item and continue the public hearing to November 11, 2015. As of the date of this report, updated proffers have not been received.

This is an application to modify proffers on 57.6+/- acres of land currently zoned M1, (Light Industrial).

Please note that this report responds to the most recent proffer draft dated October 5, 2015.

The proposed modified proffers replace transportation commitments for improvements to Shady Elm Road, \$250,000.00 in cash transportation proffers, and right of way provision across 74-A-68 with a commitment to participate in revenue sharing to complete Renaissance Drive from its existing terminus near Prosperity Drive to Shady Elm Road. Building permits are limited to 2 on the property (1 per parcel) until such time as the applicant enters into a revenue sharing agreement with the County.

A motion was made, seconded, and passed to recommend approval by the Planning Commission with a suggestion that the Applicant include within the proffers a deadline for road construction to reflect 24 to 36 months.

While there are still items that could potentially lead to the ultimate roadway being delayed in its construction such as the right-of-way acquisition process or potential difficulties achieving a rail crossing, the proffer modifications return equivalent value to provisions that are being replaced and move forward the implementation of the Comprehensive Plan and the Eastern Road Plan.

Following the required public hearing, a decision regarding this rezoning application to the Board of Supervisors would be appropriate. The applicant should be prepared to adequately address all concerns raised by the Board of Supervisors.

PROPOSED PROFFER STATEMENT

REZONING: RZ. # _____
Light Industrial (M1) to Light Industrial (M1)

PROPERTY: 57.6 acres +/-;
Tax Map Parcels 75-A-1F ("Land Bay 1") and 75-A-1 ("Land Bay 2")
[collectively, the "Property"]

RECORD OWNER: NW Works, Inc. ("Land Bay 1 Owner");
Venture I of Winchester, LLC ("Land Bay 2 Owner")

APPLICANTS: NW Works, Inc. & Venture I of Winchester, LLC

PROJECT NAME: Artillery Business Center

ORIGINAL DATE
OF PROFFERS: February 7, 2008

REVISION DATE(S): September 2, 2015; September 24, 2015; October 5, 2015

The undersigned hereby proffers that the use and development of the subject property ("Property"), as described above, shall be in strict conformance with the following conditions, which shall supersede all other proffers that may have been made prior hereto. In the event that the above referenced M1 conditional rezoning is not granted as applied for by the applicant ("Applicant"), these proffers shall be deemed withdrawn and shall be null and void. Further, these proffers are contingent upon final rezoning of the Property with "final rezoning" defined as that rezoning which is in effect on the day following the last day upon which the Frederick County Board of County Supervisors (the "Board") decision granting the rezoning may be contested in the appropriate court. If the Board's decision is contested, and the Applicant elects not to submit development plans until such contest is resolved, the term rezoning shall include the day following entry of a final court order affirming the decision of the Board which has not been appealed, or, if appealed, the day following which the decision has been affirmed on appeal. The headings of the proffers set forth below have been prepared for convenience or reference only and shall not control or affect the meaning or be taken as an interpretation of any provision of the proffers. The term "Land Bay 1 Owner" as referenced herein shall include within its meaning all future owners and successors in interest for Tax Map Parcel 75-A-1F. The term "Land Bay 2 Owner" as referenced herein shall include within its meaning all future owners and successors in interests for Tax Map Parcel 75-A-1. When used in these proffers, the "Generalized Development Plan," shall refer to the plan entitled "Generalized Development Plan, Artillery Business Center" dated February 6, 2007 revised August 14, 2015 (the "GDP").

1. **Monetary Contribution**

- 1.1 The Land Bay 2 Owner shall contribute to the County of Frederick the sum of \$5,000.00 for fire and rescue purposes prior to issuance of a certificate of occupancy for the first building constructed on Land Bay 2, as depicted on the GDP.
- 1.2 The Land Bay 2 Owner shall contribute to the County of Frederick the sum of \$2,500.00 for Sheriff's office purposes prior to issuance of a certificate of occupancy for the first building constructed on Land Bay 2, as depicted on the GDP.

- 1.3 The Land Bay 2 Owner shall contribute to the County of Frederick the sum of \$2,500.00 for general government purposes prior to issuance of a certificate of occupancy for the first building constructed on Land Bay 2, as depicted on the GDP.

2. **Site Development**

- 2.1 Direct access to the Property from Shady Elm Road shall be limited to a maximum of 2 entrances as shown on the GDP with entrance improvements subject to VDOT review and approval. (See 1 on GDP).

- 2.2 The Land Bay 2 Owner shall design a future East-West Collector Road utilizing an 80 foot right of way as depicted on the GDP from Point A to Point B as a Rural 4 Lane Divided (R4D) cross section. The Land Bay 2 Owner shall then dedicate 80 feet of right of way and construct the ultimate two westbound lanes of the Collector Road for a minimum of 1100 feet as shown from Point A to Point B on the GDP upon any of the following conditions, whichever occurs first: (See 2 on GDP)

- Prior to issuance of a certificate of occupancy for any structure located in Land Bay 2.
- Prior to issuance of a certificate of occupancy for any structure with associated land area, as depicted by site plan, within Land Bay 2.
- Upon commencement of construction of a railroad crossing as shown on the GDP for the East-West Collector Road.
- Prior to December 31, 2020.

- 2.2.1 Prior to issuance of a second building permit within Land Bay 1 or a second building permit within Land Bay 2, the Land Bay 2 Owner shall enter into an agreement with Frederick County for the funding of the design and construction as well as right of way acquisition, if necessary, for the East-West Collector Road as depicted on the GDP. Frederick County, at the time of the filing of this proffer, has entered into a Project Administration Agreement with the Commonwealth of Virginia Department of Transportation, which provides for the construction of the East-West Collector Road from Valley Pike (Rt. 11) to Shady Elm, and which further provides for a cost share of the design and construction costs for said East-West Collector Road. The agreement between the Land Bay 2 Owner and Frederick County to be entered into (if it has not already done so prior to the approval of this proffer amendment) shall provide for the participation in and funding of the design and construction of the East-West Collector Road, which provides for the payment of the County match portion of the Project Administration Agreement between Frederick County and the Commonwealth. It is the understanding of the Land Bay 2 Owner that Frederick County intends to seek additional revenue sharing funds for the completion of the East-West Collector Road, including potential right of way acquisition costs.

- 2.2.2 The Land Bay 2 Owner shall construct a maximum of two entrances on the portion of the East-West Collector Road constructed by the Land Bay 2 Owner as shown on the GDP.

- 2.4 A geotechnical analysis shall be prepared and submitted to Frederick County for any structures prior to site plan approval.

2.5 Development of the Property shall not exceed a 0.4 Floor Area Ratio (FAR).

3. **Landscape Buffers, Hiker/Biker Facilities, & Additional Right of Way**

3.1 Within the 25 foot parking setback between on-site parking areas and the proposed right of ways for Shady Elm Road and the East-West collector as required by § 165-202.01D(6)(c) of the *Frederick County Code*, the Applicant shall construct a 10 foot asphalt trail. In addition, the Applicant shall provide a densely planted landscape screen as depicted by attached Exhibit A, as revised July 15, 2015, consisting of street trees planted 50 feet on center between the proposed right of way and the asphalt trail as well as a double row of evergreen trees with a minimum density of three plants per 10 linear feet and a minimum height of four feet at time of planting located between the proposed trail and any parking areas.

4. **Design Standards**

4.1 Any building façade fronting Shady Elm Road or the proposed East-West Collector shall be constructed of one or a combination of the following : cast stone, stone, brick, architectural block, glass, wood, dry vit or stucco.

5. **Historic Resources**

5.1 The Land Bay 2 Owner shall complete a survey documenting any historic structures on Land Bay 2 in general accordance with the guidelines established by the Preliminary Information Form from the Department of Historic Resources. Any documentation created as part of said survey shall be provided to Frederick County Planning Staff and shall be completed prior to demolition of any historic buildings located on the Property.

5.2 The Land Bay 2 Owner shall contribute to the County of Frederick the sum of \$5,000.00 for purposes associated with historic Star Fort prior to issuance of a certificate of occupancy for the first building constructed on Land Bay 2.

SIGNATURE(S) APPEAR ON THE FOLLOWING PAGE(S)

Venture I of Winchester, LLC

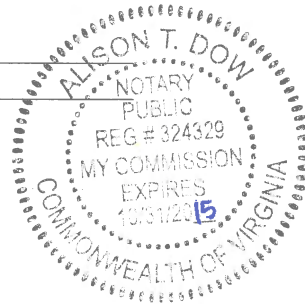
By: _____

Date: _____

STATE OF VIRGINIA, AT LARGE
FREDERICK COUNTY, To-wit:

The foregoing instrument was acknowledged before me this 15th day of October, 2015, by Gerald f. Smith, Jr., Manager of Venture I of Winchester, LLC.

Alison T. Dow, Notary Public
My commission expires 10/31/15
Notary Public Alison T. Dow



NW Works, Inc.

By:

Date:

[Signature], CEO for NW Works
10/14/15

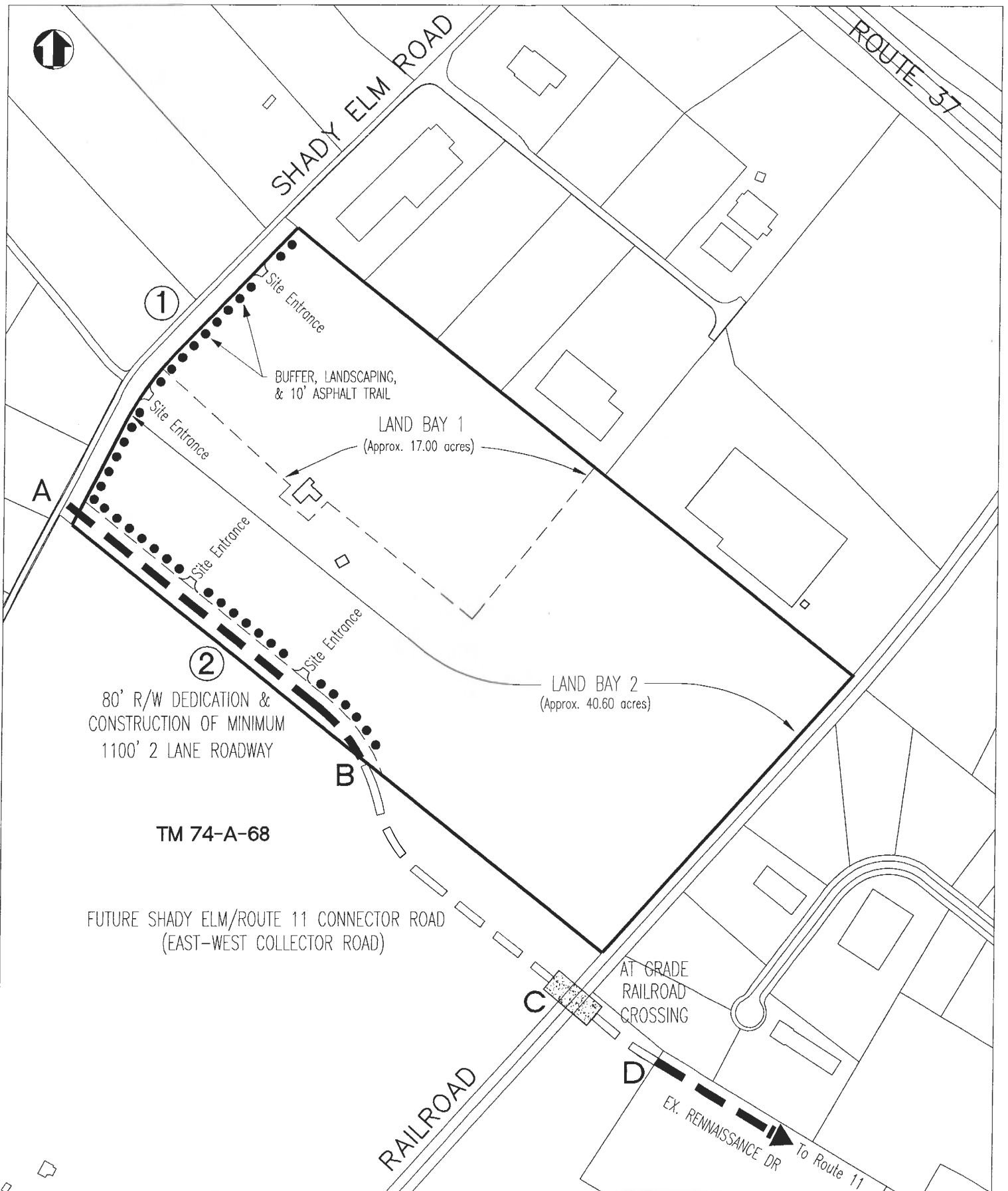
STATE OF VIRGINIA, AT LARGE
FREDERICK COUNTY, To-wit:

The foregoing instrument was acknowledged before me this 14th day of October,
2015, by H. PAIGE MANUEL.

My commission expires
Notary Public

[Signature]
July 31, 2016
REG. # 229287





ARTILLERY BUSINESS CENTER
GENERALIZED DEVELOPMENT PLAN

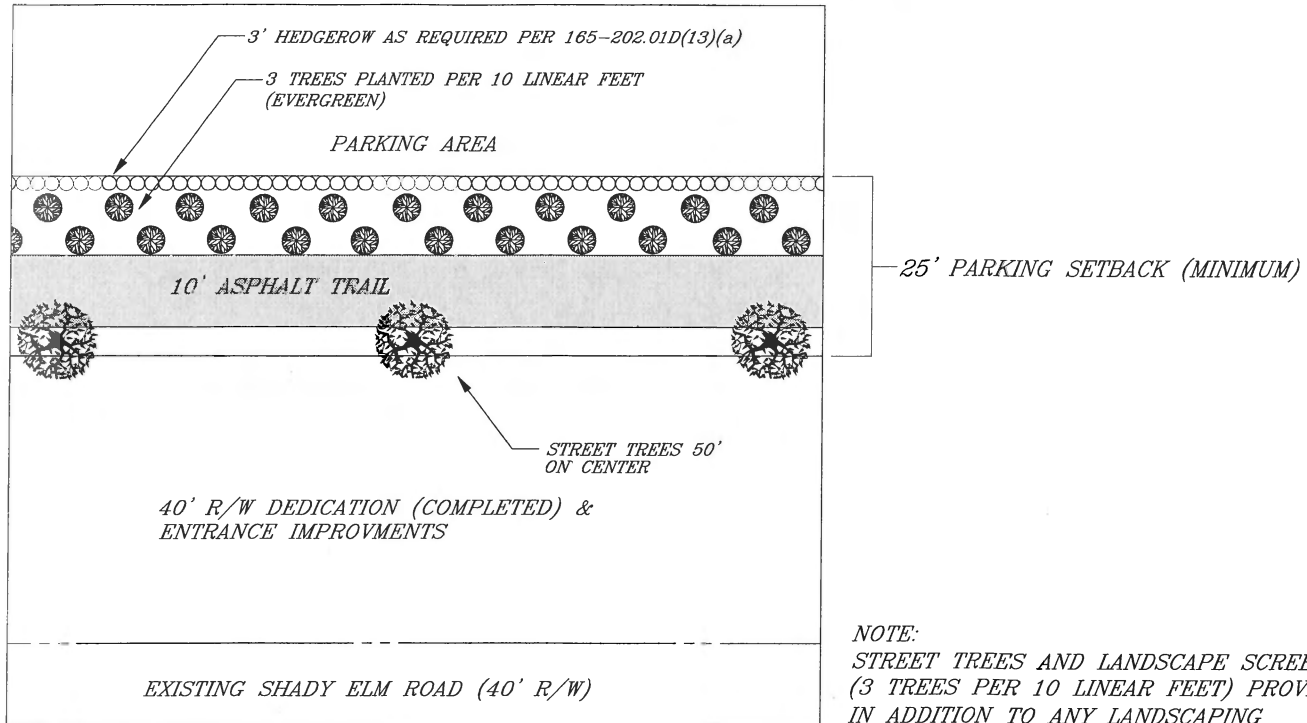
FREDERICK COUNTY, VIRGINIA

Pennoni Associates, Inc.

117 E. Picadilly St. Winchester, Virginia 22601
VOICE: (540) 667-2139 FAX: (540) 665-0493

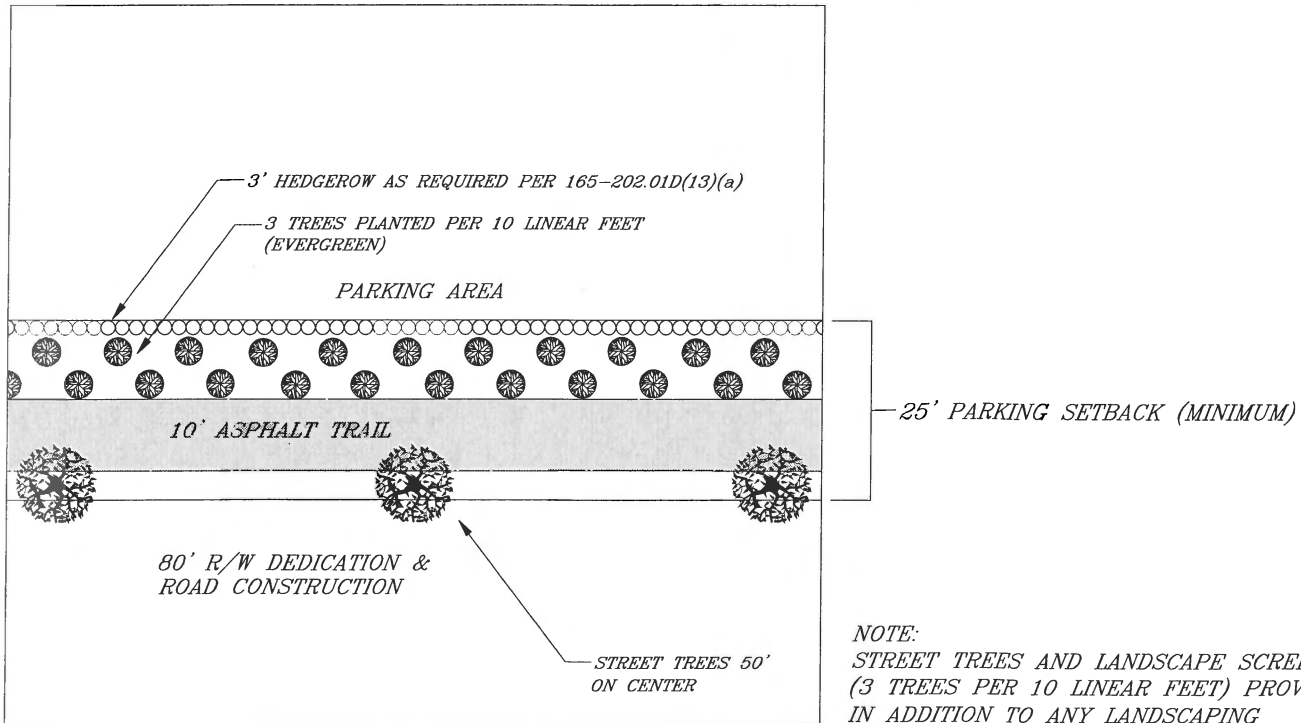
Revised
8/14/15
2/6/07
1"=400'

SHADY ELM ROAD



NOTE:
STREET TREES AND LANDSCAPE SCREEN
(3 TREES PER 10 LINEAR FEET) PROVIDED
IN ADDITION TO ANY LANDSCAPING
OTHERWISE REQUIRED BY ORDINANCE

EAST-WEST COLLECTOR ROAD



NOTE:
STREET TREES AND LANDSCAPE SCREEN
(3 TREES PER 10 LINEAR FEET) PROVIDED
IN ADDITION TO ANY LANDSCAPING
OTHERWISE REQUIRED BY ORDINANCE

ARTILLERY BUSINESS CENTER

EXHIBIT A

FREDERICK COUNTY, VIRGINIA

Pennon Associates, Inc.

117 E. Picadilly St. Winchester, Virginia 22601
VOICE: (540) 667-2139 FAX: (540) 665-0493

Revised

7/15/15

11/15/07

NTS



RESOLUTION

Action

PLANNING COMMISSION:	October 21, 2015	Recommended Approval
BOARD OF SUPERVISORS:	October 28, 2015	Opened Public Hearing, Tabled to November 12, 2015
	November 12, 2015	<input type="checkbox"/> APPROVED <input type="checkbox"/> DENIED

AN ORDINANCE AMENDING

THE ZONING DISTRICT MAP

REZONING #09-15 ARTILLERY BUSINESS CENTER – PROFFER AMENDMENT

WHEREAS, Rezoning #09-15 Artillery Business Center – Proffer Amendment submitted by Pennoni Associates, to amend the proffers associated with Rezoning #07-08 relating to the timing and commitments for transportation proffers was considered. The proffer amendment, original proffer statement dated February 7, 2008 with a final revision dated October 5, 2015 applies to parcels 75-A-1 and 75-A-1F owned by Venture I of Winchester, LLC and NW Works, Inc., respectively and is located approximately 1,500 feet south of Route 37 on the east side of Shady Elm Drive (Rt. 651) and across from Soldier's Rest Lane in the Back Creek District, and

WHEREAS, the Planning Commission held a public hearing on this rezoning on October 21, 2015, and forwarded a recommendation of approval; and

WHEREAS, the Board of Supervisors heard the items on October 28, 2015 then opened the public hearing then voted to table the items and continue the public hearing on November 12, 2015

WHEREAS, the Board of Supervisors on November 12, 2015 continued the public hearing from October 28, 2015 on this rezoning; and

WHEREAS, the Frederick County Board of Supervisors finds the approval of this rezoning to be in the best interest of the public health, safety, welfare, and in conformance with the Comprehensive Policy Plan;

NOW, THEREFORE, BE IT ORDAINED by the Frederick County Board of Supervisors that Chapter 165 of the Frederick County Code, Zoning, is amended to amend the proffers associated with

Rezoning #07-08 relating to the timing and commitments for transportation proffers.

This ordinance shall be in effect on the date of adoption.

Passed this 12th day of November, 2015 by the following recorded vote:

Richard C. Shickle, Chairman	_____	Gary A. Lofton	_____
Robert A. Hess	_____	Robert W. Wells	_____
Gene E. Fisher	_____	Charles S. DeHaven, Jr.	_____
Blaine P. Dunn	_____		

A COPY ATTEST

Brenda G. Garton
Frederick County Administrator

PROPOSED PROFFER STATEMENT

REZONING: RZ. # _____
Light Industrial (M1) to Light Industrial (M1)

PROPERTY: 57.6 acres +/-;
Tax Map Parcels 75-A-1F ("Land Bay 1") and 75-A-1 ("Land Bay 2")
[collectively, the "Property"]

RECORD OWNER: NW Works, Inc. ("Land Bay 1 Owner");
Venture I of Winchester, LLC ("Land Bay 2 Owner")

APPLICANTS: NW Works, Inc. & Venture I of Winchester, LLC

PROJECT NAME: Artillery Business Center

ORIGINAL DATE
OF PROFFERS: February 7, 2008

REVISION DATE(S): September 2, 2015; September 24, 2015; **October 5, 2015**

The undersigned hereby proffers that the use and development of the subject property ("Property"), as described above, shall be in strict conformance with the following conditions, which shall supersede all other proffers that may have been made prior hereto. In the event that the above referenced M1 conditional rezoning is not granted as applied for by the applicant ("Applicant"), these proffers shall be deemed withdrawn and shall be null and void. Further, these proffers are contingent upon final rezoning of the Property with "final rezoning" defined as that rezoning which is in effect on the day following the last day upon which the Frederick County Board of County Supervisors (the "Board") decision granting the rezoning may be contested in the appropriate court. If the Board's decision is contested, and the Applicant elects not to submit development plans until such contest is resolved, the term rezoning shall include the day following entry of a final court order affirming the decision of the Board which has not been appealed, or, if appealed, the day following which the decision has been affirmed on appeal. The headings of the proffers set forth below have been prepared for convenience or reference only and shall not control or affect the meaning or be taken as an interpretation of any provision of the proffers. The term "Land Bay 1 Owner" as referenced herein shall include within its meaning all future owners and successors in interest for Tax Map Parcel 75-A-1F. The term "Land Bay 2 Owner" as referenced herein shall include within its meaning all future owners and successors in interests for Tax Map Parcel 75-A-1. When used in these proffers, the "Generalized Development Plan," shall refer to the plan entitled "Generalized Development Plan, Artillery Business Center" dated February 6, 2007 revised August 14, 2015 (the "GDP"); ~~and shall include the following:~~

1. Monetary Contribution

- 1.1 The Land Bay 2 Owner shall contribute to the County of Frederick the sum of \$5,000.00 for fire and rescue purposes prior to issuance of a certificate of occupancy for the first building constructed on Land Bay 2, as depicted on the GDP.
- 1.2 The Land Bay 2 Owner shall contribute to the County of Frederick the sum of \$2,500.00 for Sheriff's office purposes prior to issuance of a certificate of occupancy for the first building constructed on Land Bay 2, as depicted on the GDP.

- 1.3 The Land Bay 2 Owner shall contribute to the County of Frederick the sum of \$2,500.00 for general government purposes prior to issuance of a certificate of occupancy for the first building constructed on Land Bay 2, as depicted on the GDP.

2. **Site Development**

- 2.1 Direct access to the Property from Shady Elm Road shall be limited to a maximum of 2 entrances as shown on the GDP with entrance improvements subject to VDOT review and approval. (See 1 on GDP).

- 2.2 The Land Bay 2 Owner shall design a future East-West Collector Road utilizing an 80 foot right of way as depicted on the GDP from Point A to Point B as a Rural 4 Lane Divided (R4D) cross section. The Land Bay 2 Owner shall then dedicate 80 feet of right of way and construct the ultimate two westbound lanes of the Collector Road for a minimum of 1100 feet as shown from Point A to Point B on the GDP upon any of the following conditions, whichever occurs first: (See 2 on GDP)

- Prior to issuance of a certificate of occupancy for any structure located in Land Bay 2.
- Prior to issuance of a certificate of occupancy for any structure ~~located in Land Bay 1 but with associated land area located in Land Bay 2 as depicted by site plan~~ with associated land area, as depicted by site plan, within Land Bay 2.
- Upon commencement of construction of a railroad crossing as shown on the GDP for the East-West Collector Road.
- Prior to December 31, 2020.

- 2.2.1 ~~Prior to issuance of a second building permit within Land Bay 1 or a second building permit within Land Bay 2, the Land Bay 2 Owner shall enter into an agreement with Frederick County for the funding of the design and construction as well as right of way acquisition, if necessary, for the off-site portions of the East-West Collector Road from Point B to Point D as depicted on the GDP. Frederick County, at the time of the filing of this proffer, has entered into a Project Administration Agreement with the Commonwealth of Virginia Department of Transportation, which provides for the construction of the East-West Collector Road from Valley Pike (Rt. 11) to Shady Elm, and which further provides for a cost share of the design and construction costs for said East-West Collector Road. The agreement between the Land Bay 2 Owner and Frederick County to be entered into (if it has not already done so prior to the approval of this proffer amendment) shall provide for the participation in and funding of the design and construction of the East-West Collector Road, which provides for the payment of the County match portion of the Project Administration Agreement between Frederick County and the Commonwealth. It is the understanding of the Land Bay 2 Owner that Frederick County intends to seek additional revenue sharing funds for the completion of the East-West Collector Road, including potential right of way acquisition costs. In the event that right of way at least 80' in width is made available across Tax Map Parcel 74-A-68 as generally depicted on the GDP from Point B to Point C and Frederick County obtains the right to an at grade railroad crossing and the Land Bay 2 Owner has entered into a revenue sharing agreement with Frederick County, which in turn has secured matching funds with the State~~

~~to allow for a cost share dollar for dollar match of State funds to pay for the construction of the completion of Renaissance Drive (a copy of the proposed revenue sharing agreement as signed by the Land Bay 2 Owner is attached as Exhibit A, or such other form of document as may be agreed to between the County and Land Bay 2 Owner), then the Land Bay 2 Owner shall design the East-West Collector Road as a Rural 4 Lane Divided (R4D) cross section and construct the ultimate two westbound lanes of the roadway, including the at grade railroad crossing, from Point B to the existing terminus of Renaissance Drive as shown on the GDP as Point D. If the right of way across Tax Map Parcel 74 A-68 and rights to an at grade railroad crossing are made available prior to commencement of the design of the East-West Collector Road from Point A to Point B, then completion of the design and construction of the roadway segment from Point B to Point D and the railroad crossing shall be subject to the same triggers provided by Proffer 2.2. Otherwise, design and construction of said improvements shall occur within 5 years from the date that the right of way and rights to an at grade railroad crossing are made available. An alternative to the R4D cross section for portions or all of the East-West Collector Road may be permitted if desired and confirmed in writing by both Frederick County and the Land Bay 2 Owner.~~

- 2.2.2 The Land Bay 2 Owner shall construct a maximum of two entrances on the portion of the East-West Collector Road constructed by the Land Bay 2 Owner as shown on the GDP.

~~2.3 Within their respective land bays, Land Bay 1 Owner and/or Land Bay 2 Owner may construct an internal access road, if necessary, to meet the requirements for lot access as identified by §144-24C of the *Frederick County Code*, to serve the Property to Virginia Department of Transportation standards with a minimum pavement width of 26 feet, provided they have obtained the prior written approval of the other Land Bay Owner. In the event that the internal access road traverses both Land Bay 1 and Land Bay 2, the location of the internal access road shall be subject to written approval of both the Land Bay 1 Owner and Land Bay 2 Owner.~~

- 2.4 A geotechnical analysis shall be prepared and submitted to Frederick County for any structures prior to site plan approval.
- 2.5 Development of the Property shall not exceed a 0.4 Floor Area Ratio (FAR).

3. Landscape Buffers, Hiker/Biker Facilities, & Additional Right of Way

- 3.1 Within the 25 foot parking setback between on-site parking areas and the proposed right of ways for Shady Elm Road and the East-West collector as required by § 165-202.01D(6)(c) of the *Frederick County Code*, the Applicant shall construct a 10 foot asphalt trail ~~to Department of Recreation Standards~~. In addition, the Applicant shall provide a densely planted landscape screen as depicted by attached Exhibit BA, as revised July 15, 2015, consisting of street trees planted 50 feet on center between the proposed right of way and the asphalt trail as well as a double row of evergreen trees with a minimum density of three plants per 10 linear feet and a minimum height of four feet at time of planting located between the proposed trail and any parking areas.

4. **Design Standards**

- 4.1 Any building façade fronting Shady Elm Road or the proposed East-West Collector shall be constructed of one or a combination of the following : cast stone, stone, brick, architectural block, glass, wood, dry vit or stucco.

5. **Historic Resources**

- 5.1 The Land Bay 2 Owner shall complete a survey documenting any historic structures on ~~the Property~~Land Bay 2 in general accordance with the guidelines established by the Preliminary Information Form from the Department of Historic Resources. Any documentation created as part of said survey shall be provided to Frederick County Planning Staff and shall be completed prior to demolition of any historic buildings located on the Property.
- 5.2 The Land Bay 2 Owner shall contribute to the County of Frederick the sum of \$5,000.00 for purposes associated with historic Star Fort prior to issuance of a certificate of occupancy for the first building constructed on Land Bay 2.

SIGNATURE(S) APPEAR ON THE FOLLOWING PAGE(S)

Venture I of Winchester, LLC

By: _____

Date: _____

STATE OF VIRGINIA, AT LARGE
FREDERICK COUNTY, To-wit:

The foregoing instrument was acknowledged before me this _____ day of _____,
2015, by _____.

My commission expires _____
Notary Public _____

NW Works, Inc.

By: _____

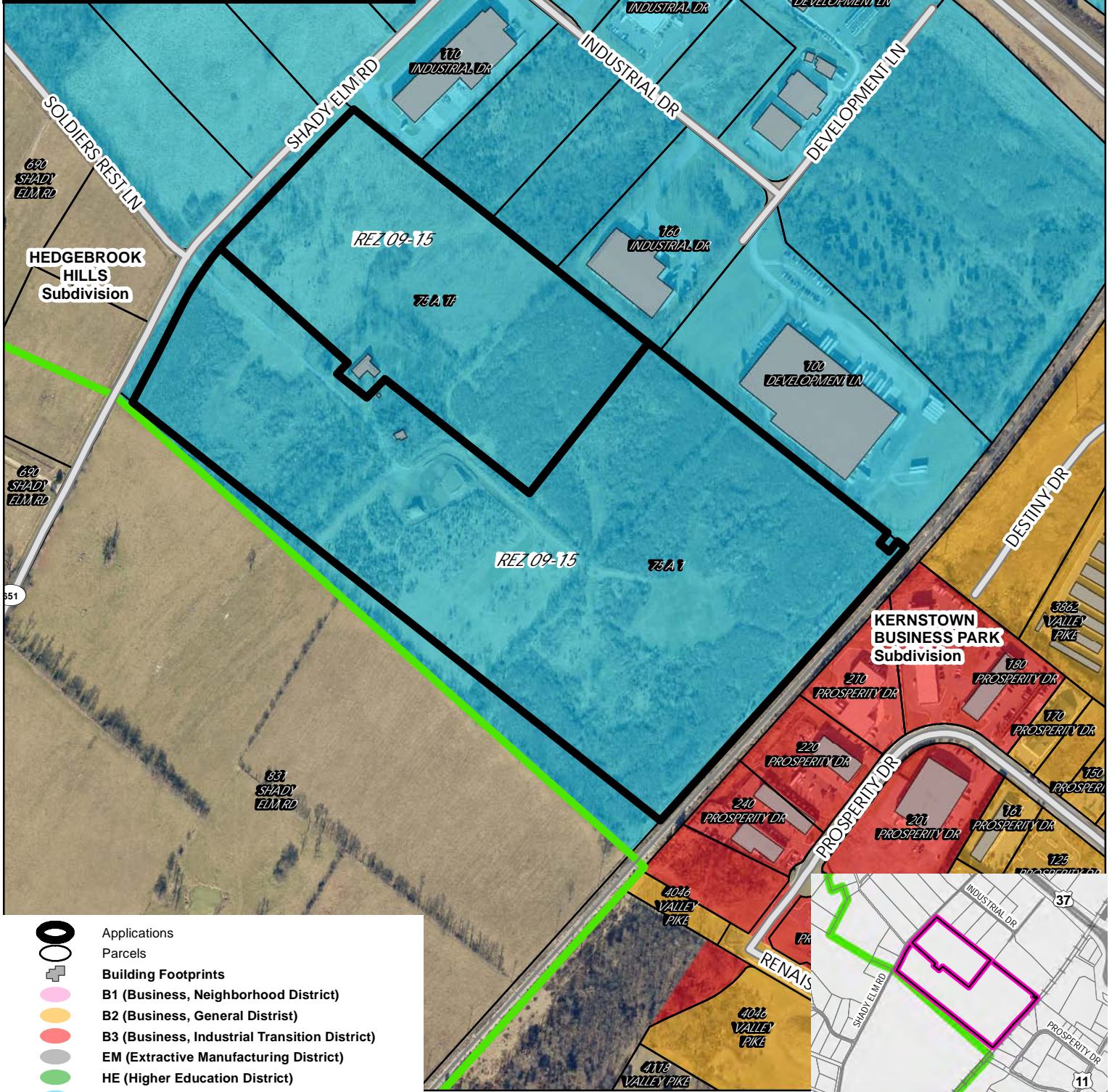
Date: _____

STATE OF VIRGINIA, AT LARGE
FREDERICK COUNTY, To-wit:

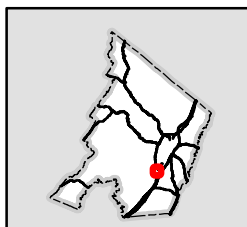
The foregoing instrument was acknowledged before me this _____ day of _____,
2015, by _____.

My commission expires _____
Notary Public _____

REZ # 09 - 15 **Artillery Business Center** PINs: 75 - A - 1, 75 - A - 1F Revise Proffers

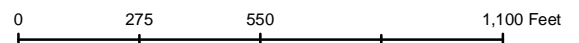


- Applications
- Parcels
- Building Footprints
- B1 (Business, Neighborhood District)
- B2 (Business, General District)
- B3 (Business, Industrial Transition District)
- EM (Extractive Manufacturing District)
- HE (Higher Education District)
- M1 (Industrial, Light District)
- M2 (Industrial, General District)
- MH1 (Mobile Home Community District)
- MS (Medical Support District)
- OM (Office - Manufacturing Park)
- R4 (Residential Planned Community District)
- R5 (Residential Recreational Community District)
- RA (Rural Area District)
- RP (Residential Performance District)

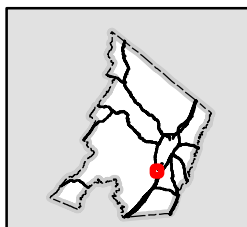
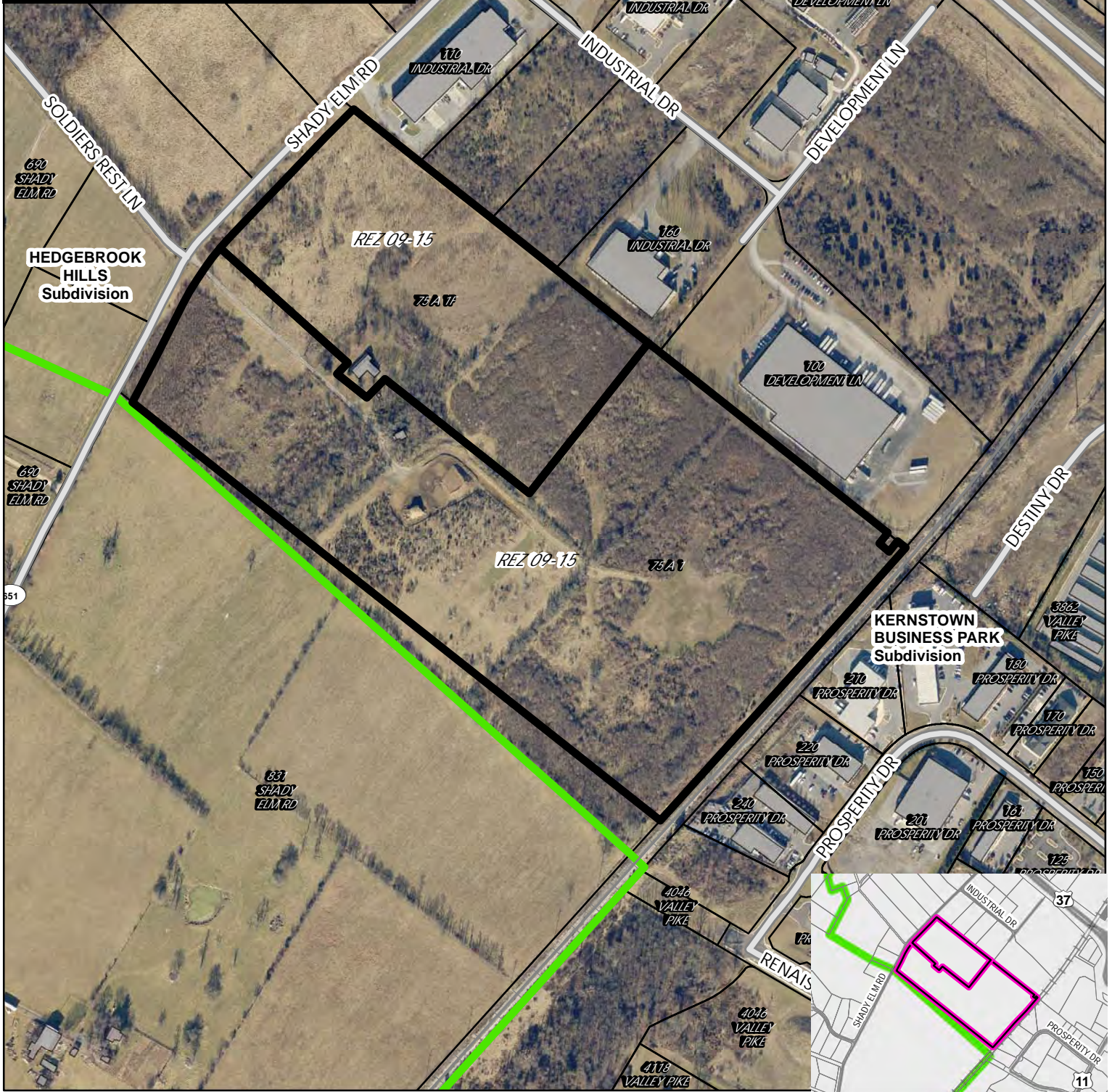


REZ # 09 - 15
Artillery Business Center
 PINs:
 75 - A - 1, 75 - A - 1F
 Revise Proffers

Note:
 Frederick County Dept of
 Planning & Development
 107 N Kent St
 Suite 202
 Winchester, VA 22601
 540 - 665 - 5651
 Map Created: September 29, 2015
 Staff: jbishop



REZ # 09 - 15 **Artillery Business Center** PINs: 75 - A - 1, 75 - A - 1F Revise Proffers



REZ # 09 - 15
Artillery Business Center
 PINs:
 75 - A - 1, 75 - A - 1F
 Revise Proffers

Note:
 Frederick County Dept of
 Planning & Development
 107 N Kent St
 Suite 202
 Winchester, VA 22601
 540 - 665 - 5651
 Map Created: September 29, 2015
 Staff: jbishop



Applications
 Parcels
 Building Footprints

0 275 550 1,100 Feet



AMENDMENT

Action:

PLANNING COMMISSION: January 16, 2008 - Recommended Denial

BOARD OF SUPERVISORS: February 13, 2008 ☒ APPROVED ☐ DENIED

AN ORDINANCE AMENDING

THE ZONING DISTRICT MAP

REZONING #08-07 OF ARTILLERY BUSINESS CENTER

WHEREAS, Rezoning #08-07 of Artillery Business Center, submitted by Patton Harris Rust & Associates to rezone 58.7 acres from RA (Rural Areas) District to M1 (Light Industrial) District, with proffers, for Light Industrial Uses, was considered. The property is located east and adjacent to Shady Elm Road, approximately 1,500 feet south of Route 37, in the Back Creek Magisterial District, and is identified by Property Identification Number 75-A-1.

WHEREAS, the Planning Commission held a public hearing on this rezoning on January 16, 2008; and

WHEREAS, the Board of Supervisors held a public hearing on this rezoning on February 13, 2008; and

WHEREAS, the Frederick County Board of Supervisors finds the approval of this rezoning to be in the best interest of the public health, safety, welfare, and in conformance with the Comprehensive Policy Plan;


NOW, THEREFORE, BE IT ORDAINED by the Frederick County Board of Supervisors that Chapter 165 of the Frederick County Code, Zoning, is amended to revise the Zoning District Map to change 58.7 acres from RA (Rural Areas) District to M1 (Light Industrial) District, for Light Industrial Uses, subject to the attached conditions voluntarily proffered in writing by the applicant and the property owner.

This ordinance shall be in effect on the date of adoption.

Passed this 13th day of February, 2008 by the following recorded vote:

Richard C. Shickle, Chairman	<u>Aye</u>	Gary A. Lofton	<u>Aye</u>
Gary W. Dove	<u>Aye</u>	Bill M. Ewing	<u>Aye</u>
Gene E. Fisher	<u>Aye</u>	Charles S. DeHaven, Jr.	<u>Nay</u>
Philip A. Lemieux	<u>Aye</u>		

A COPY ATTEST



John R. Riley, Jr.
Frederick County Administrator

PROPOSED PROFFER STATEMENT

REZONING: RZ. # 08-07
Rural Areas (RA) to Light Industrial (M1)

PROPERTY: 58.7 acres +/-;
Tax Map Parcels 75-A-1 [the "Property"]

RECORD OWNER: Venture I of Winchester, LLC

APPLICANT: Venture I of Winchester, LLC

PROJECT NAME: Artillery Business Center

ORIGINAL DATE
OF PROFFERS: December 26, 2006

REVISION DATE(S): 2/6/07; 3/22/07; 4/3/07; 4/24/07; 5/1/07; 5/24/07; 6/28/07;
8/1/07; 8/17/07; 9/14/07; 9/19/07; 9/21/07; 10/9/07; 11/5/07;
11/6/07; 11/15/07; 12/21/07; 1/15/08; 2/7/08

The undersigned hereby proffers that the use and development of the subject property ("Property"), as described above, shall be in strict conformance with the following conditions, which shall supersede all other proffers that may have been made prior hereto. In the event that the above referenced M1 conditional rezoning is not granted as applied for by the applicant ("Applicant"), these proffers shall be deemed withdrawn and shall be null and void. Further, these proffers are contingent upon final rezoning of the Property with "final rezoning" defined as that rezoning which is in effect on the day following the last day upon which the Frederick County Board of County Supervisors (the "Board") decision granting the rezoning may be contested in the appropriate court. If the Board's decision is contested, and the Applicant elects not to submit development plans until such contest is resolved, the term rezoning shall include the day following entry of a final court order affirming the decision of the Board which has not been appealed, or, if appealed, the day following which the decision has been affirmed on appeal. The headings of the proffers set forth below have been prepared for convenience or reference only and shall not control or affect the meaning or be taken as an interpretation of any provision of the proffers. The term "Applicant" as referenced herein shall include within its meaning all future owners and successors in interest. When used in these proffers, the "Generalized Development Plan," shall refer to the plan entitled "Generalized Development Plan, Artillery Business Center" dated February 6, 2007 revised February 7, 2008 (the "GDP"), and shall include the following:

1. Monetary Contribution

- 1.1 The Applicant shall contribute to the County of Frederick the sum of \$5,000.00 for fire and rescue purposes upon issuance of the first building permit.
- 1.2 The Applicant shall contribute to the County of Frederick the sum of \$2,500.00 for Sheriff's office purposes upon issuance of the first building permit.
- 1.3 The Applicant shall contribute to the County of Frederick the sum of \$2,500.00 for general government purposes upon issuance of the first building permit.

- 1.4 The Applicant shall contribute to the County of Frederick the sum of \$250,000.00 for the design and/or construction of the future East-West Collector Road or for any other transportation improvements as deemed necessary by Frederick County and VDOT. Said monetary contribution shall be made within 60 days of issuance of the first Certificate of Occupancy for any structure located on the Property.

2. Site Development

- 2.1 The Applicant shall dedicate 40 feet of right of way for Shady Elm road along the Property frontage as depicted on the GDP prior to issuance of the first building permit. Additionally, the Applicant shall widen the existing northbound lane to a total width of 24 feet of pavement as measured from the center line of Shady Elm Road along the Property frontage with Shady Elm Road to provide for a continuous right turn lane along the Property frontage with Shady Elm Road. Direct access to the Property from Shady Elm Road shall be limited to a maximum of 2 entrances as shown on the GDP. The Applicant shall provide a double stripe lane marking for the centerline of Shady Elm Road along the Property frontage with Shady Elm Road (See 1 on GDP)
- 2.2 The Applicant shall design a future East-West Collector Road utilizing an 80 foot right of way as depicted on the GDP from Point A to Point C, assuming an at grade railroad crossing, as a Rural 4 Lane Divided (R4D) cross section prior to issuance of the first Certificate of Occupancy for any structure located on the Property. The Applicant shall then dedicate 80 feet of right of way and construct the ultimate two westbound lanes of the Collector Road for a minimum of 1100 feet as shown from Point A to Point B on the GDP upon any of the following conditions, whichever occurs first: (See 2 on GDP)
- Prior to issuance of the fourth building permit for the Property.
 - Prior to the issuance of a building permit for any structure located in Land Bay 2.
 - Prior to issuance of a certificate of occupancy for any structure located in Land Bay 1 but with associated land area located in Land Bay 2 as depicted by site plan.
 - Upon commencement of a railroad crossing as shown on the GDP for the East-West Collector Road.
 - Prior to December 31, 2013.
- 2.2.1 The Applicant shall make available an 80' wide tract of land across Tax Map Parcel 74-A-68 as depicted on the GDP from Point B to Point C in conformance with the road design provided by Proffer 2.2 for the future extension of the East-West Collector Road. The Applicant shall provide said property at no cost to the County, after December 31, 2008 and within 90 days of receiving written request from the County.
- 2.2.2 The Applicant shall construct a maximum of two entrances on the portion of the East-West Collector Road constructed by the Applicant as shown on the GDP.

- 2.2.3 Land Bay 2 as shown on the GDP shall have access via the easternmost entrance located on the portion of the East-West Collector Road constructed by the Applicant as shown on the GDP.
- 2.3 The Applicant shall construct an internal access road, if necessary to meet the requirements for lot access as identified by §144-24C of the *Frederick County Code*, to serve the Property to Virginia Department of Transportation standards with a minimum pavement width of 26 feet.
- 2.4 A geotechnical analysis shall be prepared and submitted to Frederick County for any structures prior to site plan approval.
- 2.5 Development of the Property shall not exceed a 0.4 Floor Area Ratio (FAR).
- 2.6 The Property shall contain a minimum of three users upon final build-out.
- 2.7 No warehouse-distribution facility greater than 200,000 square feet shall be constructed on the Property within 5 years of the Date of Final Rezoning.
- 2.8 Should the County or others obtain the rights to an at grade railroad crossing for the proposed East-West Collector Road as identified on the GDP, the Applicant shall fully fund the design of said at grade crossing.
3. Landscape Buffers, Hiker/Biker Facilities, & Additional Right of Way
- 3.1 Within the 25 foot parking setback between the proposed right of ways for Shady Elm Road and the East-West collector as required by § 165-27E(5) of the *Frederick County Code*, the Applicant shall construct a 10 foot asphalt trail to Department of Recreation Standards. In addition, the Applicant shall provide a densely planted landscape screen as depicted by Exhibit A as revised 1/15/08 consisting of street trees planted 50 feet on center between the proposed right of way and the asphalt trail as well as a double row of evergreen trees with a minimum density of three plants per 10 linear feet and a minimum height of four feet at time of planting located between the proposed trail and any parking areas.
4. Design Standards
- 4.1 Any building façade fronting Shady Elm Road or the proposed East-West Collector shall be constructed of one or a combination of the following : cast stone, stone, brick, architectural block, glass, wood, dry vit or stucco.
- 4.2 Freestanding business signs shall be limited to one monument style sign per lot that shall not exceed 20 feet in height. In addition, the Applicant may construct one main entrance/tenant directory sign along either Shady Elm Road or the proposed East-West Collector as a monument style sign that shall not exceed 30 feet in height. If revisions to the *Frederick County Zoning Ordinance* are made which would limit the size and/or number of signs to a greater extent than the aforementioned standards, then the Applicant shall conform with the sign ordinance standards in existence at the time of issuance of a permit for any sign located on the Property.

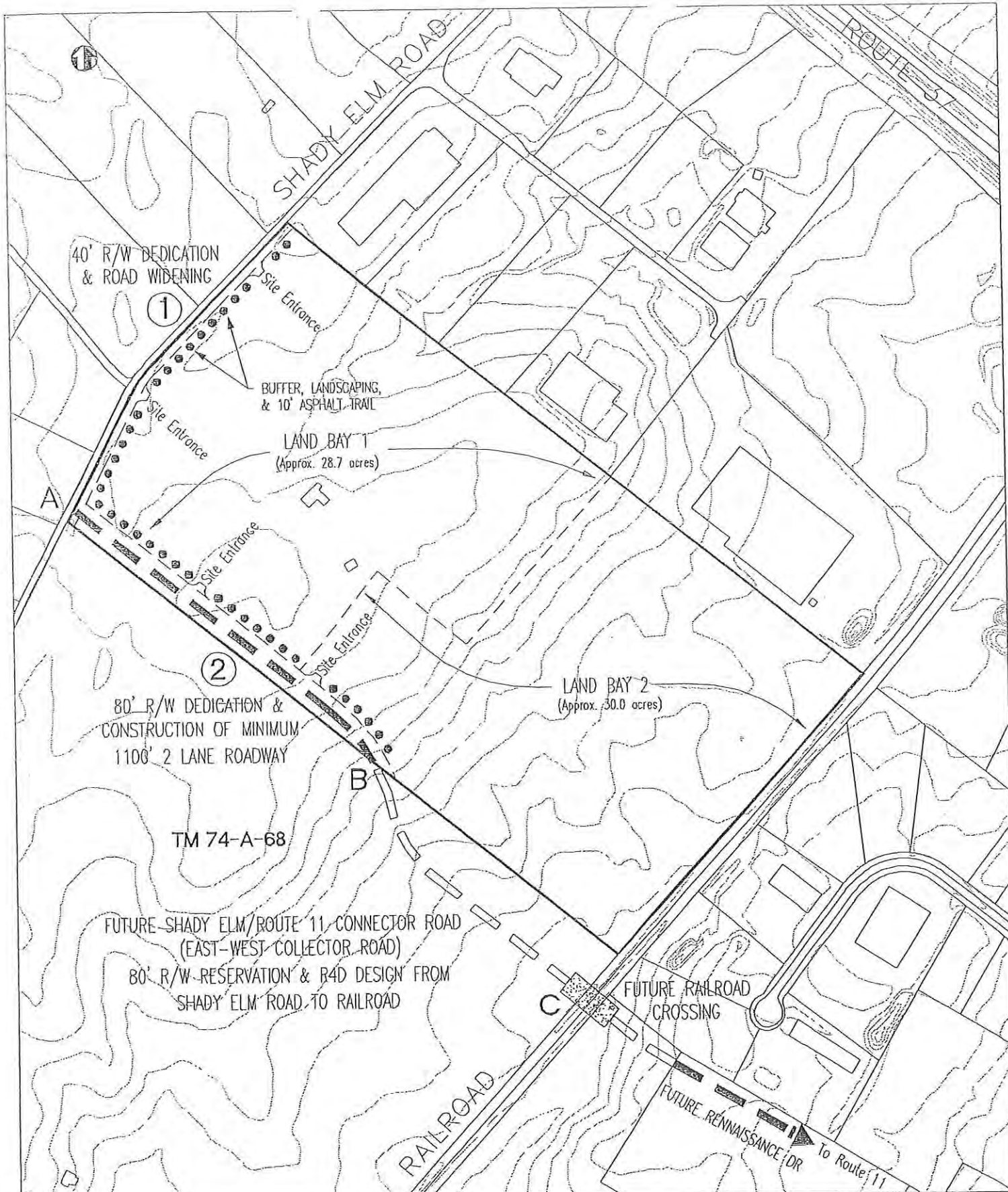
5. Historic Resources

- 5.1 The Applicant shall complete a survey documenting any historic structures on the Property in general accordance with the guidelines established by the Preliminary Information Form from the Department of Historic Resources. Any documentation created as part of said survey shall be provided to Frederick County Planning Staff and shall be completed prior to demolition of any buildings located on the Property.
- 5.2 The Applicant shall contribute to the County of Frederick the sum of \$5,000.00 for purposes associated with historic Star Fort prior to issuance of the first building permit.

6. Escalator Clause

- 6.1 In the event the monetary contributions set forth in the Proffer Statement are paid to the Frederick County Board County Supervisors ("Board") within 30 months of the approval of this rezoning, as applied for by the Applicant, said contributions shall be in the amounts as stated herein. Any monetary contributions set forth in the Proffer Statement which are paid to the Board after 30 months following the approval of this rezoning shall be adjusted in accordance with the Urban Consumer Price Index ("CPI-U") published by the United States Department of Labor, such that at the time contributions are paid, they shall be adjusted by the percentage change in the CPI-U from that date 24 months after the approval of this rezoning to the most recently available CPI-U to the date the contributions are paid, subject to a cap of 6% per year, non-compounded.

SIGNATURE(S) APPEAR ON THE FOLLOWING PAGE(S)



ARTILLERY BUSINESS CENTER
GENERALIZED DEVELOPMENT PLAN

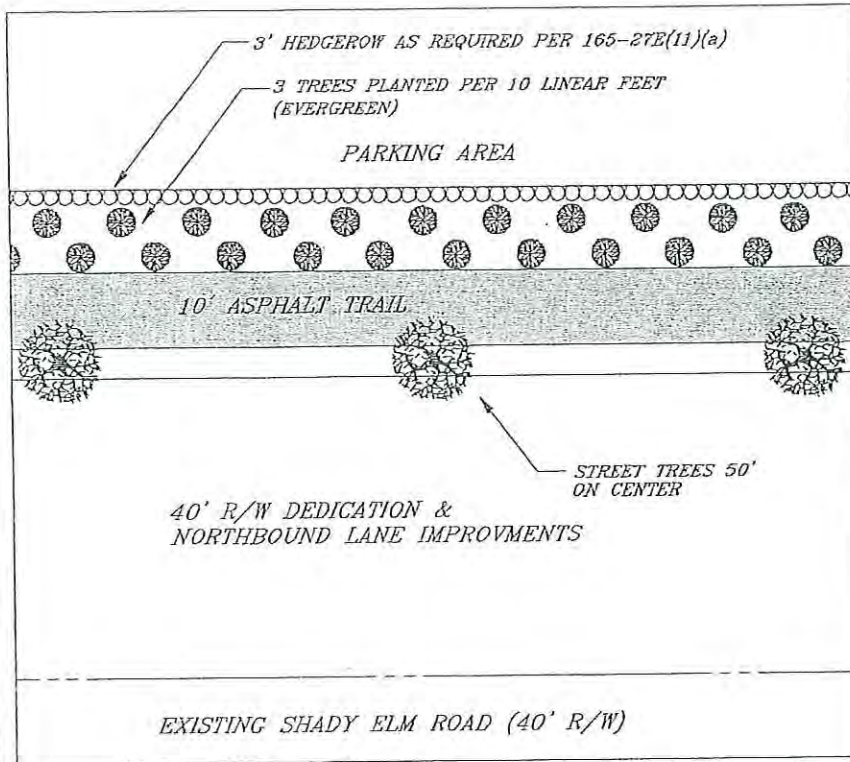
FREDERICK COUNTY, VIRGINIA

Potton, Harris, Rust & Associates, pc

117 E. Piccadilly St. Winchester, Virginia 22601
VOICE: (540) 667-2139 FAX: (540) 665-0493

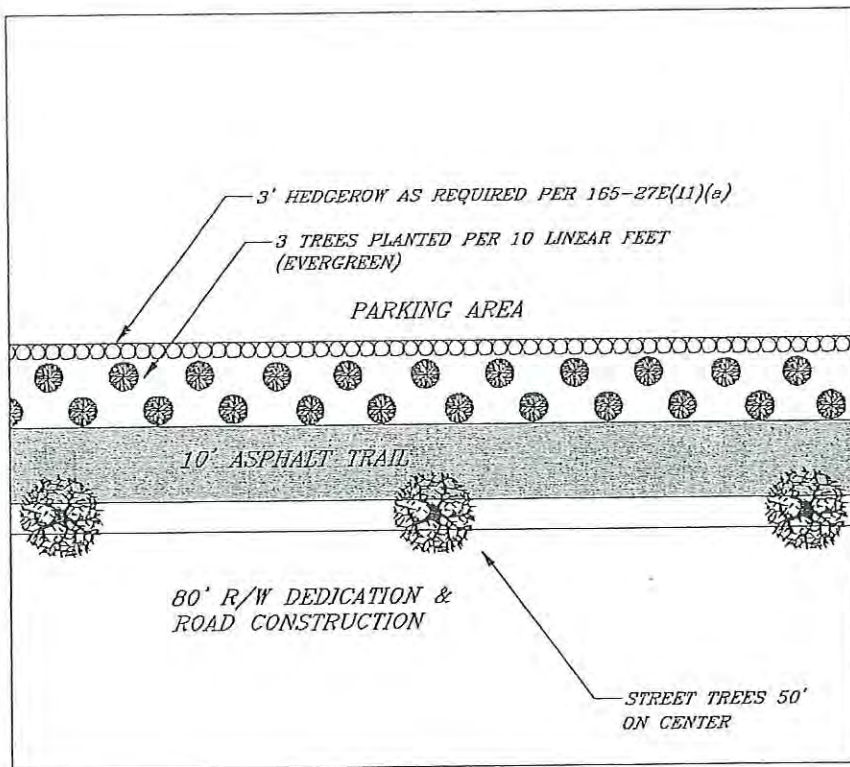
Revised
2/7/08
2/6/07
1"=400'

SHADY ELM ROAD



NOTE:
STREET TREES AND LANDSCAPE SCREEN (3 TREES PER 10 LINEAR FEET) PROVIDED IN ADDITION TO ANY LANDSCAPING OTHERWISE REQUIRED BY ORDINANCE

EAST-WEST COLLECTOR ROAD



NOTE:
STREET TREES AND LANDSCAPE SCREEN (3 TREES PER 10 LINEAR FEET) PROVIDED IN ADDITION TO ANY LANDSCAPING OTHERWISE REQUIRED BY ORDINANCE

ARTILLERY BUSINESS CENTER

EXHIBIT A

FREDERICK COUNTY, VIRGINIA

Patton, Harris, Rust & Associates, pc

117 E. Picadilly St. Winchester, Virginia 22601
VOICE: (540) 667-2139 FAX: (540) 665-0493

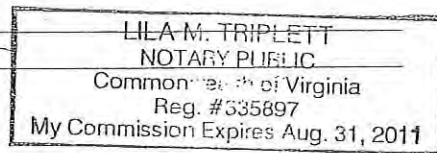
Revised

1/15/08

11/15/07

NTS

Venture I of Winchester, LLC

By: [Signature]Date: FEBRUARY 7, 2008STATE OF VIRGINIA, AT LARGE
FREDERICK COUNTY, To-wit:The foregoing instrument was acknowledged before me this 7th day of February,
2008 by Paige MAWEL.My commission expires
Notary Public [Signature]

Pam Deeter

From: John Bishop
Sent: Tuesday, October 13, 2015 1:39 PM
To: Pam Deeter
Cc: Eric Lawrence
Subject: FW: Artillery Business Center - VDOT Comments to Proffer Amendment dated 10.05.2015
Attachments: Scanned from EDNXerox.pdf

Just came in for Artillery

From: Funkhouser, Rhonda (VDOT) [<mailto:Rhonda.Funkhouser@VDOT.Virginia.gov>] **On Behalf Of** Ingram, Lloyd (VDOT)
Sent: Tuesday, October 13, 2015 1:25 PM
To: John Bishop; Mike Ruddy
Cc: Patrick Sowers; Smith, Matthew, P.E. (VDOT); Ingram, Lloyd (VDOT)
Subject: Artillery Business Center - VDOT Comments to Proffer Amendment dated 10.05.2015

The documentation within the application to rezone this property appears to have a significant impact on Route 651 (Shady Elm Road). This route is the VDOT roadway which has been considered as the access to the property referenced.

VDOT is cautiously satisfied that the transportation proffers offered in the Artillery Business Center rezoning application dated October 5, 2015 address transportation concerns associated with this request.

If you wish to discuss these comments, please contact me.

Lloyd A. Ingram | Land Development Engineer
Virginia Department of Transportation
Clarke, Frederick, Shenandoah & Warren Counties
14031 Old Valley Pike
Edinburg, VA 22824
voice: 540/984-5611
fax: 540/984-5607
e-mail: Lloyd.Ingram@vdot.virginia.gov

Patrick Sowers

From: Funkhouser, Rhonda (VDOT) <Rhonda.Funkhouser@VDOT.Virginia.gov> on behalf of Ingram, Lloyd (VDOT) <Lloyd.Ingram@VDOT.virginia.gov>
Sent: Friday, September 25, 2015 12:58 PM
To: Patrick Sowers
Cc: 'John Bishop'; mruddy@fcva.us; Smith, Matthew, P.E. (VDOT); Ingram, Lloyd (VDOT)
Subject: Artillery Business Center - VDOT Comments to Proffer Amendment

The documentation within the application to rezone this property appears to have a significant impact on Route 651 (Shady Elm Road). This route is the VDOT roadway which has been considered as the access to the property referenced.

VDOT is not satisfied that the transportation proffers offered in the Artillery Business Center rezoning application dated September 2, 2015 address transportation concerns associated with this request.

- The existing approved Artillery Business Center rezoning, dated February 7, 2008, is superior in addressing the future transportation needs of both Shady Elm Road and the extension of Renaissance Drive.
- A proffer is not required for the applicant to apply for Revenue Sharing funds to fulfill the required transportation improvements.

If you wish to discuss these comments, please contact me.

Lloyd A. Ingram | Land Development Engineer
Virginia Department of Transportation
Clarke, Frederick, Shenandoah & Warren Counties
14031 Old Valley Pike
Edinburg, VA 22824
voice: 540/984-5611
fax: 540/984-5607
e-mail: Lloyd.Ingram@vdot.virginia.gov

Diane Walsh

From: Eric Lawrence
Sent: Wednesday, October 21, 2015 9:33 AM
To: Diane Walsh
Subject: FW: Artillery rezoning

From: Rod Williams
Sent: Tuesday, October 20, 2015 2:47 PM
To: 'Patrick Sowers'
Cc: Eric Lawrence; John Bishop
Subject: Artillery rezoning

Patrick,

I have now had the opportunity to review the revised proffer statement, dated October 5, 2015, for the above matter and have three items to offer in terms of ensuring that the proffer statement would be legally sufficient as a proffer statement under state law and county ordinances:

- In Proffer 2.2.1, some of the language regarding revenue sharing remains troublesome, in the context of the legal prohibition on contract zoning. Therefore, I would suggest the rephrasing the first sentence of Proffer 2.2.1 to read as two sentences, as follows: "Prior to the earlier to occur of the issuance of a second building permit within Land Bay 1 or a second building permit within Land Bay 2, the Land Bay 2 Owner shall enter into an agreement with Frederick County by which the Land Bay 2 Owner provides for right of way acquisition, if necessary, and the funding of the design and construction of the East-West Collector Road as depicted on the GDP. The Land Bay 2 Owner may, pursuant to such agreement, use Virginia Department of Transportation cost sharing funds for the design and construction costs of the East-West Collector Road." Likewise, I would suggest the rephrasing of the current third sentence of Proffer 2.2.1 to read as follows: "The Land Bay 2 Owner shall provide in the agreement with Frederick County for the Land Bay 2 Owner's funding of the design and construction of the East-West Collector Road, to cover the County match portion of the Project Administration Agreement between Frederick County and the Commonwealth."
- In the last signed version of the proffers, I noticed that the signature on behalf of NW Works was by a director of that entity. Ordinarily, an individual director does not have the power to enter into a binding agreement on behalf of an entity. It would appear that the signature should be by an officer of the entity.
- Finally, the document contains the word "Proposed" in its title. We would need to receive a signed version without that word in order for it to be suitable for recording.

Rod

Roderick B. Williams
County Attorney
County of Frederick, Virginia
107 North Kent Street, 3rd Floor
Winchester, Virginia 22601



COUNTY of FREDERICK

Roderick B. Williams
County Attorney

540/722-8383

Fax 540/667-0370

E-mail:

rwillia@co.frederick.va.us

September 28, 2015

VIA E-MAIL – psowers@pennoni.com – AND REGULAR MAIL

Mr. Patrick Sowers
Pennoni Associates Inc.
117 East Piccadilly Street, Suite 200
Winchester, Virginia 22601

Re: Rezoning Application – Artillery Business Center
Tax Parcel Numbers 75-A-1 and -1F, consisting of 57.6± acres (the
“Property”)
Proposed Proffer Statement dated September 2, 2015

Dear Patrick:

You have submitted to Frederick County for review the above-referenced proposed proffer statement (the “Proffer Statement”) for the proposed rezoning of the Property, in the Back Creek Magisterial District, from the M1 (Light Industrial) Zoning District, with proffers (2008 Proffer Statement), to the M1 (Light Industrial) Zoning District, with revised proffers. I have now reviewed the Proffer Statement and it is my opinion that the Proffer Statement would be in a form to meet the requirements of the Frederick County Zoning Ordinance and the Code of Virginia, and would be legally sufficient as a proffer statement, subject to the following comments:

- As a general comment for staff, I note that the Proffer Statement seeks to retract a number of previous proffers or to shift the obligations entailed. While proffer amendments to limit or shift proffer obligations are not themselves unusual (in particular where one or two proffers, such as the timing of transportation improvements, are modified), the Proffer Statement contains a number of proposed rescissions and/or shifts, not all of which are noted in the cover letter accompanying the Proffer Statement.
- Introductory paragraph – The last sentence contains the phrase “and shall include the following:”, which does not appear to be appropriate there. The sentence refers to the 2015 Generalized Development Plan (the “Revised GDP”), but the


Revised GDP does not include Proffer Statement; to the contrary, the Proffer Statement includes the Revised GDP.

- Proffers 1.1 through 1.3 – Staff should be aware that these Proffers would shift the obligations therein solely to the owner of Land Bay 2. Therefore, Land Bay 1 could fully develop without the County receiving any of the monetary contributions. The Proffers do not propose a proportionate split of the monetary contributions between the two land bays.
- Proffer 2.1 – Staff should be aware that the Proffer eliminates the previous commitment to construct the widening of Shady Elm Road along the Property frontage.
- Proffer 2.2 – With respect to the second bullet point, it is unclear what a “structure located in Land Bay 1 but with associated land area located in Land Bay 2” would be. Does this refer to a structure itself located in both land bays, a structure with parking in the other or both land bays, a structure with buffer areas located in the other or both land bays, a structure with associated facilities (such as stormwater management facilities) in the other or both land bays? With respect to the third bullet point, it is unclear what “Upon commencement of a railroad crossing” means. Does this mean “Upon commencement of construction of a railroad crossing”?
- Proffer 2.2.1 – The Proffer is at least in part contingent upon the Land Bay 2 Owner entering into a revenue sharing agreement with the County. This would create inappropriate contract zoning, in which the landowner’s obligations would only vest upon the County undertaking certain commitments (entry into the revenue sharing agreement and performance by the County of obligations therein). In this regard as well, staff should be aware that the Proffer Statement eliminates the Applicant’s full construction obligations for the railroad crossing, in Proffer 2.8 of the 2008 Proffer Statement. Also, under Proffer 2.2.1 of the 2008 Proffer Statement, the County is already entitled to request, at no cost to the County, an 80-foot right-of-way across the Property. The proposed Proffer would eliminate that right and therefore raises an issue as to whether the County can agree to concede such an interest in real property without a separate public hearing on the same. See Va. Code § 15.2-1800(B).
- Proffer 2.3 – The proffer to construct an internal access road commits to do what is already an ordinance requirement (and a practical requirement for use of the Property) and therefore may be misleading in the Proffer Statement, other than to the extent that a road of less than 26-foot minimum pavement width could otherwise be constructed. Also, with respect to the second sentence (making the location of the internal access road subject to approval of both land bay owners), the provisions of the first sentence (requiring prior written approval of the other land bay owner to construct an internal access road) render it superfluous.

- Proffer 3.1 – The Proffer could clarify that the 25-foot parking setback area is between the right-of-ways for Shady Elm Road and the East-West collector, on the one hand, and the parking areas, on the other hand; Shady Elm Road and the East-West collector would intersect at an approximately a right angle, so the setback area is not between Shady Elm Road and the East-West collector themselves. Also, the Proffer refers to “Department of Recreation Standards” for the trail system; staff may need to confirm the existence of such standards.
- Proffer 5.1 – The Proffer would require a historic resources study only for Land Bay 2. The 2008 Proffer did not limit the study to Land Bay 2 and staff should be aware that it is Land Bay 1 that has a structure present.
- Proffer 5.2 – Staff should be aware that this Proffer would shift the obligation therein solely to the owner of Land Bay 2. Therefore, Land Bay 1 could fully develop without the County receiving any of the monetary contribution. The Proffers do not propose a proportionate split of the monetary contribution between the two land bays.
- Staff should be aware that the Proffer Statement eliminates the escalator clause (see Proffer 6.1 of the 2008 Proffer Statement).

I have not reviewed the substance of the proffers as to whether the proffers are suitable and appropriate for this specific development, as my understanding is that review will be done by staff and the Planning Commission.

Sincerely,



Roderick B. Williams
County Attorney

cc: Michael T. Ruddy, AICP, Deputy Planning Director (via e-mail)

**REZONING APPLICATION FORM
FREDERICK COUNTY, VIRGINIA**

To be completed by Planning Staff:

Zoning Amendment Number <u>09-15</u>	Fee Amount Paid \$ <u>10,050.00</u>	Date Received <u>9/28/15</u>
PC Hearing Date <u>10-21-15</u>	BOS Hearing Date <u>11/12/15</u>	

The following information shall be provided by the applicant:

All parcel identification numbers, deed book and page numbers may be obtained from the **Office of the Commissioner of Revenue, Real Estate Division, 107 North Kent Street, Winchester.**

1. Applicants:

Name: Pennoni Associates Telephone: (540) 667.2139
c/o Patrick Sowers

Address: 117 East Piccadilly Street
Winchester, Virginia 22601

2. Property Owner (if different than above)

Name: NW Works, Inc. Telephone: (540) 667-0809
Address: 3085 Shawnee Drive
Winchester, VA 22601

Name: Venture I of Winchester, LLC Telephone: (540) 665-0050
Address: 549 Merrimans Lane
Winchester, VA 22601

3. Contact person(s) if other than above

Name: Patrick Sowers Telephone: (540) 667.2139

4. Checklist: Check the following items that have been included with this application.

Location Map (See GDP)	<u>X</u>	Agency Comments	<u>X</u>
Plat	<u>X</u>	Fees	<u>X</u>
Deed of property	<u>X</u>	Impact Analysis Statement	<u>X</u>
Verification of taxes paid	<u>X</u>	Proffer Statement	<u>X</u>

5. The Code of Virginia allows us to request full disclosure of ownership in relation to rezoning applications.

Please list below all owners or parties in interest of the land to be rezoned:

NW Works, Inc.

Venture I of Winchester, LLC

6. A) Current Use of the Property: Vacant (entitled Industrial)

B) Proposed Use of the Property: Industrial

7. Adjoining Property: SEE ATTACHED.

8. Location: The property is located at (give exact location based on nearest road and distance from nearest intersection, using road names and route numbers).

The Property is located east and adjacent to Shady Elm Road (Rt 651)

approximately nine tenths of a mile south of the intersection of Shady Elm Road

(Rt 651) and Apple Valley Road (Rt 652).

In order for the Planning Staff to use its capital facilities impact model, it is necessary for the applicant to provide information concerning the specifics of the proposed use. Otherwise, the planning staff will use the maximum possible density of intensity scenario for the proposed Zoning District as described on page 9 of the application package.

9. Parcel Identification/Location: Parcel Identification Number: 75-A-1 and 75-A-1F

Districts

Magisterial:	<u>Back Creek</u>	High School:	<u>Sherando</u>
Fire Service:	<u>Stephens City</u>	Middle School:	<u>James Wood</u>
Rescue Service:	<u>Stephens City</u>	Elementary School:	<u>Orchard View</u>

10. Zoning Change: List the acreage included in each new zoning category being requested.

Acres	Current Zoning	Zoning Requested
57.6	M1	M1
57.6	Total acreage to be rezoned	

11. The following information should be provided according to the type of rezoning proposed:

Number of Units Proposed

Single Family Home	_____	Townhome	_____	Multi-Family	_____
Non-Residential Lots	_____	Mobile Home	_____	Hotel Rooms	_____

Square Footage of Proposed Uses

Office	_____	Service Station	_____
Retail	_____	Manufacturing	_____
Restaurant	_____	Flex - Warehouse	_____
		Other (Industrial)	1,003,622

12. Signature:

I (we), the undersigned, do hereby respectfully make application and petition the Frederick County Board of Supervisors to amend the zoning ordinance and to change the zoning map of Frederick County, Virginia. I (we) authorize Frederick County officials to enter the property for site inspection purposes.

I (we) understand that the sign issued when this application is submitted must be placed at the front property line at least seven days prior to the Planning Commission public hearing and the Board of Supervisors' public hearing and maintained so as to be visible from the road right-of-way until the hearing.

I (we) hereby certify that this application and its accompanying materials are true and accurate to the best of my (our) knowledge.

Applicant(s) _____

Date 9/25/15

Venture 1 of Winchester, LLC

Applicant(s) _____

Date 9/25/15

Adjoining Property Owners – Artillery Business Center

Owners of property adjoining the land will be notified of the Planning Commission and the Board of Supervisors meetings. For the purpose of this application, **adjoining property is any property abutting the requested property on the side or rear or any property directly across a public right-of-way, a private right-of-way, or a watercourse from the requested property.** The applicant is required to obtain the following information on each adjoining property including the parcel identification number which may be obtained from the office of the Commissioner of Revenue. *The Commissioner of the Revenue is located on the 2nd floor of the Frederick County Administrative Building, 107 North Kent Street.*

Name Property Identification Number (PIN)		Address
Name:	Henry J. Carbaugh Trustee c/o Bank of Clarke Trust Department	202 N Loudoun Street Winchester, VA 22601
Property #:	74-A-68	
Name:	Kitty Hockman Nicholas and Robin H. Eddy	690 Shady Elm Road Winchester, VA 22602
Property #:	74-3-3; 74-3-2; 74-3-1	
Name:	Bowman-Shoemaker Companies, Inc.	P.O. Box 480 Stephens City, VA 22655
Property #:	63-7-5; 63-7-4; 63-7-5	
Name:	Synergy Investments, LLC	416 Battaile Dr Winchester, VA 22601
Property #:	75-A-1A	
Name:	FVC Properties, Inc. c/o Frank Cuppo	500 N Broadway, Suite 123 Jericho, NY 11753
Property #:	75-A-1D; 75-A-1E; 75-A-1B	
Name:	Corrugated Container Corp.	100 Development Lane Winchester, VA 22602
Property #:	75-A-1C	
Name:	Frederick County Sanitation Authority	107 N Kent St Winchester, VA 22601
Property #:	75-A-1G	
Name:	Prosperity Drive Development Group, LLC	180 Prosperity Dr, Suite 3 Winchester, VA 22602
Property #:	75A-6-B-41A	
Name:	Prosperity Properties of Winc, LLC	180 Prosperity Dr, Suite 5 Winchester, VA 22602
Property #:	75-A-2M	
Name:	Prosperity 81, LLC	1306 Squire Ct, Unit B Sterling, VA 20166
Property #:	75-A-2P	
Name:	Lyle P. Strosnider, Inc	220 Prosperity Dr Winchester, VA 22602
Property #:	75-A-2F	
Name:	Pippin Enterprises, LLC	164 Meadow Trace Ln Middletown, VA 22645
Property #:	75-A-2Q	
Name:	Renaissance Commercial Center, Inc.	P.O. Box 480 Stephens City, VA 22655
Property #:	75-A-2R	



Special Limited Power of Attorney
County of Frederick, Virginia
Frederick Planning Web Site: www.co.frederick.va.us

Department of Planning & Development, County of Frederick, Virginia,
107 North Kent Street, Winchester, Virginia 22601
Phone 540-665-5651 Facsimile 540-665-6395

Know All Men By Those Present: That I (We)

(Name) NW Works, Inc. (Phone) (540) 667-0809

(Address) 3085 Shawnee Drive, Winchester, VA 22601
the owner(s) of all those tracts or parcels of land ("Property") conveyed to me (us), by deed recorded in the
Clerk's Office of the Circuit Court of the County of Frederick, Virginia, by

Instrument Number: 08005981 and is described as

Tax Map Parcel 75-A-1F Subdivision: _____
do hereby make, constitute and appoint:

(Name) Pennoni Associates (Phone) (540) 667-2139

(Address) 117 E. Piccadilly Street, Suite 200, Winchester, Virginia 22601

To act as my true and lawful attorney-in-fact for and in my (our) name, place, and stead with full power and
authority I (we) would have if acting personally to file planning applications for my (our) above described
Property, including

☒ **Rezoning (including proffers)**
☐ **Conditional Use Permits**
☐ **Master Development Plan (Preliminary and Final)**
☐ **Subdivision**
☐ **Site Plan**

My attorney-in-fact shall have the authority to offer proffered conditions and to make amendments to previously approved proffered
conditions except as follows:

This authorization shall expire one year from the day it is signed, or until it is otherwise rescinded or
modified.

In witness thereof, I (we) have hereto set my (our) hand and seal this 22nd day of Sept, 2015,

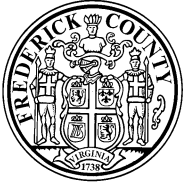
Signature(s) _____

State of Virginia, City/County of Frederick, To-wit: _____

Rebecca Jenkins, a Notary Public in and for the jurisdiction
aforesaid, certify that the person(s) who signed to the foregoing instrument personally appeared before me
and has acknowledged the same before me in the jurisdiction aforesaid this 22nd day of Sept, 2015.

Rebecca Jenkins My Commission Expires: April 30, 2018
Notary Public # 7589155

K



CONDITIONAL USE PERMIT #03-15

GARY ROGERS ARGHYRIS

Staff Report for the Board of Supervisors

Prepared: October 30, 2015

Staff Contact: Mark Cheran, Zoning Administrator

This report is prepared by the Frederick County Planning Staff to provide information to the Planning Commission and the Board of Supervisors to assist them in making a decision on this request. It may also be useful to others interested in this zoning matter.

	<u>Reviewed</u>	<u>Action</u>
Planning Commission:	10/21/15	Recommend Approval
Board of Supervisors:	11/12/15	Pending

EXECUTIVE SUMMARY:

Should the Board of Supervisors feels this cottage occupation (assembly and sale of sheds) to be appropriate, the Planning Commission recommends that the following conditions be attached to the CUP.

1. All review agency comments and requirements shall be complied with at all times.
2. No more than seven (7) sheds for display or sale shall be allowed on the property. Such sheds shall be kept in the rear of the property.
3. An illustrative sketch plan shall be submitted to and approved by Frederick County, and all plan improvements shall be implemented prior to operating the business.
4. One business sign shall be allowed and shall conform to Cottage Occupation sign requirements and shall not exceed four (4) square feet in size and five (5) feet in height.
5. Any expansion or change of use shall require a new Conditional Use Permit.

Following this public hearing, a decision regarding this Conditional Use Permit application by the Board of Supervisors would be appropriate. The Applicant should be prepared to adequately address all concerns raised by the Board of Supervisors.

LOCATION: This property is located at 1518 Fairfax Pike, White Post, Virginia.

MAGISTERIAL DISTRICT: Opequon

PROPERTY ID NUMBER: 87-A-12D

PROPERTY ZONING & PRESENT USE:

Zoned: RA (Rural Areas)
Land Use: Residential

ADJOINING PROPERTY ZONING & PRESENT USE:

North: RA (Rural Areas)	Use: Residential
South: M-1 (Light Industrial)	Use: Manufacturing
East: RA (Rural Areas)	Use: Residential
West: RA (Rural Areas)	Use: Residential

PROPOSED USE: Cottage Occupation for the assembly and sale of sheds.

REVIEW EVALUATIONS:

Virginia Department of Transportation: The application for a Conditional Use Permit for this property appears to have little measurable impact on Route 277, the VDOT facility which would provide access to the property. Existing entrance is adequate for proposed use. However, should use ever expand in the future, the entrance may have to be upgraded to VDOT commercial standards.

Frederick County Inspections: Conditional Use request to use partial area of existing Garage into F-Factory for assembling of wood items for resale/display. The area utilized shall comply with The Virginia Uniform Statewide Building Code. Please submit a permit application for the change of use area. Please include a floor plan of the garage and a future floor plan of the proposed layout. Accessible parking shall be provided per ANSI A117.1-09. Accessible route from parking area/unloading to entrance shall be provided. Final inspection/approval with certificate of occupancy shall be issued prior to new use of the facility.

Winchester-Frederick County Health Department: The Health Department has no objection as long as there is no increase in water usage to the alternative discharge septic system.

Frederick County Sanitation Authority: No comments at this time.

Winchester Regional Airport: No comments.

City of Winchester: No comments

Planning and Zoning: This proposed Cottage Occupation will take place on an 11.29 +/- acre parcel; surrounded by properties that are zoned RA and M-1. The definition for a cottage occupation is an occupation or profession customarily carried on in a dwelling unit or an accessory building, which:

- A. Actually is carried on wholly within the principal residential building or an accessory building or structure;
- B. Is carried on by no more than one person other than members of the family residing on the premises; and
- C. Is clearly incidental and secondary to the use of the dwelling unit for residential purposes.

The assembly of the sheds will take place in an existing garage approximately 1500 square feet in size. Staff would note that there will be no new structures constructed as a part of this CUP. The rear of the property will contain an outdoor display of finished sheds, and no more than seven (7) sheds for display or sale on the property at any given time. Most of the customer base for this proposed use will be internet based. However, there will be no more than five (5) customers allowed on site at any one time to view or pick-up finished sheds. An illustrious sketch plan of the property will be required with this CUP. This plan will show the area of the property being utilized in conjunction with this CUP.

This property is not located within Urban Development Area (UDA) or Sewer and Water Service Area (SWSA) as noted in the 2030 Comprehensive Policy Plan of Frederick County. However, this property is located within the Southern Frederick County Long Range Land Use Plan. This area of the County has been identified for future industrial uses.

STAFF CONCLUSIONS FOR THE 10/21/15 PLANNING COMMISSION MEETING:

If the Planning Commission feels this cottage occupation for the assembly and sale of sheds to be appropriate, staff recommends the following conditions be attached to the CUP.

- 1. All review agency comments and requirements shall be complied with at all times.
- 2. No more than five (5) customers at any one time on site.

3. No more than seven (7) sheds for display or sale shall be allowed on the property. Such sheds shall be kept in the rear of the property.
4. An illustrative sketch plan shall be submitted to and approved by Frederick County, and all plan improvements shall be implemented prior to operating the business.
5. One business sign shall be allowed and shall conform to Cottage Occupation sign requirements and shall not exceed four (4) square feet in size and five (5) feet in height.
6. Any expansion or change of use shall require a new Conditional Use Permit.

PLANNING COMMISSION SUMMARY & ACTION OF THE OF THE 10/21/15 MEETING:

Staff reported this property is currently zoned RA (Rural Areas) and the current land use is residential. The property is surrounded by RA (Rural Areas) properties used for residential and an M1 (Light Industrial) property to the rear of the property line. Staff presented and overview of the property and the location of structures.

Staff explained that the applicant is attempting to assemble and sell sheds on the property. Staff noted most of the sales of the sheds are internet based, however, the applicant would like the opportunity to have customers visit the site. Staff reported the assembly of the sheds will take place in an existing garage approximately 1,500 square feet in size towards the rear of the property. Staff reviewed the conditions of the CUP.

A Commission Member does not see the need for condition #2 (No more than five (5) customers at any one time on site) due to the inability to enforce it.

A citizen came forward to speak during the public hearing. She had a few concerns which are as follows: speed limit on the stretch of road where business is located, would like to have reduced to 45 mph; existing sheds on the property at the present time not being anchored to the ground.

Staff noted in VDOT's review of the CUP, it was believed to be small enough business now and if growth continues they may have to consider a commercial entrance.

A Commission Member inquired if appropriate to ask VDOT about reducing the speed limit. It was noted the procedure would be to turn the task over to the Transportation Committee for their assistance. It was also noted that a business sign may help in drawing attention to the entrance thus helping drivers reduce speed.

A motion was made, seconded, and passed unanimously to recommend approval of CUP #03-15 with the deletion of condition #2 (No more than five (5) customers at any one time on site).

Absent: Crockett

CONCLUSION FOR THE 11/12/15 BOARD OF SUPERVISORS MEETING:

Should the Board of Supervisors feels this cottage occupation (assembly and sale of sheds) to be appropriate, the Planning Commission recommends that the following conditions be attached to the CUP.

6. All review agency comments and requirements shall be complied with at all times.
7. No more than seven (7) sheds for display or sale shall be allowed on the property. Such sheds shall be kept in the rear of the property.
8. An illustrative sketch plan shall be submitted to and approved by Frederick County, and all plan improvements shall be implemented prior to operating the business.
9. One business sign shall be allowed and shall conform to Cottage Occupation sign requirements and shall not exceed four (4) square feet in size and five (5) feet in height.
10. Any expansion or change of use shall require a new Conditional Use Permit.

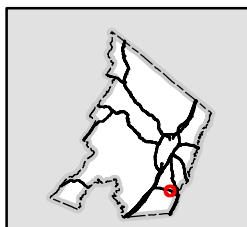
Following this public hearing, a decision regarding this Conditional Use Permit application by the Board of Supervisors would be appropriate. The applicant should be prepared to adequately address all concerns raised by the Board of Supervisors.

CUP # 03 - 15 Gary Arghyris

PIN:
87 - A - 12D
Sale of Sheds



- Applications
- Parcels
- Building Footprints
- B1 (Business, Neighborhood District)
- B2 (Business, General District)
- B3 (Business, Industrial Transition District)
- EM (Extractive Manufacturing District)
- HE (Higher Education District)
- M1 (Industrial, Light District)
- M2 (Industrial, General District)
- MH1 (Mobile Home Community District)
- MS (Medical Support District)
- OM (Office - Manufacturing Park)
- R4 (Residential Planned Community District)
- R5 (Residential Recreational Community District)
- RA (Rural Area District)
- RP (Residential Performance District)



CUP # 03 - 15 Gary Arghyris

PIN:
87 - A - 12D
Sale of Sheds

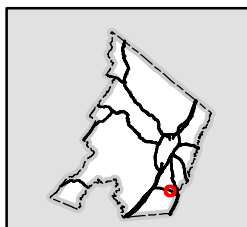
Note:
Frederick County Dept of
Planning & Development
107 N Kent St
Suite 202
Winchester, VA 22601
540 - 665 - 5651
Map Created: September 28, 2015
Staff: mcheran



0 125 250 500 Feet

CUP # 03 - 15 Gary Arghyris

PIN:
87 - A - 12D
Sale of Sheds



CUP # 03 - 15 Gary Arghyris

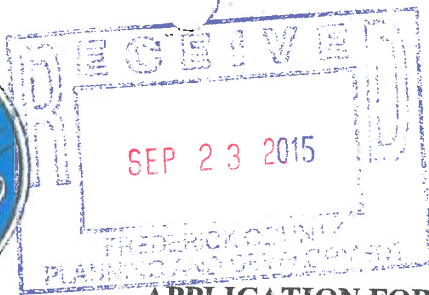
PIN:
87 - A - 12D
Sale of Sheds

Note:
Frederick County Dept of
Planning & Development
107 N Kent St
Suite 202
Winchester, VA 22601
540 - 665 - 5651
Map Created: September 28, 2015
Staff: mcheran



0 125 250 500 Feet

Applications
Parcels
Building Footprints



Submittal Deadline
P/C Meeting
BOS Meeting

9/25/15
10/2/15
11/2/15

APPLICATION FOR CONDITIONAL USE PERMIT
FREDERICK COUNTY, VIRGINIA

1. Applicant (check one): Property Owner ☒ Other ☐

NAME: Gary Rogers Arghyris

ADDRESS: 1518 Fairfax Pike White Post, VA 22663

TELEPHONE: 540-869-4050

2. Please list all owners, occupants, or parties in interest of the property:

Barbara Ellen Pierce

3. The property is located at: (please give exact directions and include the route number of your road or street)

Rt. 277 / 1518 Fairfax Pike White Post, VA 22663

4. The property has a road frontage of 570 feet and a depth of 993 feet and consists of 11.287 acres. (Please be exact)

5. The property is owned by Gary Arghyris Barbara Pierce as evidenced by deed from Robert Einstein (previous owner) recorded in deed book no. 659 on page 732, as recorded in the records of the Clerk of the Circuit Court, County of Frederick.

6. Property Identification Number (P.I.N.) 87-A-12D
Magisterial District Opequon
Current Zoning RA

12. Additional comments, if any: _____

I (we), the undersigned, do hereby respectfully make application and petition the governing body of Frederick County, Virginia to allow the use described in this application. I understand that the sign issued to me when this application is submitted must be placed at the front property line at least seven (7) days prior to the first public hearing and maintained so as to be visible until after the Board of Supervisors' public hearing. Your application for a Conditional Use Permit authorizes any member of the Frederick County Planning Commission, Board of Supervisors or Planning and Development Department to inspect your property where the proposed use will be conducted.

Signature of Applicant 

Signature of Owner 

Owners' Mailing Address 1518 Fairfax Pike White Post, VA 22663

Owners' Telephone No. 540-869-4050

TO BE COMPLETED BY THE ZONING ADMINISTRATOR:

USE CODE: _____

RENEWAL DATE: _____

CHAPTER 10, ARTICLE 1, SECTION 1-4



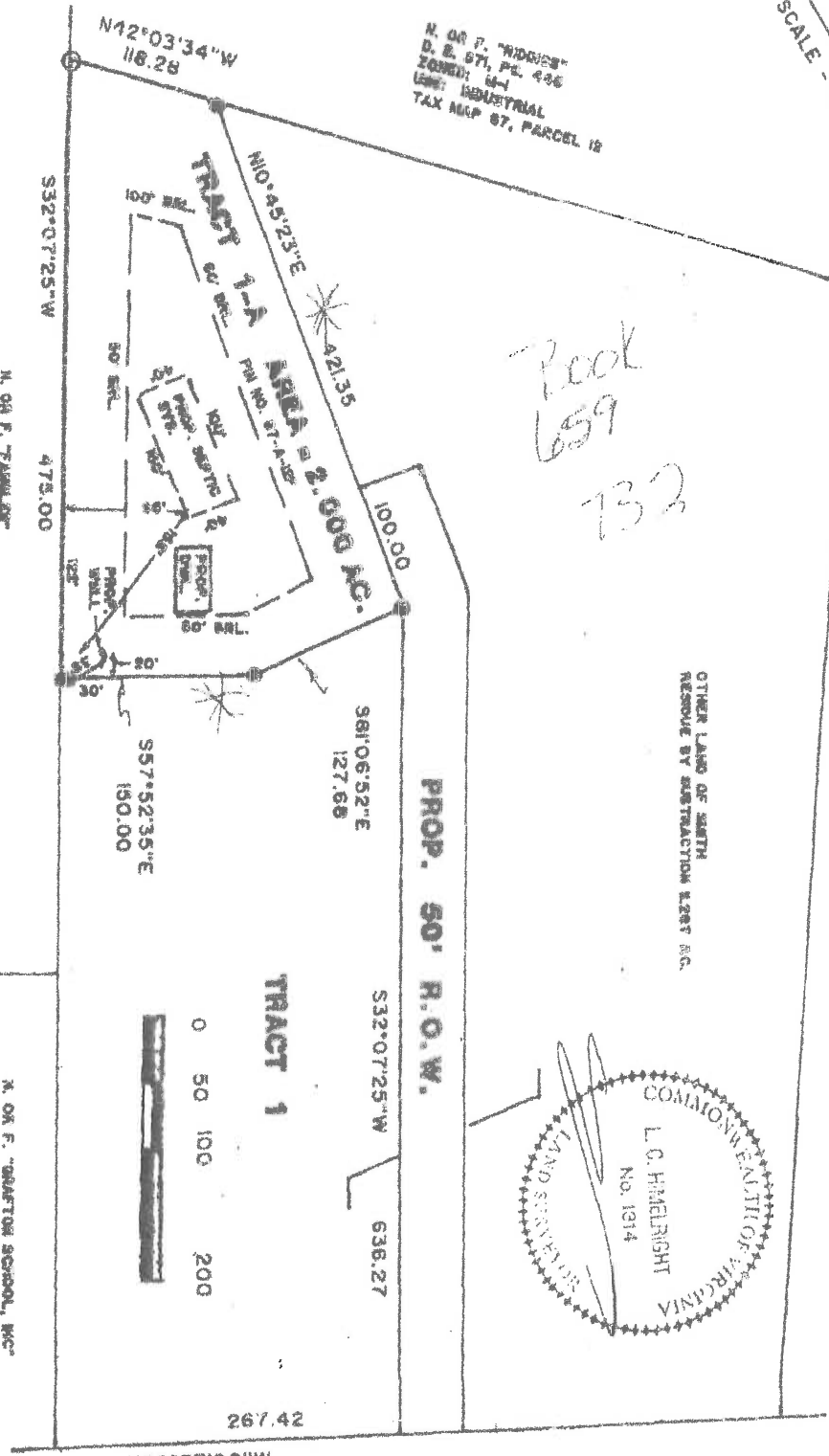
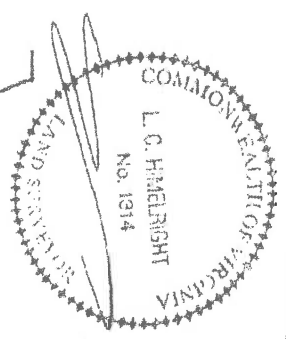
0399

SCALE - 1" = 100'

N. OR P. "WIDEN"
D. E. 571, PL. 436
ZONE: M-1
USE: INDUSTRIAL
TAX MAP 87, PARCEL 18

Pool
659
732

OTHER LAND OF SOUTH
RESERVE BY ABSTRACTION 1,287 A.C.



N. OR P. "WIDEN"
D. E. 571, PL. 436
ZONE: M-1
USE: INDUSTRIAL

SHEET 2 OF 2

● DENOTES IRON PIN SET
○ DENOTES EXISTING PIN OR PIPE

N. OR P. "WIDEN" SCHOOL, INC.

ROUTE 277

FAIRFAX PIKE

WIRCHIA: FREEBICK COUNTY, SCT.
This instrument of writing was produced to me on
2-28-05 at 1:46pm
and with certificate of acknowledgment thereto executed
was admitted to record. Tax imposed by Sec. 58.1-802 of
the Code of Virginia, and 58.1-801 have been paid, if assessable
Richard P. Hanson Clerk

CUP#03-15
 Gary Rogers Arghyris
 PIN 87-A-12D

7. Adjoining Property:

	<u>USE</u>	<u>ZONING</u>
North	_____	_____
East	_____	_____
South	_____	_____
West	_____	_____

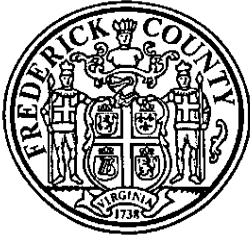
8. The type of use proposed is (consult with the Planning Dept. before completing):

9. It is proposed that the following buildings will be constructed:

10. The following are all of the individuals, firms, or corporations owning property adjacent to both sides and rear and in front of (across street from) the property where the requested use will be conducted. (Continue on back if necessary.)
 These people will be notified by mail of this application:

Name and Property Identification Number	Address
Name <u>Grafton School, INC.</u>	<u>1532 Fairfax Pike</u>
Property # <u>87-A-13A</u>	
Name <u>James Fransler</u>	
Property # <u>87-A-1413</u>	
Name <u>Iron Gate</u>	<u>212 Apprentice Ln.</u>
Property # <u>87-A-12</u>	
Name <u>Cal Houn, James A</u>	<u>1450 Fairfax Pike</u>
Property # <u>87-A-12C</u>	
Name <u>Donnie Hamman</u>	<u>160 Journeyman Ln.</u>
Property # <u>87-4-1</u>	
Name <u>Brain Hazelwood</u>	<u>1500 Fairfax P. Ke</u>
Property # <u>87-A-12F</u>	
Name <u>Gerald Riddle</u>	<u>1487 Fairfax Pike</u>
Property # <u>87-A-4</u>	

Name and Property Identification Number		Address
Name	Gerald Riddle	1487 Fairfax Pike
Property #	87-A-5	
Name		
Property #		
Name		
Property #		
Name		
Property #		
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Property #		



RESOLUTION

Action:

PLANNING COMMISSION: October 21, 2015 - Recommended Approval

BOARD OF SUPERVISORS: November 12, 2015 ☐ APPROVED ☐ DENIED

RESOLUTION

CONDITIONAL USE PERMIT #03-15 GARY ROGERS ARGHYRIS

WHEREAS, Conditional Use Permit #03-15 Of Gary Rogers Arghyris, submitted by Gary Rogers Arghyris, for a cottage occupation for the assembly and sale of sheds was considered. The property is located at 1518 Fairfax Pike. The property is further identified with Property Identification Number 87-A-12D in the Opequon Magisterial District. The conditional use is a permitted use in the RA (Rural Areas) Zoning District; and

WHEREAS, the Frederick County Planning Commission held a public hearing on the conditional use permit on October 21, 2015, recommended approval of the Conditional Use Permit with conditions: and,

WHEREAS, the Frederick County Board of Supervisors held a public hearing on this Conditional Use Permit during their regular meeting on November 12, 2015; and,

WHEREAS, the Frederick County Board of Supervisors finds the approval of this conditional use permit to be in the best interest of the public health, safety, welfare, and in conformance with the Comprehensive Policy Plan;

NOW, THEREFORE, BE IT ORDAINED by the Frederick County Board of Supervisors that Chapter 165 of the Frederick County Code, Zoning, is amended to revise the zoning map to reflect that Conditional Use Permit Application #03-15 – Gary Rogers Arghyris for a cottage occupation for the assembly and sale of sheds is permitted on the parcel identified by Property Identification Number (PIN) 87-A-12D with the following conditions:

1. All review agency comments and requirements shall be complied with at all times.

2. No more than seven (7) sheds for display or sale shall be allowed on property. Such sheds shall be kept in the rear of the property.
3. An illustrative sketch plan shall be submitted to and approved by Frederick County, and all plan improvements shall be implemented prior to operating the business.
4. One business sign shall be allowed and shall conform to the Cottage Occupation sign requirements and shall no exceed four (4) square feet in size and five (5) feet in height.
5. Any expansion or change of use shall require a new Conditional Use Permit.

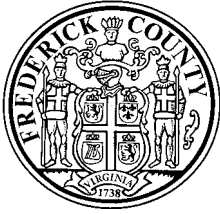
Passed this 12th day of November, 2015 by the following recorded vote:

Richard C. Shickle, Chairman	_____	Gary A. Lofton	_____
Robert A. Hess	_____	Charles S. DeHaven, Jr.	_____
Gene E. Fisher	_____	Blaine P. Dunn	_____
Robert W. Wells	_____		

A COPY ATTEST

Brenda G. Garton
Frederick County Administrator

L



REZONING APPLICATION #07-15
WOODSIDE LAND COMPANY, LLC
Staff Report for the Board of Supervisors
Prepared: October 6, 2015 (Updated October 28, 2015)
Staff Contact: Michael T. Ruddy, AICP, Deputy Planning Director

	<u>Reviewed</u>	<u>Action</u>
Planning Commission:	10/21/15	Recommended Approval
Board of Supervisors:	11/12/15	Pending

PROPOSAL: To rezone 20.00 acres from the RA (Rural Areas) District to M2 (Industrial General) District with proffers.

LOCATION: The property is located on the southern side of Route 669 about 2000' east of Route 11 and adjacent to the Winchester & Western Railroad.

EXECUTIVE SUMMARY & PLANNING COMMISSION RECOMMENDATION FOR THE 11/12/15 BOARD OF SUPERVISORS MEETING:

This is an application to rezone a total of 20 acres of land from the RA (Rural Areas) District to the M2 (Industrial General) District with proffers to accommodate industrial uses. The property is located within the Sewer and Water Service Area (SWSA). In general, the proposed industrial land use designation for this property is consistent with the current industrial land use supported by the 2030 Comprehensive Plan.

With this rezoning, the applicant has proffered that this project will contribute to transportation improvements in the vicinity of the property. However, no improvements have been identified. In addition, the existing State Road, Route 669, in the vicinity of this project does not appear to be of a standard that would support an industrial development of this intensity without some significant improvements. The Applicants approach is to provide cash contribution in the amount of \$0.75 per square foot of building. It does not appear as though the potential transportation impacts associated with this request have been adequately addressed by the Applicant. The application has identified an opportunity to assist the Frederick County Sanitation Authority in its search for additional resources by providing an easement for a well if one is determined to be viable.

The Planning Commission, as noted in the meeting summary (page 8), discussed this item thoroughly and identified several issues with the transportation components of this request including the current condition of Route 669 and the rationale for the amount of the monetary contribution. **Ultimately, the Planning Commission recommended approval of this request.**

Following the required public hearing, a decision regarding this rezoning application by the Board of Supervisors would be appropriate. The applicant should be prepared to adequately address all concerns raised by the Board of Supervisors.

This report is prepared by the Frederick County Planning Staff to provide information to the Planning Commission and the Board of Supervisors to assist them in making a decision on this application. It may also be useful to others interested in this zoning matter. Unresolved issues concerning this application are noted by staff where relevant throughout this staff report.

	<u>Reviewed</u>	<u>Action</u>
Planning Commission:	10/21/15	Recommended Approval
Board of Supervisors:	11/12/15	Pending

PROPOSAL: To rezone 20.00 acres from the RA (Rural Areas) District to M2 (Industrial General) District with proffers.

LOCATION: The property is located on the southern side of Route 669 about 2000' east of Route 11 and adjacent to the Winchester & Western Railroad.

MAGISTERIAL DISTRICT: Stonewall

PROPERTY ID NUMBERS: 34-A-6D

PROPERTY ZONING: RA (Rural Areas)

PRESENT USE: Agricultural

ADJOINING PROPERTY ZONING & PRESENT USE:

North:	RA (Rural Areas)	Use:	Residential
South:	RA (Rural Areas)	Use:	Agriculture
East:	RA (Rural Areas)	Use:	Agriculture
West:	M1 (Light Industrial)	Use:	Industrial

REVIEW EVALUATIONS:

Virginia Dept. of Transportation: *Please see attached letter dated July 31, 2015.*

Frederick County Fire Marshal: Plans approved.

Public Works Department: Impact Statement: We concur with the applicant's reference to the proposed development meeting with the County's and the Commonwealth's specifications related to road design and stormwater management. We anticipate that the development will also require upgrading Route 669, (Woodbine Road), to accommodate the proposed industrial traffic as well as stormwater runoff. The existing road has a gravel surface and a low water crossing at its intersection with Duncan Run.

We will grant our approval of the proposed rezoning with the understanding that the above comment will be considered in the design of the future industrial park.

Frederick County Sanitation Authority: *Please see attached letter from Uwe E. Weindel, PE, dated June 29, 2015.*

Frederick –Winchester Service Authority: No Comment.

Frederick County Park & Recreation: Parks and Recreation has no comments regarding the proposed rezoning.

Winchester Regional Airport: No impact to airport operations.

Frederick County Public School: We have reviewed the above-referenced application. We offer no comments.

Frederick County Attorney: *Please see attached letter from Roderick B. Williams, County Attorney, dated July 14, 2015.*

Planning & Zoning:

1) Site History

The original Frederick County Zoning Map (U.S.G.S. Stephenson Quadrangle) depicts the zoning for the subject parcel as A-2 (Agricultural General) District. The County's agricultural zoning districts were combined to form the RA (Rural Areas) District upon adoption of an amendment to the Frederick County Zoning Ordinance on May 10, 1989. The corresponding revision of the zoning map resulted in the re-mapping of the subject property and all other A-1 and A-2 zoned land to the RA District.

2) **Comprehensive Policy Plan**

The 2030 Comprehensive Plan is the guide for the future growth of Frederick County.

Land Use.

The 2030 Comprehensive Plan and the Northeast Frederick Land Use Plan provide guidance on the future development of the property. The property is located within the (Sewer and Water Service Area (SWSA)). The 2030 Comprehensive Plan identifies the general area surrounding this property with an industrial land use designation. In general, the proposed industrial land use designation for this property is consistent with the current land use supported by the Comprehensive Plan which continues to promote industrial and commercial land uses in this area of the Northeast Frederick Land Use Plan.

3) **Potential Impacts**

Site Access and Transportation.

The County's Eastern Road Plan identifies a major collector road in the immediate vicinity of this property. Route 669 is anticipated to extend from its current alignment to the east, through the adjacent property, providing improved access to this area of industrial development.

The traffic from this project would ultimately access the Route 11/Route 669/Interstate 81 area. This is an area that includes identified improvements to the County's road system including an improved major collector road, Route 669, an improved major arterial road, Route 11, and a new collector road through the Sempeles property. Some improvements in this area are anticipated to be completed by others through current and future rezoning applications.

Access to the site is proposed to be via a single entrance onto Route 669. This application proposes no improvements to the County's road system in support of this request. Alternately, the request provides for a monetary contribution for transportation improvements. This cash contribution is in the amount of \$0.75 per building square foot, payable at the time of the building permit application. Based on the proposed cap of 102,500 square feet of building development, a maximum transportation contribution of \$76,875 may be generated by this rezoning request. The per square foot amount is comparable to the cash component of recent similar rezonings with a cash proffer amount. However, these rezonings were also doing additional improvements to offset their impacts and gain site access. For example the BPG rezoning was also doing frontage improvements and participating in a potential future signal and the Blackburn rezoning had to do significant berming along their Apple Valley Road frontage as well as bear the costs of connecting to Dawson Drive in order to provide additional access to the property.

If the proposed monetary contribution is to be considered an acceptable alternative to the actual construction of physical improvements, it should be determined if the amount and timing of the contribution is sufficient given the potential use of the property. Unlike other recent rezoning applications, there does not appear to be an identified transportation improvement project in the vicinity of this project that is active and would be a good location for these funds to be allocated towards. Potential issues in the immediate vicinity include the railroad crossing and the alignment of Woodside Road, both of which are unaddressed in this rezoning. Additionally, there are a number of improvements in the area, such as the connection from Woodside to Route 11 at the Rest Church Road intersection that are in the comprehensive plan specifically to address future truck traffic in this area. While that specific improvement is already proffered, this rezoning does not address potential improvements needed to the intersection of Woodside and Route 11 if this property should develop ahead of that proffered condition.

The transportation impacts associated with this industrial land use should also be discussed further. In particular, with regards to the potential industrial land use that may be developed on the site. A cap of 102,500 square feet of building floor area is proposed. What impacts are associated with this amount of development, and what impacts would occur should this cap be exceeded. No particular land use has been proffered which could lead to a large variety in traffic impacts depending on the particular use. General Business Office use has a more intensive trip count than other industrial uses (Frederick County Rezoning Application). Other industrial uses may have a greater physical impact on the transportation network given the potential truck traffic. These factors are an important consideration not only in the vicinity of this site, but further along the transportation network at identified bottlenecks.

Transportation improvements to Route 669, Woodbine Road, are anticipated in the future. Therefore, it is important that the right-of-way needs for the future improvements to Route 669 are accommodated, and that the application provides some contribution to transportation improvements resulting from the impacts of this new development. Those impacts should include those offsite improvements warranted by the development that may be farther away from the property. Frontage improvements in the immediate vicinity of this site should be addressed by the actual development of this site the width of the existing right-of-way and the width of future expansion, beyond the previously identified hatch area, that would be necessary for improvements to Route 669 have not been identified. Dedication of any right-of-way should be included. At this time, no frontage improvements are proposed and no right-of-way dedication is provided.

A more thorough evaluation of the existing road conditions in the immediate vicinity of this project should occur. It appears as though it is a rural paved section with limited width, acute turns, and a low water drainage structure/bridge over Duncan Run. To what extent would future improvements, presumably by others, impact the Duncan Run floodplain? This request should also include an evaluation of the existing railroad crossing at the northwestern limits of the property to determine its capacity to accommodate industrial traffic.

Environment.

The site contains a considerable amount of environmental features, including most significantly, Duncan Run and its associated floodplain and wetlands. Therefore, the northwestern a portion of the site would be deemed to be undevelopable. Previously this area was identified as a hatched area on the Generalized Development Plan denoting a conservation area for storm water management. Improvements in this area are undesirable given the potential environmental impacts. The majority of the property however, contains no environmental features and would be ideal for industrial development.

The Applicant evaluated if expanded water and sewer infrastructure in this general area is needed and if so, whether this property would be able to contribute to those infrastructure needs. This could be done in conjunction with the Frederick County Sanitation Authority (FCSA). Consideration should include the future needs of properties planned for industrial to the east. To that end, the Applicant has proffered an easement for a production well for public use, 100' x 100' in size as shown on the GDP. This proffer contains a sunset clause of December 31, 2018 if the well is not determined to be viable by the Frederick County Sanitation Authority by that time.

Historical.

The Impact Analysis identified that there are historical impacts associated with this application. Two historical structures are located within the vicinity of the proposed rezoning; both were identified as potentially historically significant. The structures are Sarsaparilla Springs (#34-0156) and Woodside (#34-0731). The HRAB reviewed this application at their September 15, 2015, meeting and had no recommendation to forward to the Planning Commission, stating that alterations had been made to the identified structures making them ineligible for the State registry.

4) Proffer Statement

A) Allowed Uses:

No restriction on land uses is proposed. All uses within the M2 (Industrial General) District would be permitted. It is noted that this is the most intensive of the County's zoning districts.

B) Access Management and Transportation:

The site is proffered to have one access point onto Route 669, as shown on the Generalized Development Plan.

A cash contribution in the amount of \$0.75 per building square foot is proffered for transportation improvements.

No other transportation related proffers are offered.

C) Site Development:

The Applicant has proffered that the total building floor area shall not exceed 102,500 square feet. This number is consistent with the amount of industrial development the Applicant modelled in their TIA.

The Applicant has proffered an easement for a production well for public use, 100' x 100' in size as shown on the GDP. This proffer contains a sunset clause of December 31, 2018 if the well is not determined to be viable by the Frederick County Sanitation Authority by that time.

D) Mitigating the Impact of Development:

In addition to the above mentioned cash contribution for transportation improvements, the Applicant has proffered a cash contribution to Frederick County for Fire and Rescue purposes in the amount of \$0.10 per building square foot.

STAFF CONCLUSIONS FOR THE 10/21/15 PLANNING COMMISSION MEETING:

This is an application to rezone a total of 20 acres of land from the RA (Rural Areas) District to the M2 (General Industrial) District with proffers to accommodate industrial uses. The property is located within the Sewer and Water Service Area (SWSA). In general, the proposed industrial land use designation for this property is consistent with the current industrial land use supported by the 2030 Comprehensive Plan.

With this rezoning, the applicant has proffered that this project will contribute to transportation improvements in the vicinity of the property. However, no improvements have been identified. In addition, the existing State Road, Route 669, in the vicinity of this project does not appear to be of a standard that would support an industrial development of this intensity without some significant improvements. The Applicants approach is to provide cash contribution in the amount of \$0.75 per square foot of building. It does not appear as though the potential transportation impacts associated with this request have been adequately addressed by the Applicant. The application has identified an opportunity to assist the Frederick County Sanitation Authority in its search for additional resources by providing an easement for a well if one is determined to be viable.

The Planning Commission should determine if the approach to addressing the transportation component of the application is acceptable, and the amount of the potential proffer, is appropriate. Any issues brought forth by the Planning Commission should be appropriately addressed by the applicant.

PLANNING COMMISSION SUMMARY OF 10/21/15 MEETING:

Staff reported this is a request to rezone 20 acres from the RA (Rural Areas) District to M2 (Industrial General) District with proffers. Staff noted this property is on the east side of Winchester & Western Railroad tracks and south of Woodbine Road. The Applicant has provided a GDP (Generalized Development Plan) for this 20 acre parcel and clearly shows the Woodbine Road right-of-way; Duncan Run and the associated flood plains on each side; highlights the proposed entrance location; and a potential well site for the County.

Staff reported this is a relatively straight forward request however there are some issues that need to be addressed. The proffers for this rezoning were reviewed by Staff. It was noted the industrial land use designation is consistent with the Comprehensive Plan but it is important to recognize some of the impacts associated with this request may be addressed with the applicants proffer statement and the proffers primarily revolve around transportation. Staff explained it is important to recognize the condition of Woodbine Road (Route 669) in the vicinity of this project. The road is relatively rural in condition; it includes a low water bridge crossing Duncan Run, and includes significant turns in the road itself. The long term Comprehensive Plan identifies a major collector road and Woodbine Road extending east from its current location.

Staff continued the potential cash contribution of \$.75 per building square foot has the ability to generate up to but no more than \$76,875 for transportation improvements in that general area. Recognizing the scale of that and the cost of transportation improvements, that potential amount does not appear to address the improvements that may be needed to the road and to other transportation solutions in the general area.

Mr. Timothy Stowe representing the Applicant came forward to address any questions or concerns. Mr. Stowe reiterated this project has been scaled to be able to work with the transportation network that is in place. The goal of the Applicant is to not generate more than 100 trips during peak hours. He noted the Applicant does realize the road is small, winding, and he feels this modest level of traffic will not overtax the roadway.

A Commission Member inquired if the 100 units of traffic is truck traffic and if this site is for a warehouse. Mr. Stowe responded typically in a development similar in nature to this 8% is truck traffic and the balance is usually employees and visitors. He noted the plan is for a warehouse on this site. A Commission Member requested clarification for the basis of the \$.75 per square foot. Mr. Stowe explained this amount has been used in previous projects that have been approved by the Board of Supervisors with very similar interests.

A Commission Member voiced his concern with the Applicants view on the traffic impact; would the existing condition of Woodbine Road structurally sustain 8% of tractor trailer traffic without significant maintenance being performed especially with part of the road being located in a flood plain. He doesn't foresee the road being able to handle that type of traffic. Mr. Stowe noted there has not been any type of soil or pavement analysis performed. However at the present time there are trucks accessing the Frederick County Public Schools warehouse site on a regular basis as well as agricultural traffic and at

times carrying heavier loads than a tractor trailer may hold. The Commission Member inquired if this is an appropriate transportation system to accommodate the use. Mr. Stowe elaborated based on the Comprehensive Plan this is the direction the County has decided to go and this proposal is keeping within that plan.

A Commission Member commented that with the \$.75 per square foot being used in the past for projects we cannot expect someone to do anything different at this point. He also expressed his appreciation of an easement well being considered in the proffers for this project.

A Commission Member asked will traffic intensity require a lot of road maintenance. Staff explained not having performed analysis of the roadway, he cannot speak to what is not known to be factual or to what that piece of pavement can or cannot handle. He expressed confidence that the road was not built to what VDOT would require today for construction of a new road. He agreed this is a valid concern.

A Commission Member requested Staff comment on the rail situation at this location. It was noted they have viewed the site and the track appears to be very straight. If M2 piece of property is the goal for this rezoning than this would be a prime candidate for rail siting and if so can it be accommodated with the length of its property boundary. Staff agreed that is accurate, the length looks good, and there are rail access funds available.

There were no citizen comments for the Public Hearing.

The Applicant came forward to answer any questions and to address any concerns. He explained the rail situation; currently it is Winchester & Western Railroad; last year a second rail line was installed as a stacking/parking area that ran approximately 2000 linear feet down his property; since completion they have started a third line on the west side which means significant parking for Winchester & Western Railroad. The Applicant addressed the concerns regarding Woodbine Road; from the railroad west to Route 11 was upgraded to tractor trailer status about 15 years ago; the road was widened approximately 18 inches on each side and capped. He explained the amount of roadway that is being addressed through the proffer is from the railroad to the turn which is not a very long distance. He agreed on the \$.75 per square foot proffer due to that amount being used previously on rezonings. The Applicant commented regarding tractor trailer traffic on Woodbine Road. He agreed the road would need to be upgraded and the part he is speaking of is of minimal distance.

A Commissioner commented he feels the transportation proffers are inadequate for this rezoning. Another Member noted he feels this is a good application and that the County has to start somewhere to process more industrial uses.

There were no further comments or questions at this time.

A motion was made, seconded, and passed to recommend approval of this rezoning.

Abstain: Oates

Absent: Crockett

**EXECUTIVE SUMMARY & PLANNING COMMISSION RECOMMENDATION FOR THE
11/12/15 BOARD OF SUPERVISORS MEETING:**

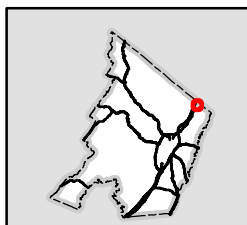
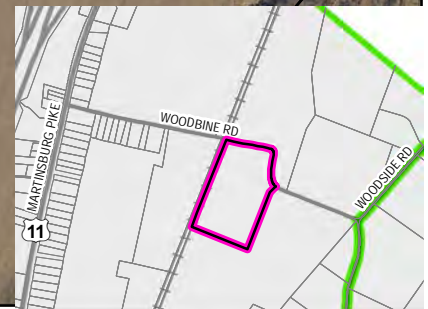
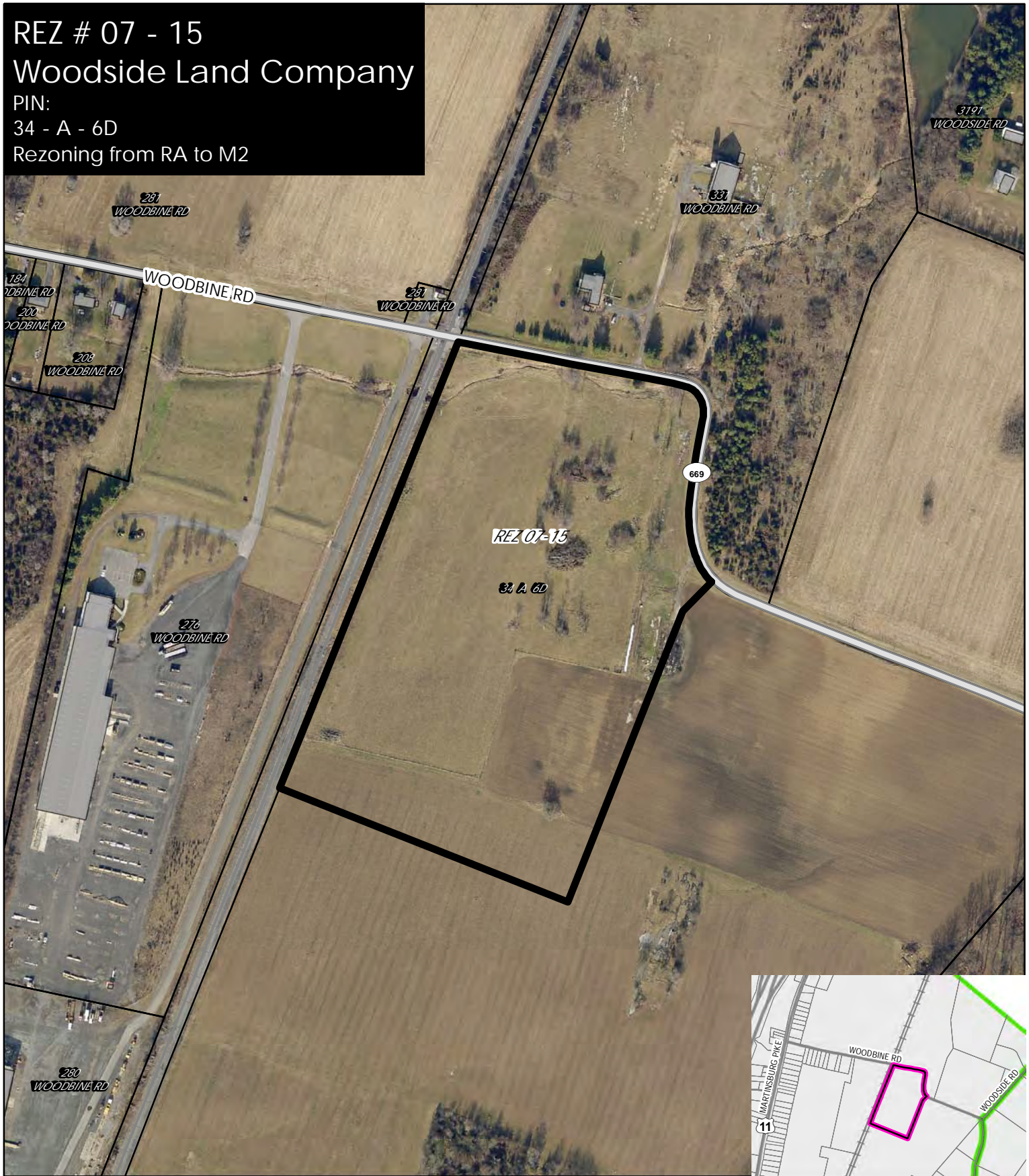
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With this rezoning, the applicant has proffered that this project will contribute to transportation improvements in the vicinity of the property. However, no improvements have been identified. In addition, the existing State Road, Route 669, in the vicinity of this project does not appear to be of a standard that would support an industrial development of this intensity without some significant improvements. The Applicants approach is to provide cash contribution in the amount of \$0.75 per square foot of building. It does not appear as though the potential transportation impacts associated with this request have been adequately addressed by the Applicant. The application has identified an opportunity to assist the Frederick County Sanitation Authority in its search for additional resources by providing an easement for a well if one is determined to be viable.

The Planning Commission, as noted in the meeting summary (page 8), discussed this item thoroughly and identified several issues with the transportation components of this request including the current condition of Route 669 and the rationale for the amount of the monetary contribution. **Ultimately, the Planning Commission recommended approval of this request.**

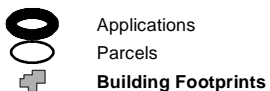
Following the required public hearing, a decision regarding this rezoning application by the Board of Supervisors would be appropriate. The applicant should be prepared to adequately address all concerns raised by the Board of Supervisors.

REZ # 07 - 15
Woodside Land Company
PIN:
34 - A - 6D
Rezoning from RA to M2



REZ # 07 - 15
Woodside Land Company
PIN:
34 - A - 6D
Rezoning from RA to M2

Note:
Frederick County Dept of
Planning & Development
107 N Kent St
Suite 202
Winchester, VA 22601
540 - 665 - 5651
Map Created: September 29, 2015
Staff: mruddy



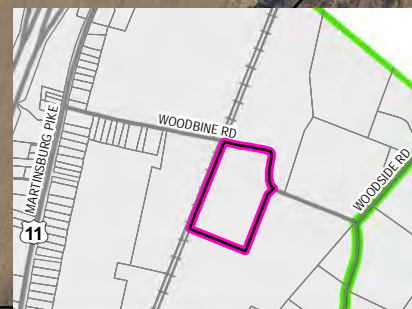
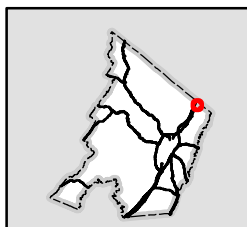
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REZ # 07 - 15 Woodside Land Company

PIN:
34 - A - 6D
Rezoning from RA to M2



-  Applications
-  Parcels
-  Building Footprints
-  B1 (Business, Neighborhood District)
-  B2 (Business, General District)
-  B3 (Business, Industrial Transition District)
-  EM (Extractive Manufacturing District)
-  HE (Higher Education District)
-  M1 (Industrial, Light District)
-  M2 (Industrial, General District)
-  MH1 (Mobile Home Community District)
-  MS (Medical Support District)
-  OM (Office - Manufacturing Park)
-  R4 (Residential Planned Community District)
- R5 (Residential Recreational Community District)
- RA (Rural Area District)
- RP (Residential Performance District)



REZ # 07 - 15

Woodside Land Company

PIN:
34 - A - 6D
Rezoning from RA to M2

Note:
Frederick County Dept of
Planning & Development
107 N Kent St
Suite 202
Winchester, VA 22601
540 - 665 - 5651
Map Created: September 29, 2015
Staff: mruddy



0 200 400 800 Feet

Rezoning: RZ # __-15
Property: Area: 20.000 acres
Tax Parcel 34-(A)-6D
Record Owner: Woodside Land Company, LLC
Project Name: Woodside Land Company
Original Date of Proffers: June 22, 2015
Revised Date of Proffers: August 26, 2015
Magisterial District: Stonewall

Pursuant to Section 15.2-2296 Et. Seq. of the Code of Virginia, 1950, as amended, and the provisions of the Frederick County Zoning Ordinance with respect to conditional zoning, the undersigned owner hereby offer the following proffers that in the event the Board of Supervisors of Frederick County, Virginia, shall approve Rezoning Application #__-15 for rezoning of 20.000-acres from the RA (Rural Areas) Districts to M-2 (Industrial General) District, development of the subject property shall be done in conformity with the terms and conditions set forth herein, except to the extent that such terms and conditions may be subsequently amended or revised by the owner and such are approved by the Board of Supervisors in accordance with the said Code and Zoning Ordinance. In the event that such rezoning is not granted, then these proffers shall be deemed withdrawn and have no effect whatsoever. These proffers shall be binding upon this owner and their legal successors, heirs, or assigns.

The Properties are more particularly described as the lands conveyed to Woodside Land Company, LLC, from John H. Light, as recorded in the Frederick County Circuit Court Clerk's Office as instrument #120009190 dated August 16, 2012.

Proffers:

1. Transportation

- a. The site shall be accessed via a single entrance onto Route 669 as shown on the Generalized Development Plan (GDP) to be made part of this proffer as Exhibit A. Furthermore, the total building floor area shall not exceed 102,500 square feet, per the Transportation Impact Analysis by Stowe Engineering.

- b. The owner hereby proffers a cash contribution to Frederick County, for Transportation Improvements, of \$0.75 per building square foot, to be paid with application for building permits. The term "building square foot" shall be the combined floor area for each story.

2. Fire & Rescue

- a. The owner hereby proffers a cash contribution to Frederick County for Fire and Rescue purposes, of \$0.10 per building square foot to be disbursed to the Frederick County Fire and Rescue Department, to be paid prior to each final site plan approval. The term "building square foot" shall be the combined floor area for each story.

3. Frederick County Sanitation Authority

- a. The owner hereby proffers a 100'x100' easement as shown on the GDP for a production well for public use. This easement shall expire on December 31, 2018, if the well is not viable as determined by the Frederick County Sanitation Authority.

The conditions proffered above shall be binding upon heirs, executors, administrators, assigns, and successors in the interest of the owner and owner. In the event the Frederick County Board of Supervisors grants this rezoning and accepts the conditions, the proffered conditions shall apply to the land rezoned in addition to other requirements set forth in the Frederick County Code and Ordinance.

Respectfully Submitted:

By: John H. Light
John H. Light, manager
Woodside Land Company, LLC

9/24/15
Date

Commonwealth of Virginia,

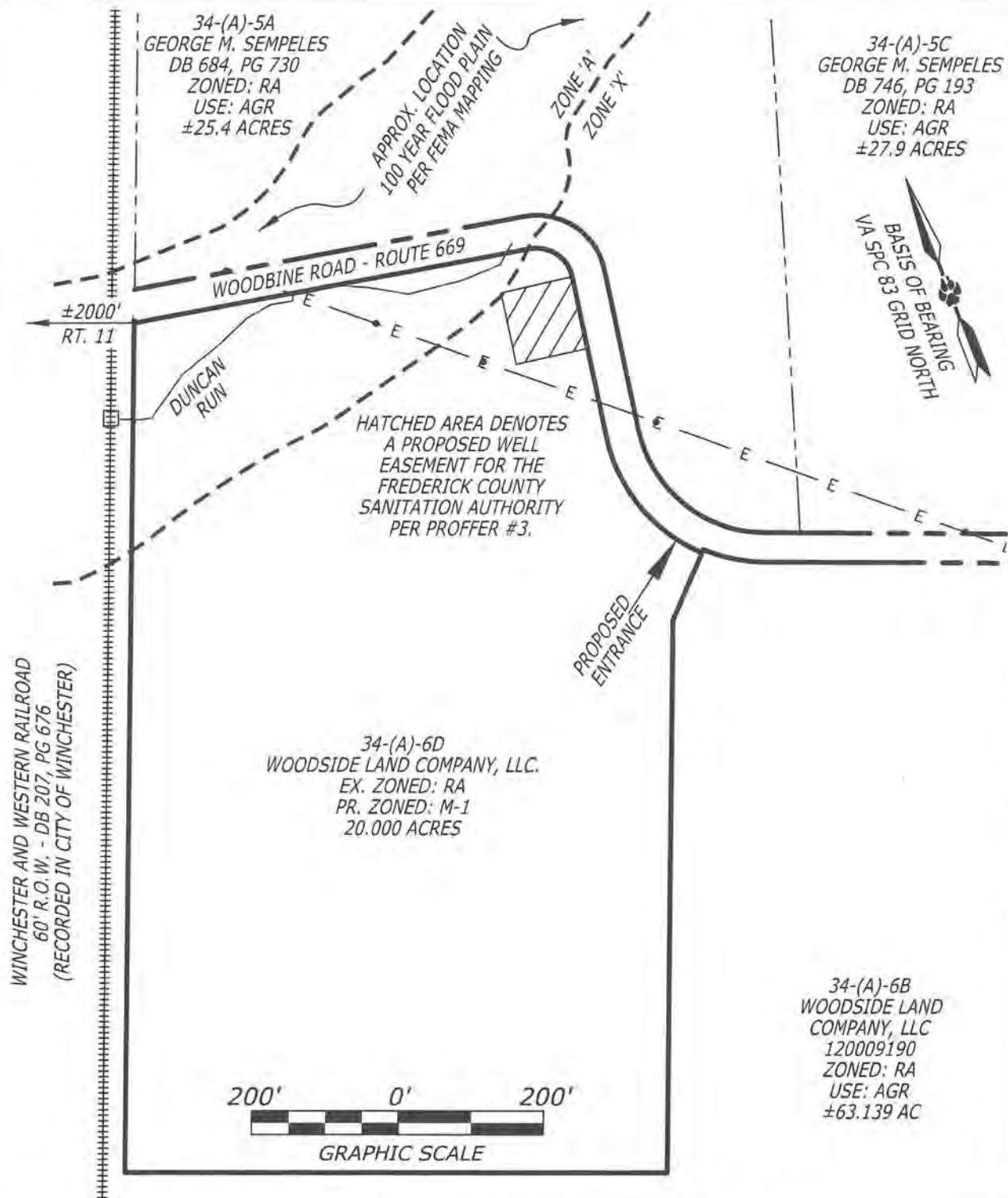
City/County of Frederick To Wit:

The foregoing instrument was acknowledged before me this 24th day of September, 2015

By John Light
Tammie Stevers
Notary Public

7589252
Registration Number

My Commission Expires 10-31-2018



GreyWolfe, Inc.

Land Surveying and Consulting

GENERALIZED DEVELOPMENT PLAN
FOR THE REZONING OF THE LANDS OF
**WOODSIDE LAND
COMPANY, LLC**

STONEWALL MAGISTERIAL DISTRICT
FREDERICK COUNTY, VIRGINIA

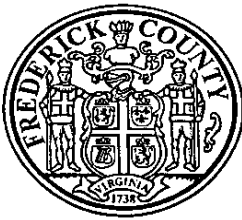
1073 Redbud Road
Winchester, VA 22603
GreyWolfeInc@aol.com
540-667-2001 OFC
540-545-4001 FAX

FILE NO: 0237

DATE: AUG. 26, 2015

SCALE: 1" = 200'

SHEET 1 OF 1



AMENDMENT

Action:

PLANNING COMMISSION: October 21, 2015 - Recommended Approval

BOARD OF SUPERVISORS: November 12, 2015 ☐ APPROVED ☐ DENIED

AN ORDINANCE AMENDING

THE ZONING DISTRICT MAP

REZONING #07-15 WOODSIDE LAND COMPANY, LLC

WHEREAS, Rezoning #07-15, Of Woodside Land Company LLC, submitted by GreyWolfe, Inc., to rezone 20.00 acres of land from the RA (Rural Areas) District to the M2 (Industrial General) District with proffers dated June 22, 2015, last revised on August 26, 2015, was considered. The property is located on the southern side of Route 669 about 2,000' east of Route 11 and adjacent to the Winchester & Western Railroad. The property is further identified by PIN 34-A-6D in the Stonewall Magisterial District; and

WHEREAS, the Planning Commission held a public hearing on this rezoning on October 21, 2015 and recommended approval; and

WHEREAS, the Board of Supervisors held a public hearing on this rezoning on November 12, 2015; and

WHEREAS, the Frederick County Board of Supervisors finds the approval of this rezoning to be in the best interest of the public health, safety, welfare, and in conformance with the Comprehensive Policy Plan;

NOW, THEREFORE, BE IT ORDAINED by the Frederick County Board of Supervisors, that Chapter 165 of the Frederick County Code, Zoning, is amended to revise the Zoning District Map to rezone 20.00 acres of land from the RA (Rural Areas) District to the M2 (Industrial General) District with proffers. The conditions voluntarily proffered in writing by the applicant and the property owner are attached.

This ordinance shall be in effect on the date of adoption.

Passed this 12th day of November, 2015 by the following recorded vote:

Richard C. Shickle, Chairman	_____	Gary A. Lofton	_____
Robert A. Hess	_____	Robert W. Wells	_____
Gene E. Fisher	_____	Charles S. DeHaven, Jr.	_____
Blaine P. Dunn	_____		

A COPY ATTEST

Brenda G. Garton
Frederick County Administrator

Subj: **RE: Woodside Land rezoning**
Date: 9/2/2015 8:26:07 A.M. Eastern Daylight Time
From: rwillia@fcva.us
To: Greywolfeinc@aol.com
CC: mruddy@fcva.us

Gary,

I am in receipt of your letter of August 26, have reviewed the revised proffer statement, and have no comments on it at this time. Thank you.

Rod

From: Rod Williams
Sent: Tuesday, July 14, 2015 12:11 PM
To: Gary Oates
Cc: Mike Ruddy
Subject: Woodside Land rezoning

Gary – Please see the attached re the above item. Thanks.

Rod

Roderick B. Williams
County Attorney
County of Frederick, Virginia
107 North Kent Street, 3rd Floor
Winchester, Virginia 22601
Telephone: (540) 722-8383
Facsimile: (540) 667-0370
E-mail: rwillia@fcva.us
Please note new e-mail address: rwillia@fcva.us



COUNTY of FREDERICK

Roderick B. Williams
County Attorney

540/722-8383

Fax 540/667-0370

E-mail:

rwillia@co.frederick.va.us

July 14, 2015

VIA E-MAIL AND REGULAR MAIL

Mr. Gary Oates
GreyWolfe, Inc.
1073 Redbud Road
Winchester, VA 22603

Re: Rezoning Application – Woodside Land Rezoning
Proffer Statement dated June 22, 2015

Dear Gary:

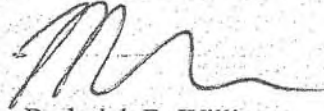
You have submitted to Frederick County for review the above-referenced proffer statement (the "Proffer Statement") for the proposed rezoning of Tax Parcel Number 34-A-6D (the "Property"), 20.00 acres in the Stonewall Magisterial District, from the RA (Rural Areas) District to the M1 (Light Industrial) District, with proffers. I have now reviewed the Proffer Statement and it is my opinion that the Proffer Statement would be in a form to meet the requirements of the Frederick County Zoning Ordinance and the Code of Virginia, and would be legally sufficient as a proffer statement, subject to the following comments:

- My research did not find that the Property has yet been subdivided off as a separate parcel from Tax Parcel Number 34-A-6B. If this does not occur prior to submission of the rezoning application, the rezoning application will need to include a meets and bounds plat of the area to be rezoned.
- Proffer 1.b. – The proffer should identify the specific right of way area reserved and state the procedure for dedication of the right of way. Presumably, the procedure can call for a request by the County and then actual completion of the dedication within a specified period of time. Also, the designation of the right of way designation area as a component of stormwater management does not address how stormwater management would be handled at the time of the dedication of the right of way.

Mr. Gary Oates
July 14, 2015
Page 2

I have not reviewed the substance of the proffers as to whether the proffers are suitable and appropriate for this specific development, as my understanding is that review will be done by staff and the Planning Commission.

Sincerely,

A handwritten signature in black ink, appearing to read 'R. Williams', with a stylized, flowing script.

Roderick B. Williams
County Attorney

cc: Michael T. Ruddy, Deputy Director of Planning & Development, Frederick
County (via e-mail)

Light Property TIA, Frederick County, VA

Summary of VDOT Review Comments

July 31, 2015

Report Comments

1. Please update the Proposed Uses & Access section of the report to provide the proposed development intensity (102,500 square feet per the proffers) and a description of the proposed site access to Route 669.
2. The report is missing a plan at engineering scale that illustrates the proposed uses on the property, please provide.
3. Please update Figure 1 to include identification of existing uses within the Project Location Map.
4. The report and analysis does not take into account the trips to be generated or the transportation improvements associated with the Mr. Fuel Travel Center TIA prepared by Ramey Kemp & Associates. The Build year for the Mr. Fuel development is 2017. Therefore, the analysis of this submission's Design year of 2022 needs to include the proposed background trips and improvements associated with the Mr. Fuel Travel Center TIA. Please update the report as necessary.
5. The trip distribution included in the report and used for future year analysis assumes 90% of trips from southbound Route 11 and 10% from northbound Route 11. However, of the 90% from southbound Route 11, only 40% are from Rest Church Road / I-81 in the AM and 20% are to Rest Church Road / I-81 in the PM. Please update the report and analysis to assume 80% of the site trips are from / to Rest Church Road / I-81, 10% are from / to northbound Route 11, and 10% are from / to southbound Route 11.
6. Proffer 1.b states that a portion of the property along Route 669 will be reserved for right-of-way for potential future road improvements by Frederick County (as identified on the GDP). However, the proffer also states that until such time that said improvements occur, the area will be utilized as conservation area to meet SWM/BMP requirements for the proposed development. Please advise how this area will accommodate a future realignment of Route 669 if it is being utilized to meet the stormwater management requirements of the site? We also recommend removing the 30 year expiration period on the right-of-way.

In response to your email dated 8/4/15 which contained review comments from VDOT, I offer the following responses:

Report Comments

1. Please update the Proposed Uses & Access section of the report to provide the proposed development intensity (102,500 square feet per the proffers) and a description of the proposed site access to Route 669.

Response – This update has been provided

2. The report is missing a plan at engineering scale that illustrates the proposed uses on the property, please provide.

Response – a plan has been added following the Proposed Use section of the report.

3. Please update Figure 1 to include identification of existing uses within the Project Location Map.

Response – Figure 1 has been updated as requested.

4. The report and analysis does not take into account the trips to be generated or the transportation improvements associated with the Mr. Fuel Travel Center TIA prepared by Ramey Kemp & Associates. The Build year for the Mr. Fuel development is 2017. Therefore, the analysis of this submission's Design year of 2022 needs to include the proposed background trips and improvements associated with the Mr. Fuel Travel Center TIA. Please update the report as necessary.

Response – Even though the rezoning for the Mr. Fuel project has not been approved, the traffic and proposed improvements associated with the project have been included in the 2022 design year analysis as requested.

5. The trip distribution included in the report and used for future year analysis assumes 90% of trips from southbound Route 11 and 10% from northbound Route 11. However, of the 90% from southbound Route 11, only 40% are from Rest Church Road / I-81 in the AM and 20% are to Rest Church Road / I-81 in the PM. Please update the report and analysis to assume 80% of the site trips are from / to Rest Church Road / I-81, 10% are from / to northbound Route 11, and 10% are from / to southbound Route 11.

Response – The original trip distribution was based on the existing distribution of traffic in this intersection. While other proposed projects may draw their trips from I-81, this project is not expected to, which has been previously explained. Nonetheless, the trip distribution has been revised as requested.

6. Proffer 1.b states that a portion of the property along Route 669 will be reserved for right-of-way for potential future road improvements by Frederick County (as identified on the GDP). However, the proffer also states that until such time that said improvements occur, the area will be utilized as conservation area to meet SWM/BMP requirements for the proposed development. Please advise how this area will accommodate a future realignment of Route 669 if it is being utilized to meet the stormwater management requirements of the site? We also recommend removing the 30 year expiration period on the right-of-way.

Response – The proffer has been deleted.

7. The note on the Generalized Development Plan referencing the hatched area states, "the owner proffer to convey any portion of the area within 60 to the county...". Please clarify and revise the note accordingly.

Response – The note has been revised.

Synchro Comments

8. The Synchro files for the existing year analysis are utilizing incorrect signal timing for the Rest Church Road / Route 11 intersection (should be 60-70 second cycle length as opposed to the 80- 110 second cycle length assigned in the models). While the signal timing sheet for the intersection is provided in the appendix, the Synchro files are using Max Splits from the Phase Data on page 1, instead of the Split Times on page 5 (signal is coordinated, as opposed to Semi- Actuated Uncoordinated as assigned in the Synchro models). Please utilize the Min. Green, Passage, Yellow, and All Red times from the Phase Data on page 1 and the Max Splits under the Split Times on page 5. Due to the short timeframe of the Build Out year, please use the existing signal timing for the existing year, 2016 Background and 2016 Build Out analysis. Update the report and result outputs as necessary.

Response – The synchro files, output and report have been updated.

9. The 2022 Design Year analysis needs to incorporate the background traffic and transportation improvements from the Mr. Fuel Travel Center TIA prepared by Ramey Kemp & Associates. The Mr. Fuel TIA proposed protective/permissive left turn movements for the Rest Church Road / Route 11 intersection, utilizing flashing yellow arrow indicators (modeled in Synchro as Dallas phasing D.P+P designation). Please update the phasing in the 2022 Design Year models, optimize the signal timings, and update the report and result outputs as necessary.

Response – The 2022 design year has been updated to include the traffic and proposed improvements from the Mr. Fuel project.

10. The report is utilizing HCS 2010 analysis outputs in Synchro. This method does not automatically consider right turn on red movements and the volume must be manual entered in Synchro. Please review this input and update as necessary. The eastbound Rest Church Road right turn movement LOS may be inaccurately reported due to this issue.

Response – Field counts were conducted to determine the percentage of right turning vehicles that were turning right on red. These percentages were applied to the various movements in the AM and PM peak hours to determine the number of RTOR movements. The model has been updated with these numbers.

11. Since Rest Church Road and US-11 is currently running as a protected-only left-turn phasing, any future year scenario that considers the use of protected/permissive left-turn phasing at that intersection shall also consider the impacts of using protected-only

phasing (NOT using protected/permissive phasing). If a safety problem starts to develop with protected/permissive left-turn phasing, we will want to change it back to protected-only phasing and the impacts of that change will need to be evaluated.

Response – This analysis has evaluated the intersection both ways. Without the Dallas Permitted plus Protected phasing proposed by the Mr. Fuel project, the traffic from Mr. Fuel creates a LOS of D in 5 of the movements.

A copy of the updated report, synchro files, proffers, generalized development plan, and plat are attached.

Thank you,

Tim Stowe

Stowe Engineering

V 540.686.7373 | f 540.301.1100 | c 540.336.0656

Rezoning Comments



Frederick County Sanitation Authority

Mail to:

Frederick County Sanitation Authority
Attn: Engineer
P.O. Box 1877
Winchester, Virginia 22604
(540) 868-1061

Hand deliver to:

Frederick County Sanitation Authority
Attn: Engineer
315 Tasker Road
Stephens City, Virginia

Applicant: Please fill out the information as accurately as possible in order to assist the Sanitation Authority with their review. **Attach a copy of your application form, location map, proffer statement, impact analysis, and any other pertinent information.**

Applicant's Name: GreyWolfe, Inc - Gary R. Oates, LS-B, PE Telephone: 540-667-2001

Mailing Address: 1073 Redbud Road, Winchester, VA 22603

Location of property: Southern side of Route 669 about 2000' east
of Route 11 and adjacent to Winchester & Western Railroad

Current zoning: RA Zoning requested: M-1 Acreage: 20

Sanitation Authority Comments:

PLEASE SEE ATTACHED

Sanitation Authority Signature & Date: _____

Notice to Sanitation Authority - Please Return This Form to the Applicant

JUN 2 2015



FREDERICK COUNTY SANITATION AUTHORITY

Post Office Box 1877
Winchester, Virginia 22604-0177

PH - (540)868-1061
Fax - (540)868-1429
www.fcsa-water.com

Uwe E. Weindel, P.E.
Engineer-Director

June 29, 2015

Mr. Gary Oates
Grey Wolfe, Inc.
1073 Redbud Road
Winchester, Virginia 22603

Ref.: Rezoning Plan Comments
Woodside Land Company, LLC
Tax Map # 34-A-6D

Dear Sir:

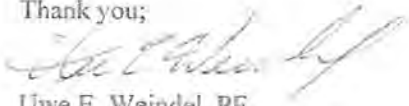
Per your request, a review of the proposed rezoning has been performed. The Frederick County Sanitation Authority offers comments limited to the anticipated impact/effect upon the Authority's public water and sanitary sewer system and the demands thereon.

The parcel is in the water and sanitary sewer area served by the Authority. Based on the location both water and sanitary sewer service is available within a reasonable distance from the site. Sanitary sewer treatment capacity at the waste water treatment plant is also presently available. Sanitary sewer conveyance capacity and layout will be contingent on the applicant performing a technical analysis of the existing sanitary sewer system within the area to be served and the ability of the existing conveyance system to accept additional load. Likewise, water distribution capacity will require the applicant to perform a technical analysis of the existing system within the area to be served to determine available capacity of both the potable water system and the ability to provide fire protection.

Water and sanitary sewers are to be constructed in accordance with the FCSA standards specifications. Dedicated easements may be required and based on the layout vehicular access will need to be incorporated into the final design. All easements should be free from any encumbrance including permanent structures (fences, signs, etc.) and landscaping (trees, shrubs, etc.).

Please be aware that the Authority does not review or comment upon proffers and/or conditions proposed or submitted by the applicant in support of or in conjunction with this plan, nor does the Authority assume or undertake any responsibility to review or comment upon any amended proffers and/or conditions which the Applicant may hereafter provide to Frederick County.

Thank you;


Uwe E. Weindel, PE
Engineer-Director



COUNTY of FREDERICK

Department of Planning and Development

540/ 665-5651

Fax: 540/ 665-6395

September 23, 2015

Mr. Gary Oates, LS-B, PE
GreyWolfe, Inc
1073 Redbud Road
Winchester, Virginia 22603

**RE: Request for Historic Resources Advisory Board (HRAB) Comments
Woodside Land Company Property Rezoning
Property Identification Number (PIN): 34-(A)-6D
Current Zoning District: RA (Rural Area)**

Dear Mr. Oates:

The Frederick County Historic Resources Advisory Board (HRAB) considered the above referenced rezoning proposal during their meeting on September 15, 2015. The HRAB reviewed information associated with Rural Landmarks Survey Report, information from the Virginia Department of Historic Resources and information provided by the applicant's representative.

This application seeks to rezone 20 acres from the RA (Rural Areas) District to the M2 (Industrial General) District with proffers. The site is located on the eastern side of Winchester & Western Railroad and south of Route 669, Woodbine Road, about 2000' east of Route 11 (Martinsburg Pike). The proposed use of the property is industrial uses.

Historic Resources Advisory Board Concerns

The Study of Civil War Sites in the Shenandoah Valley, published by the National Park Service, does not identify the proposed tower site or the surrounding areas as being part of a battlefield. The Rural Landmarks Survey Report for Frederick County, Virginia, identifies two historic structures located within the vicinity of the proposed rezoning. Both of these properties are listed as potentially significant. The sites that are listed in the survey are:

- Sarsaparilla Springs (#34-0156)
- Woodside (#34-0731)

After reviewing this information and the applicant's materials, the Historic Resources Advisory Board (HRAB) recommended the rezoning be sent forward to the Planning Commission and Board of Supervisors for review. The HRAB had no recommendations to forward due to the alterations that have been made to the structures which render them ineligible for the State Registry.

Mr. Gary Oates, LS-B, PE
Re: Rezoning of the Woodside Land Company
September 23, 2015
Page 2

Please contact me with any questions concerning these comments from the HRAB.

Sincerely,

A handwritten signature in cursive script, appearing to read "Candice Perkins".

Candice Perkins, AICP
Senior Planner

CEP/pd

cc: Lauren Murphy, HRAB Chair

Impact Statement

For consideration of Rezoning the lands for

Woodside Land Company, LLC

Stonewall Magisterial District
Frederick County, Virginia

August 26, 2015

Tax Map Numbers

34-(A)-6D

Total Area: 20.000 acres

Owner of Record:

Woodside Land Company, LLC

2973 Woodside Road

Clear Brook, VA 22624

(540) 539-3834

Contact:

Gary R. Oates, LS-B, PE

GreyWolfe, Inc.

1073 Redbud Road

Winchester, VA 22603

(540) 667-2001 ofc

(540) 545-4001 fax

Woodside Land Company, LLC

Introduction

The site is located on the eastern side of Winchester & Western Railroad and south of Route 669, Woodbine Road, about 2000' east of Route 11 (Martinsburg Pike). The parcel is currently zoned RA and is currently used for agriculture. The parcels lies within the Sewer and Water Service Area. The proposed use for the site is Light Industrial General (M-2), with a cap of 102,500 sf of building floor area. The applicant is seeking this change in zoning to create a more viable industrial parcel consistent with the Frederick County Comprehensive Plan.

The 2030 Frederick County Comprehensive Plan contains the Northeast Land Use Plan which designates the area of this rezoning shall be Industrial. There are not any Developmentally Sensitive Areas nearby nor any Public Facilities.

Existing Conditions

The property is used for agriculture. The stormwater drains generally to Duncan Run to the north.

Comprehensive Planning

The 2030 Frederick County Comprehensive Plan contains the Northeast Land Use Plan which designates the area of this rezoning shall be Industrial. There are not any Developmentally Sensitive Areas nearby nor any Public Facilities. The benefit to Frederick County by approving this rezoning will be a positive economic impact from businesses through taxes, as well as employment opportunities for its citizens.

Proposed Development

The site will be graded, landscaped, and roads installed that will meet current County and Commonwealth specifications.

Physical Impacts

A portion of the site is located within the 100 year flood plains per FEMA Flood Map No. 51069C0150D. This area will be utilized as a conservation area for stormwater management. The ability for the County to request any portion of this for road improvements is reserved. Access the site will be via one commercial entrance onto Route 669 and installed per Frederick County Zoning Ordinance. Stormwater quality and quantity shall utilize organic BMP's such as grass swales, bio-retention cells, and artificial wetlands.

Surrounding Properties

The site is bounded to the north by Route 669 and RA zoned land owned by George Sempeles that is comprehensively planned for additional industrial uses consistent with the rest of his industrial park, to the west by Winchester & Western railroad, and to the east and south by agricultural fields owned by the applicant. Past the road and railroad are M-1 (Industrial Lands).

Traffic Impact and Analysis

Report by Stowe Engineering is available upon request if not already provided. The Eastern Road Plan calls for the section of Woodbine Road along to the frontage to be improved to a major collector and the alignment to shift northwards to straighten the road. Since right of way will be needed from neighboring parcels to accomplish this realignment; a cash contribution of \$0.75 per square of building area has been proffered for future transportation needs in the area. This is consistent with the BPG and Blackburn rezoning applications that have been accepted by the County.

Furthermore, the application has proffered to restrict the building footprint to 102,500 sf. This restriction keeps the traffic below the threshold of the VDOT Chapter 527 requirements, limits the peak hour traffic to less than 100 vehicle trips per hour, and maintains a level of service C for the intersection of Route 11 and Woodbine Road where almost all traffic will come from.

Finally, the condition of Woodbine Road and the railroad crossing are adequate for the existing and proposed use. Additional traffic from future rezonings may necessitate improvements the railroad crossing, low water crossing, and road alignment and pavement section.

Sewer Conveyance and Treatment

There is a pump station at the intersection of W&W and Route 669 about 150' from this property. The applicant will be responsible for installing sleeves under the railroad and Route 669 to reach the pump station. Furthermore, the applicant will be responsible for any upgrades or improvements to the existing pump station necessary to receive his effluent. This development is expected to employ 51 people based on the capped floor area, and generate 765 gpd.

Water Supply

The FCSA has a water line on Route 669 that will accessed similar to the sewer. The expected water demand will be 765 gpd for employees, plus an additional 1,000 gpd for wash down uses. The water line brought to the site will be a minimum of 8" in diameter to provide fire protection. Furthermore, the owner has proffered to grant an easement to the Frederick County Sanitation Authority for a production well. The well

site is identified in FCSA's studies and the easement shall remain permanent if the well is a viable source to supplement the public water system.

Drainage

The stormwater runoff drains to the north into Duncan Run. The applicant will be required to implement BMP's and other devices to meet the Commonwealth of Virginia's requirements as required by DEQ.

Solid Waste Disposal

The Civil Engineering Reference Manual, 4th edition, uses a rate of 5.4 cubic yards per 1,000 square feet of floor area. A 102,500 sf development will yield 554 cubic yards per year. The solid waste will be transferred to the Frederick County Landfill Facility by private licensed commercial carriers.

Historical Impact

There are two historical impacts associated with this application.

The first is a house owned by George Semples and referred to in historical documents as the "Joseph Payne House", "Locust Level" and "Sasparilla Springs". It is further identified by the Virginia Department of Historic Resources as DHR-034-0156. It is a Federal style home made of brick and built in 1840. The owner has developed the surrounding land into an industrial park. This house is situated 175' north of the proposed rezoning and is screened by evergreens along the road.

The second house is owned by David Gum and known as the "Branson-Stephenson-Huyett-Light House". It is further identified as DHR-034-0731. The architecture is a Federal/Adamesque and it was built circa 1840. It is situated along Woodside Road 1500' east of the proposed rezoning.

Educational Impact

This development will not create additional students for the schools.

Police, Fire, and Rescue Impact

The development will increase the burden on fire and rescue. The applicant is offering a proffer of \$0.10 per constructed building square foot to the County for fire and rescue services.

Parks & Recreation Impact

This development is not expected to increase population; therefore, no measurable impacts are predicted.

Soils

The soil types identified on the General Soil Map of the Soil Survey of Frederick County, Virginia are Carbo-Oaklet-Rock Outcropping (#7C) and Carbo-Oaklet Silt Loams (#32B) as shown on map sheet 19. These soil types are clay with an abundance of limestone rock. The characteristics of this soil are manageable for development following the Virginia Erosion and Sediment Control practices.

Geology

This area is also known for karst topography. Care should be taken to explore for sinkholes and caverns prior to any excavation or development.

**REZONING APPLICATION FORM
FREDERICK COUNTY, VIRGINIA**

SEP 24 2015

To be completed by Planning Staff:

Zoning Amendment Number 07-15 Fee Amount Paid \$ 12,000.00
PC Hearing Date 10/21/15 Date Received 9/24/15
BOS Hearing Date 11/12/15

The following information shall be provided by the applicant:

All parcel identification numbers, deed book and page numbers may be obtained from the **Office of the Commissioner of Revenue, Real Estate Division, 107 North Kent Street, Winchester.**

1. Applicant:

Name: GreyWolfe, Inc. - Gary R. Oates Telephone: (540) 667-2001
Address: 1073 Redbud Road, Winchester, VA, 22603

2. Property Owner (if different than above):

Name: Woodside Land Company, LLC Telephone: (540) 539-3834
Address: 2973 Woodside Road
Clear Brook, VA 22624

3. Contact person if other than above:

Name: Gary R. Oates Telephone: (540) 667-2001

4. Property Information:

- a. Property Identification Number(s): 34-(A)-6D
- b. Total acreage to be rezoned: 20.000 acres
- c. Total acreage of the parcel(s) to be rezoned (if the entirety of the parcel(s) is not being rezoned): _____
- d. Current zoning designation(s) and acreage(s) in each designation: 20.000 ac. RA
- e. Proposed zoning designation(s) and acreage(s) in each designation: 20.000 ac. M-2
- f. Magisterial District(s): Stonewall

5. Checklist: Check the following items that have been included with this application.

Location map	<input checked="" type="checkbox"/>	Agency Comments	<input checked="" type="checkbox"/>
Plat	<input checked="" type="checkbox"/>	Fees	<input checked="" type="checkbox"/>
Deed to property	<input checked="" type="checkbox"/>	Impact Analysis Statement	<input checked="" type="checkbox"/>
Verification of taxes paid	<input checked="" type="checkbox"/>	Proffer Statement	<input checked="" type="checkbox"/>
Plat depicting exact meets and bounds for the proposed zoning district	<input checked="" type="checkbox"/>		<input checked="" type="checkbox"/>
Digital copies (pdf's) of all submitted documents, maps and exhibits	<input checked="" type="checkbox"/>		<input checked="" type="checkbox"/>

6. The Code of Virginia allows us to request full disclosure of ownership in relation to rezoning applications.

Please list below all owners or parties in interest of the land to be rezoned:

John H. Light, sole member

7. Adjoining Property:

<u>PARCEL ID NUMBER</u>	<u>USE</u>	<u>ZONING</u>
34-(5)-5A & 5C	Agricultural	RA
34-(A)-6B	Agricultural	RA
34-(A)-6A	Industrial	M-1
34-(A)-4	Industrial	M-1

8. Location: The property is located at (give exact location based on nearest road and distance from nearest intersection, using road names and route numbers):

Southern side of Route 669 about 2000' east of Route 11 and adjacent to Winchester & Western Railroad

9. The following information should be provided according to the type of rezoning proposed:

Number of Units Proposed

Single Family homes: 0 Townhome: 0 Multi-Family: 0
Non-Residential Lots: 0 Mobile Home: 0 Hotel Rooms: 0

Square Footage of Proposed Uses

Office: _____ Service Station: _____
Retail: _____ Manufacturing: _____
Restaurant: _____ Warehouse: 102,500
Commercial: _____ Other: _____

10. Signature:

I (we), the undersigned, do hereby respectfully make application and petition the Frederick County Board of Supervisors to amend the zoning ordinance and to change the zoning map of Frederick County, Virginia. I (we) authorize Frederick County officials to enter the property for site inspection purposes.

I (we) understand that the sign issued when this application is submitted must be placed at the front property line at least seven days prior to the Planning Commission public hearing and the Board of Supervisors public hearing and maintained so as to be visible from the road right-of-way until the hearing.

I (we) hereby certify that this application and its accompanying materials are true and accurate to the best of my (our) knowledge.

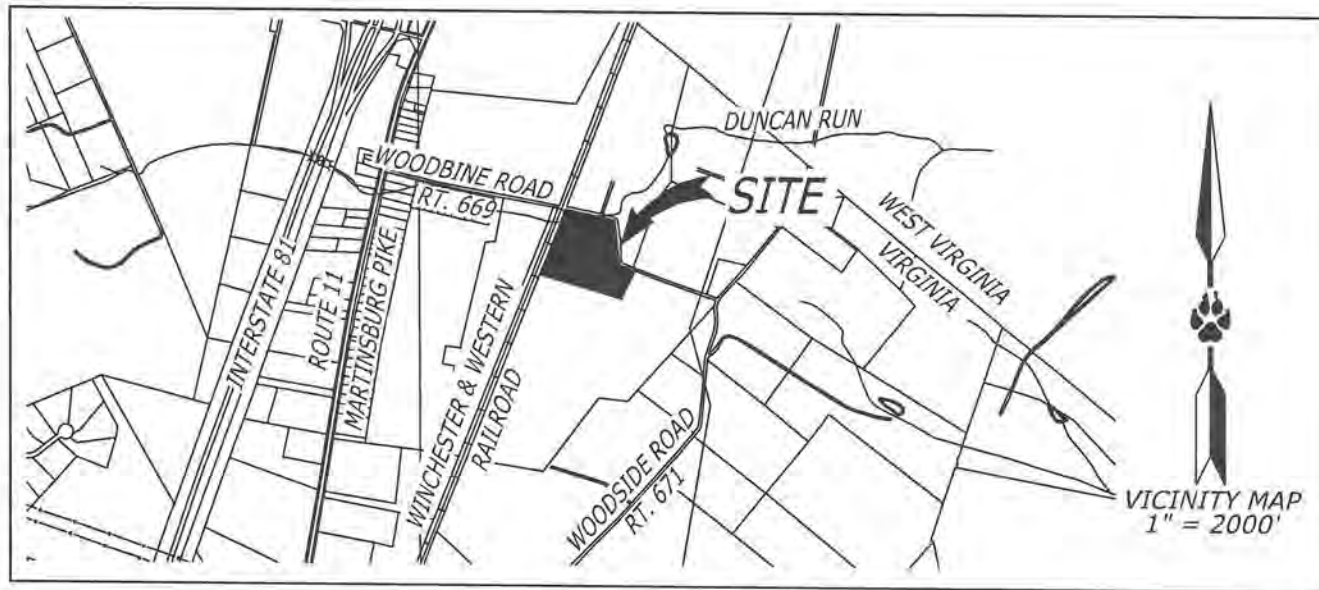
Applicant(s): Gray Voice, Inc. - Gray R. Cate Date: 9/24/15
_____ Date: _____

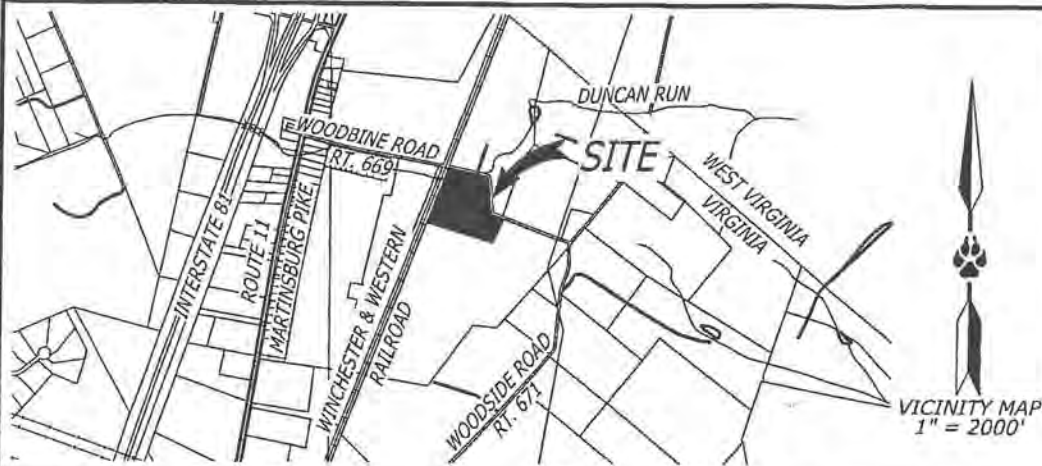
Owner(s): John H. Light Date: 9/24/15
_____ Date: _____

ADJOINING PROPERTY OWNERS

Owners of property adjoining the land will be notified of the Planning Commission and the Board of Supervisors meetings. For the purpose of this application, **adjoining property is any property abutting the requested property on the side or rear or any property directly across a public right-of-way, a private right-of-way, or a watercourse from the requested property.** The applicant is required to obtain the following information on each adjoining property including the parcel identification number which may be obtained from the office of the Commissioner of Revenue. *The Commissioner of the Revenue is located on the 2nd floor of the Frederick County Administrative Building, 107 North Kent Street.*

Name and Property Identification Number	Address
Name George Sempeles	331 Woodbine Road Clear Brook, VA 22624
Property # 34-(A)-4, 5A, 5C	
Name Woodside Land Company, LLC	2973 Woodside Road Clear Brook, VA 22624
Property # 34-(A)-6B	
Name Lester Properties-VA	1111 2nd Avenue South Lester Prairie, MN 55354
Property # 34-(A)-6A	
Name	
Property #	
Name	
Property #	
Name	
Property #	
Name	
Property #	
Name	
Property #	
Name	
Property #	





FINAL PLAT OF A MINOR RURAL SUBDIVISION
OF THE LAND OF
WOODSIDE LAND COMPANY, LLC.
STONEWALL MAGISTERIAL DISTRICT, FREDERICK COUNTY, VIRGINIA
JUNE 11, 2015

OWNER'S CERTIFICATE

THE ABOVE AND FOREGOING MINOR RURAL SUBDIVISION SURVEY OF THE WOODSIDE LAND COMPANY, INC., AS APPEARS ON THE ACCOMPANYING PLAT IS WITH THE CONSENT OF AND IN ACCORDANCE WITH THE DESIRES OF THE UNDERSIGNED OWNERS, PROPRIETORS, AND TRUSTEES, IF ANY.

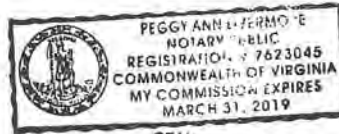
John H. Light
JOHN H. LIGHT,
MANAGER OF WOODSIDE LAND COMPANY, LLC.

COMMONWEALTH OF VIRGINIA

CITY/COUNTY OF Frederick, TO-WIT: THE FOREGOING OWNER'S CERTIFICATE
WAS ACKNOWLEDGED BEFORE ME THIS 10 DAY OF June, 2015 BY:

John H. Light
PRINTED OWNER
Peggy Ann Livermore
PRINTED NOTARY PUBLIC
Peggy Ann Livermore
SIGNATURE NOTARY PUBLIC

MY COMMISSION EXPIRES March 31, 2019



SEAL

SURVEYOR'S CERTIFICATE

I HEREBY CERTIFY THE PARCEL CONTAINED IN THIS MINOR RURAL SUBDIVISION IS THE LAND CONVEYED TO WOODSIDE LAND COMPANY, INC. FROM JOHN H. LIGHT BY DEED DATED AUGUST 16, 2012, OF RECORD IN THE FREDERICK COUNTY CIRCUIT CLERK'S OFFICE AS INSTRUMENT 120009190.

Gary R. Oates
GARY R. OATES, LAND SURVEYOR

PARENT TRACT
PARCEL 34-(A)-6B
83.288 AC. BY DEED
ZONED: RA

APPROVAL

[Signature]
FREDERICK COUNTY SUBDIVISION ADMINISTRATOR

14 Aug. 15
DATE

[Signature]
FREDERICK COUNTY SANITATION AUTHORITY

6-22-2015
DATE

[Signature]
VIRGINIA DEPARTMENT OF TRANSPORTATION

8-6-2015
DATE



GreyWolfe, Inc.
Land Surveying and Consulting

1073 Redbud Road
Winchester, VA 22603
GreyWolfeInc@aol.com
540-667-2001 OFC
540-545-4001 FAX

DRAWN BY: CBC

FILE NO: 0237

SHEET 1 OF 3

0222

NOTES

1. A FIELD SURVEY WAS PERFORMED BY GREYWOLFE, INC. IN APRIL, 2015.
2. A TITLE REPORT HAS NOT BEEN FURNISHED; THEREFORE, OTHER EASEMENTS OR ENCUMBRANCES MAY EXIST THAT ARE NOT SHOWN ON THIS PLAT.
3. THIS PARCEL IS LOCATED ON FLOOD INSURANCE RATE MAP No. 51069C0150D IN FLOOD ZONE 'A', AREAS SUBJECT TO INUNDATION BY THE 1% ANNUAL CHANCE FLOOD, AND FLOOD ZONE 'X', AREAS DETERMINED TO BE OUTSIDE THE 0.2% ANNUAL CHANCE FLOODPLAIN, DATED SEPTEMBER 2, 2009.
4. THERE WAS NO READILY APPARENT EVIDENCE OF A CEMETERY WITHIN CLOSE PROXIMITY TO THE BOUNDARY LINES.
5. BOUNDARY SURVEY NOT PERFORMED ON ENTIRE 34-(A)-6B PARCEL. FIELD SURVEY WAS PERFORMED TO MEET FREDERICK COUNTY SUBDIVISION REQUIREMENTS.

AREA TABULATION

TAX PARCEL	ZONED	USE	ORIG. ACREAGE	ADJ. ACREAGE
34-(A)-6B	RA	AGRICULTURAL	±83.288 ACRES (BY DEED)	±63.165 ACRES (BY SUBTRACTION)
34-(A)-6D	RA	AGRICULTURAL	N/A	20.000 ACRES
R.O.W. DEDICATION			N/A	0.123 ACRES
			±83.288 ACRES (BY DEED)	±83.288 ACRES

ABBREVIATIONS

BRL = BUILDING RESTRICTION LINE
 DB = DEED BOOK
 PG = PAGE
 PP = POWER POLE
 PR. = PROPOSED
 AGR. = AGRICULTURAL
 R.O.W. = RIGHT OF WAY

LEGEND

⊙ = PROPERTY CORNER FOUND
 1/2" REBAR UNLESS
 OTHERWISE STATED
 ⊗ = PROPERTY CORNER SET
 5/8" X 24" REBAR WITH
 YELLOW PLASTIC CAP
 —E— = OVERHEAD UTILITY LINES
 ⊥ = CENTERLINE
 —X— = 4' WIRE FENCE



FINAL PLAT OF A MINOR RURAL SUBDIVISION
 OF THE LAND OF
WOODSIDE LAND COMPANY, LLC.
 STONEWALL MAGISTERIAL DISTRICT, FREDERICK COUNTY, VIRGINIA



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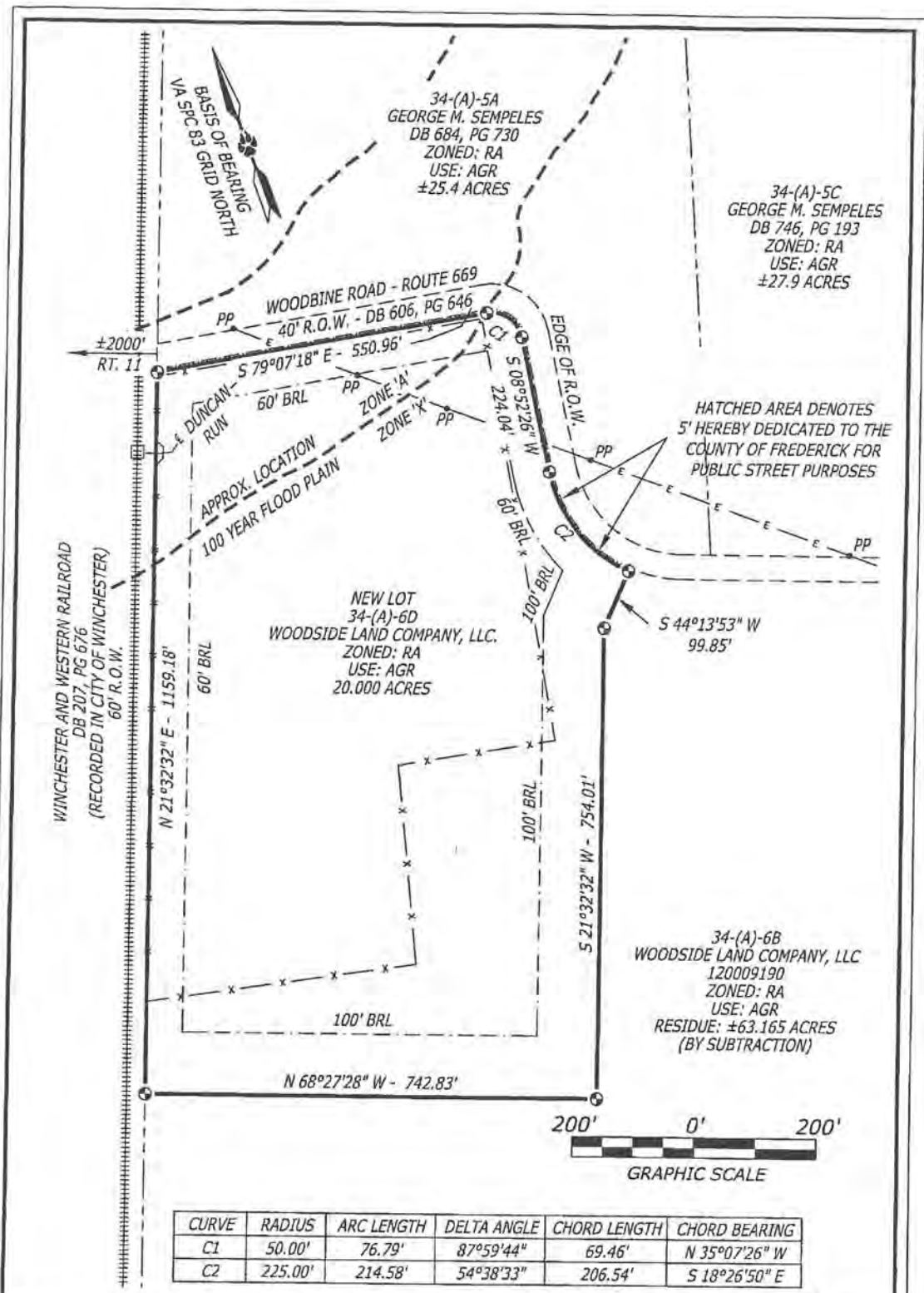
FILE NO: 0237

DATE: JUNE 11, 2015

SCALE: N/A

SHEET 2 OF 3

0223



FINAL PLAT OF A MINOR RURAL SUBDIVISION
OF THE LAND OF
WOODSIDE LAND COMPANY, LLC.
STONEWALL MAGISTERIAL DISTRICT, FREDERICK COUNTY, VIRGINIA

GreyWolfe, Inc.
Land Surveying and Consulting

1073 Redbud Road
Winchester, VA 22603
GreyWolfeInc@aol.com
540-667-2001 OFC
540-545-4001 FAX

FILE NO: 0237 DATE: JUNE 11, 2015 SCALE: 1" = 200' SHEET 3 OF 3

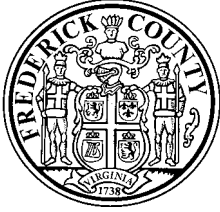
VIRGINIA: FREDERICK COUNTY, SC1.
This instrument of writing was produced to me on

August 14, 2015 at 3:11 P.M.
and with certificate acknowledgement thereto annexed
was admitted to record. Tax imposed by Sec. 58.1-802 of
§ N/A, and 58.1-801 have been paid, if assessable.

Rebecca P. Hogan, Clerk

0224

M



REZONING APPLICATION #08-15

McCANN OFFICE PARK

Staff Report for the Board of Supervisors

Prepared: October 6, 2015 (Updated October 28, 2015)

Staff Contact: Michael T. Ruddy, AICP, Deputy Planning Director

	<u>Reviewed</u>	<u>Action</u>
Planning Commission:	10/21/15	Recommended Approval
Board of Supervisors:	11/12/15	Pending

PROPOSAL: To rezone 154.923 acres as follows: 43.76 acres from RA (Rural Areas) to RA (Rural Areas) with proffers, 6.18 acres from RA (Rural Areas) District to B2 (General Business) District, 11.729 acres from RA (Rural Areas) District to M1 (Light Industrial) District and 93.246 acres from RA (Rural Areas) District to OM (Office-Manufacturing Park) District with proffers.

LOCATION: The property is located on the southeastern side of Martinsburg Pike (Route 11) and Old Charlestown Road (Route 761).

EXECUTIVE SUMMARY & PLANNING COMMISSION RECOMMENDATION FOR THE 11/12/15 BOARD OF SUPERVISORS MEETING:

This is an application to rezone a total of 154.923 acres as follows: 43.76 acres from RA (Rural Areas) to RA (Rural Areas) with proffers, 6.18 acres from RA (Rural Areas) District to B2 (General Business) District, 11.729 acres from RA (Rural Areas) District to M1 (Light Industrial) District and 93.246 acres from RA (Rural Areas) District to OM (Office-Manufacturing Park) District with proffers. The property is located within the Sewer and Water Service Area (SWSA). The proposed land use designations for this property are consistent with the current land use supported by the 2030 Comprehensive Plan.

From a transportation perspective, the Applicant is addressing potential issues brought forth in the TIA as well as Comprehensive Plan items such as widening of Old Charlestown Road and Route 37 right-of-way. Staff believes this sufficiently offsets the potential traffic impacts of the development.

Issues and impacts associated with the environmental and historical resources on this property appear to have been adequately addressed by the Applicant.

The Planning Commission's discussion sought clarification on a couple of points relating to the transportation comments provided in the review of this application. **Ultimately, the Planning Commission did not identify any outstanding concerns with the request and recommended approval of this request.**

Following the required public hearing, a decision regarding this rezoning application by the Board of Supervisors would be appropriate. The applicant should be prepared to adequately address all concerns raised by the Board of Supervisors.

This report is prepared by the Frederick County Planning Staff to provide information to the Planning Commission and the Board of Supervisors to assist them in making a decision on this application. It may also be useful to others interested in this zoning matter. Unresolved issues concerning this application are noted by staff where relevant throughout this staff report.

	<u>Reviewed</u>	<u>Action</u>
Planning Commission:	10/21/15	Recommended Approval
Board of Supervisors:	11/12/15	Pending

PROPOSAL: To rezone 154.923 acres as follows: 43.76 acres from RA (Rural Areas) to RA (Rural Areas) with proffers, 6.18 acres from RA (Rural Areas) District to B2 (General Business) District, 11.729 acres from RA (Rural Areas) District to M1 (Light Industrial) District and 93.246 acres from RA (Rural Areas) District to OM (Office-Manufacturing Park) District with proffers.

LOCATION: The property is located on the southeastern side of Martinsburg Pike (Route 11) and Old Charlestown Road (Route 761).

MAGISTERIAL DISTRICT: Stonewall

PROPERTY ID NUMBERS: 44-A-25A, 44-A-25B, 44-A-40

PROPERTY ZONING: RA (Rural Areas)

PRESENT USE: Agricultural

ADJOINING PROPERTY ZONING & PRESENT USE:

North:	RA (Rural Areas)	Use:	Vacant/Agriculture
South:	RA (Rural Areas)	Use:	Residential
East:	RA (Rural Areas)	Use:	Vacant/Agriculture
West:	RP (Residential Performance)	Use:	Residential

REVIEW EVALUATIONS:

Virginia Dept. of Transportation: *Please see attached letter dated September 11, 2015.*

Public Works Department: We do not have any comments on the proposed rezoning. However, we recommend that a wetland study and geological survey to locate potential sinkholes be performed prior to submittal of the master development plan.

Frederick County Sanitation Authority: *Please see attached letter from Uwe E. Weindel, PE, dated March 20, 2015.*

Frederick-Winchester Service Authority: No comments.

Frederick County Public Schools: No comments.

Frederick County Department of Parks & Recreation: Parks and Recreation would like to see language added to address the following proffer items: a. ii. / d. I, ii: An indication that the McCanns Lane gate at the Cul de Sac will be of a type to allow bike and pedestrian trail users to pass, and include a marked crossing of the proposed interior road.

d. iii: An indication of the timing this trail segment will be built.

Other than the requested changes, Parks and Recreation supports the proposed trail network and open space proffers.

Frederick County Attorney: *Please see attached letter from Roderick Williams, County Attorney, dated May 11, 2015.*

Planning & Zoning:

1) Site History

The original Frederick County Zoning Map (U.S.G.S. Stephenson Quadrangle) depicts the zoning for the subject parcel as A-2 (Agricultural General) District. The County's agricultural zoning districts were combined to form the RA (Rural Areas) District upon adoption of an amendment to the Frederick County Zoning Ordinance on May 10, 1989. The corresponding revision of the zoning map resulted in the re-mapping of the subject property and all other A-1 and A-2 zoned land to the RA District.

In 2015, a Boundary Line Adjustment Plat was approved that incorporated three acres from this property into the Hiatt Run Condominium property. As the Planning Commission and Board of Supervisors is aware, Master Development Plan MPD #04-15, the Hiatt Run Condominiums Master Development Plan, was approved by the County that enabled the development of 120 units contained within eight garden apartment buildings on the Hiatt Run property. A rezoning

for the three acres that was adjusted from this property is currently under review.

2) **Comprehensive Policy Plan**

The 2030 Comprehensive Plan is the guide for the future growth of Frederick County.

Land Use.

The 2030 Comprehensive Plan and the Northeast Frederick Land Use Plan provide guidance on the future development of the property. The property is located within the SWSA. The 2030 Comprehensive Plan identifies this property with an OM (Office Manufacturing) land use designation and a DSA (Developmentally Sensitive Area) land use designation. This was a balanced approach to the land use in this area that enabled development and protected the environmental and historic features of the site.

In general, the proposed office manufacturing zoning, supported by the small area of commercial designation, and the light industrial zoning south of future Route 37, for this property is consistent with the current land use supported by the Comprehensive Plan. The remaining RA (Rural Areas) zoning is generally consistent with the identified DSA.

In addition, the items that are described in the amendment to the Northeast Land Use Plan in support of the land use designations appear to be appropriately addressed in this application.

Site Access and Transportation.

Primary access to the property will be via an improved McCanns Road and the intersection of McCanns Road and Route 11. A secondary future access point will be provided from Old Charlestown Road which will provide for a restricted right in, right out entrance which will be installed in the future. It is important to recognize that this approach to accessing the property was based on direction the Applicant received from VDOT during the review of this rezoning application. McCanns Road will be improved for industrial traffic and a signalized intersection will be provided at the intersection of McCanns Lane and Route 11.

The Applicant has made an effort to address the potential impacts of this rezoning request by linking the vehicle trip count to the development of the property. The Average Daily Trips from this site shall not exceed 6,713.

The County's Eastern Road Plan identifies Route 37 traversing through this property. In addition, Route 11 is identified as an improved arterial road and Route 761 is identified as an improved major collector road.

Route 37 is appropriately addressed in this application. The right-of-way for future Route 37, a 400' strip of land, is proposed to be dedicated to the County for future Route 37 across the property within 60 days of a written request from Frederick County.

The Applicant has reserved a temporary access easement to the southern parcel that would be extinguished in the future when other public access is provided to serve the southern 11.982 acres. The easement within the area to be dedicated should be recognized as it may present an encumbrance in the dedication of the Route 37 right-of-way.

Environment.

Hiatt Run and its associated floodplains and wetlands traverse the north western portion of this property. This developmentally sensitive area has been recognized in the application by being placed in the area reserved as RA (Rural Areas) land and identified in the proffer statement as open space.

History.

HRAB reviewed this application at their March 17, 2015 meeting and issued comments dated March 18, 2015. The HRAB's recommendation included; providing a pull off area to the Shenandoah Valley Battlefields Association to provide for interpretive signage, that only one freestanding sign be permitted at the park entrance off Old Charlestown Road identifying the name of the park only, and that the split rail fence along Martinsburg Pike and Old Charlestown Road is addressed.

The Applicant has addressed the preservation of the core historic areas associated directly with the Stephensons Depot area by preserving this area as RA (Rural Areas) land and identifying it in the proffer statement as open space. The split rail fence has not been included as the Applicant states this will be in the large area dedicated to the County for future right-of-way and when considering the distance from the road will not be visible. It is also the Applicants desire to ensure the fence will be a wire fence for cattle.

3) Site Suitability/Environment

The application's impact analysis should include more detail with regards to the suitability of the site. It is customary to prepare exhibits that show the location of the various site constraints or features such as the floodplains and wetlands. This information is important to the Planning Commission and Board of Supervisors review of the application. It would also be used to reflect the accuracy of the proposed zoning boundaries with regards to areas of development and preservation. Including the historical context of this site would also be helpful and illustrate support for the zoning delineation.

4) Potential Impacts

In addition to addressing the transportation impacts, the Applicant has addressed other potential impacts as follows. The Applicant has proffered a 10' asphalt trail along the north side of McCanns Road which will connect into the trail proffered with the adjacent Hiatt Run

Condominium project.

It has been pointed out that the Applicant could consider connecting the proposed trail to the adjacent major development east along Old Charlestown Pike. Please clarify the internal 10' trail loop adjacent to Old Charlestown Pike within the Proffer Statement. As a result of the pending Hiatt Run Condominium rezoning application, the trail connections in this general area may be adequately addressed.

Consider the split rail fence proffer internal to the project, especially in the area where the internal road traverses the DSA in the northern portion of the project.

5) **Proffer Statement** Dated March 6, 2015 (revised August 27, 2015)

A) Allowed Uses:

No restriction on land uses is proposed. All uses within the zoning districts requested, OM, B2, M1, and RA would be permitted. It is noted that the RA (Rural Areas) portion of the property outside of the dedicated right-of-way is identified as open space and will not be developed.

B) Access Management and Transportation:

The site is proffered to have primary access from McCanns Road onto Route 11 and a secondary access controlled to a right in, right out entrance on Route 761.

As part of this program, the Applicant has proffered:

- signalization at Route 11 and McCanns Road,
- turn lanes on Route 11 north,
- turning lanes on McCanns Road,
- improvements to McCanns Road to a point 500' west of the CSX Railroad Bridge from where all entrances to the commercial and industrial development will be located (paved with a heavy traffic cross section per VDOT standards)..

The Applicant has proffered a considerable amount of right-of-way dedication to the State and the County in support of future road improvements in the area. The dedication is consistent with what is needed in this area.

Most significant of the transportation proffers is the dedication of a 400' strip of land for future Route 37 across the property within 60 days of a written request from Frederick County. The Applicant has reserved a temporary access easement to the southern parcel that would be extinguished in the future when other public access is provided to serve the southern 11.982 acres.

No additional transportation proffers or cash contributions for transportation improvements are offered with this request.

C) Site Development:

The Applicant has proffered that the total vehicle trips shall not exceed 6,713 vehicle trips per day as a result of the site development. This number is consistent with the amount of industrial and commercial development the Applicant modelled in their TIA.

The Applicant has proffered a 10' asphalt trail along the north side of McCanns Road which will connect into the trail proffered with the adjacent Hiatt Run Condominium project.

The Applicant has proffered a single monument style sign at the intersection of McCanns Road and Route 11 that would appear to be consistent with the requirements of the County's Sign Ordinance. The Applicant should further clarify if the signage proffer is intended to restrict signs throughout the rest of the property. In addition, a sign in this location would only be permitted if it was located on the property of the development and not off-premise. This should be addressed further by the Applicant. The County should not accept a proffer that is in conflict with current Ordinance requirements.

In an effort to address the historical component of this request and the desire to provide access to the trail system and historical areas of the site, the Applicant has proffered to provide an additional ten (10) parking spaces beyond current requirements in the B2 area to be used for visitor parking. In addition, a 10' by 10' area nearby will be proffered for a historical marker. This marker would be provided by others.

The 27.435 acres of the property that has been set aside as an open space buffer and remains RA (Rural Areas) is consistent with the environmental and historical areas recognized in the Comprehensive Plan on this property. This proffer provides visitors with access and interpretation to the recreational and historical components of this site.

D) Mitigating the Impact of Development:

The Applicant has proffered a cash contribution to Frederick County for Fire and Rescue purposes in the amount of \$0.10 per building square foot.

STAFF CONCLUSIONS FOR THE 10/21/15 PLANNING COMMISSION MEETING:

This is an application to rezone a total of 154.923 acres as follows: 43.76 acres from RA (Rural Areas) to RA (Rural Areas) with proffers, 6.18 acres from RA (Rural Areas) District to B2 (General Business) District, 11.729 acres from RA (Rural Areas) District to M1 (Light Industrial) District and 93.246 acres from RA (Rural Areas) District to OM (Office-Manufacturing Park) District with proffers. The

property is located within the Sewer and Water Service Area (SWSA). The proposed land use designations for this property are consistent with the current land use supported by the 2030 Comprehensive Plan.

From a transportation perspective, the Applicant is addressing potential issues brought forth in the TIA as well as Comprehensive Plan items such as widening of Old Charlestown Road and Route 37 right-of-way. Staff believes this sufficiently offsets the potential traffic impacts of the development.

Issues and impacts associated with the environmental and historical resources on this property appear to have been adequately addressed by the Applicant.

The Planning Commission should determine if the approach to addressing the transportation component of the application is acceptable.

PLANNING COMMISSION SUMMARY OF 10/21/15 MEETING:

Staff reported this application is to rezone a total of 154.923 acres. He noted the rezoning appears complicated with the breakdown of acreage and zoning districts however it is consistent with the updated land uses of the 2030 Comprehensive Plan. Staff provided an overview of the location of the property at which time the right-of-way for Route 37 on the southern end of the property was emphasized.

The Applicant provided the proffer statement along with a series of maps and has identified the requested zoning locations. The proffers were reviewed by Staff. The transportation proffer was highlighted specifically: Route 37 right-of-way dedication; additional right-of-way along other roads; signalization at intersection with Route 11; improvements to McCanns Road.

Staff explained access to this site will be from McCanns Road and the applicant has worked closely with VDOT to receive their endorsement to access this property. Staff continued currently McCanns Road cannot support this project however the applicants proffer provides the commitment to improve McCanns Road to a standard that can support industrial traffic. Staff reiterated the land use is consistent with the 2030 Comprehensive Plan and the impacts anticipated have generally been addressed in particular transportation.

The Public Hearing portion of the meeting was opened; no one came forward to speak and the Public Hearing was closed.

Mr. Timothy Stowe representing the applicant came forward to answer questions anyone may have. He explained they feel this is a good balance of development property that can be used to bring industrial base to the County; to preserve green areas that will benefit the community; and to provide the transportation improvements that are needed to support this project. He feels this is a good fit and a win win for the County and for the landowner.

A Commission Member inquired about page 2 of 4 of an email that was sent back to VDOT, #5 seems

to be a disagreement on the proposed cross section, whether the cross section is adequate for a commercial roadway serving the intensity of the development. He asked if an agreement was met on this. Mr. Stowe responded there are two components to this: once at the intersection we anticipate two turn lanes, one for southbound Route 11 and one for northbound Route 11 traffic, plus the eastbound lane for traffic coming into the development and that would be 36 feet. He explained once the area for the que is cleared the intent would be to narrow the pavement to two lanes rather than carry three lanes all the way back and that area would be 24 feet. A Commission Member asked if VDOT agreed to this. Mr. Stowe responded VDOT has not responded as of today.

A Commission Member inquired to Staff what if VDOT and developer do not agree. Staff noted ultimately VDOT has the final say.

A motion was made, seconded, and unanimously passed to recommend approval of REZ #08-15 McCanns Office Park.

Abstain: Oates
Absent: Crockett

EXECUTIVE SUMMARY & PLANNING COMMISSION RECOMMENDATION FOR THE 11/12/15 BOARD OF SUPERVISORS MEETING:

This is an application to rezone a total of 154.923 acres as follows: 43.76 acres from RA (Rural Areas) to RA (Rural Areas) with proffers, 6.18 acres from RA (Rural Areas) District to B2 (General Business) District, 11.729 acres from RA (Rural Areas) District to M1 (Light Industrial) District and 93.246 acres from RA (Rural Areas) District to OM (Office-Manufacturing Park) District with proffers. The property is located within the Sewer and Water Service Area (SWSA). The proposed land use designations for this property are consistent with the current land use supported by the 2030 Comprehensive Plan.

From a transportation perspective, the Applicant is addressing potential issues brought forth in the TIA as well as Comprehensive Plan items such as widening of Old Charlestown Road and Route 37 right-of-way. Staff believes this sufficiently offsets the potential traffic impacts of the development.

Issues and impacts associated with the environmental and historical resources on this property appear to have been adequately addressed by the Applicant.

The Planning Commission's discussion sought clarification on a couple of points relating to the transportation comments provided in the review of this application. **Ultimately, the Planning Commission did not identify any outstanding concerns with the request and recommended approval of this request.**

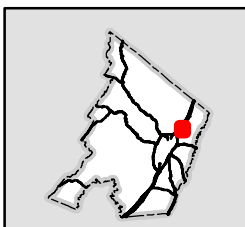
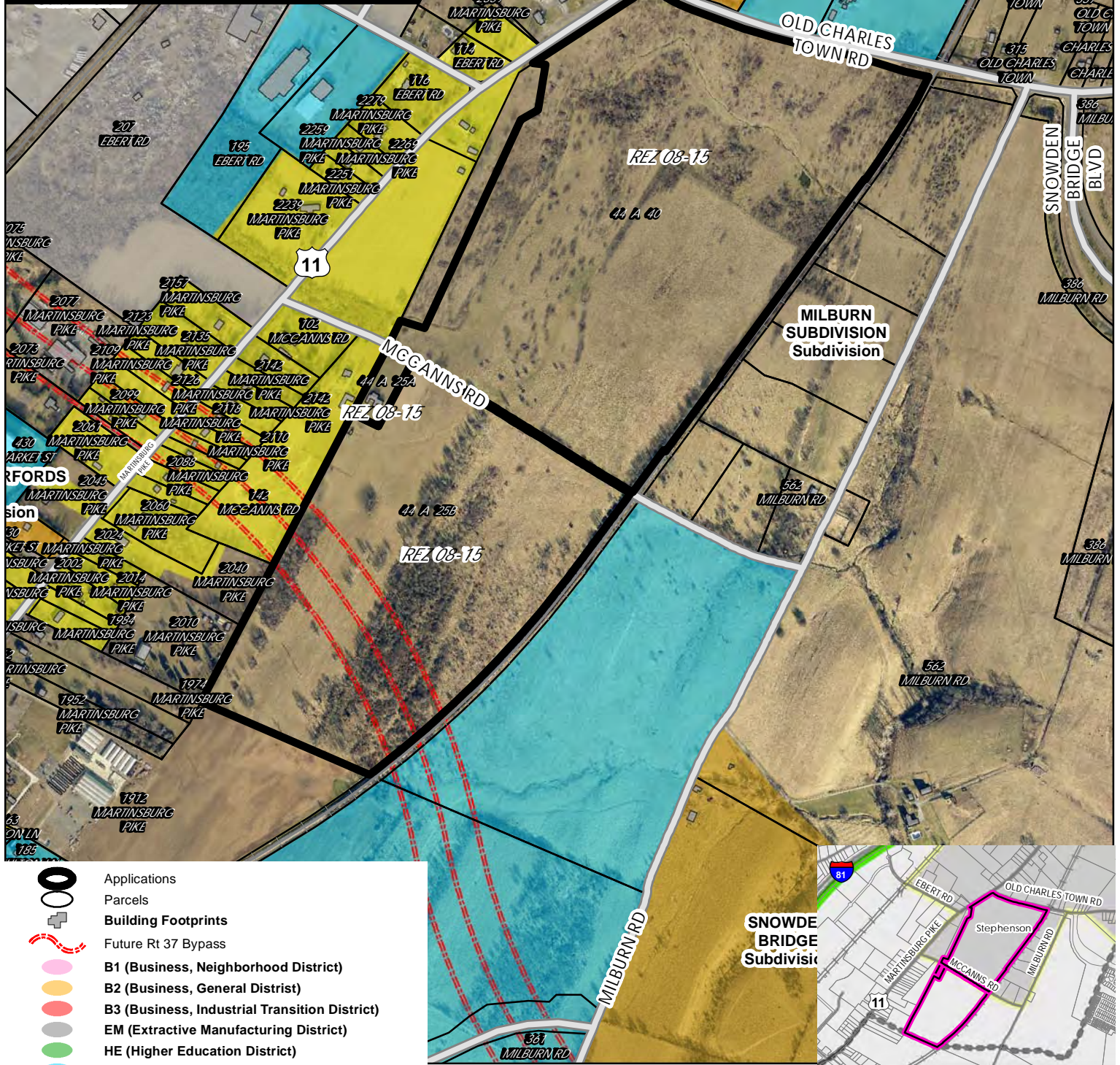
Following the required public hearing, a decision regarding this rezoning application by the Board of Supervisors would be appropriate. The applicant should be prepared to adequately address all concerns raised by the Board of Supervisors.

REZ # 08 - 15

McCann Office Park

PINs:

44 - A - 25A, 44 - A - 25B, 44 - A - 40
Rezoning from RA to RA with Proffers,
B2, M1, and OM with Proffers



REZ # 08 - 15 McCann Office Park

PINs:
44 - A - 25A, 44 - A - 25B, 44 - A - 40
Rezoning from RA to RA with Proffers,
B2, M1, and OM with Proffers

Note:
Frederick County Dept of
Planning & Development
107 N Kent St
Suite 202
Winchester, VA 22601
540 - 665 - 5651
Map Created: September 29, 2015
Staff: mruddy



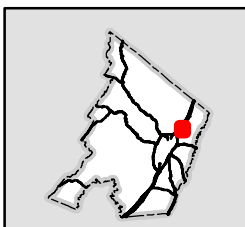
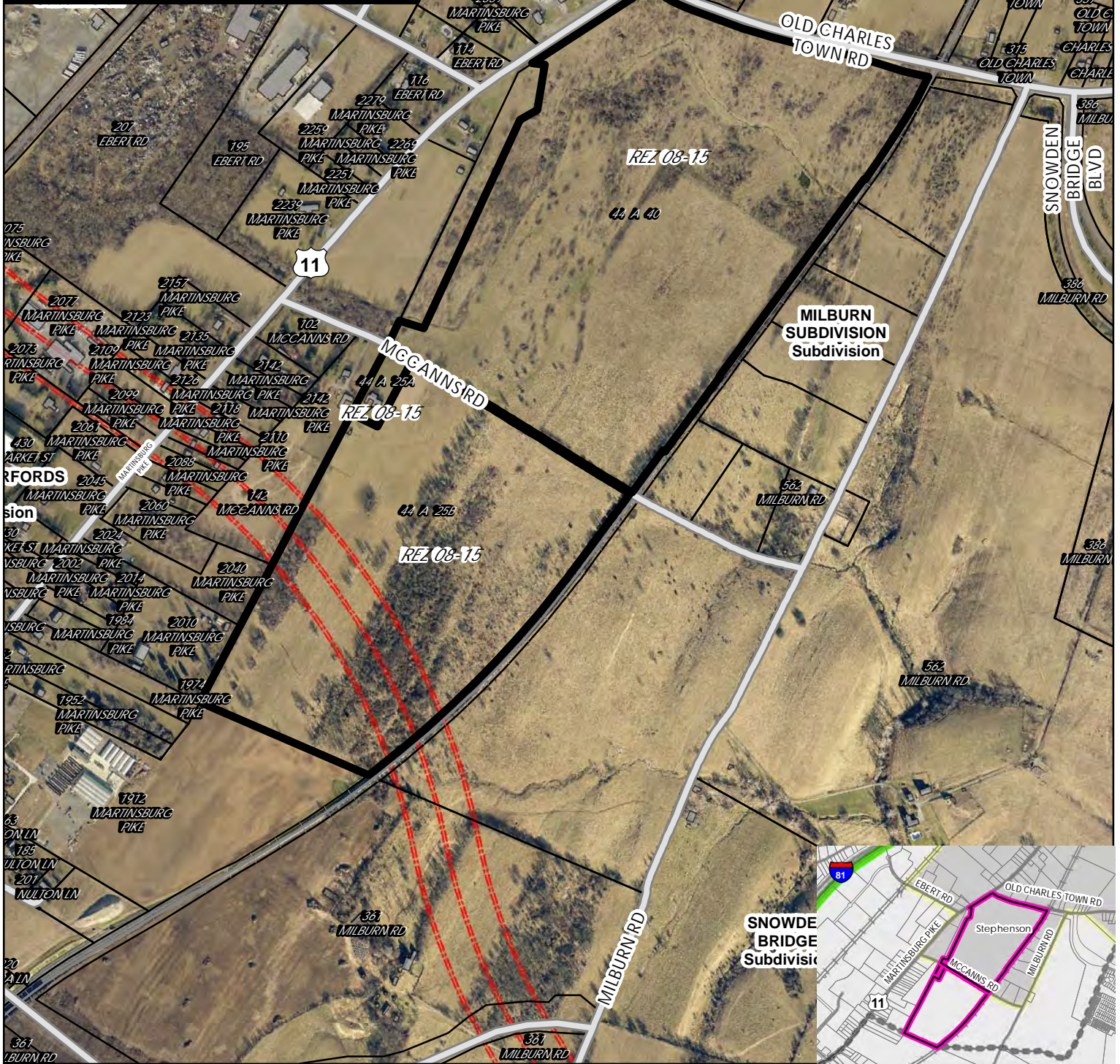
0 475 950 1,900 Feet

REZ # 08 - 15

McCann Office Park

PINs:

44 - A - 25A, 44 - A - 25B, 44 - A - 40
Rezoning from RA to RA with Proffers,
B2, M1, and OM with Proffers



REZ # 08 - 15 McCann Office Park

PINs:
44 - A - 25A, 44 - A - 25B, 44 - A - 40
Rezoning from RA to RA with Proffers,
B2, M1, and OM with Proffers

Note:
Frederick County Dept of
Planning & Development
107 N Kent St
Suite 202
Winchester, VA 22601
540 - 665 - 5651
Map Created: September 29, 2015
Staff: mruddy



0 475 950 1,900 Feet



Rezoning: RZ # __-15

Property: Area: 154.923 acres
Tax Parcels 44-(A)-25A, 44-(A)-25B & 44-(A)-40

Record Owners: McCann Family Land Trust
Jack Wampler, Sr.
Jack Wampler, Jr.

Project Name: McCann Office Park

Original Date of Proffers: March 6, 2015

Revisions: March 18, 2015
August 3, 2015
August 27, 2015

Magisterial District: Stonewall

Pursuant to Section 15.2-2296 Et. Seq. of the Code of Virginia, 1950, as amended, and the provisions of the Frederick County Zoning Ordinance with respect to conditional zoning, the undersigned owners hereby offer the following proffers that in the event the Board of Supervisors of Frederick County, Virginia, shall approve Rezoning Application #__-15 for rezoning of 154.923-acres from the RA District to RA with Proffers (27.435 acres) to be used for Open Space, RA with Proffers (16.333 acres) to be dedicated for right of way to the County and Commonwealth, Business (B-2) (6.180 acres), Light Industrial (M-1) (11.729 acres), and Office Manufacturing Park (OM) (93.246 acres) Districts, development of the subject property shall be done in conformity with the terms and conditions set forth herein, except to the extent that such terms and conditions may be subsequently amended or revised by the owners and such are approved by the Board of Supervisors in accordance with the said Code and Zoning Ordinance. In the event that such rezoning is not granted, then these proffers shall be deemed withdrawn and have no effect whatsoever. These proffers shall be binding upon the owners and their legal successors, heirs, or assigns.

The "Properties" are more particularly described as the lands conveyed to McCann Family land Trust from Betty Ann Marshall and Judith McCann Slaughter by Memorandum of Trust Agreement as instrument #010012943 dated July 1, 2001, and Deed of Exchange from Judith McCann Slaughter to McCann Family Land Trust as instrument 020000470 dated July 1, 2001, and from Judith McCann Slaughter and Samuel A. Slaughter, III, to Jack Wampler, Sr., and Jack Wampler, Jr. as instrument 040024111 dated November 20, 2004, as recorded in the Frederick County Circuit Court Clerk's Office. See also plats of record in Deed Book 599 on Page 241, and instruments 150000961, 150000962, 150008123; and further identified collectively as Tax Parcels 44-(A)-25A, 44-(A)-25B, and 44-(A)-40.

Proffers:

1. Transportation – Vehicle Trips per Day to be determined at Site Plan submission utilizing the current ITE Trip Generation Manual. The owners hereby proffer that the Average Daily Trips shall not exceed 6,713.
 - a. Right of Way Dedication
 - i. The owners hereby proffer to dedicate an additional 20' strip of land to the Commonwealth of Virginia along Martinsburg Pike (Route 11) for future widening totaling 0.391 acres as shown on Figures 2, prior to the first certificate of occupancy or within 60 days by written request by the Commonwealth of Virginia.
 - ii. The owners hereby proffer to dedicate land to the County of Frederick along Martinsburg Pike (Route 11) and along Old Charles Town Road (Route 761) for future widening and turn lanes totaling 2.221 acres as shown on Figures 2 and 3, prior to the first certificate of occupancy or within 60 days by written request by Frederick County.
 - iii. The owners hereby proffer to dedicate a 400' strip of land for Route 37, to the County of Frederick, as shown on Figure 1, within 60 days by written request by Frederick County. Access for the southern parcel (11.982 acres) shall be a 50' temporary access easement through this dedication. This easement shall be extinguished when another access point to a public road is provided by the Commonwealth, County, or others.
 - iv. The owners hereby proffer 1.735 acres on McCann's Road (Route 838), to the County of Frederick as shown on Figure 2, within 60 days by written request by Frederick County.
 - b. Road Improvements
 - i. The owners hereby proffer to enter into a signalization agreement with VDOT for a traffic light at the intersection of Martinsburg Pike (Route 11) and McCann's Road (Route 838) prior to the approval of the first site plan.
 - ii. The owners hereby proffer to install right turn lane on northbound Martinsburg Pike (Route 11). Lane shall be installed prior to the first occupancy permit.

- iii. The owners hereby proffer to construct left and right turn lanes on McCann's Road (Route 838) at the intersection with Route 11. Lane shall be installed prior to the first occupancy permit.
- iv. The owners hereby proffer a single "right in/right out" entrance onto Old Charles Town Road (Route 761). Said entrance shall align with the approved entrance of rezoning #02-09. The entrance will not be constructed until the transportation improvements on rezonings #02-09 (Bishop-Amari) and #06-03 (Stephenson's Village) or January 1, 2035; whichever comes first.
- v. The owners hereby proffer to improve McCann's Road (Route 838) from the intersection of Martinsburg Pike (Route 11) to a point 500' west of the CSX railroad bridge. All entrances to the commercial and industrial development shall be limited to the improved section of Route 838. Improvements shall occur prior to the first occupancy permit. Improvements are:
 - 1. A 10' asphalt trail parallel to Route 838 along the north side of the right way. Said trail shall connect to the trail proffered in the Hiatt Run Condos rezoning #___-15.
 - 2. The road shall be paved with a cross-section for heavy traffic per VDOT standards and specifications. A detail of this cross-section is attached as Figure 7.

2. Fire & Rescue – Monetary Contributions

- a. The owners hereby proffer a cash contribution to Frederick County for Fire and Rescue purposes, of \$0.10 per building square foot to be disbursed to the Frederick County Fire and Rescue Department, to be paid prior to occupancy permit. The term "building square foot" shall be the combined floor area for each story.

3. Historic

- a. The owners hereby proffer to provide an additional 10 parking spaces beyond County requirements in the commercial (B-2) area for visitor parking and a 10'x10' area nearby for a historic marker. The marker, installation, and maintenance, shall be provided by others.
- b. The owners proffer the 27.435 acres of the property, to be zoned RA, and as shown in Figure 4, shall be an open space buffer.

4. Signage

- a. The owners proffer a single monument style sign by the intersection of McCann's Road (Route 838) and Martinsburg Pike (Route 11) not to exceed 25 feet in height and 150 square feet in area. The sign shall be for the individual tenant and/or owner signage.

5. Figures and Drawings – The attached figures number 1 through 7 to be made part of these proffers.

The conditions proffered above shall be binding upon heirs, executors, administrators, assigns, and successors in the interest of the owners and owners. In the event the Frederick County Board of Supervisors grants this rezoning and accepts the conditions, the proffered conditions shall apply to the land rezoned in addition to other requirements set forth in the Frederick County Code and Ordinance.

Respectfully Submitted:

By: Judy McCann-Slaughter 9-1-2015
McCann Family Land Trust Date
Judy McCann-Slaughter, Trustee

By: Ellen L. Marshall 9/4/15
McCann Family Land Trust Date
Ellen L. Marshall, Trustee

Commonwealth of Virginia,

City/County of Winchester To Wit:

The foregoing instrument was acknowledged before me this 1 day of Sept, 2015

By Judith McCann Slaughter

By _____

Jill Potter
Notary Public

7550607
Registration Number

My Commission Expires 12/31/2017

JILL RENEE POTTER
NOTARY PUBLIC
COMMONWEALTH OF VIRGINIA
MY COMMISSION EXPIRES DEC. 31, 2017
COMMISSION # 7550607

Commonwealth of Virginia,

City/County of Washington DC To Wit:

The foregoing instrument was acknowledged before me this 4th day, September, 2015

By Ellen L. Marshall

By _____

Joseph L. Cronan, Jr.
Notary Public

Regist

My Commission Expires 11-14-2016

202-266-8517



By: Jack K Wampler Sr
Jack Wampler, Sr

09-10-2015
Date

By: Jack Wampler Jr
Jack Wampler, Jr

09-10-2015
Date

Commonwealth of Virginia,

City/County of Frederick To Wit:

The foregoing instrument was acknowledged before me this 10 day of September, 2015

By Jack K Wampler Sr

By Jack K Wampler Jr

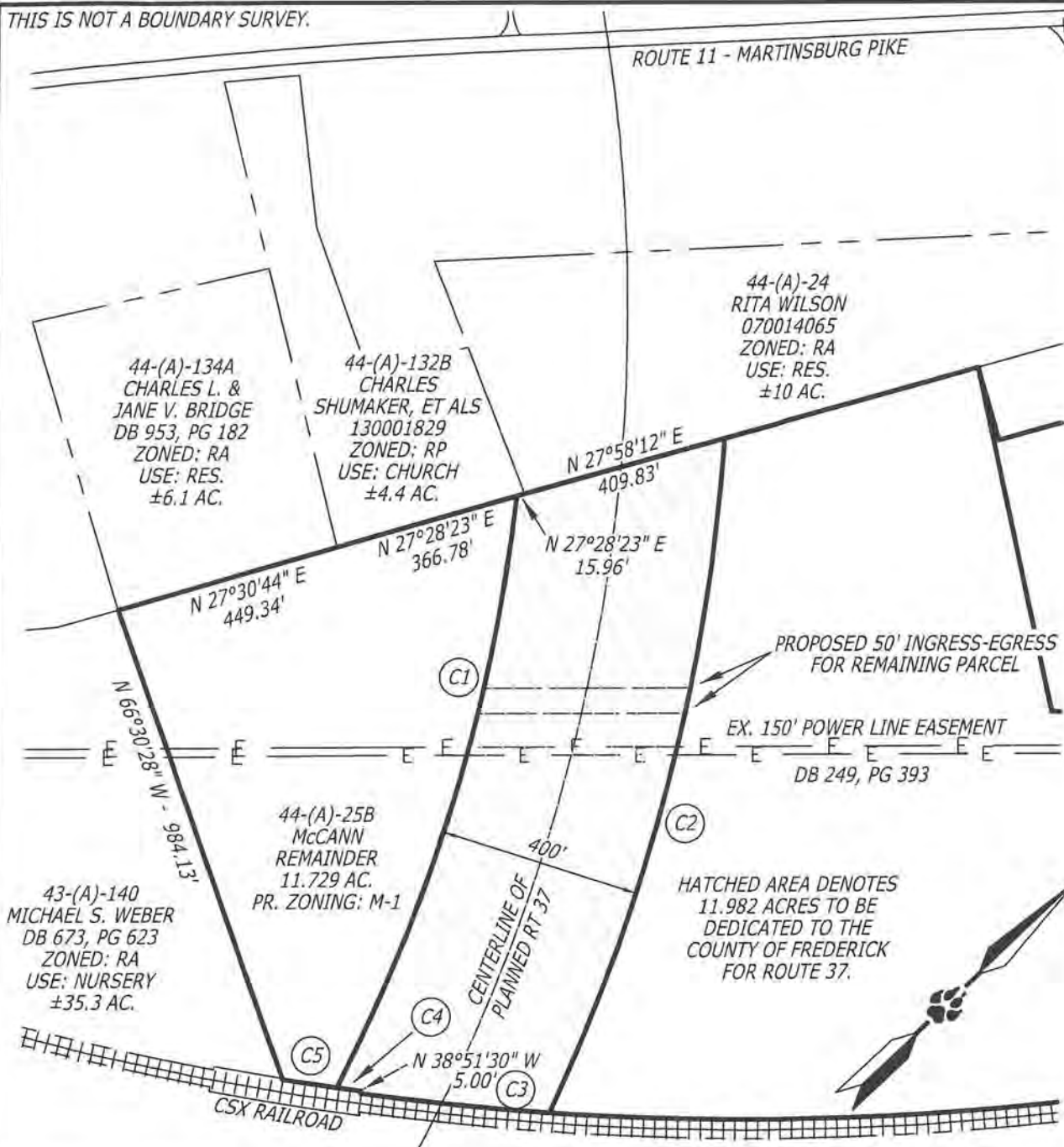
Megan T Pierce
Notary Public

342190
Registration Number

My Commission Expires June 30 2016



THIS IS NOT A BOUNDARY SURVEY.



#	RADIUS	ARC	DELTA	BEARING	CHORD	DIRECTION
C1	3300.00'	1221.95'	21°12'57"	N 30°09'58" W	1214.98'	C-CW
C2	3700.00'	1378.00'	21°20'20"	S 32°29'52" E	1370.05'	CW
C3	5709.58'	374.69'	03°45'36"	S 49°15'42" W	374.62'	C-CW
C4	5704.58'	48.80'	00°29'24"	S 51°23'12" W	48.80'	C-CW
C5	5704.58'	107.30'	01°04'40"	S 52°10'14" W	107.30'	C-CW



GreyWolfe, Inc.

Land Surveying and Consulting

FIGURE 1

SKETCH SHOWING REMAINDER
PARCEL, INGRESS-EGRESS EASEMENT
AND RIGHT OF WAY DEDICATION
FOR ROUTE 37

1073 Redbud Road
Winchester, VA 22603
GreyWolfeInc@aol.com
540-667-2001 OFC
540-545-4001 FAX

McCANN OFFICE PARK

DATE: AUGUST 3, 2015

SCALE: 1" = 300'

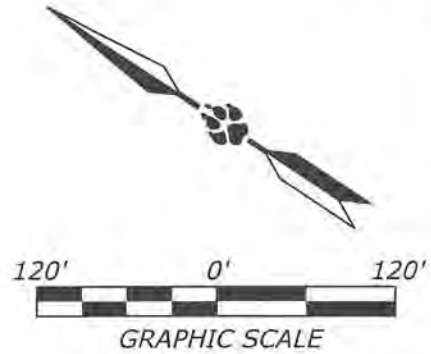
FILE NO: 0388

BISHOP-AMARI
REZ #02-09
B-2

OLD CHARLESTOWN ROAD - RT 761

250.00' RADIUS

THIS IS NOT A BOUNDARY SURVEY.

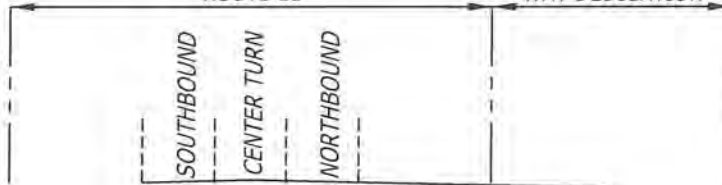


44-(A)-40
OPEN SPACE
BUFFER
30.243 AC.

ROUTE 11 - MARTINSBURG PIKE

EX. 80' RIGHT OF WAY
ROUTE 11

PROPOSED 40' RIGHT OF
WAY DEDICATION



CROSS-HATCHED AREA DENOTES
0.391 ACRES FOR RIGHT OF
WAY TO BE DEDICATED TO THE
COMMONWEALTH OF VIRGINIA.

HATCHED AREA DENOTES
2.221 ACRES FOR RIGHT OF
WAY TO BE DEDICATED TO
THE COUNTY OF FREDERICK.

HIATT RUN
APARTMENTS

CROSS-SECTION
N.T.S.



GreyWolfe, Inc.
Land Surveying and Consulting

FIGURE 2

SKETCH SHOWING CROSS-SECTION,
PLAN VIEW, AND RIGHT OF WAY
DEDICATION FOR ROUTE 11

1073 Redbud Road
Winchester, VA 22603
GreyWolfeInc@aol.com
540-667-2001 OFC
540-545-4001 FAX

McCANN OFFICE PARK

DATE: AUGUST 3, 2015

SCALE: 1" = 120'

FILE NO: 0388

THIS IS NOT A BOUNDARY SURVEY.

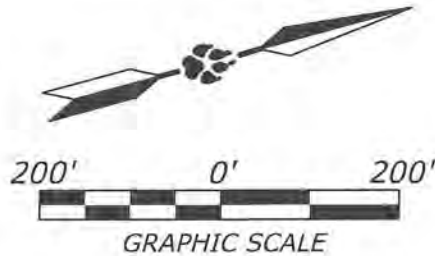
44-(A)-40
OPEN SPACE
BUFFER
30.243 AC.

ROUTE 11
MARTINSBURG PIKE

OLD CHARLESTOWN ROAD
ROUTE 761

BISHOP-AMARI
REZONING #02-09
ZONED: B:2

NEW ENTRANCE TO ALIGN
WITH APPROVED LOCATION
PER REZONING #02-09, A
TRAFFIC LIGHT WILL BE
INSTALLED WHEN
WARRANTED BY VDOT.



HATCHED AREA DENOTES
2.612 ACRES FOR RIGHT OF
WAY TO BE DEDICATED TO
THE COUNTY OF FREDERICK.

BRIDGE



GreyWolfe, Inc.
Land Surveying and Consulting

FIGURE 3

SKETCH SHOWING CROSS-SECTION,
PLAN VIEW, AND RIGHT OF WAY
DEDICATION FOR ROUTE 761

1073 Redbud Road
Winchester, VA 22603
GreyWolfeInc@aol.com
540-667-2001 OFC
540-545-4001 FAX

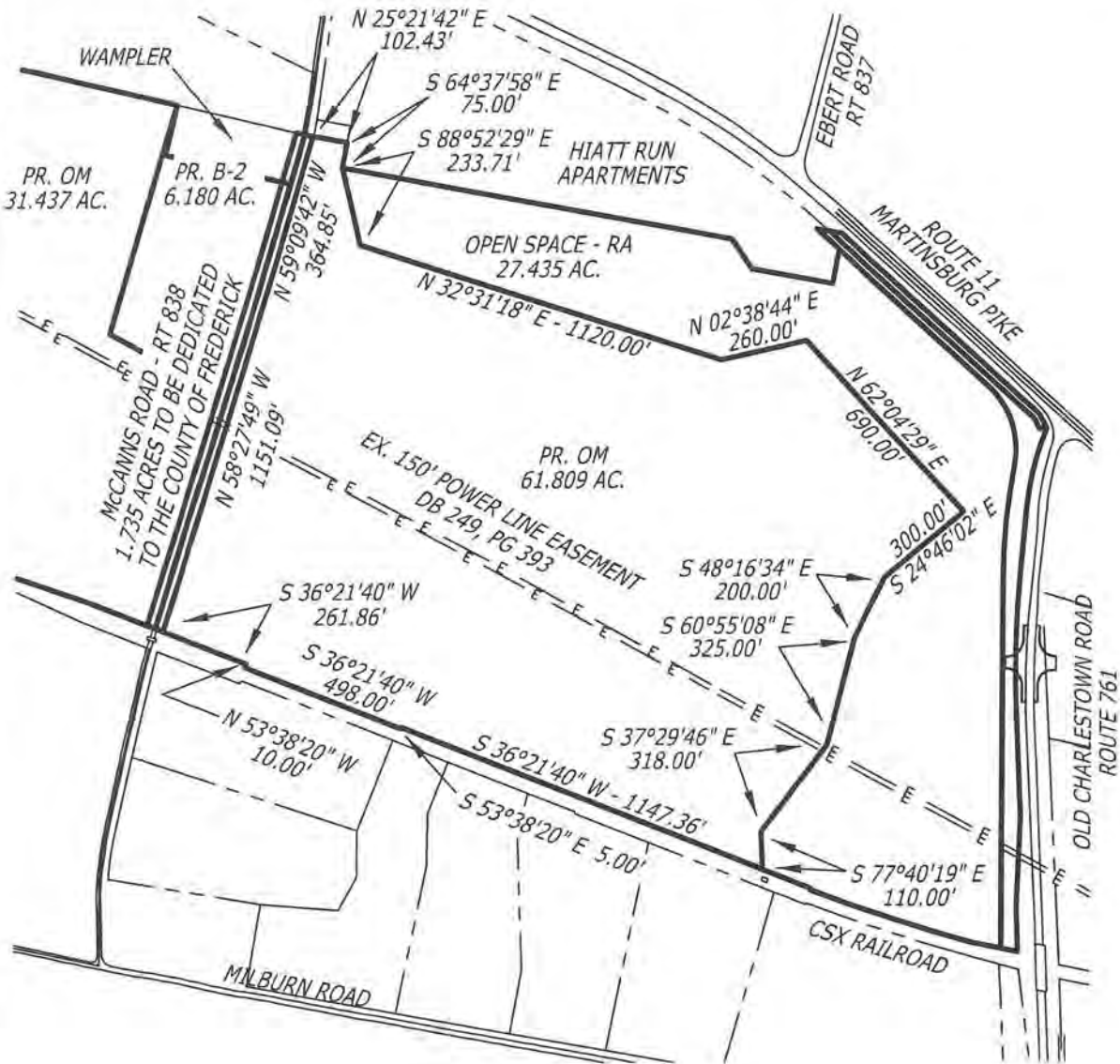
MCCANN OFFICE PARK

DATE: AUGUST 3, 2015

SCALE: 1" = 200'

FILE NO: 0388

THIS IS NOT A BOUNDARY SURVEY.



GreyWolfe, Inc.
Land Surveying and Consulting

FIGURE 4
SKETCH SHOWING
ZONING BOUNDARY
OF OM AREA

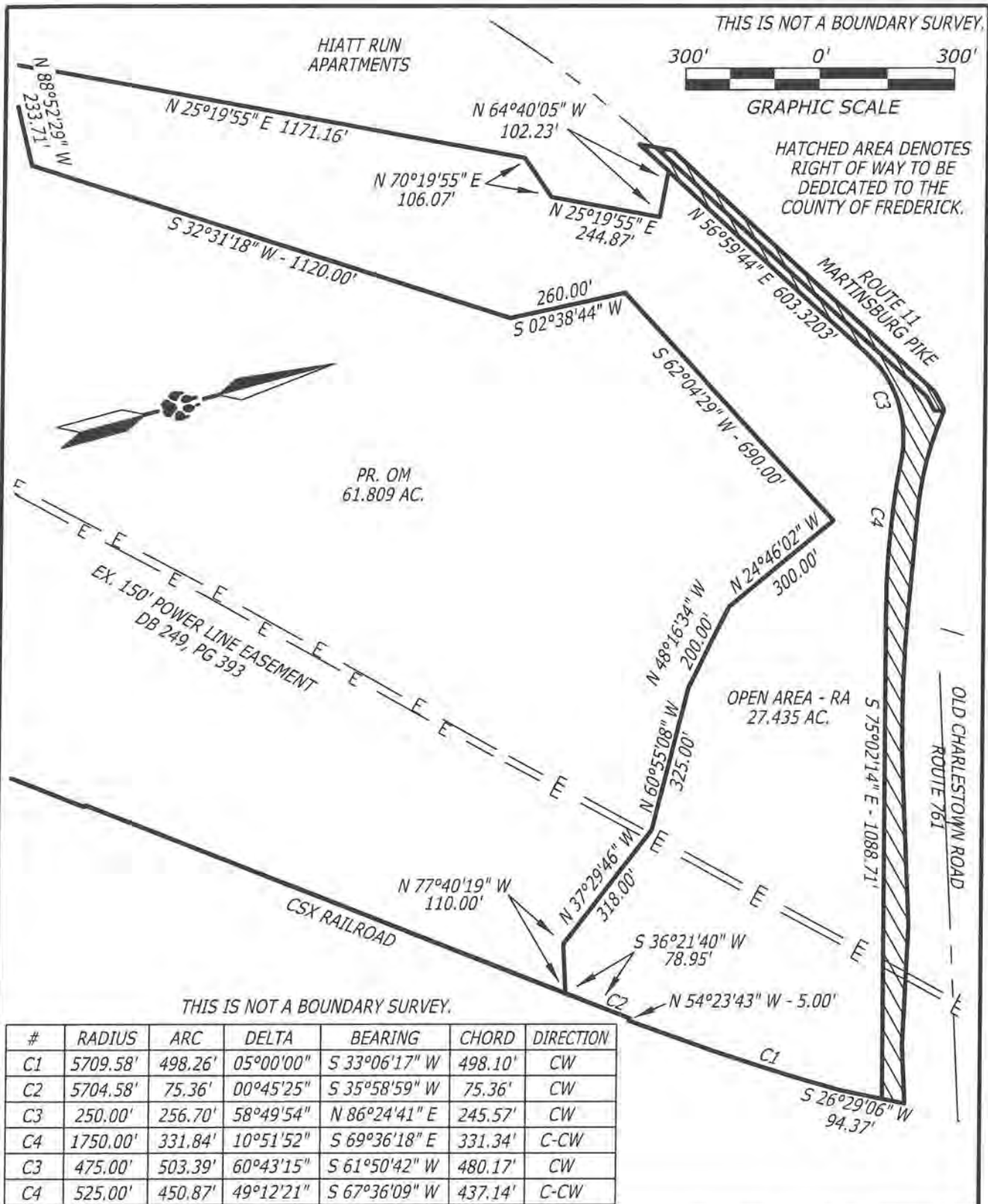
1073 Redbud Road
Winchester, VA 22603
GreyWolfeInc@aol.com
540-667-2001 OFC
540-545-4001 FAX

MCCANN OFFICE PARK

DATE: AUGUST 3, 2015

SCALE: 1" = 500'

FILE NO: 0388



GreyWolfe, Inc.
Land Surveying and Consulting

FIGURE 5
SKETCH SHOWING
ZONING BOUNDARY
OF OPEN AREA

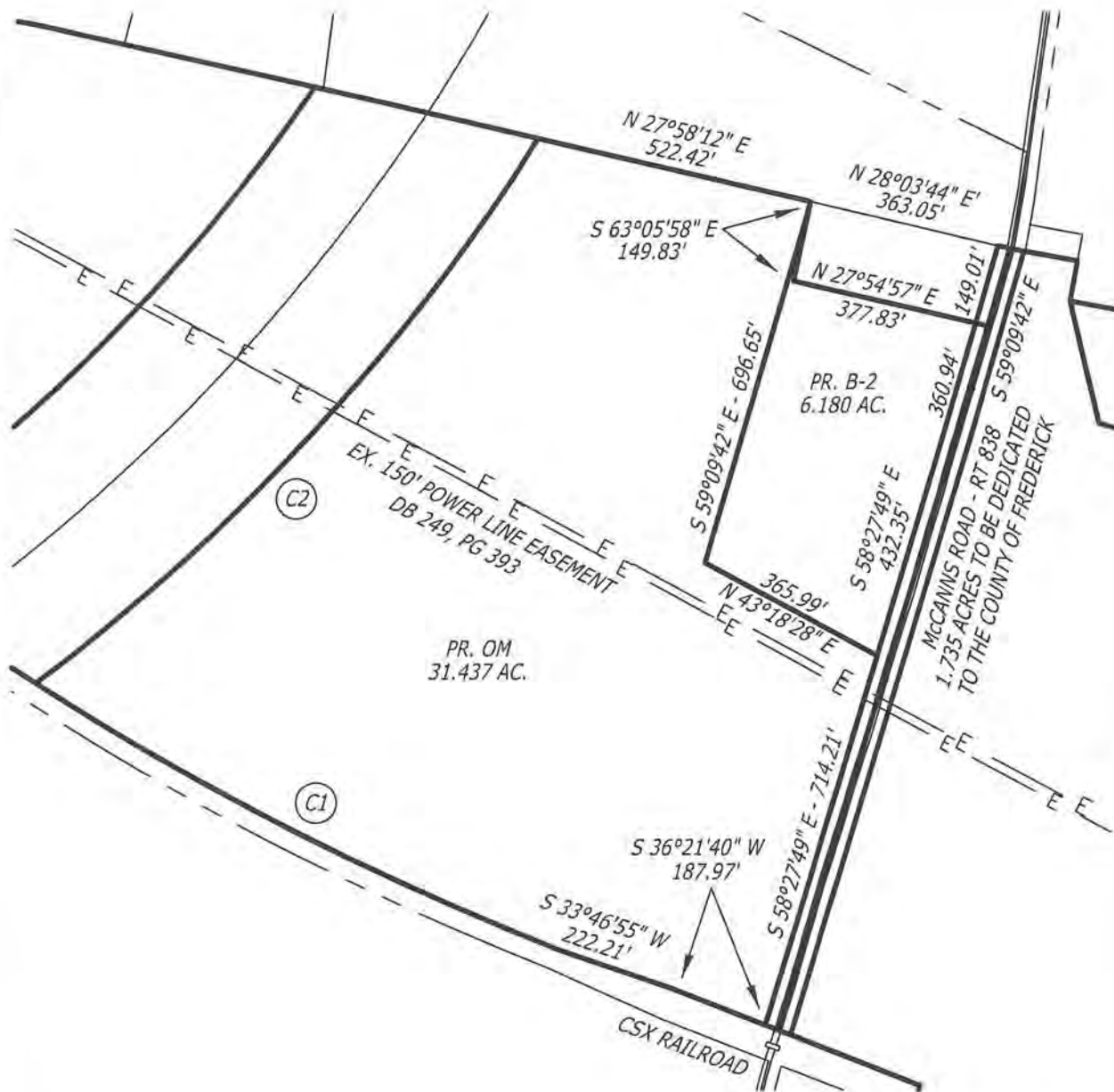
1073 Redbud Road
Winchester, VA 22603
GreyWolfeInc@aol.com
540-667-2001 OFC
540-545-4001 FAX

McCANN OFFICE PARK

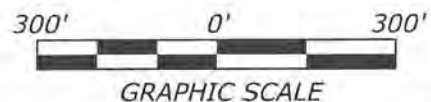
DATE: AUGUST 3, 2015

SCALE: 1" = 300'

FILE NO: 0388



#	RADIUS	ARC	DELTA	BEARING	CHORD	DIRECTION
C1	5709.58'	1098.18'	11°01'13"	S 41°52'17" W	1096.49	CW
C2	3700.00'	1378.00'	21°20'20"	N 32°29'52" W	1370.05'	C-CW



GreyWolfe, Inc.
Land Surveying and Consulting

FIGURE 6
SKETCH SHOWING
ZONING BOUNDARY
OF B-2 & OM

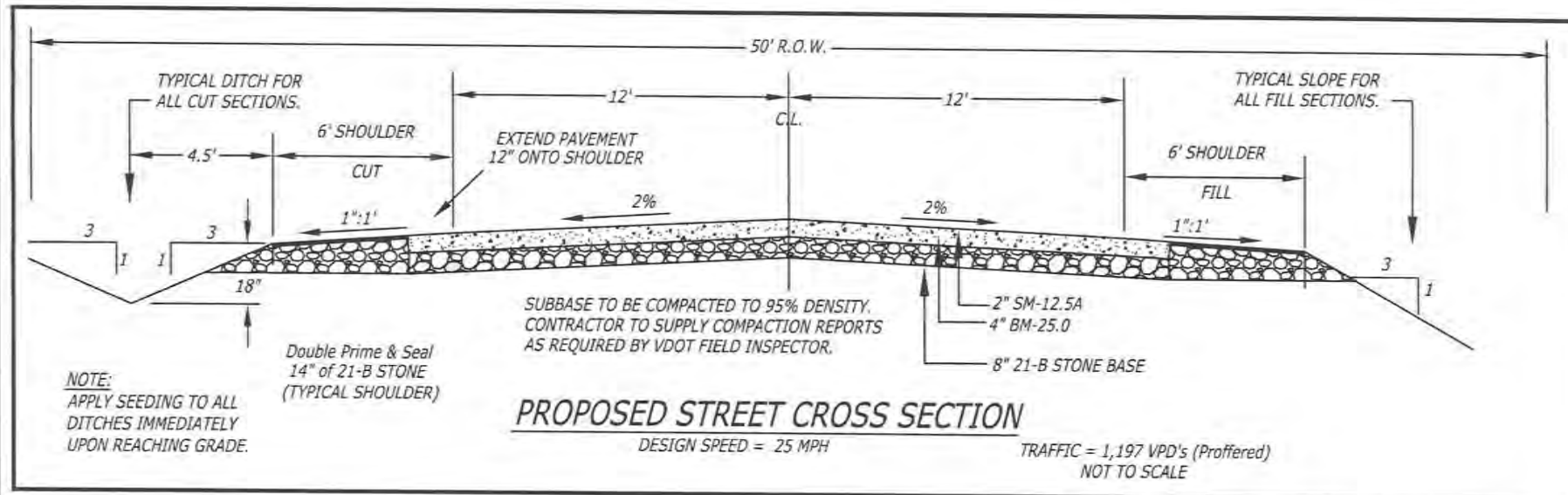
1073 Redbud Road
Winchester, VA 22603
GreyWolfeInc@aol.com
540-667-2001 OFC
540-545-4001 FAX

McCANN OFFICE PARK

DATE: AUGUST 3, 2015

SCALE: 1" = 300'

FILE NO: 0388



GreyWolfe, Inc.

Land Surveying and Consulting

FIGURE 7

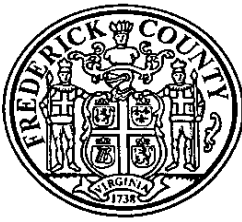
*Detail of Road Improvements for
McCann's Road (Route 838)
Proposed Cross-Section*

1073 Redbud Road
Winchester, VA 22603
GreyWolfeInc@aol.com
540-667-2001 OFC
540-545-4001 FAX

McCANN OFFICE PARK

DATE: AUGUST 3, 2015 SCALE: N.T.S.

FILE NO: 0388



AMENDMENT

Action:

PLANNING COMMISSION: October 21, 2015 - Recommended Approval

BOARD OF SUPERVISORS: November 12, 2015 ☐ APPROVED ☐ DENIED

AN ORDINANCE AMENDING

THE ZONING DISTRICT MAP

REZONING #08-15 MCCANN OFFICE PARK

WHEREAS, Rezoning #08-15, Of McCann Office Park, submitted by GreyWolfe, Inc., to rezone 154.923 acres of land from the RA (Rural Areas) District to RA (Rural Areas) with proffers, 6.18 acres from RA (Rural Areas) District to B2 (General Business) District, 11.729 acres from RA (Rural Areas) District to M1 (Light Industrial) District and 93.246 acres from RA (Rural Areas) District to OM (Office-Manufacturing Park) District with proffers, with proffers dated March 6, 2015, last revised on August 27, 2015 was considered. The property is located on the southeastern side of Martinsburg Pike (Route 11) and Old Charlestown Road. The property is further identified with PIN(s) 44-A-25A, 44-A-25B and 44-A-40 in the Stonewall Magisterial District; and

WHEREAS, the Planning Commission held a public hearing on this rezoning on October 21, 2015 and recommended approval; and

WHEREAS, the Board of Supervisors held a public hearing on this rezoning on November 12, 2015; and

WHEREAS, the Frederick County Board of Supervisors finds the approval of this rezoning to be in the best interest of the public health, safety, welfare, and in conformance with the Comprehensive Policy Plan;

NOW, THEREFORE, BE IT ORDAINED by the Frederick County Board of Supervisors, that Chapter 165 of the Frederick County Code, Zoning, is amended to revise the Zoning District Map to rezone 154.923 acres of land from the RA (Rural Areas) District to RA (Rural Areas) with proffers, 6.18 acres from RA (Rural Areas) District to B2 (General Business) District, 11.729 acres from RA (Rural Areas) District to M1 (Light Industrial) District and 93.246 acres from RA (Rural Areas) District to OM (Office-Manufacturing Park) District with proffers, with proffers dated March 6, 2015, last revised on August 27, 2015. The conditions voluntarily proffered in writing by the applicant and the property owners are attached.

This ordinance shall be in effect on the date of adoption.

Passed this 12th day of November, 2015 by the following recorded vote:

Richard C. Shickle, Chairman	_____	Gary A. Lofton	_____
Robert A. Hess	_____	Robert W. Wells	_____
Gene E. Fisher	_____	Charles S. DeHaven, Jr.	_____
Blaine P. Dunn	_____		

A COPY ATTEST

Brenda G. Garton
Frederick County Administrator



COUNTY of FREDERICK

Roderick B. Williams
County Attorney

540/722-8383

Fax 540/667-0370

E-mail:

rwillia@co.frederick.va.us

May 11, 2015

VIA E-MAIL – Greywolfeinc@aol.com – AND REGULAR MAIL

Mr. Gary Oates
GreyWolfe, Inc.
1073 Redbud Road
Winchester, Virginia 22603

Re: Rezoning Application – McCann Office Park
Tax Parcel Numbers 44-A-25B and 44-A-40, consisting of ± 156.06 acres
(the “Properties”), Stonewall Magisterial District
Proposed Proffer Statement

Dear Gary:

I have now had the opportunity to review the proposed proffer statement, dated March 6, 2015, revised March 18, 2015 (the “Proffer Statement”), for the rezoning of the Properties from the RA (Rural Areas) zoning district to the RA (Rural Areas) zoning district, with proffers, the B2 (General Business) zoning district, with proffers, and the OM (Office-Manufacturing Park) zoning district, with proffers. It is my opinion that the Proffer Statement would be in a form to meet the requirements of the Frederick County Zoning Ordinance and the Code of Virginia, and would be legally sufficient as a proffer statement, subject to the following comments:

- It would be helpful, somewhere on the introductory page of the Proffer Statement, to establish “the Property” as a defined term, referring collectively to parcels 44-A-25B and 44-A-40, and then to use the term “the Property” consistently throughout the Proffer Statement.
- Zoning boundaries/designations – In order to provide sufficient definiteness to the zoning process, the specific internal zoning boundaries (see Figure 4) will need to be shown by metes and bounds.
- Description at the bottom of page 1 – It would be appropriate to reference as well the recorded surveys for the two parcels, as the acreages in the two deeds do not necessarily correspond with particularity to the acreages as shown on the surveys and referenced in the rezoning materials. Also, the reference to the first deed should be to instrument number 010012943.

- Proffer 1 – The Proffer Statement should be a stand-alone document, without references to extraneous documents. Therefore, the reference in the second sentence to the TIA should be deleted; the sentence should simply end at “13,308”.
- Proffer 1.a.iii. – The “southern parcel”/“McCann remainder” presents an impractical situation. While temporary access through the right of way dedication area for Route 37 would work prior to the construction of Route 37 at that location, the “southern parcel”/“McCann remainder” would be landlocked (by Route 37, CSX, and the Weber, Bridge, and Shumaker properties) upon the construction of Route 37 as a limited access highway at that location.
- Proffer 1.b.i. – The proffer should indicate whether the triggering event is the earlier or the later to occur of the indicated events.
- Proffer 1.b.iii. – The cul-de-sac appears on Figure 4 and not Figure 2. Further in this regard, it may be helpful to provide a Figure with an expanded illustrative of and showing the diameter of the cul-de-sac, such as with the Figures showing the Route 37, Route 11, and Old Charlestown Road dedications.
- Proffer 1.c.i. – For clarity, “the Park” should be “the Property”. Also, in that this proffer specifically defines the location of the entrance to the Property, the language in proffer 1.a.i. should be correspondingly changed.
- Proffer 1.c.ii. and iii. – It would be helpful to add a comma following “if not constructed by others”, to make clear that the Proffer Statement obligates completion of the improvement prior to issuance of the first certificate of occupancy for the Property.
- Proffer 1.c.v. – The proffer should address the timing of the cul-de-sac construction in the event that the abandonment is not complete per proffer 1.d.
- Proffer 1.c.vi. – In the event that the necessary internal “road” to serve the Property is more than one “road”, it may be best to use the term “road(s)” to refer to this.
- Proffer 1.d.i. – Because a proffer cannot obligate action by the governing body, “to be requested by the Board of Supervisors” should be changed to “if requested by the Board of Supervisors”.
- Proffer 1.d.iii. – The proffer should indicate the timing of this feature, which would presumably be the same as that for the feature in proffer 1.c.iv.
- Proffer 3.b. – For clarity purposes, I would offer a rewording of the proffer, as follows: “The owner proffers that the 30.243-acre portion of the Property, to be zoned RA, and as is shown on Figure 5, shall be an open space buffer for public use and enjoyment, without any construction, roads, or trails thereon.”

Mr. Gary R. Oates
May 11, 2015
Page 3

- Proffer 4.a. – For clarity purposes, it may be appropriate for “individual tenant signage” to read “individual tenant and/or owner signage”. This would address a situation in which the office park might be subdivided into individual lots, so that, still, only the park name and logo would appear on the sign.

I have not reviewed the substance of the proffers as to whether the proffers are suitable and appropriate for this specific development, as my understanding is that that review will be done by staff and the Planning Commission.

Sincerely,

A handwritten signature in black ink, appearing to read 'Roderick B. Williams', with a stylized, flowing script.

Roderick B. Williams
County Attorney

cc: Michael Ruddy, Department of Planning and Development (via e-mail)



GREYWOLFE, INC.
1073 REDBUD ROAD • WINCHESTER, VA 22603
(540) 667-2001 • (540) 545-4001 FAX
GREYWOLFEINC@AOL.COM



Roderick B. Williams, County Attorney
107 North Kent Street
Winchester, VA 22601

August 27, 2015

Subject: McCann Office Park

Mr. Williams,

This letter is response to your comments dated May 11, 2015. I have revised the proffers based your comments and have attached them to this letter. Please note that since your review, VDOT has requested the main access to shift to McCanns Road and another property has been added to the rezoning.

1. The "properties" have been identified via tax parcel numbers and deed references.
2. Metes and Bounds of the specific areas to be zoned to the different designations are shown in figures 4 thru 6.
3. The reference to the plats of record are added.
4. The reference to the TIA in proffer 1 has been removed.
5. In reference to the remainder in proffer 1.a.iii, since it is the desire of the County and State to receive the right of way as part of the rezoning and we cannot a landlocked parcel, the 50' easement is our only recourse. The County or State will either have to provide an alternate access or provide a bridge or tunnel under Route 37 for access. I have left this proffer as written. I am open to discuss any other solutions.
6. A trigger for Proffer 1.b.i. has been added.
7. Proffer 1.b.iii has been revised.
8. The term "Park" has been replaced with "Properties".
9. Proffers 1.c.ii and iii have been removed.
10. Proffer 1.c.v has been removed.
11. Proffer 1.d.i has been removed.
12. Proffer 1.d.iii has been removed.
13. Proffer 3.b has been simplified.
14. Proffer 4.a has been revised per your comment.

Thank you,

Gary R. Oates, LS-B, PE
GreyWolfe, Inc

McCann Business Center TIA, Frederick County, VA

Summary of VDOT Review Comments

September 11, 2015

1. The updated report assumes that Snowden Bridge Boulevard will be completed (connecting Old Charles Town Road to US 11) in the Build Year of 2025. However, the traffic volumes with the Build Year and Design Year Synchro models assume that all peak hour traffic will access the Stephenson Village / Snowden Bridge development from the entrance on Old Charles Town Road. This assumption creates unrealistic higher volumes on US 11 and Old Charles Town Road as trip distribution to the Snowden Bridge Boulevard / US 11 connection is not being accounted for. The trip distribution should reflect this connection if the improvement is going to be reflected in the report. Alternatively, if the improvement is not assumed to be in place by the build year, background trips to be lowered to a more realistic yet.
2. The report also assumes that US 11 will be improved to a 6 lane, divided facility (as planned by the Frederick County Comprehensive Plan) by others in the 2025 Build Year. Given the timeframe of transportation projects at this scale, the assumed improvement would generally be in a planning level study given the 10 year horizon. Since there is not even a present day discussion of a study at this location, in our opinion it is highly unlikely that such an improvement would be completed by the 2025 Build Year. VDOT recommends that the applicant verify whether or not the recommended improvements will mitigate the traffic impacts of the development if US 11 has not been improved in the 2025 Build Year. By assuming this condition as present in the next 10 years, the analyst portrays an operational condition which is favorable along US 11, but is unlikely to be realized since the condition is unfunded for at least the next 6 years. As the County continues to support land development changes along the corridor, the Department would advise that consideration be given to beginning the initial planning necessary to pursue a future widening project along US 11.
3. The signal warrant analysis submitted with the TIA is considered for informational purposes only. Prior to entering into a signalization agreement with the developer, VDOT will require that an updated signal warrant analysis be submitted with the initial site plan on the property. In order to maintain operational performance on US 11, the proposed site entrance on US 11 should be developed as a single way stop controlled entrance until such time that site generated trips meet signal warrants. At such time, the developer shall be responsible for installation of the signal. Please revise proffer #1.b.i accordingly.
4. The concept plan provided in the report does not identify the layout of the proposed site uses. Will the proposed right-in / right-out only entrance along Old Charles Town Road connect internally to the main development entrance on US 11? Was allowing left turn movements from

westbound Old Charles Town Road into the site considered at this entrance? This movement would redistribute some trips from US 11 south.

5. The proposed cross-section for the improvements to McCann's Road as provided in Figure 7 of the proffers is inadequate for a commercial roadway serving the proposed intensity of development. The cross-section should be curb and gutter and a minimum 36' pavement width is recommended (U3 typical section). Note that both the Build Year and Design Year Synchro models show a 5 lane road section for McCann's Road (including the turn lanes) at the intersection with US 11. Please revise.
6. The report and proffer #1.b.v.1 states that a 10' multiuse trail will be constructed parallel to the improved McCann's Road and will be designed to be extended to adjacent properties. VDOT recommends expanding the proffer to include an internal pedestrian and bicycle network with the design of the development.
7. VDOT recommends updating proffer #1.b.v to state that the improved McCann's Road will be transitioned down to the existing roadway cross-section prior to the existing CSX railroad bridge.
8. Please update the cost estimate for the improvement to McCann's Road in Appendix E based on Comment 5. The estimate should be based on a \$7,500,000 cost per mile.
9. The Existing Year Synchro models contain a coding error at the intersection of US 11 and Old Charles Town Road. The intersection is angled in a way that causes the US 11 north and southbound movements are modeled as turning movements. Please correct and verify that the results previously reported are accurate.

Subj: **RE: McCann TIA Submittal**
 Date: 9/23/2015 1:14:55 P.M. Eastern Daylight Time
 From: timstowe@stowecompanies.com
 To: Terry.ShortJR@VDOT.Virginia.gov
 CC: Matthew.Smith@vdot.virginia.gov, AdamF.Campbell@vdot.virginia.gov, ibishop@fcva.us,
Rhonda.Funkhouser@VDOT.Virginia.gov, GreyWolfInc@aol.com

Terry,

I offer the following responses to the comments offered on 9/21/15 pertaining to the subject project.

McCann Traffic Impact Study

Responses to VDOT Comments

September 23, 2015

1. The updated report assumes that Snowden Bridge Boulevard will be completed (connecting Old Charles Town Road to US 11) in the Build Year of 2025. However, the traffic volumes with the Build Year and Design Year Synchro models assume that all peak hour traffic will access the Stephenson Village / Snowden Bridge development from the entrance on Old Charles Town Road. This assumption creates unrealistic higher volumes on US 11 and Old Charles Town Road as trip distribution to the Snowden Bridge Boulevard / US 11 connection is not being accounted for. The trip distribution should reflect this connection if the improvement is going to be reflected in the report. Alternatively, if the improvement is not assumed to be in place by the build year, background trips to be lowered to a more realistic yet.

Response: The reviewer has incorrectly interpreted the report. The report does assume that certain proffered improvements associated with the Snowden Bridge project will be constructed by the McCann build out year 2025, but it does not assume Snowden Bridge Blvd. will be completed to Route 11, which is why all traffic from the Snowden Bridge projects enters and exists onto Old Charles Town Road.

Many of the transportation improvements proffered by the Snowden Bridge project are initiated when traffic volumes reach a pre-determined threshold. The McCann report assumes this threshold will be reached for the signalization of 2 intersections and the widening of Old Charles Town Road.

2. The report also assumes that US 11 will be improved to a 6 lane, divided facility (as planned by the Frederick County Comprehensive Plan) by others in the 2025 Build Year. Given the timeframe of transportation projects at this scale, the assumed improvement would generally be in a planning level study given the 10 year horizon. Since there is not even a present day discussion of a study at this location, in our opinion it is highly unlikely that such an improvement would be completed by the 2025 Build Year. VDOT recommends that the applicant verify whether or not the recommended improvements will mitigate the traffic impacts of the development if US 11 has not been improved in the 2025 Build Year. By assuming this condition as present in the next 10 years, the analyst portrays an operational condition which is favorable along US 11, but is unlikely to be realized since the condition is unfunded for at least the next 6 years. As the County continues to support land development changes along the corridor, the Department would advise that consideration be given to beginning the initial planning necessary to pursue a future widening project along US 11.

Response: Capacity improvements on Route 11 in the vicinity of the McCann project are assumed to be in place by the year 2025. Since this is a priority for Frederick County it is presumed that work on this project can be expected within 10 years. An improved Route 11 does provide benefits to the McCann project as well as all travelers in the area. However, a modeling scenario was also included based on the existing roadway conditions which results in longer delays at full build out since there is only one receiving lane for vehicles turning left from McCann Road.

3. The signal warrant analysis submitted with the TIA is considered for informational purposes only. Prior to entering into a signalization agreement with the developer, VDOT will require that an updated signal warrant analysis be submitted with the initial site plan on the property. In order to maintain operational performance on US 11, the proposed site entrance on US 11 should be developed as a single way stop controlled entrance until such time that site generated trips meet signal warrants. At such time, the developer shall be responsible for installation of the signal. Please revise proffer #1.b.i accordingly.

Response: The proffer is saying the same thing as the comment. The developer has proffered to enter into a signalization agreement with VDOT, and that signalization agreement gives VDOT the right to require the signal when VDOT deems the timing is right. Until VDOT asks for the signal, the existing stop sign will remain in place and all improvements will be made in accordance with site plans which will be reviewed and approved by the Edinburg office of VDOT.

4. The concept plan provided in the report does not identify the layout of the proposed site uses. Will the proposed right-in / right-out only entrance along Old Charles Town Road connect internally to the main development entrance on US 11? Was allowing left turn movements from westbound Old Charles Town Road into the site considered at this entrance? This movement would redistribute some trips from US 11 south.

Response: The proposed sites uses are not known at this point. Therefore it is assumed the future entrance onto Old Charles Town Road will be a driveway for one of the uses. A left turn movement was considered; however, due to the traffic load onto the road it was felt that it would be better to have only a right-in/right-out for public safety. We are choosing to proceed with the entrance as planned.

5. The proposed cross-section for the improvements to McCann's Road as provided in Figure 7 of the proffers is inadequate for a commercial roadway serving the proposed intensity of development. The cross-section should be curb and gutter and a minimum 36' pavement width is recommended (U3 typical section). Note that both the Build Year and Design Year Synchro models show a 5 lane road section for McCann's Road (including the turn lanes) at the intersection with US 11. Please revise.

Response: The proposed cross-section for a 24' wide improvement to McCann's Road is adequate. Please consider that 99% of the traffic on McCann Road will be for this development. VDOT and the County will review and require improvements as site plans come in and the improvements will be based on actual traffic counts instead the "worst-case scenario" required for TIA's. The applicant will transition from the intersection of Route 11 to the 24' wide improvements as proposed in the proffers and GDP.

6. The report and proffer #1.b.v.1 states that a 10' multiuse trail will be constructed parallel to the improved McCann's Road and will be designed to be extended to adjacent properties. VDOT recommends expanding the proffer to include an internal pedestrian and bicycle network with the design of the development.

Response: The proffered multi-use trail along McCann's Road will remain in the current proffers; however, we cannot implement your suggestion to require or proffer it throughout the development as we do not know the future users. For example, one interested party from this past year would require level 5 government security around the facility and we cannot have the public walking in there.

7. VDOT recommends updating proffer #1.b.v to state that the improved McCann's Road will be transitioned down to the existing roadway cross-section prior to the existing CSX railroad bridge.

Response: The current proffer will remain as written. The transition from the improved 24' wide paved road to the existing gravel road is not necessary to be included in proffers. The will be required by VDOT on the road plans that will have to be reviewed and approved prior to any improvements within your right of way. The proffers are written to include items that County and

State would not otherwise have the authority to require.

8. Please update the cost estimate for the improvement to McCann's Road in Appendix E based on Comment 5. The estimate should be based on a \$7,500,000 cost per mile.

Response: The cost estimate has been updated and is attached. \$7,500,000 per mile seems very excessive for a roadway of this type.

9. The Existing Year Synchro models contain a coding error at the intersection of US 11 and Old Charles Town Road. The intersection is angled in a way that causes the US 11 north and southbound movements are modeled as turning movements. Please correct and verify that the results previously reported are accurate.

Response: Curvature was added to Route 11 and Old Charles Town Road at the intersection of the two roadways to adjust some of the angled movement. However, Old Charles Town Road does not intersect Route 11 perpendicularly, it intersects on a skew. While extended massaging of the models may result in some improved results, this intersection was found to have failing levels of service for key movements regardless of the model adjustments. This is due to the high volume of traffic that will remain in this intersection until an alternate route is provided.

Tim Stowe

Stowe Engineering

V 540.686.7373 | F 540.301.1100 | C 540.336.0656

From: Short, Terry (VDOT) [<mailto:Terry.ShortJR@VDOT.Virginia.gov>]

Sent: Monday, September 21, 2015 5:18 PM

To: timstowe@stowecompanies.com

Cc: Smith, Matthew, P.E. (VDOT) <Matthew.Smith@vdot.virginia.gov>; Campbell, Adam (VDOT) <AdamF.Campbell@vdot.virginia.gov>; John Bishop (jbishop@fcva.us) <jbishop@fcva.us>; Funkhouser, Rhonda (VDOT) <Rhonda.Funkhouser@VDOT.Virginia.gov>

Subject: McCann TIA Submittal

Tim-

Attached please find District comments related to your recent submittal of the subject TIA.

Should you have any questions, please let us know.

Thanks.

Terry

Terry R. Short, Jr. | District Planning Manager
VDOT - Staunton District
811 Commerce Road
Staunton, VA 24401-9029
voice: 540/332-9057
fax: 540/332-2262
cell: 540/447-6350
e-mail: terry.shortJR@vdot.virginia.gov



Please consider the environment before printing this email

McCann Business Center
Estimated Cost of Public Transportation Improvement
23-Sep-15

McCann Road Improvements (Route 838)

1	Reconstruction of McCann Road (Rte 838) for 2100 ft w/ grading, drainage, storm water mngt, 24' pavement, 8' shoulders.	\$2,982,955
2	dual left turn lanes @ 300' w/ taper	\$250,000
3	dual right turn lanes	\$250,000
4	Approach accuated traffic signal	\$300,000
5	right of way value, 2.5 acres	\$70,000
6	Pavement Markings	\$25,000
	Subtotal	<u>\$3,877,955</u>

Right of Way Donation Value

1	Route 37 right of way value, 11.982 acres	\$539,190
2	Route 11 and Old Charles Town Rd right of way value, 2.612 ac	\$117,540
	Subtotal	<u>\$656,730</u>

Project Total	\$4,534,685
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Rezoning Comments



Frederick County Sanitation Authority

Mail to:

Frederick County Sanitation Authority
Attn: Engineer
P.O. Box 1877
Winchester, Virginia 22604
(540) 868-1061

Hand deliver to:

Frederick County Sanitation Authority
Attn: Engineer
315 Tasker Road
Stephens City, Virginia

Applicant: Please fill out the information as accurately as possible in order to assist the Sanitation Authority with their review. **Attach a copy of your application form, location map, proffer statement, impact analysis, and any other pertinent information.**

Applicant's Name: GreyWolfe, Inc. - Gary R. Oates, LS-B, PE Telephone: 540-667-2001

Mailing Address: 1073 Redbud Road, Winchester, Virginia, 22603
Winchester, Virginia 22603
McCann Office Park

Location of property: Southeast intersection of Martisburg Pike (Rt 11) and Old
Charlestown Road (Route 761). Lying on the western side of CSX
Railway with McCanns Road running through the middle.

Current zoning: RA Zoning requested: B-2 & OM Acreage: 156.606 ac.

Sanitation Authority Comments:

SEE ATTACHED

Sanitation Authority Signature & Date: _____

Notice to Sanitation Authority - Please Return This Form to the Applicant

MAR 9 2015

[Handwritten signature]



FREDERICK COUNTY SANITATION AUTHORITY

Post Office Box 1877
Winchester Virginia 22604-8377

PH. - (540)868-1061
Fax - (540)868-1429
www.fcsa-water.com

Uwe E. Weindel, P.E.
Engineer-Director

March 20, 2015

Mr. Gary Oates
GreyWolfe, Inc.
1073 Redbud Road
Winchester, Virginia 22603

Ref.: Rezoning Application Comments
McCann Office Park
Tax Map # 44-A-25B & 44-A-40

Dear Sir:

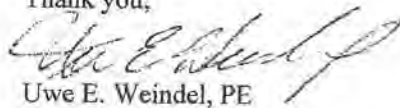
Per your request, a review of the proposed rezoning application has been performed. The Frederick County Sanitation Authority offers comments limited to the anticipated impact/effect upon the Authority's public water and sanitary sewer system and the demands thereon.

The parcels are in the water and sanitary sewer area served by the Authority. Based on the location both water and sanitary sewer service is available within a reasonable distance from the site. Sanitary sewer treatment capacity at the waste water treatment plant is also presently available. Sanitary sewer conveyance capacity and layout will be contingent on the applicant performing a technical analysis of the existing sanitary sewer system within the area to be served and the ability of the existing conveyance system to accept additional load. Likewise, water distribution capacity will require the applicant to perform a technical analysis of the existing system within the area to be served to determine available capacity of both the potable water system and the ability to provide fire protection. Please note that the water pump station referenced in the Impact Statement is not in use nor is capable of use.

Water and sanitary sewers are to be constructed in accordance with the FCSA standards specifications. Dedicated easements may be required and based on the layout vehicular access will need to be incorporated into the final design. All easements should be free from any encumbrance including permanent structures (fences, signs, etc.) and landscaping (trees, shrubs, etc.).

Please be aware that the Authority does not review or comment upon proffers and/or conditions proposed or submitted by the applicant in support of or in conjunction with this plan, nor does the Authority assume or undertake any responsibility to review or comment upon any amended proffers and/or conditions which the Applicant may hereafter provide to Frederick County.

Thank you;


Uwe E. Weindel, PE
Engineer-Director



COUNTY of FREDERICK

Department of Planning and Development

540/ 665-5651

Fax: 540/ 665-6395

March 18, 2015

Mr. Gary Oates, LS-B, PE
GreyWolfe, Inc
1073 Redbud Road
Winchester, Virginia 22603

RE: Request for Historic Resources Advisory Board (HRAB) Comments
McCann Office Park
Property Identification Number (PIN): 44-A-40 and 44-A-25B
Current Zoning District: RA (Rural Area)

Dear Mr. Oates:

The Frederick County Historic Resources Advisory Board (HRAB) considered the above referenced rezoning proposal during their meeting on March 17, 2015. The HRAB reviewed information associated with the Study of Civil War Sites in the Shenandoah Valley published by the National Park Service and information provided by the applicant's representative.

This application seeks to rezone 156.6 acres of land from the RA (Rural Areas) District to the OM (Office Manufacturing Park) District and the B2 (Business General) District with proffers. The properties are located near the intersection of Martinsburg Pike and Old Charlestown Road, on both sides of McCann Road, and adjacent to the CSX Railroad. The proposed use of the property is office, manufacturing and commercial uses.

Historic Resources Advisory Board Concerns

The Study of Civil War Sites in the Shenandoah Valley published by the National Park Service identifies these properties as core battlefield area for the Battle of Second Winchester and the Battle of Third Winchester (Opequon), with retained integrity. After reviewing this information and the applicant's materials and proposals, the Historic Resources Advisory Board (HRAB) recommended approval of the McCann Slaughter Rezoning Application with the following conditions:

- A pull off area will be provided to the Shenandoah Valley Battlefield Foundation to provide for interpretative signage.
- The HRAB requested that only one freestanding sign be permitted at the park entrance off of Old Charlestown Road; said sign should be an office park sign (name of park only), not a multitenant complex sign.
- Text will be added to the proffer regarding the proposed split rail fence along Martinsburg

Mr. Gary Oates, LS-B, PE
Re: Rezoning of the McCann Office Park
March 18, 2015
Page 2

Pike and Old Charlestown Road.

Please contact me with any questions concerning these comments from the HRAB.

Sincerely,

A handwritten signature in cursive script, appearing to read "Candice Perkins".

Candice Perkins, AICP
Senior Planner

CEP/pd

cc: Lauren Murphy, HRAB Chair



COUNTY of FREDERICK


Department of Planning and Development

540/665-5651

FAX: 540/665-6395

MEMORANDUM

TO: Gary Oates
GreyWolfe, Inc.

FROM: Michael T. Ruddy, AICP
Deputy Director 

RE: Rezoning Comments: McCann Office Park Rezoning.
Martinsburg Pike and Old Charlestown Road; PIN's 44-A-25B and 44-A-40

DATE: April 17, 2015

The following comments are offered regarding the McCann Office Park Rezoning Application. This is a request to rezone 156.606± acres from RA (Rural Areas) District to a combination of RA (Rural Areas) District 30.243± acres, B2 (General Business) 8.597± acres, and OM (Office Manufacturing) District 102.811± acres with Proffers. The review is generally based upon the proffer statement dated March 18, 2015, and the Impact Analysis Statement dated March 9, 2015.

Prior to formal submission to the County, please ensure that these comments and all review agency comments are adequately addressed. At a minimum, a letter describing how each of the agencies and their comments have been addressed should be included as part of the submission.

General.

- 1) The submission fee for this application would total \$25,330.00, based upon acreage of 156.6± acres.

Land Use.

- 1) The 2030 Comprehensive Plan and the Northeast Frederick Land Use Plan provide guidance on the future development of the property. The property is located within the SWSA. The 2030 Comprehensive Plan identifies this property with an OM (Office Manufacturing) District land use designation and a DSA (Developmentally Sensitive Area) land use designation. This was a balanced approach to the land use in this area that enabled development and protected the environmental and historic features of the site.

In general, the proposed office manufacturing zoning, supported by the small area of commercial designation, for this property is consistent with the current land use supported by the Comprehensive Plan. The remaining RA (Rural Areas) District zoning is generally consistent with the identified DSA.

In addition, the items that are described in the amendment to the Northeast Land Use Plan in support of the land use designations appear to be appropriately addressed.

Impact Analysis and Proffer Statements.

Please address the following items from the Impact Analysis and Proffer Statements prepared for this Application.

- 1) The application's impact analysis should include more detail with regards to the suitability of the site. It is customary to prepare exhibits that show the location of the various site constraints or features such as the floodplains and wetlands. This information is important to the Planning Commission and Board of Supervisors review of the application. It would also be used to reflect the accuracy of the proposed zoning boundaries with regards to areas of development and preservation. Including the historical context of this site would also be helpful and illustrate support for the zoning delineation.
- 2) The Application has addressed the potential impacts of this rezoning request by linking improvements to the vehicle trip count, therefore, the majority of the impacts addressed deal with transportation. In the Impact Analysis, please describe how this relates to the potential physical development of the site. It should be noted that, beyond the above described trip cap, this application provides no limitation on the potential OM and commercial land uses that may be developed on the site.
- 3) The Impact Analysis should include more detail regarding the proposed approach to the transportation and access component of the request and should describe how the TIA relates to the Proffer Statement. At this time there is no description as to how Route 37 and access to the southern portion of the property would be provided. The Impact Analysis is where you could describe those components of the Proffer Statement that you have proffered to address the potential transportation impacts.
- 4) It is understood that the overall transportation scheme for this project will change. Please make sure the revised application adequately describes and addresses the revised approach to the sites access and related transportation improvements. Comments from Mr. Bishop, Deputy Director Transportation, will be forthcoming upon submission of updated transportation information. Staff may also provide additional comments related to the proposed changes if warranted.

- 5) The Application includes a calculation for the potential wastewater impacts of this project. A similar evaluation of the potential water demands of the project should be included.
- 6) The Proffer Statement should make specific reference to the exhibits included if they are intended to be part of the Proffer Statement. The use of a proffered Generalized Development Plan may be useful with this application.
- 7) Please provide a separate plat showing the meets and bounds of the rezoning.
- 8) Proffer 1.a) iii. Insert "37". In the same proffer; an easement within the area to be dedicated presents an encumbrance in the dedication of the Route 37 right-of-way. Would another approach to this be desirable?
- 9) Proffer 1.b) iii. Correct the figure reference.
- 10) Please clarify the internal 10' trail loop adjacent to Old Charlestown Pike within the Proffer Statement.
- 11) Consider connecting the proposed trail to the adjacent major development east along Old Charlestown Pike.
- 12) Please describe the road phasing further. This may relate to the timing of some of the other transportation proffers.
- 13) Consider the split rail fence proffer internal to the project, especially in the area where the internal road traverses the DSA in the northern portion of the project.
- 14) The Fire and Rescue Proffer trigger should be evaluated. At the time of the building permit or Certificate of Occupancy may be more feasible.
- 15) Please clarify if the signage proffer is intended to restrict signs throughout the rest of the property.

In conclusion, please ensure that the above comments, and those offered by the reviewing agency are addressed. Additional comments will be provided upon receiving direction on a revised transportation approach.

MTR/pd

Impact Statement

For consideration of Rezoning the lands for

McCann Office Park

Stonewall Magisterial District
Frederick County, Virginia

August 27, 2015

Tax Map Numbers

44-(A)-25A, 44-(A)-25B, & 44-(A)-40

Total Area: 154.923 acres

Owners of Record:

McCann Family Land Trust

562 Milburn Road

Winchester, VA 22603

(540) 667-3762

and

Jack Wampler, Sr, and Jack Wampler, Jr.

2468 Martinsburg Pike

Winchester, VA 22603

(540) 667-7772

Contact:

Gary R. Oates, LS-B, PE

GreyWolfe, Inc.

1073 Redbud Road

Winchester, VA 22603

(540) 667-2001 ofc

(540) 545-4001 fax

McCann Office Park Rezoning

Introduction

The site is located on the eastern side of Martinsburg Pike (Route 11), the southern side of Old Charlestown Road (Route 761) and is bisected by McCanns Road (Route 838) at Stephenson in Frederick County, VA. The parcels are currently zoned RA and are used for agriculture and a residence. The proposal for the site is to rezone 6.180 acres to B-2, 11.729 acres to M-1, 93.246 acres to OM, 27.435 acres set aside as Open Space Buffer area remaining RA, and the remaining land will be dedicated for Right of Way. The applicant is seeking this change in zoning to create a more viable industrial & commercial parcel consistent with the Frederick County Comprehensive Plan.

Existing Conditions

The property is used for agriculture. The stormwater drains generally to Hiatt Run and to the east towards the CSX railroad.

Comprehensive Planning

The 2030 Comprehensive Plan contains an amendment adopted by the Board of Supervisors in 2014 for this area. Key points spelled out in the amendment are the “protection of the environmental features”, which is accomplished in this rezoning with the 27 acre Open Space Buffer. Another is the Office/Industrial land use designation and is addressed with the 93 acres of proposed OM zoning.

The preservation of McCanns Road as a trail is desired; however, could not be accomplished due to concerns by VDOT. See Transportation below. Therefore, buffers, trails, road closing, etc., called for in the amendment will not be met.

Another point in the amendment was the use of split rail fence along Route 11 and Old Charlestown Road. This is another item that will not be met because a large portion of property is being dedicated to Frederick County along these roads for right of way. Then a trail will be created within a 20' pedestrian easement. Finally the fence, up to 150' from the road in places, will be a wire fence for cattle. The landscaping and distance from road will prevent most motorists from seeing the fence.

A desire of the County is to obtain right of way for the future Route 37 bypass. The application proffers 11.982 acres for this; however, a portion of the property, 11.729 acres, will be landlocked unless an easement is provided. The proffer spells out that a 50' temporary access easement shall remain over the dedicated right of way until such time as

the County or State provides an alternative access for the parcel. This can be accomplished when Route 37 is designed and built with a frontage road, a future road through the Webber parcel, or a tunnel under Route 37.

A small portion of the site, 6 acres, will be used for commercial uses to support the local office-industrial uses per the amendment. The benefit to Frederick County by approving this rezoning will be a positive economic impact from businesses through taxes, as well as employment opportunities for its citizens.

Proposed Development

The site will be graded, landscaped, and roads installed that will meet current County and VDOT specifications.

Physical Impacts

A portion of the site is located within the 100 year flood plains per FEMA Flood Map No. 51069C0250D. This area will either be set aside in the buffer area, used to for road construction in order to access the site per Frederick County Zoning Ordinance, and used to install organic BMP's such as grass swales, bio-retention cells, and artificial wetlands. An existing portion of McCann's Road will be requested for abandonment and utilized for a hiker-biker trail. This trail will have a 50' buffer centered over it to preserve the historic nature of the old road.

Surrounding Properties

The site is bounded by Route 11, to the west, CSX railroad to the east, Route 761 to the north, and Weber's Nursery to the south. The surrounding land uses vary from RA, RP, R-4, B-2, and M-2 on Ebert Road.

Traffic Impact and Analysis

The 2014 amendment to the 2030 Comprehensive Plan call for McCann's Road to be protected and a north-south road from Old Charles Town Road; however, the initial transportation impact analysis that was submitted to VDOT was met with determined resistance. Therefore, a new TIA was produced that follows the direction laid down by VDOT and the site will be accessed via McCanns Road from Route 11. McCanns Road will have to be improved for industrial traffic and a lighted intersection provided at Route 11. The only connection to Old Charles Town Road will be a restricted right in/right out entrance that will not be installed until all improvements proffered with the Stephenson Village Rezoning (RZ #06-03) and Bishop-Amari (RZ #02-09) are installed.

A recent agreement and land sale with Hiatt Run Condos, LLC, provides for a public trail system that was called for in the amendment and this also provides additional right of way on McCanns Road at the intersection of Route 11 for a larger connection for turn lanes, tapers, traffic lights, etc.

Sewer Conveyance and Treatment

There is a pump station on at Snowden Bridge Station that can be reached via an easement across the adjoiners, and a study with Graystone Industrial Park to partner on a combined system. This commercial development is expected to generate 10,000 gpd and industrial portion will generate 30,000 gpd.

Water Supply

The FCSA has a water pump station on McCann's Road that is adjacent to the site. The water demands for an industrial general run 15%-20% higher than sewer demands for wash down, irrigation, etc. It is expected that water usage at final buildout will approach 50,000 gpd.

Drainage

The majority of the stormwater runoff drains to the east towards CSX. The applicant will be required to implement BMP's and other devices to meet the Commonwealth of Virginia's requirements as required by DEQ.

Solid Waste Disposal

The Civil Engineering Reference Manual, 4th edition, uses a rate of 5.4 cubic yards per 1,000 square feet of floor area. A 1,100,000 sf development will yield 5940 cubic yards per year. The solid waste will be transferred to the Frederick County Landfill Facility by private licensed commercial carriers.

Historical Impact

The site known as Stephenson Depot lies to the north and the area noted in Battlefield Network Plan dated February, 1997, indicates the core area for preserving lies within the buffer area north of Hiatt Run.

Educational Impact

This development will not create additional students for the schools.

Police, Fire, and Rescue Impact

The development will increase the burden on fire and rescue. The applicant is offering a proffer of \$0.10 per constructed building square foot to the County for fire and rescue services.

Parks & Recreation Impact

This development is not expected to increase population; therefore, no measurable impacts are predicted. The construction of the trails and open space available to the public should have a positive impact.

Soils

The soil types identified on the General Soil Map of the Soil Survey of Frederick County, Virginia are Frederick-Poplimento loams (#14B), Frederick-Poplimento very rocky loams (#16B), Frederick-Poplimento-Rock Outcrop Complex (#17C), and Swimley silt loams (#39B) as shown on map sheet 24. This soil types are clay with an abundance of limestone rock. The characteristics of this soil are manageable for development following the Virginia Erosion and Sediment Control practices.

Geology

This area is also known for karst topography. Care should be taken to explore for sinkholes and caverns prior to any excavation or development.

**REZONING APPLICATION FORM
FREDERICK COUNTY, VIRGINIA**

To be completed by Planning Staff:

Zoning Amendment Number _____	Fee Amount Paid \$ _____
PC Hearing Date <u>10-21-15</u>	Date Received _____
	BOS Hearing Date <u>11-12-15</u>

The following information shall be provided by the applicant:

All parcel identification numbers, deed book and page numbers may be obtained from the **Office of the Commissioner of Revenue, Real Estate Division, 107 North Kent Street, Winchester.**

1. Applicant:

Name: GreyWolfe, Inc. - Gary R. Oates, LS-B, PE Telephone: 540-667-2001

Address: 1073 Redbud Road

Winchester, Virginia 22603

2. Property Owner (if different than above)

Name: McCann Family Land Trust & Jack Wampler, Sr. & Jr. Telephone: (540) 667-3762

Address: 562 Milburn Road

Winchester, VA 22603

3. Contact person if other than above

Name: Gary R. Oates Telephone: 667-2001

4. Checklist: Check the following items that have been included with this application.

Location map _____	Agency Comments _____
Plat _____	Fees _____
Deed to property _____	Impact Analysis Statement _____
Verification of taxes paid _____	Proffer Statement _____

5. The Code of Virginia allows us to request full disclosure of ownership in relation to rezoning applications.

Please list below all owners or parties in interest of the land to be rezoned:

McCann Family Land Trust - (Judith McCann Slaughter, Ellen L. Marshall,

Daniel V. Marshall, III; Sheryl M. Griffin, Susanne T. Marshall, Patricia A. Marshall,

Ruth V. McCann, Thomas M. McCann) and Jack Wampler, Sr., Jack Wampler, Jr.

6. A) Current Use of the Property: Agricultural - Land Use, and Residential

B) Proposed Use of the Property: Commercial and Office-Manufacturing

7. Adjoining Property:

<u>PARCEL ID NUMBER</u>	<u>USE</u>	<u>ZONING</u>
<u>44-(A)-7, 10, 17, 24, 132B, 137</u>	<u>Res. & Vacant</u>	<u>RP</u>
<u>44-(A)-5, 5B, 38, 39, 134A, 140</u>	<u>Res. & Vacant</u>	<u>RA</u>
<u>44-(8)-1, 2, 3, 4, 5, 7</u>	<u>Vacant</u>	<u>RA</u>
<u>44-(A)-25, 26, 41, 42</u>	<u>Lumber Production</u>	<u>M-1</u>
<u>44-(A)-43</u>	<u>Residential</u>	<u>B-2</u>
<u> </u>	<u> </u>	<u> </u>

8. Location: The property is located at (give exact location based on nearest road and distance from nearest intersection, using road names and route numbers):

Southeast intersection of Martisburg Pike (Rt 11) and Old

Charlestown Road (Route 761). Lying on the western side of CSX railway with

McCanns Road running through the middle.

9. The following information should be provided according to the type of rezoning proposed:

Number of Units Proposed

Single Family homes: 0 Townhome: 0 Multi-Family: 0
Non-Residential Lots: 0 Mobile Home: 0 Hotel Rooms: 0

Square Footage of Proposed Uses

Office: _____ Service Station: _____
Retail: 25,000 Manufacturing: _____
Restaurant: 12,500 sf Warehouse: 1,000,00
Other: _____

10. Signature:

I (we), the undersigned, do hereby respectfully make application and petition the Frederick County Board of Supervisors to amend the zoning ordinance and to change the zoning map of Frederick County, Virginia. I (we) authorize Frederick County officials to enter the property for site inspection purposes.

I (we) understand that the sign issued when this application is submitted must be placed at the front property line at least seven days prior to the Planning Commission public hearing and the Board of Supervisors public hearing and maintained so as to be visible from the road right-of-way until the hearing.

I (we) hereby certify that this application and its accompanying materials are true and accurate to the best of my (our) knowledge.

Applicant(s): GAET WOLFE INC Date: 7/23/15

Date: _____

Trustee Owner(s): James McLaughlin Date: 9-1-2015
Elmer Dale Date: 9/4/15
Jack E. Wampler Jr Date: 09-10-2015
Jack Wampler Jr Date: 09-10-2015

ADJOINING PROPERTY OWNERS

Owners of property adjoining the land will be notified of the Planning Commission and the Board of Supervisors meetings. For the purpose of this application, **adjoining property is any property abutting the requested property on the side or rear or any property directly across a public right-of-way, a private right-of-way, or a watercourse from the requested property.** The applicant is required to obtain the following information on each adjoining property including the parcel identification number which may be obtained from the office of the Commissioner of Revenue. *The Commissioner of the Revenue is located on the 2nd floor of the Frederick County Administrative Building, 107 North Kent Street.*

Name and Property Identification Number		Address
Name	Hiatt Run Condos, LLC	821 Apple Pie Ridge Road
Property #	44-(A)-17	Winchester, VA 22603
Name	Charles Shumaker, et als	2040 Martinsburg Pike
Property #	43-(A)-132B	Winchester, VA 22603
Name	Charles Bridge	2010 Martinsburg Pike
Property #	43-(A)-134A	Winchester, VA 22603
Name	John Shoemaker	6515 Valley Road
Property #	43-(A)-137	Berkeley Springs, WV 25411
Name	Michael Weber	1912 Martinsburg Pike
Property #	43-(A)-140	Winchester, VA 22603
Name	Crider & Shockey, Inc of WV	PO Box 2530
Property #	44-(8)-1, 2, 3, 4, 5, 7	Winchester, VA 22604
Name	Crider & Shockey, Inc of WV	PO Box 2530
Property #	44-(A)-25, 26	Winchester, VA 22604
Name	Allen L. Shirley, et als	2455 Martinsburg Pike
Property #	44-(A)-5	Stephenson, VA 22656
Name	Donald Shirley, et als	2359 Martinsburg Pike
Property #	44-(A)-5B, 7	Stephenson, VA 22656

Name and Property Identification Number		Address
Name	Vincent Lord	2310 Martinsburg Pike Winchester, VA 22603
Property #	44-(A)-10	
Name	Rita Wilson	PO Box 2996 Winchester, VA 22604
Property #	44-(A)-24	
Name	Gregory Bishop	285 Boggess Lane Winchester, VA 22603
Property #	44-(A)-43	
Name	Robert Dyke	293 Old Charlestown Road Stephenson, VA 22656
Property #	44-(A)-38	
Name	Stephenson Associates	PO Box 2530 Winchester, VA 22604
Property #	44-(A)-39	
Name	Cutshaw Enterprises, LC	PO Box 805 Morganton, NC 28680
Property #	44-(A)-41, 42	
Name		
Property #		
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Property #		
Name		
Property #		

N



MEMORANDUM

TO: Frederick County Board of Supervisors

FROM: Candice E. Perkins, AICP, Senior Planner *Cep*

SUBJECT: **Public Hearing - Ordinance Amendment
Self-Storage Facilities in the RA (Rural Areas) District**

DATE: October 30, 2015

Staff has been requested to assess the potential to include self-storage facilities as a conditional use in the RA (Rural Areas) District. Currently self-storage is a permitted use in the B2, B3, M1 and M2 Districts. It has been requested that staff look into self-storage in the RA District due to this use requiring limited infrastructure (such as water and sewer). Currently other commercial uses permitted through a conditional use permit include:

- Country clubs, with or without banquet facilities.
- Country general stores.
- Service stations.
- Antique shops.
- Restaurants.
- Motels.
- Auction houses.
- Campgrounds, tourist camps, recreation areas and resorts.
- Commercial outdoor recreation, athletic or park facilities.
- Nationally chartered fraternal lodges or civic clubs, social centers and their related facilities.
- Sawmills and planing mills, Type B.
- Landscape contracting businesses.
- Veterinary office, clinic or hospital, including livestock services.
- Day-care facilities.
- Welding Repair (SIC 7692).
- Flea Markets, Operated Indoors or Outdoors.

The DRRC discussed this amendment at their July 2015 meeting. The DRRC had minor revisions and sent the proposed changes to the Planning Commission for discussion. The Planning Commission discussed this item on August 19, 2015; the Planning Commission agreed with the changes and sent the item forward for review by the Board of Supervisors. The Board of Supervisors discussed this item on September 9, 2015; and the Board expressed concern that this use may not fit in with many areas zoned Rural Areas and also questioned what would happen if the use discontinued.

Ultimately, the Board of Supervisors sent the proposed amendment forward for public hearing to solicit citizen comments. After the Board of Supervisors meeting staff added a condition to the proposed amendment requiring that properties be located within a Rural Community Center to qualify to apply for a Conditional Use Permit. The Planning Commission held a public hearing for this item on October 21, 2015; there were no public comments. The Planning Commission disagreed with the requirement for Rural Community Centers and recommended approval of the amendment with the removal of that requirement.

The attached document shows the existing ordinance with the proposed changes supported by the DRRC and the Planning Commission (with bold italic for text added). ***This proposed amendment is being presented to the Board of Supervisors as a public hearing item. A decision by the Board of Supervisors on this proposed Zoning Ordinance text amendment is sought.*** Please contact me if you have any questions.

Attachments: 1. Revised ordinance with additions shown in bold underlined italics.
 2. Resolution

CEP/pd

Original language

Draft revisions

**ARTICLE IV
AGRICULTURAL AND RESIDENTIAL DISTRICTS**

Part 401 – RA Rural Areas District

§ 165-401.03 Conditional uses.

The following uses of structures and land shall be allowed only if a conditional use permit has been granted for the use:

NN. Self-Service Storage Facilities

**Article II
SUPPLEMENTARY USE REGULATIONS, PARKING, BUFFERS, AND REGULATIONS FOR SPECIFIC USES**

Part 204 – Additional Regulations for Specific Uses

§ 165-204.18 Storage facilities, self-service.

Where allowed, self-service storage facilities shall meet the following requirements:

- A. Self-service storage facility operations shall be permitted as a primary or accessory use in all zoning districts in which they are permitted.
- B. All parking areas, travel aisles and maneuvering areas associated with the self-service storage facility operations shall be paved with asphalt, concrete or similar material to provide a durable hard surface.
- C. Buildings are permitted that provide interior and exterior accessible units. Individual units within the self-service storage building shall not exceed 1,000 square feet in area.
- D. Minimum building spacing shall be 30 feet apart. Loading areas shall be delineated to ensure that adequate travel aisles are maintained between buildings.
- E. Recreational vehicles and boats shall be permitted to be stored within completely enclosed areas of the self-service storage facility, provided that the storage area is separate from the parking areas and travel aisles and is depicted on the approved site development plan. Areas utilized for this purpose shall be exempt from the surface requirements specified under § 165-204.18B.
- F. Self-service storage facilities shall meet the following landscaping or screening requirements:

- (1) Facilities located in the B-2 Business General District shall be completely screened around the perimeter of the property by a double row of evergreen trees that are staggered and planted a maximum of eight feet off center and are a minimum of six feet in height when planted.
 - (2) Facilities located in the B-3 Industrial Transition District or the M-1 Light Industrial District shall be required to landscape the yard area within the front yard setback to provide for a double row of evergreen trees that are staggered and planted a maximum of eight feet off center. The side and rear yards shall be planted with a single row of evergreen or deciduous trees that are planted a maximum of 40 feet off center. All trees shall be a minimum of six feet in height at the time of planting.
 - (3) Facilities located on parcels that are within a master planned industrial park or office park shall be required to landscape the perimeter of the facility with a single row of evergreen or deciduous trees that are planted a maximum of 40 feet off center. All trees shall be a minimum of six feet in height at the time of planting.
 - (4) The required planting of all trees described under this Subsection **F** shall occur in an area that is between the adjoining property boundary line and the placement of security fencing. The installation of an opaque wall or fence that is a minimum of six feet in height may substitute for required landscaped areas in all zoning districts.
- G. Self-service storage facility operations shall be designed to accommodate the storage of residential, commercial and industrial items, excluding hazardous, toxic and explosive materials. No use, sale, repair or activity other than storage shall be permitted to occur in self-service storage facility operations. A copy of the lease agreement which describes the requirements of this subsection shall be approved in conjunction with the site development plan for the self-service storage facility operation.
- H. In addition to the above, self-service storage facilities in the RA (Rural Areas) District shall adhere to the following requirements:**
- (1) All development shall conform to all B2 (General Business) District standards.**
 - (2) All development shall have direct access onto a paved state road.**



ORDINANCE AMENDMENT

Action:

PLANNING COMMISSION: October 21, 2015

Recommended Approval

BOARD OF SUPERVISORS: November 12, 2015 ☐ APPROVED ☐ DENIED

AN ORDINANCE AMENDING THE FREDERICK COUNTY CODE CHAPTER 165 ZONING

ARTICLE IV - AGRICULTURAL AND RESIDENTIAL DISTRICTS PART 401 – RA RURAL AREAS DISTRICT §165-401.03 - CONDITIONAL USES

ARTICLE II – SUPPLEMENTARY USE REGULATIONS, PARKING, BUFFERS, AND REGULATIONS FOR SPECIFIC USES PART 204 – ADDITIONAL REGULATIONS FOR SPECIFIC USES §165-204.18 – STORAGE FACILITIES, SELF-SERVICE

WHEREAS, an ordinance to amend Chapter 165, Zoning to allow self-storage facilities as a conditional use in the RA (Rural Areas) District was considered and supplemental use regulations pertaining to the use; and

WHEREAS, the Planning Commission held a public hearing on this ordinance amendment on October 21, 2015; and

WHEREAS, the Board of Supervisors held a public hearing on this ordinance amendment on November 12, 2015; and

WHEREAS, the Frederick County Board of Supervisors finds that the adoption of this ordinance to be in the best interest of the public health, safety, welfare, and in good zoning practice; and

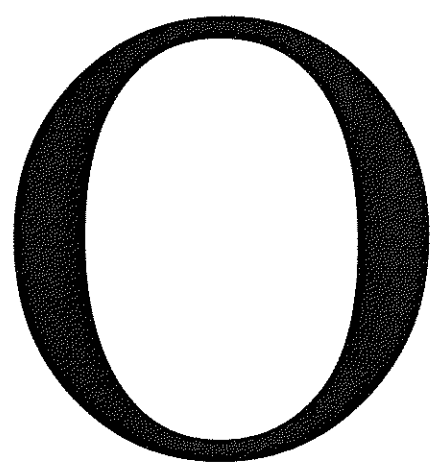
NOW, THEREFORE, BE IT ORDAINED by the Frederick County Board of Supervisors that **Chapter 165 Zoning, is amended to modify Article IV – Agricultural and Residential Districts, Part 401 – RA Rural Areas District; §165-401.03 – Conditional Uses; Article II – Supplementary Use Regulations, Parking, Buffers, and Regulations for Specific Uses, Part 204 – Additional Regulations for Specific Uses, §165-204.18 – Storage Facilities, Self-Service;** include self-storage facilities as a conditional use in the RA (Rural Areas) District and supplemental use regulations pertaining to the use.

Passed this 12th day of November, 2015 by the following recorded vote:

Richard C. Shickle, Chairman	_____	Gary A. Lofton	_____
Robert A. Hess	_____	Charles S. DeHaven, Jr.	_____
Gene E. Fisher	_____	Blaine P. Dunn	_____
Robert W. Wells	_____		

A COPY ATTEST

Brenda G. Garton
Frederick County Administrator





MEMORANDUM

TO: Frederick County Board of Supervisors

FROM: Candice E. Perkins, AICP, Senior Planner *CEP*

SUBJECT: Public Hearing - Ordinance Amendment – Variance Requirements

DATE: October 30, 2015

During the 2015 Session, the Virginia General Assembly passed amendments to the Code of Virginia pertaining to the operation of the local Board of Zoning Appeals. These changes require revisions to be made to the Zoning Ordinance to be compliant with the Code of Virginia pertaining to the Board of Zoning Appeals and the standards by which the Board reviews variance requests. Specific changes include:

- The definition of “variance” has been revised.
- The administrative appeals section has been updated to be consistent with the Code of Virginia – the determination of the Zoning Administrator shall be presumed to be correct and the burden of proof falls on the applicant to rebut the presumption of correctness.
- Within Section C – Variances - the term “unnecessary hardships” has been replaced with the phrase “unreasonable restriction on the utilization of the property”.
- Several other minor revisions have been included that reformat the ordinance to comply with the changes.

The DRRC discussed this amendment at their July 2015 meeting. The DRRC endorsed the changes and sent the amendment forward to the Planning Commission for discussion. The Planning Commission discussed this item on August 19, 2015; the Planning Commission agreed with the changes and sent the item forward for review by the Board of Supervisors. The Board of Supervisors discussed this item on September 9, 2015; the Board of Supervisors agreed with the proposed changes and sent the amendment forward for public hearing. The Planning Commission held a public hearing for this item on October 21, 2015; there were no public comments and the Planning Commission recommended approval.

The attached document shows the existing ordinance with the proposed changes supported by the DRRC and the Planning Commission (with strikethroughs for text eliminated and bold italic for text added). ***This proposed amendment is being presented to the Board of Supervisors as a public hearing item. A decision by the Board of Supervisors on this proposed Zoning Ordinance text amendment is sought.*** Please contact me if you have any questions.

Attachments:

1. Revised ordinance with additions shown in bold underlined italics.
2. Code of Virginia – BZA and Variances
3. Resolution

CEP/pd

Original language

Draft revisions

**ARTICLE X
BOARD OF ZONING APPEALS**

Part 1001 – Board of Zoning Appeals

§ 165-1001.01 Appointment; organization; terms.

A Board of Zoning Appeals shall be appointed by the Circuit Court according to the requirements and provisions of the Code of Virginia. The Board of Zoning Appeals shall organize and conduct itself according to all requirements of the Code of Virginia. The Board of Zoning Appeals shall consist of five members appointed for five-year terms.

§ 165-1001.02 Powers and duties.

A. Administrative appeals. The Board of Zoning Appeals shall hear and decide appeals from any order, requirement, decision or determination made by the Zoning Administrator, Director of Planning and Development or other administrative officer with authority to administer or enforce the requirements of this chapter. **The determination of the Zoning Administrator shall be presumed to be correct. At a hearing, the Zoning Administrator shall explain the basis for their determination after which the appellant has the burden of proof to rebut such presumption of correctness by a preponderance of the evidence. The Board of Zoning Appeals shall consider any applicable ordinances, laws and regulations in making its decision.**

(1) Procedures. An appeal to the Board of Zoning Appeals may be taken by any person, department, board, County or municipality aggrieved or affected by any decision of the Zoning Administrator. Such appeal shall be taken within 30 days after the decision by filing with the Zoning Administrator and Board of Zoning Appeals a notice of appeal specifying the grounds thereof. The Zoning Administrator shall transmit to the Board all the papers constituting the record upon which the action appealed was taken. An appeal shall stay all proceedings in furtherance of the action appealed unless the Zoning Administrator certifies to the Board that, by reason of facts stated in the certificate, a stay would, in his opinion, cause imminent peril to life or property, in which case proceedings shall not be stayed otherwise than by a restraining order granted by the Board or by a court of record, on application and on notice to the Zoning Administrator and for good cause shown.

(2) The Board shall fix a reasonable time for the hearing of an application or appeal and shall give public notice thereof as well as due notice to the parties in interest. It shall decide the appeal within 60 days. The Board may reverse or affirm wholly or partly or may modify an order, requirement, decision or determination appealed according to the procedures described in the Code of Virginia.

B. Map interpretations. The Board of Zoning Appeals shall hear and decide applications for the interpretation of the Zoning District Map after notice to the owners of the property affected and after a public hearing held according to the requirements of the Code of Virginia. The Board shall

interpret the map in such a way as to carry out the intent and purpose of this chapter for the particular district in question. The Board shall not have the power to change substantially the locations of district boundaries as established by this chapter. The Board shall not have power to rezone property.

C. Variances. The Board of Zoning Appeals shall hear and decide applications for variances from specific terms or requirements of this chapter in specific cases. Variances shall only be granted by the Board in the following cases:

(1) ~~When granting the variance will not be contrary to the public interest.~~ **The burden of proof shall be on the applicant for a variance to prove by a preponderance of the evidence that their application meets the standard for a variance as defined;**

(2) A variance shall be granted if the evidence shows that the strict application of the terms of the ordinance would unreasonably restrict the utilization of the property or that the granting of the variance would alleviate a hardship due to a physical condition relating to the property or improvements thereon at the time of the effective date of the ordinance and:

- a. The property interest for which the variance is being requested was acquired in good faith;**
- b. Any hardship was not created by the applicant for the variance;**
- c. The granting of the variance will not be of substantial detriment to adjacent property and nearby properties in the proximity of that geographical area;**
- d. Condition or situation of the property concerned is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted as an amendment to the ordinance;**
- e. The granting of the variance does not result in a use that is not otherwise permitted on such property or a change in the zoning classification of the property; and**
- f. The relief or remedy sought by the variance application is not available through a Conditional Use Permit process or the process for modification of a zoning ordinance.**

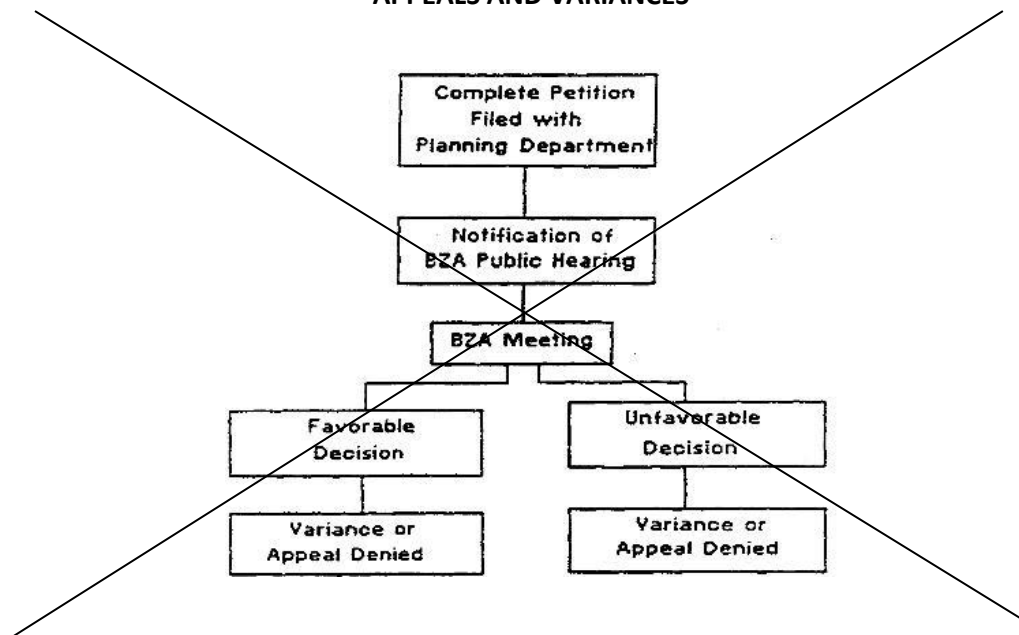
~~(2) When owing to special conditions, a literal enforcement of the provisions of this chapter will result in unnecessary hardship. Variances shall only be granted when the property owner can show that his property was acquired in good faith and where the owner can show that the hardship was not self-inflicted. Variances shall be granted where, by reason of the exceptional conditions on the property at the time of the effective date of this chapter, the strict application of the requirements of this chapter would effectively prohibit or unreasonably restrict the use of the property. Variances shall be granted to alleviate a clearly demonstrable hardship approaching confiscation. Variances shall not be granted to provide a special privilege or convenience sought by the applicant. A variance shall not be granted when the condition being alleviated is of a recurring nature so that the condition could better be alleviated by a zoning amendment.~~

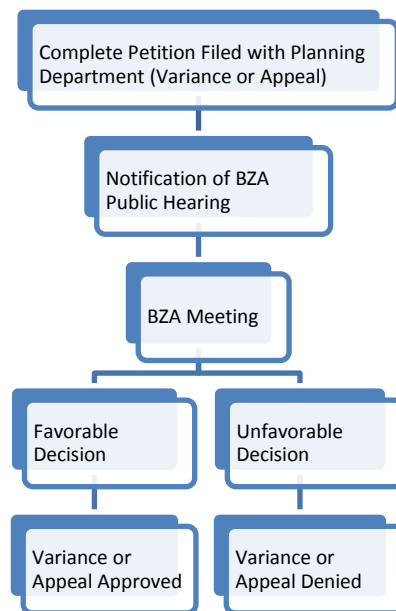
~~(3) When the granting of the variance will maintain the intent of this chapter.~~

~~(4) Variances shall be granted to alleviate the following types of conditions:~~

- ~~(a) Narrowness, shallowness, size or shape of a specific piece of property.~~
 - ~~(b) Exceptional topographic conditions.~~
 - ~~(c) Extraordinary conditions concerning the use of adjacent properties.~~
 - ~~(d) Other extraordinary conditions of the specific parcel of land.~~
- ~~(5) Variances shall only be authorized if the Board finds the following:~~
- ~~(a) That the strict application of this chapter would produce undue hardship as described above.~~
 - ~~(b) That such hardship is not shared generally by other properties in the same zoning district and the same vicinity.~~
 - ~~(c) That the authorization of such variance will not be of substantial detriment to adjacent property and that the character of the district will not be changed by granting the variance.~~
- (3) No variance shall be granted for any proposed use, development or activity in the Floodway District that will cause any increase in flood levels during the one-hundred-year flood.
- (4) When considering a variance application located within the floodplain districts, additional factors contained in ARTICLE VII, § 165-702.18, must be followed.
- D. Procedures. Applications for variances shall be made to the Zoning Administrator in accordance with rules adopted by the Zoning Administrator. Plans, maps and other application materials shall be provided by the applicant as required. Variances; shall be promptly transmitted to the Board of Zoning Appeals for public hearing. No variance shall be granted until after notice and a public hearing is held according to the requirements of the Code of Virginia. Applications for variances shall be accompanied by a nonrefundable fee in an amount as set by resolution of the Board of Supervisors from time to time.

APPEALS AND VARIANCES





- E. Conditions. In granting a variance, the Board of Zoning Appeals may impose such conditions regarding the location, character and other features of the proposed structure or use as it may deem necessary in the public interest and may require a guaranty or bond to ensure that the conditions imposed are being and will continue to be complied with.
- F. Decisions of the Board of Zoning Appeals may be appealed to the Circuit Court according to procedures set forth in the Code of Virginia.

ARTICLE I

GENERAL PROVISIONS, AMENDMENTS, AND CONDITIONAL USE PERMITS

Part 101 – General Provisions

§ 165-101.02 Definitions and word usage.

VARIANCE - A reasonable deviation from those provisions regulating the ***shape***, size or area of a lot or parcel of land, or the size, ***height***, area, bulk or location of a building or structure when the strict application of this chapter would result in unnecessary or unreasonable hardship to the property owners ***unreasonably restrict the utilization of the property***, and such need for a variance would not be shared generally by other properties, and provided that such variance is not contrary to the intended spirit and purpose of this chapter and would result in substantial justice being done.

VIRGINIA ACTS OF ASSEMBLY -- 2015 SESSION

CHAPTER 597

An Act to amend and reenact §§ 15.2-2201, 15.2-2308, 15.2-2309, and 15.2-2314 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 15.2-2308.1, relating to variances.

[H 1849]

Approved March 26, 2015

Be it enacted by the General Assembly of Virginia:

1. That §§ 15.2-2201, 15.2-2308, 15.2-2309, and 15.2-2314 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding a section numbered 15.2-2308.1 as follows:

§ 15.2-2201. Definitions.

As used in this chapter, unless the context requires a different meaning:

"Affordable housing" means, as a guideline, housing that is affordable to households with incomes at or below the area median income, provided that the occupant pays no more than thirty percent of his gross income for gross housing costs, including utilities. For the purpose of administering affordable dwelling unit ordinances authorized by this chapter, local governments may establish individual definitions of affordable housing and affordable dwelling units including determination of the appropriate percent of area median income and percent of gross income.

"Conditional zoning" means, as part of classifying land within a locality into areas and districts by legislative action, the allowing of reasonable conditions governing the use of such property, such conditions being in addition to, or modification of the regulations provided for a particular zoning district or zone by the overall zoning ordinance.

"Development" means a tract of land developed or to be developed as a unit under single ownership or unified control which is to be used for any business or industrial purpose or is to contain three or more residential dwelling units. The term "development" shall not be construed to include any tract of land which will be principally devoted to agricultural production.

"Historic area" means an area containing one or more buildings or places in which historic events occurred or having special public value because of notable architectural, archaeological or other features relating to the cultural or artistic heritage of the community, of such significance as to warrant conservation and preservation.

"Incentive zoning" means the use of bonuses in the form of increased project density or other benefits to a developer in return for the developer providing certain features, design elements, uses, services, or amenities desired by the locality, including but not limited to, site design incorporating principles of new urbanism and traditional neighborhood development, environmentally sustainable and energy-efficient building design, affordable housing creation and preservation, and historical preservation, as part of the development.

"Local planning commission" means a municipal planning commission or a county planning commission.

"Military installation" means a base, camp, post, station, yard, center, homeport facility for any ship, or other activity under jurisdiction of the U.S. Department of Defense, including any leased facility, or any land or interest in land owned by the Commonwealth and administered by the Adjutant General of Virginia or the Virginia Department of Military Affairs. "Military installation" does not include any facility used primarily for civil works, rivers and harbors projects, or flood control projects.

"Mixed use development" means property that incorporates two or more different uses, and may include a variety of housing types, within a single development.

"Official map" means a map of legally established and proposed public streets, waterways, and public areas adopted by a locality in accordance with the provisions of Article 4 (§ 15.2-2233 et seq.) hereof.

"Planned unit development" means a form of development characterized by unified site design for a variety of housing types and densities, clustering of buildings, common open space, and a mix of building types and land uses in which project planning and density calculation are performed for the entire development rather than on an individual lot basis.

"Planning district commission" means a regional planning agency chartered under the provisions of Chapter 42 (§ 15.2-4200 et seq.) of this title.

"Plat" or "plat of subdivision" means the schematic representation of land divided or to be divided and information in accordance with the provisions of §§ 15.2-2241, 15.2-2242, 15.2-2258, 15.2-2262, and 15.2-2264, and other applicable statutes.

"Preliminary subdivision plat" means the proposed schematic representation of development or subdivision that establishes how the provisions of §§ 15.2-2241 and 15.2-2242, and other applicable

statutes will be achieved.

"Resident curator" means a person, firm, or corporation that leases or otherwise contracts to manage, preserve, maintain, operate, or reside in a historic property in accordance with the provisions of § 15.2-2306 and other applicable statutes.

"Site plan" means the proposal for a development or a subdivision including all covenants, grants or easements and other conditions relating to use, location and bulk of buildings, density of development, common open space, public facilities and such other information as required by the subdivision ordinance to which the proposed development or subdivision is subject.

"Special exception" means a special use, that is a use not permitted in a particular district except by a special use permit granted under the provisions of this chapter and any zoning ordinances adopted herewith.

"Street" means highway, street, avenue, boulevard, road, lane, alley, or any public way.

"Subdivision," unless otherwise defined in an ordinance adopted pursuant to § 15.2-2240, means the division of a parcel of land into three or more lots or parcels of less than five acres each for the purpose of transfer of ownership or building development, or, if a new street is involved in such division, any division of a parcel of land. The term includes resubdivision and, when appropriate to the context, shall relate to the process of subdividing or to the land subdivided and solely for the purpose of recordation of any single division of land into two lots or parcels, a plat of such division shall be submitted for approval in accordance with § 15.2-2258.

"Variance" means, in the application of a zoning ordinance, a reasonable deviation from those provisions regulating the *shape*, size, or area of a lot or parcel of land; or the size, *height*, area, bulk, or location of a building or structure when the strict application of the ordinance would ~~result in unnecessary or unreasonable hardship to the property owner~~ *unreasonably restrict the utilization of the property*, and such need for a variance would not be shared generally by other properties, and provided such variance is not contrary to the ~~intended spirit and purpose of the ordinance, and would result in substantial justice being done~~. It shall not include a change in use, which change shall be accomplished by a rezoning or by a conditional zoning.

"Zoning" or "to zone" means the process of classifying land within a locality into areas and districts, such areas and districts being generally referred to as "zones," by legislative action and the prescribing and application in each area and district of regulations concerning building and structure designs, building and structure placement and uses to which land, buildings and structures within such designated areas and districts may be put.

§ 15.2-2308. Boards of zoning appeals to be created; membership, organization, etc.

A. Every locality that has enacted or enacts a zoning ordinance pursuant to this chapter or prior enabling laws, shall establish a board of zoning appeals that shall consist of either five or seven residents of the locality, appointed by the circuit court for the locality. Boards of zoning appeals for a locality within the fifteenth or nineteenth judicial circuit may be appointed by the chief judge or his designated judge or judges in their respective circuit, upon concurrence of such locality. Their terms of office shall be for five years each except that original appointments shall be made for such terms that the term of one member shall expire each year. The secretary of the board shall notify the court at least thirty days in advance of the expiration of any term of office, and shall also notify the court promptly if any vacancy occurs. Appointments to fill vacancies shall be only for the unexpired portion of the term. Members may be reappointed to succeed themselves. Members of the board shall hold no other public office in the locality except that one may be a member of the local planning commission. A member whose term expires shall continue to serve until his successor is appointed and qualifies. The circuit court for the City of Chesapeake and the Circuit Court for the City of Hampton shall appoint at least one but not more than three alternates to the board of zoning appeals. At the request of the local governing body, the circuit court for any other locality may appoint not more than three alternates to the board of zoning appeals. The qualifications, terms and compensation of alternate members shall be the same as those of regular members. A regular member when he knows he will be absent from or will have to abstain from any application at a meeting shall notify the chairman twenty-four hours prior to the meeting of such fact. The chairman shall select an alternate to serve in the absent or abstaining member's place and the records of the board shall so note. Such alternate member may vote on any application in which a regular member abstains.

B. Localities may, by ordinances enacted in each jurisdiction, create a joint board of zoning appeals that shall consist of two members appointed from among the residents of each participating jurisdiction by the circuit court for each county or city, plus one member from the area at large to be appointed by the circuit court or jointly by such courts if more than one, having jurisdiction in the area. The term of office of each member shall be five years except that of the two members first appointed from each jurisdiction, the term of one shall be for two years and of the other, four years. Vacancies shall be filled for the unexpired terms. In other respects, joint boards of zoning appeals shall be governed by all other provisions of this article.

C. With the exception of its secretary and the alternates, the board shall elect from its own membership its officers who shall serve annual terms as such and may succeed themselves. The board

may elect as its secretary either one of its members or a qualified individual who is not a member of the board, excluding the alternate members. A secretary who is not a member of the board shall not be entitled to vote on matters before the board. ~~For~~ *Notwithstanding any other provision of law, general or special, for the conduct of any hearing, a quorum shall be not less than a majority of all the members of the board and the board shall offer an equal amount of time in a hearing on the case to the applicant, appellant or other person aggrieved under § 15.2-2314, and the staff of the local governing body.* Except for matters governed by § 15.2-2312, no action of the board shall be valid unless authorized by a majority vote of those present and voting. The board may make, alter and rescind rules and forms for its procedures, consistent with ordinances of the locality and general laws of the Commonwealth. The board shall keep a full public record of its proceedings and shall submit a report of its activities to the governing body or bodies at least once each year.

D. Within the limits of funds appropriated by the governing body, the board may employ or contract for secretaries, clerks, legal counsel, consultants, and other technical and clerical services. Members of the board may receive such compensation as may be authorized by the respective governing bodies. Any board member or alternate may be removed for malfeasance, misfeasance or nonfeasance in office, or for other just cause, by the court that appointed him, after a hearing held after at least fifteen days' notice.

E. Notwithstanding any contrary provisions of this section, in the City of Virginia Beach, members of the board shall be appointed by the governing body. The governing body of such city shall also appoint at least one but not more than three alternates to the board.

§ 15.2-2308.1. Boards of zoning appeals, ex parte communications, proceedings.

A. *The non-legal staff of the governing body may have ex parte communications with a member of the board prior to the hearing but may not discuss the facts or law relative to a particular case. The applicant, landowner or his agent or attorney may have ex parte communications with a member of the board prior to the hearing but may not discuss the facts or law relative to a particular case. If any ex parte discussion of facts or law in fact occurs, the party engaging in such communication shall inform the other party as soon as practicable and advise the other party of the substance of such communication. For purposes of this section, regardless of whether all parties participate, ex parte communications shall not include (i) discussions as part of a public meeting or (ii) discussions prior to a public meeting to which staff of the governing body, the applicant, landowner or his agent or attorney are all invited.*

B. *Any materials relating to a particular case, including a staff recommendation or report furnished to a member of the board, shall be made available without cost to such applicant, appellant or other person aggrieved under § 15.2-2314, as soon as practicable thereafter, but in no event more than three business days of providing such materials to a member of the board. If the applicant, appellant or other person aggrieved under § 15.2-2314 requests additional documents or materials be provided by the locality other than those materials provided to the board, such request shall be made pursuant to § 2.2-3704. Any such materials furnished to a member of the board shall also be made available for public inspection pursuant to subsection F of § 2.2-3707.*

C. *For the purposes of this section, "non-legal staff of the governing body" means any staff who is not in the office of the attorney for the locality, or for the board, or who is appointed by special law or pursuant to § 15.2-1542. Nothing in this section shall preclude the board from having ex parte communications with any attorney or staff of any attorney where such communication is protected by the attorney-client privilege or other similar privilege or protection of confidentiality.*

D. *This section shall not apply to cases where an application for a special exception has been filed pursuant to subdivision 6 of § 15.2-2309.*

§ 15.2-2309. Powers and duties of boards of zoning appeals.

Boards of zoning appeals shall have the following powers and duties:

1. To hear and decide appeals from any order, requirement, decision, or determination made by an administrative officer in the administration or enforcement of this article or of any ordinance adopted pursuant thereto. The decision on such appeal shall be based on the board's judgment of whether the administrative officer was correct. *The determination of the administrative officer shall be presumed to be correct. At a hearing on an appeal, the administrative officer shall explain the basis for his determination after which the appellant has the burden of proof to rebut such presumption of correctness by a preponderance of the evidence.* The board shall consider ~~the purpose and intent of~~ any applicable ordinances, laws, and regulations in making its decision. *For purposes of this section, determination means any order, requirement, decision or determination made by an administrative officer. Any appeal of a determination to the board shall be in compliance with this section, notwithstanding any other provision of law, general or special.*

2. ~~To authorize~~ *Notwithstanding any other provision of law, general or special, to grant upon appeal or original application in specific cases such a variance as defined in § 15.2-2201 from the terms of the ordinance as will not be contrary to the public interest, when, owing to special conditions a literal enforcement of the provisions will result in unnecessary hardship; provided that the spirit of the ordinance shall be observed and substantial justice done; as follows: the burden of proof shall be on the*

applicant for a variance to prove by a preponderance of the evidence that his application meets the standard for a variance as defined in § 15.2-2201 and the criteria set out in this section.

~~When a property owner can show that his~~ Notwithstanding any other provision of law, general or special, a variance shall be granted if the evidence shows that the strict application of the terms of the ordinance would unreasonably restrict the utilization of the property or that the granting of the variance would alleviate a hardship due to a physical condition relating to the property or improvements thereon at the time of the effective date of the ordinance, and (i) the property interest for which the variance is being requested was acquired in good faith and ~~where by reason of the exceptional and any hardship was not created by the applicant for the variance; narrowness, shallowness, size, or shape of a specific piece of property at the time of the effective date of the ordinance, or where by reason of exceptional topographic conditions or other extraordinary situation or condition of the piece of property, or of the condition, situation, or development of property immediately adjacent thereto, the strict application of the terms of the ordinance would effectively prohibit or unreasonably restrict the utilization of the property or where the board is satisfied, upon the evidence heard by it, that the granting of the variance will alleviate a clearly demonstrable hardship, as distinguished from a special privilege or convenience sought by the applicant, provided that all variances shall be in harmony with the intended spirit and purpose of the ordinance.~~ (ii) the granting of the variance will not be of substantial detriment to adjacent property and nearby properties in the proximity of that geographical area; (iii) the condition or situation of the property concerned is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted as an amendment to the ordinance; (iv) the granting of the variance does not result in a use that is not otherwise permitted on such property or a change in the zoning classification of the property; and (v) the relief or remedy sought by the variance application is not available through a special exception process that is authorized in the ordinance pursuant to subdivision 6 of § 15.2-2309 or the process for modification of a zoning ordinance pursuant to subdivision A4 of § 15.2-2286 at the time of the filing of the variance application.

No such variance shall be authorized by the board unless it finds:

- a. That the strict application of the ordinance would produce undue hardship relating to the property;
- b. That the hardship is not shared generally by other properties in the same zoning district and the same vicinity; and
- c. That the authorization of the variance will not be of substantial detriment to adjacent property and that the character of the district will not be changed by the granting of the variance.

No variance shall be ~~authorized~~ considered except after notice and hearing as required by § 15.2-2204. However, when giving any required notice to the owners, their agents or the occupants of abutting property and property immediately across the street or road from the property affected, the board may give such notice by first-class mail rather than by registered or certified mail.

No variance shall be authorized unless the board finds that the condition or situation of the property concerned is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted as an amendment to the ordinance.

In ~~authorizing~~ granting a variance, the board may impose such conditions regarding the location, character, and other features of the proposed structure or use as it may deem necessary in the public interest; and may require a guarantee or bond to ensure that the conditions imposed are being and will continue to be complied with. Notwithstanding any other provision of law, *general or special*, the property upon which a property owner has been granted a variance shall be treated as conforming for all purposes under state law and local ordinance; however, the structure permitted by the variance may not be expanded unless the expansion is within an area of the site or part of the structure for which no variance is required under the ordinance. Where the expansion is proposed within an area of the site or part of the structure for which a variance is required, the approval of an additional variance shall be required.

3. To hear and decide appeals from the decision of the zoning administrator after notice and hearing as provided by § 15.2-2204. However, when giving any required notice to the owners, their agents or the occupants of abutting property and property immediately across the street or road from the property affected, the board may give such notice by first-class mail rather than by registered or certified mail.

4. To hear and decide applications for interpretation of the district map where there is any uncertainty as to the location of a district boundary. After notice to the owners of the property affected by the question, and after public hearing with notice as required by § 15.2-2204, the board may interpret the map in such way as to carry out the intent and purpose of the ordinance for the particular section or district in question. However, when giving any required notice to the owners, their agents or the occupants of abutting property and property immediately across the street or road from the property affected, the board may give such notice by first-class mail rather than by registered or certified mail. The board shall not have the power to change substantially the locations of district boundaries as established by ordinance.

5. No provision of this section shall be construed as granting any board the power to rezone property or to base board decisions on the merits of the purpose and intent of local ordinances duly adopted by the governing body.

6. To hear and decide applications for special exceptions as may be authorized in the ordinance. The board may impose such conditions relating to the use for which a permit is granted as it may deem necessary in the public interest, including limiting the duration of a permit, and may require a guarantee or bond to ensure that the conditions imposed are being and will continue to be complied with.

No special exception may be granted except after notice and hearing as provided by § 15.2-2204. However, when giving any required notice to the owners, their agents or the occupants of abutting property and property immediately across the street or road from the property affected, the board may give such notice by first-class mail rather than by registered or certified mail.

7. To revoke a special exception previously granted by the board of zoning appeals if the board determines that there has not been compliance with the terms or conditions of the permit. No special exception may be revoked except after notice and hearing as provided by § 15.2-2204. However, when giving any required notice to the owners, their agents or the occupants of abutting property and property immediately across the street or road from the property affected, the board may give such notice by first-class mail rather than by registered or certified mail. If a governing body reserves unto itself the right to issue special exceptions pursuant to § 15.2-2286, and, if the governing body determines that there has not been compliance with the terms and conditions of the permit, then it may also revoke special exceptions in the manner provided by this subdivision.

8. The board by resolution may fix a schedule of regular meetings, and may also fix the day or days to which any meeting shall be continued if the chairman, or vice-chairman if the chairman is unable to act, finds and declares that weather or other conditions are such that it is hazardous for members to attend the meeting. Such finding shall be communicated to the members and the press as promptly as possible. All hearings and other matters previously advertised for such meeting in accordance with § 15.2-2312 shall be conducted at the continued meeting and no further advertisement is required.

§ 15.2-2314. Certiorari to review decision of board.

Any person or persons jointly or severally aggrieved by any decision of the board of zoning appeals, or any aggrieved taxpayer or any officer, department, board or bureau of the locality, may file with the clerk of the circuit court for the county or city a petition that shall be styled "In Re: date Decision of the Board of Zoning Appeals of [locality name]" specifying the grounds on which aggrieved within 30 days after the final decision of the board.

Upon the presentation of such petition, the court shall allow a writ of certiorari to review the decision of the board of zoning appeals and shall prescribe therein the time within which a return thereto must be made and served upon the secretary of the board of zoning appeals or, if no secretary exists, the chair of the board of zoning appeals, which shall not be less than 10 days and may be extended by the court. The allowance of the writ shall not stay proceedings upon the decision appealed from, but the court may, on application, on notice to the board and on due cause shown, grant a restraining order.

Any review of a decision of the board shall not be considered an action against the board and the board shall not be a party to the proceedings; however, the board shall participate in the proceedings to the extent required by this section. The governing body, the landowner, and the applicant before the board of zoning appeals shall be necessary parties to the proceedings *in the circuit court*. The court may permit intervention by any other person or persons jointly or severally aggrieved by any decision of the board of zoning appeals.

The board of zoning appeals shall not be required to return the original papers acted upon by it but it shall be sufficient to return certified or sworn copies thereof or of the portions thereof as may be called for by the writ. The return shall concisely set forth such other facts as may be pertinent and material to show the grounds of the decision appealed from and shall be verified.

~~If, upon the hearing, it shall appear to the court that testimony is necessary for the proper disposition of the matter, it may take evidence or appoint a commissioner to take evidence as it may direct and report the evidence to the court with his findings of fact and conclusions of law, which shall constitute a part of the proceedings upon which the determination of the court shall be made.~~ The court may reverse or affirm, wholly or partly, or may modify the decision brought up for review.

In the case of an appeal from the board of zoning appeals to the circuit court of an order, requirement, decision or determination of a zoning administrator or other administrative officer in the administration or enforcement of any ordinance or provision of state law, or any modification of zoning requirements pursuant to § 15.2-2286, the findings and conclusions of the board of zoning appeals on questions of fact shall be presumed to be correct. The appealing party may rebut that presumption by proving by a preponderance of the evidence, including the record before the board of zoning appeals, that the board of zoning appeals erred in its decision. Any party may introduce evidence in the proceedings in the court. The court shall hear any arguments on questions of law de novo.

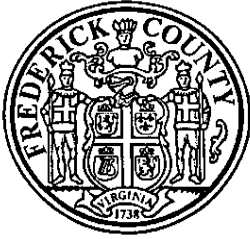
In the case of an appeal by a person of any decision of the board of zoning appeals that denied or granted an application for a variance, ~~or application for a special exception,~~ the decision of the board of zoning appeals shall be presumed to be correct. The petitioner may rebut that presumption by ~~showing to the satisfaction of the court that the board of zoning appeals applied erroneous principles of law, or where the discretion of the board of zoning appeals is involved, the decision of the board of zoning~~

appeals was plainly wrong and in violation of the purpose and intent of the zoning ordinance proving by a preponderance of the evidence, including the record before the board of zoning appeals, that the board of zoning appeals erred in its decision.

In the case of an appeal by a person of any decision of the board of zoning appeals that denied or granted application for a special exception, the decision of the board of zoning appeals shall be presumed to be correct. The petitioner may rebut that presumption by showing to the satisfaction of the court that the board of zoning appeals applied erroneous principles of law, or where the discretion of the board of zoning appeals is involved, the decision of the board of zoning appeals was plainly wrong, was in violation of the purpose and intent of the zoning ordinance, and is not fairly debatable.

In the case of an appeal from the board of zoning appeals to the circuit court of a decision of the board, any party may introduce evidence in the proceedings in the court in accordance with the Rules of Evidence of the Supreme Court of Virginia.

Costs shall not be allowed against the locality, unless it shall appear to the court that it acted in bad faith or with malice. In the event the decision of the board is affirmed and the court finds that the appeal was frivolous, the court may order the person or persons who requested the issuance of the writ of certiorari to pay the costs incurred in making the return of the record pursuant to the writ of certiorari. If the petition is withdrawn subsequent to the filing of the return, the locality may request that the court hear the matter on the question of whether the appeal was frivolous.



ORDINANCE AMENDMENT

Action:

PLANNING COMMISSION: October 21, 2015

Recommended Approval

BOARD OF SUPERVISORS: November 12, 2015 ☐ APPROVED ☐ DENIED

**AN ORDINANCE AMENDING
THE FREDERICK COUNTY CODE
CHAPTER 165 ZONING**

**ARTICLE X – BOARD OF ZONING APPEALS
PART 1001 – BOARD OF ZONING APPEALS
§165-1001.02 – POWER AND DUTIES**

**ARTICLE I – GENERAL PROVISIONS, AMENDMENTS, AND
CONDITIONAL USE PERMITS
PART 101 – GENERAL PROVISIONS
§165-101.02 – DEFINITIONS AND WORD USAGE**

WHEREAS, during the 2015 Session of the Virginia General Assembly passed an amendment to the Code of Virginia pertaining to the operation of the local Board of Zoning Appeals; and

WHEREAS, The Frederick County Planning Department has drafted revisions to Article X and Article I of the Zoning Ordinance to be compliant with the Code of Virginia pertaining to the Board of Zoning Appeals and the standards by which the Board review variance requests; and

WHEREAS, the Planning Commission held a public hearing on this ordinance amendment on October 21, 2015; and

WHEREAS, the Board of Supervisors held a public hearing on this ordinance amendment on November 12, 2015; and

WHEREAS, the Frederick County Board of Supervisors finds that the adoption of this ordinance to be in the best interest of the public health, safety, welfare, and in good zoning practice; and

NOW, THEREFORE, BE IT ORDAINED by the Frederick County Board of Supervisors that **Chapter 165 Zoning is amended to modify Article X – Board of Zoning Appeals, Part 1001 – Board of Zoning Appeals, §165-1001.02 – Powers and Duties and Article I – General Provisions Amendments, and Conditional Use Permits, Part 101 – General Provisions, §165-101.02 – Definitions and Word Usage** to be compliant with the Code of Virginia pertaining to the Board of Zoning Appeals and the standards by which the Board reviews variance requests.

Passed this 12th day of November, 2015 by the following recorded vote:

Richard C. Shickle, Chairman	_____	Gary A. Lofton	_____
Robert A. Hess	_____	Charles S. DeHaven, Jr.	_____
Gene E. Fisher	_____	Blaine P. Dunn	_____
Robert W. Wells	_____		

A COPY ATTEST

Brenda G. Garton
Frederick County Administrator

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MEMORANDUM

TO: Frederick County Board of Supervisors

FROM: Candice E. Perkins, AICP, Senior Planner *CEP*

SUBJECT: **Public Hearing - Ordinance Amendment
Setbacks from Agricultural and Forestal Districts**

DATE: October 30, 2015

During the 2015-2020 Agricultural and Forestal District update, concern was presented over the inclusions of parcels less than five (5) acres into the districts due to their impacts on adjacent parcels that were not in agricultural districts. The concern was that placement of these parcels of less than five (5) acres in size into the Agricultural District did not clearly further agriculture pursuits and interests, and often contained residences, yet the resulting 200-foot setback placed greater restrictions on their adjacent neighbors. Essentially, someone with a two (2) acre parcel could control development activity on their two (2) acres as well as their neighbor's two (2) acres (when the 200-ft setback was applied).

The Board of Supervisors held a public hearing for the inclusion of these parcels less than five (5) acres into the agricultural districts at their August 12, 2015 meeting. At that meeting they deferred action on accepting or denying the inclusion of many of these parcels and directed staff to draft an ordinance amendment that would allow the inclusion of the parcels without impacting adjacent parcels.

Staff has drafted an amendment to the RA (Rural Areas) District setbacks to address this issue; the proposed amendment includes the following:

- Utilizes the RA setback requirement based on adjoining parcel size previously adopted in 2007.
- Includes setbacks for parcels that abut an agricultural district, based on the size of the parcel within the adopted agricultural district.
- Parcels within an agricultural district that are six (6) acres or less would require a 50' setback and parcels over six (6) acres would require the 200' setback.

The Planning Commission discussed this item their August 19, 2015 meeting; at that meeting the Planning Commission discussed the acreage cutoff at 6 acres or above and below six (6) acres and felt this change addresses the issues raised with the Agricultural and Forestal District update.

The DRRC discussed this at their August 27, 2015 meeting; the DRRC requested that the acreage be changed from six (6) acres to two (2) acres. The DRRC felt that five (5) and six (6) acre parcels still

have a high potential for agricultural uses and the 200 foot setback was appropriate. The committee felt that reducing the acreage to two (2) acres for the 50 foot building restriction line would be more acceptable. The Board of Supervisors discussed this item on September 9, 2015; the Board of Supervisors discussed the six (6) and two (2) acre options. Ultimately the Board of Supervisors sent the amendment forward for public hearing with the six (6) acre requirement. The Planning Commission held a public hearing for this item on October 21, 2015; there were no public comments. The Commission discussed the six (6) and two (2) acre options previously presented, a member felt that the two (2) acre option was a better option and didn't see the need for moving to the six (6) acre. Ultimately the Planning Commission recommended approval of the amendment with the six(6) acre provision.

The attached document shows the existing ordinance with the proposed changes supported by the DRRC and the Planning Commission (with strikethroughs for text eliminated and bold italic for text added). ***This proposed amendment is being presented to the Board of Supervisors as a public hearing item. A decision by the Board of Supervisors on this proposed Zoning Ordinance text amendment is sought.*** Please contact me if you have any questions.

Attachments: **1. Revised ordinance with additions shown in bold underlined italics.**
 2. Resolution

CEP/pd

Original language

Draft revisions

**ARTICLE IV
AGRICULTURAL AND RESIDENTIAL DISTRICTS**

Part 401 – RA Rural Areas District

§ 165-401.07 Setback requirements.

The following setback requirements shall apply to all parcels within the RA Rural Areas Zoning District:

A. Setbacks for all lots other than rural preservation lots shall be as set out below.

[Amended 2-28-2007; 4-27-2011]

- (1) Front setbacks. The front setback for any principal or accessory use or structure ~~located on a traditional five-acre lot~~ shall be 60 feet from the property line or right-of-way of the street, road or ingress/egress easement.
- (2) Side or rear setbacks. The minimum side or rear setback for any principal use or structure shall be determined by the primary use of the adjoining parcel as follows:

Adjoining Parcel Size	Setback (Side and Rear) (feet)
6 acres or less	50
More than 6 acres	100
<u>Agricultural and Forestal District, 6 acres or less</u>	<u>50</u>
<u>Agricultural and Forestal District, more than 6 acres</u>	<u>200</u>
Orchard <u>(regardless of parcel size)</u>	200



ORDINANCE AMENDMENT

Action:

PLANNING COMMISSION: October 21, 2015

Recommended Approval

BOARD OF SUPERVISORS: November 12, 2015 ☐ APPROVED ☐ DENIED

AN ORDINANCE AMENDING THE FREDERICK COUNTY CODE CHAPTER 165 ZONING

ARTICLE IV - AGRICULTURAL AND RESIDENTIAL DISTRICTS PART 401 – RA RURAL AREAS DISTRICT §165-401.07 – SETBACK REQUIREMENTS

WHEREAS, Staff has been directed to prepare an amendment to Chapter 165, Zoning to reduce the setbacks off of parcels within the Agricultural and Forestal District. Staff has drafted an amendment to the RA (Rural Areas) District setbacks that would require parcels abutting a property within an agricultural district that is six acres or less to have a 50' setback and parcels more than six acres would require a 200' setback; and

WHEREAS, the Planning Commission held a public hearing on this ordinance amendment on October 21, 2015; and

WHEREAS, the Board of Supervisors held a public hearing on this ordinance amendment on November 12, 2015; and

WHEREAS, the Frederick County Board of Supervisors finds that the adoption of this ordinance to be in the best interest of the public health, safety, welfare, and in good zoning practice; and

NOW, THEREFORE, BE IT ORDAINED by the Frederick County Board of Supervisors that **Chapter 165 Zoning, is amended to modify Article IV – Agricultural and Residential Districts, Part 401 – RA Rural Areas District; §165-401.07 – Setback Requirements** requiring parcels abutting a property within an agricultural district that is six acres or less to have a 50' setback and parcels more than six acres would require a 200' setback.

Passed this 12th day of November, 2015 by the following recorded vote:

Richard C. Shickle, Chairman _____

Gary A. Lofton _____

Robert A. Hess _____

Charles S. DeHaven, Jr. _____

Gene E. Fisher _____

Blaine P. Dunn _____

Robert W. Wells _____

A COPY ATTEST


Brenda G. Garton
Frederick County Administrator

Q



MEMORANDUM

TO: Frederick County Board of Supervisors

FROM: Mark R. Cheran, Zoning Administrator 

SUBJECT: **Public Meeting - Consideration for Inclusion of Parcels of Less Than 5 Acres Into the 2015-2020 Agricultural and Forestal Districts**

DATE: November 3, 2015

On August 12, 2015, the Board of Supervisors held a public hearing to consider adding 46 parcels of less than five (5) acres in size to the 2015-2020 Agricultural and Forestal Districts. Eleven of the parcels were adopted for inclusion into the Districts. After a lengthy discussion regarding how the current building setback requirements may impact adjacent parcels, the Board deferred action on the remaining 35 parcels. As reflected in the attached table (Attachment 3), 16 of the 35 parcels were "Not Adjacent nor Encapsulated by Existing Ag District"; 19 of the 35 parcels were "Adjacent to Existing Ag District".

Since the August meeting, staff has drafted a setback ordinance revision in an attempt to address the concerns that were previously expressed. Specifically, the draft ordinance reduces the setback influence area from 200 feet to 50 feet when the Agricultural District property is less than 6 acres. The draft ordinance is scheduled for action by the Board on November 12, 2015. (The ordinance is a separate action item, and should be acted on prior to this memorandum's purpose of including additional parcels into the Agricultural and Forestal District.)

In the event that the draft ordinance is accepted, and adopted by the Board of Supervisors, staff believes that the inclusion of the 35 parcels totaling 70.94 acres into the Agricultural and Forestal District is appropriate.

Staff is requesting Board action on the inclusion of 35 parcels totaling 70.94 acres into the 2015-2020 Agricultural and Forestal District.

Please see the attached Table (Attachment 3) which identifies the 35 parcels that are being considered for inclusion in the 2015-2020 Agricultural and Forestal Districts.

Attached to this memorandum for your review are:

1. Minutes of June 24, 2015 ADAC meeting.
2. Minutes of July 15, 2015 Planning Commission meeting.

3. **List of the remaining thirty-five (35) properties less than five (5) acres proposed for inclusion in the Agricultural and Forestal District, and recommendations of disposition.**
4. Location maps of the thirty-five (35) parcels demonstrating the influence of the 50 foot Agricultural District setback on adjoining properties.

Background:

The County's Agricultural and Forestal District Program is intended to recognize, promote, embrace, and protect our agricultural economy. One strategy utilized to protect agricultural operations is an ordinance requirement that establishes a 200-foot building setback against the agricultural district; essentially working to minimize impacts on agricultural activities from non-agricultural structures. The 200-foot building setback (i.e. 'buffer') from Agricultural Districts was adopted into the Zoning Ordinance on May 28, 2007.

In February 2015, the Agricultural District Advisory Committee (ADAC) found that parcels less than five (5) acres, not in the Land Use Assessment Program, and in an Agricultural District, could be placing unintended restrictions on adjacent properties. The concern was that placement of these parcels of less than five (5) acres in size into the Agricultural District did not clearly further agriculture pursuits and interests, yet the resulting 200-foot setback placed greater restrictions on their adjacent neighbors. Essentially, someone with a two (2) acre parcel could control development activity on their two (2) acres as well as their neighbor's two (2) acres (when the 200-ft setback was applied). At their April 20, 2015 meeting, ADAC recommended that such properties not be included in the Agricultural District. On May 20, 2015, the Planning Commission endorsed the ADAC's April 20, 2015 recommendation.

On May 27, 2015, the Frederick County Board of Supervisors adopted the eight (8) 2015-2020 Agricultural and Forestal Districts totaling 11,425 acres. Forty-six (46) parcels totaling eighty-seven (87) acres were not included in the adopted 2015-2020 Agricultural and Forestal Districts. These forty-six (46) parcels were each less than five (5) acres in size and were not participants in the County's Land Use Assessment Program. During the Board's public hearing, a number of property owner's voiced concern that they wanted their smaller parcels included in the Agricultural Districts, and more importantly, were not aware that their parcels were not included in the Planning Commission's recommendation, nor had their parcels been advertised for inclusion. ***On May 27, 2015, the Board of Supervisors requested that each of these parcels be given further consideration, and that the property owners be given an opportunity to participate in the evaluation.***

In response to the Board of Supervisors' May 27, 2015 request, the ADAC held a meeting on June 24, 2015, to reconsider including the forty-six (46) parcels of less than five (5) acres into the County's Agricultural and Forestal Districts. Staff presented for review each of the forty-six (46) parcels previously not included in the Districts. The property owners were offered an

opportunity to voice their position regarding placement of their less than five (5) acre parcels into the Agricultural and Forestal District. A number of property owners attended the meeting and voiced their preference that their parcels be included in the Agricultural and Forestal Districts. The ADAC discussion did include a review of how placement of a parcel into an Agricultural and Forestal District would place additional setback restrictions of 200 feet on adjoining properties. Ultimately, the ADAC supported the interests of property owners wanting participation and inclusion in the Agricultural and Forestal Districts. ***The ADAC recommended that all forty-six (46) parcels be included in their respective Districts.***

The Planning Commission held a public hearing on July 15, 2015, to review the forty-six (46) parcels. Several property owners spoke to request that their property remain in the Agricultural and Forestal Districts. One adjacent property owner expressed his concern that a 200-foot setback would render his property unbuildable – devaluing the property from approximately \$70-\$80,000 to less than \$20,000.

The Planning Commission noted that the County's Agricultural and Forestal District Program is intended to recognize, promote, and protect our agricultural economy. The strategy utilized to protect agricultural operations is an ordinance requirement that establishes a 200-foot building setback against the agricultural district; essentially working to minimize impacts on agricultural activities from non-agricultural structures. The Planning Commissioners questioned if it was appropriate that parcels less than five (5) acres be included within an Agricultural and Forestal District, as these parcels would be placing unintended restrictions on adjacent properties not in an Agricultural and Forestal District.

At the request of numerous Planning Commission members, and prior to its July 15, 2015 meeting, staff broke down the forty-six (46) affected properties into three groups for evaluation and review. The first group was properties encapsulated/surrounded by existing Agricultural and Forestal Districts. The second group was properties that were neither adjacent nor encapsulated by existing Agricultural and Forestal Districts. The third group was properties adjacent to an existing Agricultural and Forestal District.

The Planning Commission in reviewing the forty-six (46) parcels of less than five (5) acres believed that the increased setback to adjoining properties not in the Agricultural and Forestal District did place unintended restrictions on adjacent properties. Furthermore, the Planning Commission felt the undue burden placed on the affected property owner was not the intent of the Agricultural and Forestal Districts; the affected property owner would require relief from the greater setback and this relief could only be accomplished by a variance via the Board of Zoning Appeals at a cost of \$400.00.

The Planning Commission, recommended the following actions:

- **22 Parcels with a total of 61.95 +/- acres not be added to the Districts.**
- **24 Parcels with a total of 46.35 +/- acres be added to the Districts.**

The total acreage of the County's eight (8) Agricultural and Forestal Districts as a result of the Planning Commission recommendation would be 11,646.35 +/- acres.

BOARD OF SUPERVISORS SUMMARY AND ACTION FROM THE 08/12/15 MEETING:

The Board of Supervisors held a public hearing for the inclusion of these 46 parcels less than five (5) acres into the Agricultural and Forestal Districts at their August 12, 2015 meeting. At that meeting the Board of Supervisors included 11 properties totaling 16.98 acreage for inclusion into the Agricultural and Forestal District. However, the Board deferred action on accepting or denying the inclusion of 35 parcels totaling 70.94 acres and directed staff to draft an ordinance amendment that would allow the inclusion of the parcels without impacting adjacent parcels.

MRC/pd

MEETING SUMMARY
OF THE
AGRICULTURAL DISTRICT ADVISORY COMMITTEE

Held in the Board of Supervisors Room of the Frederick County Administration Building at 107 North Kent Street in Winchester, Virginia on June 24, 2015.

PRESENT: Carly C. Ay, Stonewall District; Dudley H. Rinker, Back Creek District; John Stelzl, Opequon District; John D. Cline, Stonewall District; and Cordell L. Watt, Gainesboro District

ABSENT: Harman Brumback, Back Creek District; Jason McDonald, Shawnee District; and John R. Marker, Back Creek District Alternate

Staff: Eric Lawrence, Director of Planning & Development; Mark R. Cheran, Zoning Administrator; and Pam Deeter, Secretary

OTHER: Ellen Murphy, Commissioner of Revenue; Seth Thatcher, Assessor; and eight property owners and/or representatives.

The meeting was called to order by Mr. Cheran. Items one and two on the agenda are two new properties that want to come into the Agricultural and Forestal District. Item three on the agenda is 46 properties that were not included in the renewal of the 2015-2020 Agricultural and Forestal District, for which the Board of Supervisors requests a re-evaluation.

Mr. Cheran stated that people continue to express a desire to be included in the Agricultural District; the agenda this evening is an opportunity to consider their addition to the District.

Item 1: Addition of 5 acres, PIN 43-A-159A, to 2015-2020 Red Bud Agricultural and Forestal District

This is a request to the Frederick County Agricultural District Advisory Committee (ADAC) to add a 5.0+/- acre parcel, PIN 43-A-159A, to the 2015-2020 Red Bud Agricultural and Forestal District. The parcel is located along Red Bud Road and the District currently has 985.59 acres. If approved this would increase the 2015-2020 Red Bud Agricultural and Forestal District to 990.5+/- acres. This addition meets the intent of Chapter 43, Section 15.2-4300 of the Code of Virginia, and has been evaluated in conjunction with the 2030 Comprehensive Plan which keeps this area rural in nature.

On a motion made by Mr. Rinker and seconded by Mr. Watt, the ADAC recommended approval of the addition of the 5.0+/- acres, PIN 43-A-159A, to the 2015-2020 Red Bud Agricultural and Forestal District.

Item 2: Addition of 175 acres, PIN 85-A-3, to 2015-2020 South Frederick Agricultural and Forestal District

This is a request to the Frederick County Agricultural District Advisory Committee (ADAC) to add a 175-acre parcel, PIN 85-A-3, to the 2015-2020 South Frederick Agricultural and Forestal District. The parcel is located along Conestoga Lane. If approved this would increase the 2015-2020 South Frederick Agricultural and Forestal District to 6,020.90+/- acres. This addition meets the intent of Chapter 43, Section 15.2-4300 of the Code of Virginia, and has been evaluated in conjunction with the 2030 Comprehensive Plan which keeps this area rural in nature.

On a motion made by Mr. Watt and seconded by Mr. Rinker, the ADAC recommended approval of the addition of the 175 acres, PIN 85-A-3, to the 2015-2020 South Frederick Agricultural and Forestal District.

Item 3: Re-Evaluation of the addition of 46 parcels, totaling 87 acres, to various Agricultural and Forestal Districts.

Mr. Cheran gave background information that at the ADAC meeting in February 2015, ADAC discussed whether properties that were less than 5 acres in size and not in the County Land Use Assessment Program should be included in an agricultural and forestal district. These properties' placement in the District could impact adjacent property owners by requiring a building setback of 200 foot from agricultural district boundaries. The ADAC recommended that such properties not be included in the Agricultural and Forestal District.

The Board of Supervisors met on May 27, 2015, and adopted the eight 2015-2020 Agricultural and Forestal Districts totaling 11,425 acres which did not include 46 parcels (total 87 acres) that were less than 5 acres in size, and not in the County's Land Use Assessment Program. The Board of Supervisors requested that the ADAC review the 46 parcels, and permit the 46 property owners the opportunity to participate in the evaluation.

Before the presentation started, an ADAC member spoke about the importance of small parcels which helped create the individual Agricultural and Forestal Districts, which these landowners support agricultural in the County, and therefore should be included in the agricultural district program.

Mr. Cheran stated that as the ADAC reviews the 46 parcels, staff will present an illustrative map of each parcel, and include the 200 foot buffer area on adjacent properties to depict the potential setback restriction on an adjacent property's use.

PIN 42-A-61 Mr. Cheran started his presentation with the Albin District. This parcel is owned by DTS LC and the size of the parcel is 2.50 acres. A committee member spoke and said that it is the right of landowner if he wants to be in the Agricultural District to protect them. It was noted that the parcel is surrounded by the Agricultural District, and there are no adjacent houses. On a motion made by Mr. Rinker and seconded by Mr. Stelzl, the ADAC unanimously recommended approval of including PIN 42-A-61 into the 2015-2020 Albin Agricultural and Forestal District.

PIN(s) 31-A-170 and 31-A-171 Located in the Apple Pie Ridge District, these two parcels are owned by Fruit Hill Orchard Inc. One parcel has 0.34 acres and the other 1.07 acres. Again the map is showing a 200 foot setback of how it would affect adjoining property owners. A committee member confirmed that these properties already adjoin an orchard.

On a motion made by Mr. Rinker and seconded by Mr. Stelzl, the ADAC unanimously recommended approval of including PIN(s) 31-A-170 and 31-A-171 into the 2015-2020 Apple Pie Ridge Agricultural and Forestal District.

PIN 85-A-25 The next 10 properties are located in the Double Church Agricultural and Forestal District. The first to consider is PIN 85-A-25, a 0.50 acre parcel owned by Roger Siever. This is a small property with limited expansion opportunity. Placement of the property into the Agricultural District will place additional setback burdens on its adjacent properties. A committee member asked if this restriction affects the parcel that is in Agricultural District from building. Mr. Cheran replied, no. A committee member stated then why do we want to restrict an adjacent parcel from building.

A committee member said if a landowner wants to be back in the District than we should allow him back in. A question was posed is this a new addition or was this property already in District. Mr. Cheran replied this landowner was already in the District.

On a motion made by Mr. Rinker and seconded by Mr. Stelzl, the ADAC recommended approval of including PIN 85-A-25 into the 2015-2020 Double Church Agricultural and Forestal District. One committee member opposed the motion.

PIN 85-A-33 PIN 85-A-33 is owned by Jessie Judd and the parcel size is 0.37 acres. Mr. Cheran showed the buffers on the map which could affect the properties to the west and east. It was noted that placement of this property in the District is impacting the neighboring property. A member asked if the fields were in the Agricultural District and Mr. Cheran said no. A committee member said this property wants back in District but yet he hasn't done anything to support or hurt it the Agricultural District. Another member spoke up and said he helped to form the District.

On a motion made by Mr. Rinker and seconded by Mr. Stelzl, the ADAC recommended approval of including PIN 85-A-33 into the 2015-2020 Double Church Agricultural and Forestal District. Two committee members opposed the motion.

PIN 85-A-132 PIN 85-A-132 is owned by Sandra Ritenour, and is 3.67 acres. The property owner came forward to speak. This piece of land was cut from the original farm and a house was placed on the property and surrounding this property is Agricultural and Forestal family owners. In the past, the property owners stated she has raised corn, steers, goats, and sheep on this property. Ms. Ritenour would like to stay in the District.

On a motion made by Mr. Stetzl and seconded by Mr. Rinker, the ADAC unanimously recommended approval of including PIN 85-A-132 into the 2015-2020 Double Church Agricultural and Forestal District.

PIN 85-A-139A PIN 85-A-139A is owned by Gary and Linda Scothorn, and contains 1.29 acres. Mr. Scothorn came forward to speak. Mr. Scothorn confirmed the area where he could build. He expressed that he would obtain a building permit if he decided to build. His house is setting in the middle of his property and he owns several other smaller parcels with separate deeds around his larger tract of land.

On a motion made by Mr. Ay and seconded by Mr. Stelzel, the ADAC unanimously recommended approval of including PIN 85-A-132 into the 2015-2020 Double Church Agricultural and Forestal District.

PIN 86-A-33 PIN 86-A-33 is owned by Betty Stetzl, and contains .12 acres. Mr. Stelz spoke for his mother, and stated that the buffer does come onto his farm which is in the Agricultural District and also across the road and this property is surround by farmland. This property was part of the main farm but when Grim Road went in this piece of property was separated from the main farm.

On a motion made by Mr. Rinker and seconded by Mr. Ay, the ADAC unanimously recommended approval of including PIN 86-A-33 into the 2015-2020 Double Church Agricultural and Forestal District. Mr. Stetzl abstained from voting and the vote was unanimously passed.

PIN 86-A-230A PIN 86-A-230A is owned by Jeffery and Joseph Gore, and the parcel has 0.97 acres. Mr. Cheran said the 200 foot buffer has been placed on the map and this buffer could impact the adjoining property owners

On a motion made by Mr. Stetzl and seconded by Mr. Rinker, the ADAC unanimously recommended approval of including PIN 86-A-230A into the 2015-2020 Double Church Agricultural and Forestal District.

PIN 86-A-231 PIN 86-A-231 is owned by Fred Gore, and the parcel has 2.50 acres. The property appears to be less than 100 feet wide, possibly an old right-of-way. The properties on both side of this parcel are in the Agricultural and Forestal District.

On a motion made by Mr. Stetzl and seconded by Mr. Rinker, the ADAC unanimously recommended approval of including PIN 86-A-231 into the 2015-2020 Double Church Agricultural and Forestal District.

PIN 86-A-245 PIN 86-A-245 is owned by John and Virginia Booth and the parcel has 0.50 acres. A committee member spoke up and said that Ms. Booth contacted him that she was interested in staying in the Agricultural and Forestal District.

On a motion made by Mr. Rinker and seconded by Mr. Cline, the ADAC unanimously recommended approval of including PIN 86-A-245 into the 2015-2020 Double Church Agricultural and Forestal District.

PIN(s) 86-A-264 and 86-A-264A PIN(s) 86-A-264 and 86-A-264A are owned by Shirley Ritenour, one parcel is 0.50 and the other is 0.53 acres in size. A committee member spoke up that the field in the back is Clevenger Property and to the best of his knowledge this property is in Agricultural District.

On a motion made by Mr. Stelzl and seconded by Mr. Rinker, the ADAC unanimously recommended approval of including PIN 86-A-264 and 86-A-264A into the 2015-2020 Double Church Agricultural and Forestal District.

PIN 43-A-159 The next 11 properties are located in the Red Bud Agricultural and Forestal District. The first to consider is PIN 43-A-159, a 2 acre property owner by R & J Land Development, LLC.

Mr. Oates came forward to speak on behalf of the property owner. The property to the North and East of the R & J Land Development land was just recommended for approval tonight (earlier on agenda) to go into the Agricultural District. Mr. Oates stated that property buffers don't go across the road because that is a front setback and on other side of this property is a commercial site which would have no impact on this property. The landowner wants to stay in the Agricultural District. Mr. Oates stated that all buffer stops at the state maintained road or right-of-way and they don't continue past the road.

On a motion made by Mr. Stelzl and seconded by Mr. Rinker, the ADAC unanimously recommended approval of including PIN 43-A-159 into the 2015-2020 Red Bud Agricultural and Forestal District.

PIN 44-A-28C PIN 44-A-28C is owned by Robert and Marsha Boden and the parcel has 4.30 acres. Mr. Oates came forward to speak on behalf of the landowners. The property to the North, East and South are in the Agricultural District. When the District was formed ten years ago Mr. Oates stated he needed a lot of these little parcels to meet the criteria to form a District and also to tie together the larger farm parcels.

A committee member gave his opinion that putting on an addition to a house in the 200 foot buffer is different from someone trying to put in 20 lots. Maybe there needs to be a change in an amendment. Mr. Cheran said if you are adding onto the principal structure that is where the 200 foot comes into play. Now, if you were putting up an accessory dwelling, the 200 foot buffer wouldn't come into play.

On a motion made by Mr. Rinker and seconded by Mr. Ay, the ADAC unanimously recommended approval of including PIN 44-A-28C into the 2015-2020 Red Bud Agricultural and Forestal District.

PIN 44D-2-6 PIN 44D-2-6 is owned by Charles Willis and the parcel is 2.00 acres in size. Ms. Willis contacted staff and wants to be in the Agricultural and Forestal District. Mr. Oates stood up and stated when this District was formed he needed this piece to connect to Huntzberry Farm so they could be in the Agricultural District. Mr. Oates said when the District was formed there was no lot size. We need to

have 200 acres to form the Districts and the properties could be one mile in apart from another and still be in the Agricultural District.

On a motion made by Mr. Stelzl and seconded by Mr. Rinker, the ADAC unanimously recommended approval of including PIN 44D-2-6 into the 2015-2020 Red Bud Agricultural and Forestal District.

PIN 55-A-5B PIN 55-A-5B is owned by Vera Herring and the parcel size is 1.00 acre. Mr. Oates spoke again this is another property that helped form the District. The property to the East and the South belongs to her son; to the West is the Battlefield. Ms. Herring property buffer won't affect anyone since surrounding property is in Agricultural District.

On a motion made by Mr. Rinker and seconded by Mr. Cline, the ADAC unanimously recommended approval of including PIN 55-A-5B into the 2015-2020 Red Bud Agricultural and Forestal District.

PIN 55-A-5D PIN 55-A-5D is owned by Kevin Herring and the parcel size is 1.21 acres. Mr. Oates said this is Vera Herring's son and he is surrounded by Agricultural District land.

On a motion made by Mr. Stelzl and seconded by Mr. Rinker, the ADAC unanimously recommended approval of including PIN 55-A-5D into the 2015-2020 Red Bud Agricultural and Forestal District.

PIN 55-A-14 PIN 55-A-14 is owned by Ernest Lam and the parcel size is 2.00 acres. The buffers were shown on the map for viewing to the Committee. Mr. Oates spoke again that this property owner helped form the District and would like to remain in the District.

On a motion made by Mr. Rinker and seconded by Mr. Stelzl, the ADAC unanimously recommended approval of including PIN 55-A-14 into the 2015-2020 Red Bud Agricultural and Forestal District.

PIN(s) 55-A-115 and 55-A-117 PIN(s) 55-A-115 and 55-A-117 are owned by Mr. Jeff Jenkins through two different holding companies: Jeffrey Jenkins and R & J Land Development. The Jeffrey Jenkins parcel has 1.75 acres and the R & J Land Development has 4.33 acres in size. Mr. Oates said these parcels are both surrounded by Church and a subdivision

On a motion made by Mr. Rinker and seconded by Mr. Stelzl, the ADAC unanimously recommended approval of including PIN(s) 55-A-115 and 55-A-117 into the 2015-2020 Red Bud Agricultural and Forestal District.

PIN 55-A-118 PIN 55-A-118 is owned by Dawn Stultz and her parcel contains 1.13 acres.

On a motion made by Mr. Rinker and seconded by Mr. Stelzl, the ADAC unanimously recommended approval of including PIN 55-A-118 into the 2015-2020 Red Bud Agricultural and Forestal District.

PIN(s) 55-A-177 and 55-A-178A PIN(s) 55-A-177 and 55-A-178A are owned by William Schuller Jr., and William and Genevieve Schuller. One parcel contains 0.38 acres and the other parcel contains 1.28 acres in size. Mr. Oates said Mr. Schuller has purchased these properties one at a time and never consolidated the land. Each of the properties might have an old house on it and he uses that as a shed. Mr. Schuller has cattle on the land and also uses the fields for hay.

On a motion made by Mr. Stelzl and seconded by Mr. Rinker, the ADAC unanimously recommended approval of including PIN 55-A-177 and 55-A-178A into the 2015-2020 Red Bud Agricultural and Forestal District.

PIN 77-A-83 The next 21 properties are located in the South Frederick Agricultural and Forestal District. The first to consider is PIN 77-A-83, a 0.5 acre property owned by Constance Meagher.

On a motion made by Mr. Rinker and seconded by Mr. Stelzl, the ADAC unanimously recommended approval of including PIN 77-A-83 into the 2015-2020 South Frederick Agricultural and Forestal District.

PIN(s) 73-A-27 and 73-A-28 PIN(s) 73-A-27 and 73-A-28 are owned by Martha Cooley and Vernon Riding Trust. Ms. Cooley's property has 4.00 acres in size and the Trust property has 4.00 acres as well. These properties are along Germany Road.

On a motion made by Mr. Rinker and seconded by Mr. Stelzl, the ADAC unanimously recommended approval of including PIN(s) 73-A-27 and 73-A-28 into the 2015-2020 South Frederick Agricultural and Forestal District.

PIN(s) 73-A-30, 73-A-30A, and 73-A-30E PIN(s) 73-A-30, 73-A-30A, and 73-A-30E are owned by Dudley Rinker, Kenton and Kathy Noffke and Dudley Rinker. Mr. Rinker's one property is 4.83 acres and the other property is 1.01 acres in size. Mr. and Mrs. Noffke's property has 1.71 acres. Mr. Rinker has abstained from the vote.

On a motion made by Mr. Cline and seconded by Mr. Stelzl, the ADAC unanimously recommended approval of including PINs 73-A-30, 73-A-30A, and 73-A-30E into the 2015-2020 South Frederick Agricultural and Forestal District.

PIN 73-A-34 PIN 73-A-34 is owned by Charles Hamilton and consists of 4.80 acres.

On a motion made by Mr. Cline and seconded by Mr. Rinker, the ADAC unanimously recommended approval of including PIN 73-A-34 into the 2015-2020 South Frederick Agricultural and Forestal District.

PIN 73-A-38 PIN 73-A-38 is owned by Mark and Roxanna Orndorff and consists of 3.57 acres. This property is along Middle Road.

On a motion made by Mr. Rinker and seconded by Mr. Stelzl, the ADAC unanimously recommended approval of including PIN 73-A-38 into the 2015-2020 South Frederick Agricultural and Forestal District.

PIN 73-12-11 PIN 73-12-11 is owned by Charles and Vicky Murphy and consists of 2.86 acres.

On a motion made by Mr. Stelzl and seconded by Mr. Rinker, the ADAC unanimously recommended approval of including PIN 73-12-11 into the 2015-2020 South Frederick Agricultural and Forestal District.

PIN(s) 73-12-23 and 73-12-26 PIN(s) 73-12-23 and 73-12-26 are owned by David and Patricia Hlavinka and David and Julie Menefee. The Hlavinka property consists of 2.98 acres and the Menefee property consists of 2.29 acres in size. The Menefee sent in a letter wanting to stay in the Agricultural District. It was noted that these lots are in a Rural Preservation Subdivision, with recorded setbacks; therefore the 200 foot Agricultural District buffer will not affect the lots within the rural preservation subdivision.

On a motion made by Mr. Stelzl and seconded by Mr. Rinker, the ADAC unanimously recommended approval of including PIN(s) 73-12-23 and 73-12-26 into the 2015-2020 South Frederick Agricultural and Forestal District.

PIN 74-A-10F PIN 74-A-10F is owned by Larry and Joyce Earhart and consists of 1.46 acres. Mr. and Mrs. Earhart came forward to speak. Mrs. Earhart expressed their concerns that your property doesn't have to be in land use to be in the Agricultural District and they feel they are being penalized because they have a small parcel which is not in the land use program. They support the Agricultural District and have been in the district for many years. The surrounding properties are in the Agricultural District. A committee member asked the property owner if their larger property is in the Land Use Program and Agricultural and Forestal District Program. Mrs. Earhart said yes for many years. The Earhart's stated that they did not want their neighbor to construct a house, and that the additional 200 foot Agricultural District buffer placed on the adjacent property would prohibit the construction of a house on the adjacent property, further preserving their farming operation.

On a motion made by Mr. Stelzl and seconded by Mr. Rinker, the ADAC unanimously recommended approval of including PIN 74-A-10F into the 2015-2020 South Frederick Agricultural and Forestal District.

PIN(s) 74-A-14, 74-A-15A, and 74-A-15 PIN(s) 74-A-14, 74-A-15A, and 74-A-15 are owned by Cheryl Humphries and Pamela Lewis. Two of the properties owned by Ms. Humphries consist of 2.0 acres and 1.23 acres. The joint property with Pamela Lewis is 3.00 acres in size.

On a motion made by Mr. Rinker and seconded by Mr. Stelzl, the ADAC unanimously recommended approval of including PIN(s) 74-A-14, 74-A-15A, and 74-A-15 into the 2015-2020 South Frederick Agricultural and Forestal District.

PIN 61-A-23A PIN 61-A-23A is owned by BHS, LC and the parcel is 1.00 acre in size.

On a motion made by Mr. Rinker and seconded by Mr. Watt, the ADAC unanimously recommended approval of including PIN 61-A-23A into the 2015-2020 South Frederick Agricultural and Forestal District.

PIN 62-A-27 PIN 62-A-27 is owned by William Copenhaver and the parcel is 1.30 acres.

On a motion made by Mr. Rinker and seconded by Mr. Stelzl, the ADAC unanimously recommended approval of including PIN 62-A-27 into the 2015-2020 South Frederick Agricultural and Forestal District.

PIN 61-A-29 PIN 61-A-29 is owned by BHS, LC and the parcel is 1.25 acres in size.

On a motion made by Mr. Rinker and seconded by Mr. Stelzl, the ADAC unanimously recommended approval of including PIN 61-A-29 into the 2015-2020 South Frederick Agricultural and Forestal District.

PIN(s) 61-A-43E and 61-A-44 PIN(s) 61-A-43E and 61-A-44 are owned by Carol Melby and Joseph Snapp. Ms. Melba's is property is 1.00 acre in size and Mr. Snapp's is 2.20 acres.

On a motion made by Mr. Rinker and seconded by Mr. Stelzl, the ADAC unanimously recommended approval of including PIN(s) 61-A-43E and 61-A-44 into the 2015-2020 South Frederick Agricultural and Forestal District.

PIN 73-A-64A PIN 73-A-64A is owned by Holly and Samuel Dillender and the parcel size is 2.32 acres.

On a motion made by Mr. Rinker and seconded by Mr. Stelzl, the ADAC unanimously recommended approval of including PIN 73-A-64A into the 2015-2020 South Frederick Agricultural and Forestal District.

PIN 26-A-61A The next parcel is located in the South Timber Ridge Agricultural and Forestal District. PIN 26-A-61A, is a 2 acre property owned by CLW Holdings. The surrounding is all Agricultural and Forestal District.

On a motion made by Mr. Rinker and seconded by Mr. Stelzl, the ADAC unanimously recommended approval of including PIN 26-A-61A into the 2015-2020 South Timber Ridge Agricultural and Forestal District. Mr. Watt abstained from the vote.

Mr. Cheran will take the recommendation to the Planning Commission on July 15, 2015 and to the Board of Supervisors on August 12, 2015.

Mr. Watt wanted to get the opinion of the committee members about building an addition onto a home. Mr. Watt stated that he does not believe the intent of an Agricultural and Forestal District is to restrict an adjoining property owner's ability to construct a building addition to his or her house. But, unfortunately, today's recommendations to include parcels into the agricultural district did subject adjacent property owner's to additional setback restrictions.

A committee member noticed on the map that the future Route 37 extension is against the Agricultural and Forestal District. The committee member wanted to know how this would affect the District. Staff noted that when an Agricultural District is either created or renewed by the Board of Supervisors it is noted that a major road or subdivision is in the Comprehensive Policy Plan for that area, and that the establishment of the Agricultural District will hinder the ability to implement the planned infrastructure. But it was also noted that the Board could elect not to include a parcel into the agricultural district if the planned infrastructure was envisioned to be constructed within the next 5 years and that the Board felt

the planned infrastructure should supersede the agricultural protections offered by participation in an Agricultural District.

A committee member had a question about PATH (Power Lines). If a landowner in the Agricultural and Forestal District, is approached by a utility company for a right-of-way through his property is this allowed. Mr. Cheran replied the way state code is written it should recognize the Agricultural Forestal District and should be taken into consideration but not sure if it would stop them or not. If the landowner opposed this action it would certainly strengthen the landowner's legal position being in the District.

The meeting adjourned at 7:25 p.m.

PUBLIC HEARING

Addition to the South Frederick Agricultural and Forestal District – The proposed addition is a 175.00+/- acre tract within one parcel and is located in the Back Creek District along Conestoga Lane.

Action – Recommend Approval

Zoning and Subdivision Administrator, Mark R. Cheran, reported this is a request to add a 175.00+/- acre parcel to the South Frederick Agricultural and Forestal District. Mr. Cheran explained the District currently has a total of 5,845.90+/- acres and if approved with the additional 175.00+/- acre parcel, the District would now have a total of 6,020.90+/- acres. Mr. Cheran noted the Agricultural District Advisory Committee (ADAC) unanimously recommended approval of this item at their June 24, 2015 meeting.

Chairman Wilmot opened the public hearing to citizen comments. No one came forward to speak and Chairman Wilmot closed the public comment portion of the hearing.

There were no questions or comments from Commission members at this time.

Upon motion made by Commissioner Marston and seconded by Commissioner Thomas,

BE IT RESOLVED, that the Frederick County Planning Commission does hereby unanimously recommend approval of the Addition to the South Frederick Agricultural and Forestal District – The proposed addition is a 175.00+/- acre tract within one parcel and is located in the Back Creek District along Conestoga Lane.

(Note: Commissioners Oates and Unger were absent from the meeting)

2015-2020 Agricultural and Forestal District Addition of Parcels Less than 5 Acres – This Public Hearing is to consider the addition of 46 parcels, each less than 5 acres in size to the following Districts: Albin, Apple Pie Ridge, Double Church, Red Bud, South Frederick, and South Timber Ridge Districts. This could add up to an additional 87 acres to the established 11,425.93 acres within the Agricultural and Forestal District Program for the ensuing five year period. Properties that are incorporated into an Agricultural and Forestal District are guaranteed certain protection as specified in Section 15.2-4300 of the Code of Virginia.

Action- Listed separately below

Zoning and Subdivision Administrator, Mark R. Cheran, reported in February 2015 the Frederick County Agricultural District Advisory Committee (ADAC) met to consider the eight Agricultural and Forestal Districts the County currently has. He explained during the review process, the ADAC found there were parcels less than 5 acres, not in the Land Use Assessment Program, and in an Agricultural District. Mr. Cheran noted that the ADAC felt this could be placing unintended restrictions on adjacent properties that would include excessive building setbacks and eliminating opportunity for

placement of buildings on a property. Therefore, the ADAC recommended such properties not be included in the Agricultural and Forestal Districts.

Mr. Cheran referenced the May 27, 2015 Frederick County Board of Supervisors meeting at which time the eight 2015-2020 Agricultural and Forestal Districts totaling 11,425 acres were adopted. He noted forty-six (46) parcels totaling 87 acres were not included in the adopted Agricultural and Forestal Districts. These 46 parcels were each less than 5 acres and were not participants in the County's Land Use Assessment Program. Mr. Cheran reported, as a result the Board of Supervisors requested each of these parcels be given further consideration and the property owners be given an opportunity to participate in the evaluation.

Mr. Cheran reported, on June 24, 2015 the ADAC held a meeting to consider the inclusion of the 46 parcels of less than 5 acres into the County's Agricultural and Forestal Districts. He noted, the 46 property owners were invited to participate and 10 properties were represented at the meeting.

Mr. Cheran shared the comments from the Agricultural District Advisory Committee (ADAC) and the comments are as follows:

- Importance of Agricultural Districts and to welcome all who wish to be included
- Important to recognize those properties that were part of the original creation of the Districts, without which the District may not have qualified
- Important to recognize that inclusion in the Agricultural District creates impacts (greater setbacks) on adjacent properties, therefore it must be deemed appropriate to include a parcel if it is not directly contributing to farm use

Mr. Cheran noted, the ADAC recommended approval for inclusion of all 46 parcels into the Agricultural District program.

Mr. Cheran reported, Staff notified the 46 property owners as well as the adjoining property owners. At the recommendation of the Planning Commission, the 46 parcels were organized into three groups and are as follows:

- Group 1 – Parcels not adjacent nor encapsulated by existing Agricultural Districts
- Group 2 – Parcels adjacent to existing Agricultural Districts
- Group 3 – Parcels encapsulated by existing Agricultural Districts

Commissioner Thomas inquired what the impact to the 46 parcels is if they would not be included back in the Agricultural and Forestal Districts. Mr. Cheran noted, there would not be any impacts. He continued, if the parcels were in the Land Use Assessment Program there may be tax impacts; however, these 46 parcels are not in the Land Use Assessment Program. Commissioner Thomas asked for clarification on the Agricultural and Forestal District definition. Mr. Cheran reiterated, the Agricultural and Forestal Districts are established to protect Agricultural and Forestal operations, recognizes and promotes our agricultural economy, preserves open space, utilizes a tool in land use actions, and once adopted the Districts become part of the County's Comprehensive Policy Plan.

Commissioner Dunlap noted, in the event we recommend approval of the 46 parcels to be included, his concern is the 200 ft. building setback and would there be any form of relief for these property owners should they want to construct an additional structure and the 200 ft. setback be a factor.

Mr. Cheran explained, the relief that would apply is an application for a Variance to the Board of Zoning Appeals (BZA).

Commissioner Marston inquired what the minimal amount of acres is for an Agricultural District to exist. Mr. Cheran responded the creation of an Agricultural and Forestal District starts out with a core of 200 acres and within a mile radius of that other property owners may choose to join in. Commissioner Marston asked if taking any of the 46 parcels out would jeopardize the existence of any of the Districts. Mr. Cheran noted, without the 46 parcels in question today, it would leave a total of 11,513 acres in the eight Agricultural and Forestal Districts and all could remain intact.

Commissioner Thomas commented, it appears none of these parcels could meet the intent of the Agricultural and Forestal District. He noted, you're not going to farm on a tenth of an acre, you're not going to farm on a half-acre that has a house on it, and therefore it would not be preserving farm or forest land. Mr. Cheran explained, when assembling the Agricultural and Forestal Districts that is when all of the 46 parcels in question were included. He noted, knowing the setbacks were changed to Rural Area (RA) study; it did appear it would be a hindrance on adjoining property owners. Commissioner Thomas stated, it appears for those half-acre or even up to 2 acre parcels this would be giving them control of land two and three times the size of the property they own; for example, they may own 1 acre but control 3 or 4 acres of someone else's property. Mr. Cheran noted, given the setbacks that statement would be correct.

Commissioner Crockett commented, looking at the aerial photos provided, most of the 46 parcels appear to be residences. Mr. Cheran concurred; they are mostly single family dwellings. Commissioner Crockett stated, he is in support of preserving agricultural land but also the rights of the adjacent property owners cannot be ignored.

Commissioner Marston commented, his concern is the County may be headed down a wrong path should all of the 46 parcels be put back into the Agricultural and Forestal Districts. He stated the clean-up down the road may be lengthy.

Chairman Wilmot opened the public hearing to citizen comments. The following citizens came forward to speak.

Mr. John Toney of the Back Creek Magisterial District came forward to speak. Mr. Toney presented a photo of the Carter Hall property that has an adjacent property which is part of the 46 parcels being discussed. He commented he does not believe a residence and work shop should qualify to be put in an Agricultural and Forestal District. Chairman Wilmot requested Mr. Cheran identify this parcel (79-A-10F) via the onscreen map.

Mrs. Joyce Earhart of the Back Creek Magisterial District came forward to speak. Mrs. Earhart owns the property being referenced by Mr. John Toney. She explained, at the last ADAC meeting it was noted they were not required to be in the Land Use Assessment Program to be a part of an Agricultural District, therefore they do not understand why their parcel was removed. She stated, as an owner of a small parcel and a larger adjoining parcel they feel they should be grand fathered in due to the fact they have been part of the Agricultural and Forestal District for years. She concluded, they respectfully request their property remain in the Agricultural and Forestal District.

Ms. Sandra Ritenour of the Opequon Magisterial District and the Double Church Agricultural and Forestal District came forward to speak. Ms. Ritenour explained her property is one of the 46 parcels in question. She noted, she is grateful this decision is being revisited by the County. Ms.

Ritenour explained her property was part of the family farm which still surrounds her property. She concluded her request is that the Planning Commission take each parcel individually and reconsider their placement.

Mr. Larry Earhart of the Back Creek Magisterial District came forward to comment. He stated his property has been in the district for years and should remain there. He noted the adjacent neighbors had the opportunity to complain or dispute years ago and no one did so; therefore, he feels no one should complain now.

Mr. William Schuller of the Shawnee Magisterial District came forward and stated he would like his property to be put back into the Agricultural and Forestal District.

Chairman Wilmot asked if there were any other citizens who wished to speak. No one came forward and Chairman Wilmot closed the public comment portion of the hearing.

Commissioner Mohn commented he sees the need to look at a lot of these parcels individually. He is concerned with the groupings and wants to be sure what is being viewed graphically is accurate. Mr. Cheran elaborated on the photos noting, they are just an overview and if the parcels are viewed individually the graphics will be accurate.

Chairman Wilmot explained the 3 grouping to ensure everyone is clear and asked if there were any questions. There were not questions at that time.

Commissioner Thomas commented, Group 1 (not adjacent to or encapsulated by Agricultural District) should *not* be included in the Agricultural and Forestal District. He elaborated, Group 2 (adjacent to existing Agricultural District) should be evaluated individually and Group 3 (encapsulated by existing Agricultural District) should be included.

Supervisor Hess provided a background of what transpired at the recent Board of Supervisors meeting. He explained, the night of the meeting it was already a couple days past the expiration date for the Agricultural and Forestal Districts. The proposal that was presented and was advertised for the public hearing did not include the 46 parcels. He noted there was no option left for the Board of Supervisors to add any of the 46 parcels back in to the Districts. The Board of Supervisors approved the Agricultural and Forestal Districts with these removed and noted the property owners of the removed 46 parcels had not been notified.

Planning Director, Eric R. Lawrence commented, Mr. Hess explained it well. He noted in order to get to tonight all advertisement was complete in all legal aspects, invites were sent to the 46 property owners as well as legal notifications sent to adjacent property owners. Mr. Lawrence noted every effort has been made to make sure the public is properly notified and aware of what is going on.

Chairman Wilmot reiterated the Groupings to ensure all Commission Members are clear and able to proceed.

Commissioner Marston inquired if a parcel is removed can that parcel be put back in the Agricultural and Forestal District after 5 years. Mr. Cheran responded yes, by going through the process again.

Commissioner Thomas made a motion which was seconded by Commissioner Triplett to *exclude* Group 1(not adjacent or encapsulated by existing Agricultural District) and *include* Group 3 (encapsulated by existing Agricultural District) in the 2015-2020 Agricultural and Forestal District.

BE IT RESOLVED, that the Frederick County Planning Commission does hereby unanimously recommend approval to *exclude* Group 1(not adjacent or encapsulated by existing Agricultural District) and *include* Group 3 (encapsulated by existing Agricultural District) in the 2015-2020 Agricultural and Forestal District.

(Note: Commissioners Oates and Unger were absent from the meeting)

The remaining 19 parcels, Group 2 (adjacent to existing Agricultural District) were voted on individually and the results are as follows:

PIN(s) 31-A-170 and 31-A-171 A motion was made by Commissioner Mohn, seconded by Commissioner Dunlap and unanimously approved to *include* these parcels in the Apple Pie Ridge Agricultural and Forestal District.

PIN 85-A-132 A motion was made by Commissioner Mohn, seconded by Commissioner Dunlap and unanimously approved to *include* this parcel in the Double Church Agricultural and Forestal District.

PIN 44-A-28C Commissioner Thomas clarified the buffer does not extend across the road. Commissioner Kenney noted that not much agriculture activity can take place on this property. Commissioner Mohn commented to leave the property in and the impacts are not severe. A motion was made by Commissioner Mohn, seconded by Commissioner Manuel and passed by majority vote to *include* this parcel in the Red Bud Agricultural and Forestal District.

PIN 55-A-115 A motion was made by Commissioner Thomas, seconded by Commissioner Kenney and unanimously approved to *exclude* this parcel from the Red Bud Agricultural and Forestal District.

PIN 55-A-117 A motion was made by Commissioner Thomas, seconded by Commissioner Kenney and unanimously approved to *exclude* this parcel from the Red Bud Agricultural and Forestal District.

PIN 55-A-14 A motion was made by Commissioner Thomas, seconded by Commissioner Mohn and unanimously approved to *exclude* this parcel from the Red Bud Agricultural and Forestal District.

PIN(s) 55-A-177 and 55-A-178A Commissioner Thomas clarified the buffer does not extend across Valley Mill Road. Commissioner Mohn commented these parcels are contiguous to the Agricultural District and it would be appropriate to keep them in. A motion was made by Commissioner Mohn, seconded by Commissioner Marston and unanimously approved to *include* these parcels in the Red Bud Agricultural and Forestal District.

PIN 44D-2-6 A motion was made by Commissioner Mohn, seconded by Commissioner Manuel and approved by majority vote to *include* this parcel in the Red Bud Agricultural and Forestal District.

PIN(s) 73-A-27 and 73-A-28 A motion was made by Commissioner Thomas, seconded by Commissioner Triplett and unanimously approved to *include* these parcels in the South Frederick Agricultural and Forestal District.

PIN 74-A-10F Commissioner Thomas clarified the buffer does not extend across the road. He also noted the property across the road is not developed therefore if included it would give this parcel control of property that is not theirs. A motion was made by Commissioner Dunlap, seconded by Commissioner Triplett and unanimously approved to *exclude* this parcel from the South Frederick Agricultural and Forestal District.

PIN 73-A-34 A motion was made by Commissioner Thomas, seconded by Commissioner Kenney and unanimously approved to *exclude* this property from the South Frederick Agricultural and Forestal District.

PIN(s) 73-A-30 and 73-A-30E A motion was made by Commissioner Thomas, seconded by Commissioner Molden and unanimously approved to *include* these parcels in the South Frederick Agricultural and Forestal District.

PIN 73-A-30A Commissioner Thomas commented this appears to be a single family dwelling. A motion made by Commissioner Thomas, seconded by Commissioner Molden and approved by majority vote to *exclude* this parcel from the South Frederick Agricultural and Forestal District.

PIN 73-A-64A Commissioner Marston commented he knows this property is completely agriculture. A motion made by Commissioner Marston, seconded by Commissioner Thomas and unanimously approved to *include* this parcel in the South Frederick Agricultural and Forestal District.

PIN 61-A-44 A motion was made by Commissioner Thomas, seconded by Commissioner Triplett and unanimously approved to *include* this parcel in the South Frederick Agricultural and Forestal District.

(Note: Commissioners Oates and Unger were absent from the meeting)

PIN	Owner	Acres	Ag & Forestal Districts	Recommendation to include in Ag District		BOARD APPROVAL for inclusion in Ag District
				ADAC	PC	

Not Adjacent nor Encapsulated by existing Ag District						
85 A 33	JUDD, JESSIE F	0.37	Double Church	YES	NO	PENDING
85 A 25	SIEVER, ROGER DALE	0.50	Double Church	YES	NO	PENDING
86 A 230A	GORE, JEFFERY M & JOSEPH F	0.97	Double Church	YES	NO	PENDING
86 A 231	GORE, FRED B ET ALS	2.50	Double Church	YES	NO	PENDING
86 A 245	BOOTH, JOHN H. & VIRGINIA G.	0.50	Double Church	YES	NO	PENDING
86 A 264A	RITENOUR, SHIRLEY	0.53	Double Church	YES	NO	PENDING
86 A 264	RITENOUR, SHIRLEY	0.50	Double Church	YES	NO	PENDING
86 A 33	STELZL, BETTY R	0.12	Double Church	YES	NO	PENDING
43 A 159	R & J LAND DEVELOPMENT, LLC	2.00	Red Bud	YES	NO	PENDING
55 A 118	STULTZ, DAWN M	1.13	Red Bud	YES	NO	PENDING
62 A 27	COPENHAVER, WILLIAM R	1.30	South Frederick	YES	NO	PENDING
61 A 43E	MELBY, CAROL J	1.00	South Frederick	YES	NO	PENDING
73 A 38	ORNDORFF, MARK A & ROXANNA M	3.57	South Frederick	YES	NO	PENDING
73 12 11	MURPHY, CHARLES R & VICKY O	2.86	South Frederick	YES	NO	PENDING
73 12 26	MENEFEE, DAVID & JULIE	2.29	South Frederick	YES	NO	PENDING
73 12 23	HLAVINKA, DAVID D & PATRICIA E	2.98	South Frederick	YES	NO	PENDING

PIN	Owner	Acres	Ag & Forestal Districts	Recommendation to include in Ag District		BOARD APPROVAL for inclusion in Ag District
				ADAC	PC	

Adjacent to Existing Ag District

31 A 170	FRUIT HILL ORCHARD INC	0.34	ApplePieRidge	YES	YES	PENDING
31 A 171	FRUIT HILL ORCHARD INC	1.07	ApplePieRidge	YES	YES	PENDING
85 A 132	RITENOUR, SANDRA R	3.67	Double Church	YES	YES	PENDING
44 A 28C	BODEN, ROBERT R. JR. & MARSHA	4.30	Red Bud	YES	YES	PENDING
44D 2 6	WILLIS, CHARLES I	2.37	Red Bud	YES	YES	PENDING
55 A 14	LAM, ERNEST L	2.00	Red Bud	YES	NO	PENDING
55 A 117	R & J LAND DEVELOPMENT, LLC	4.33	Red Bud	YES	NO	PENDING
55 A 115	JENKINS, JEFFREY G	1.75	Red Bud	YES	NO	PENDING
55 A 178A	SCHULLER, WILLIAM H SR & GENEVIEVE	1.28	Red Bud	YES	YES	PENDING
55 A 177	SCHULLER, WILLIAM HAMPTON JR	0.38	Red Bud	YES	YES	PENDING
61 A 44	SNAPP, JOSEPH DAVISON	2.20	South Frederick	YES	YES	PENDING
73 A 64A	DILLENDER, HOLLY B & SAMUEL C JR	2.32	South Frederick	YES	YES	PENDING
73 A 34	HAMILTON, CHARLES A.	4.80	South Frederick	YES	NO	PENDING
73 A 28	RIDINGS, L VERNON RESIDUAL TRUST	4.00	South Frederick	YES	YES	PENDING
73 A 27	COOLEY, MARTHA	4.00	South Frederick	YES	YES	PENDING
73 A 30A	NOFFKE, KENTON L & KATHY C	1.71	South Frederick	YES	NO	PENDING
73 A 30E	RINKER, DUDLEY H.	1.01	South Frederick	YES	YES	PENDING
73 A 30	RINKER, DUDLEY H.	4.83	South Frederick	YES	YES	PENDING
74 A 10F	EARHART, LARRY L & JOYCE C	1.46	South Frederick	YES	NO	PENDING

TOTAL ACREAGES 70.94**70.94****47.82**

Property Removed from the 2015-2020 Agricultural & Forestal Districts



 50 Foot Buffer

 Parcels

Agricultural & Forestal District

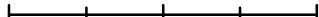
 Double Church District

PIN	Owner	Acres	Ag & Forestal Districts
85 A 33	JUDD, JESSIE F	0.37	Double Church



Note:
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Map Created: November 2, 2015

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Property Removed from the 2015-2020 Agricultural & Forestal Districts



 50 Foot Buffer

 Parcels

Agricultural & Forestal District

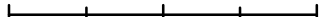
 Double Church District

PIN	Owner	Acres	Ag & Forestal Districts
85 A 25	SIEVER, ROGER DALE	0.50	Double Church



Note:
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540 - 665 - 5651
Map Created: November 2, 2015

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Property Removed from the 2015-2020 Agricultural & Forestal Districts



 50 Foot Buffer

 Parcels

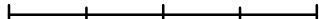
Agricultural & Forestal District

 Double Church District

PIN	Owner	Acres	Ag & Forestal Districts
86 A 230A	GORE, JEFFERY M & JOSEPH F	0.97	Double Church



Note:
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540 - 665 - 5651
Map Created: November 2, 2015

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Property Removed from the 2015-2020 Agricultural & Forestal Districts



 50 Foot Buffer

 Parcels

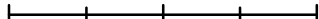
Agricultural & Forestal District

 Double Church District

PIN	Owner	Acres	Ag & Forestal Districts
86 A 231	GORE, FRED B ET ALS	2.50	Double Church



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Property Removed from the 2015-2020 Agricultural & Forestal Districts



 50 Foot Buffer

 Parcels

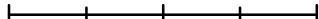
Agricultural & Forestal District

 Double Church District

PIN	Owner	Acres	Ag & Forestal Districts
86 A 245	BOOTH, JOHN H. & VIRGINIA G.	0.50	Double Church



Note:
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Property Removed from the 2015-2020 Agricultural & Forestal Districts



 50 Foot Buffer

 Parcels

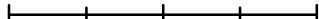
Agricultural & Forestal District

 Double Church District

PIN	Owner	Acres	Ag & Frestal Districts
86 A 264	RITENOUR, SHIRLEY	0.50	Double Church
86 A 264A	RITENOUR, SHIRLEY	0.53	Double Church



Note:
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Map Created: November 2, 2015

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Property Removed from the 2015-2020 Agricultural & Forestal Districts



 50 Foot Buffer

 Parcels

Agricultural & Forestal District


 Double Church District

PIN	Owner	Acres	Ag & Forestal Districts
86 A 33	STELZL, BETTY R	0.12	Double Church



Note:
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Map Created: November 2, 2015

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Property Removed from the 2015-2020 Agricultural & Forestal Districts



50 Foot Buffer

Parcels

Agricultural & Forestal District

Red Bud

PIN	Owner	Acres	Ag & Forestal Districts
43 A 159	R & J LAND DEVELOPMENT, LLC	2.00	Red Bud



Note:
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Property Removed from the 2015-2020 Agricultural & Forestal Districts



 50 Foot Buffer

 Parcels

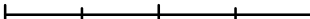
Agricultural & Forestal District

 Red Bud

PIN	Owner	Acres	Ag & Forestal Districts
55 A 118	STULTZ, DAWN M	1.13	Red Bud



Note:
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0 0.02 0.04 0.08 Miles


Property Removed from the 2015-2020 Agricultural & Forestal Districts



50 Foot Buffer

Parcels

Agricultural & Forestal District

South Frederick District

PIN	Owner	Acres	Ag & Forestal Districts
62 A 27	COPENHAVER, WILLIAM R	1.30	South Frederick



Note:
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Property Removed from the 2015-2020 Agricultural & Forestal Districts



 50 Foot Buffer

 Parcels

Agricultural & Forestal District

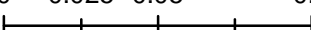
 South Frederick District

PIN	Owner	Acres	Ag & Frestal Districts
61 A 43E	MELBY, CAROL J	1.00	South Frederick
61 A 44	SNAPP, JOSEPH DAVISON	2.20	South Frederick



Note:
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Property Removed from the 2015-2020 Agricultural & Forestal Districts



 50 Foot Buffer

 Parcels

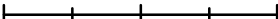
Agricultural & Forestal District

 South Frederick District

PIN	Owner	Acres	Ag & Forestal Districts
73 A 38	ORNDORFF, MARK A & ROXANNA M	3.57	South Frederick



Note:
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0 0.02 0.04 0.08 Miles


Property Removed from the 2015-2020 Agricultural & Forestal Districts



 50 Foot Buffer

 Parcels


Agricultural & Forestal District

 South Frederick District

PIN	Owner	Acres	Ag & Forestal Districts
73 12 11	MURPHY, CHARLES R & VICKY O	2.86	South Frederick



Note:
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Property Removed from the 2015-2020 Agricultural & Forestal Districts



 50 Foot Buffer

 Parcels

Agricultural & Forestal District

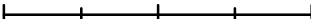
 South Frederick District

PIN	Owner	Acres	Ag & Forestal Districts
73 12 23	HLAVINKA, DAVID D & PATRICIA E	2.98	South Frederick
73 12 26	MENEFEE, DAVID & JULIE	2.29	South Frederick



Note:
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540 - 665 - 5651
Map Created: November 2, 2015

0 0.025 0.05 0.1 Miles



Property Removed from the 2015-2020 Agricultural & Forestal Districts



 50 Foot Buffer

 Parcels

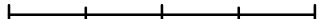
Agricultural & Forestal District

 Apple Pie Ridge

PIN	Owner	Acres	Ag & Forestal Districts
31 A 170	FRUIT HILL ORCHARD INC	0.34	Apple Pie Ridge
31 A 171	FRUIT HILL ORCHARD INC	1.07	Apple Pie Ridge



Note:
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0 0.025 0.05 0.1 Miles


Property Removed from the 2015-2020 Agricultural & Forestal Districts



 50 Foot Buffer

 Parcels

Agricultural & Forestal District

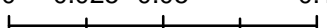
 Double Church District

PIN	Owner	Acres	Ag & Forestal Districts
85 A 132	RITENOUR, SANDRA R	3.67	Double Church






Note:
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0 0.025 0.05 0.1 Miles



Property Removed from the 2015-2020 Agricultural & Forestal Districts



-  50 Foot Buffer
-  Parcels
-  Future Route 37 Bypass

Agricultural & Forestal District

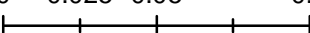
-  Red Bud

PIN	Owner	Acres	Ag & Forestal Districts
44 A 28C	BODEN, ROBERT R. JR. & MARSHA	4.30	Red Bud



Note:
Frederick County Dept of Planning & Development
107 N Kent St. Suite 202, Winchester, VA 22601
540 - 665 - 5651
Map Created: November 2, 2015

0 0.025 0.05 0.1 Miles



Property Removed from the 2015-2020 Agricultural & Forestal Districts



50 Foot Buffer

Parcels

Agricultural & Forestal District

Red Bud

PIN	Owner	Acres	Ag & Forestal Districts
44D 2 6	WILLIS, CHARLES I.	2.37	Red Bud



Note:
Frederick County Dept of Planning & Development
107 N Kent St. Suite 202, Winchester, VA 22601
540 - 665 - 5651
Map Created: November 2, 2015

0 0.02 0.04 0.08 Miles

Property Removed from the 2015-2020 Agricultural & Forestal Districts



 50 Foot Buffer

 Parcels

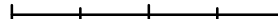
Agricultural & Forestal District

 Red Bud

PIN	Owner	Acres	Ag & Forestal Districts
55 A 14	LAM, ERNEST L	2.00	Red Bud



Note:
Frederick County Dept of Planning & Development
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540 - 665 - 5651
Map Created: November 2, 2015

0 0.02 0.04 0.08 Miles


Property Removed from the 2015-2020 Agricultural & Forestal Districts



50 Foot Buffer

Parcels

Agricultural & Forestal District

Red Bud

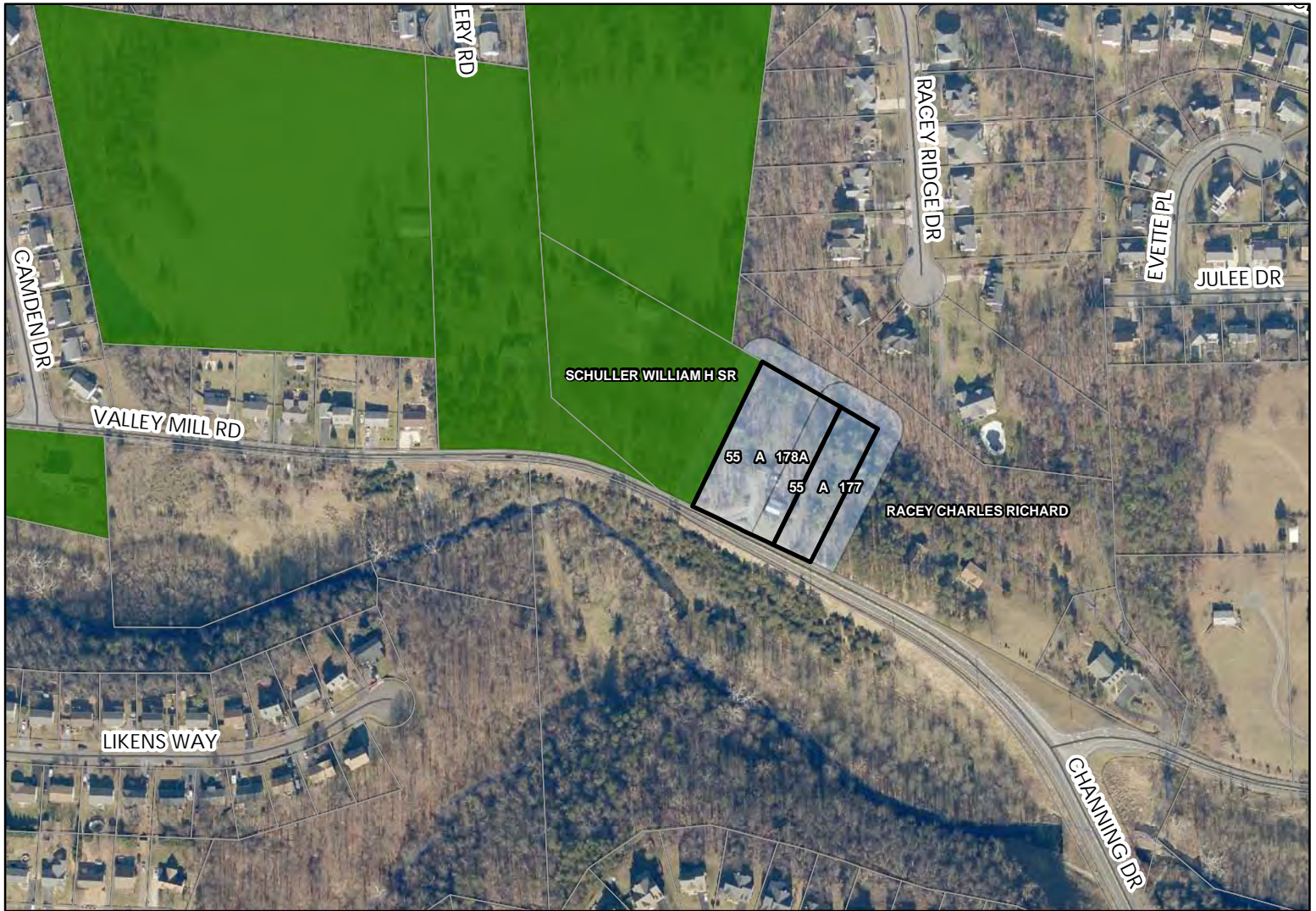
PIN	Owner	Acres	Ag & Forestal Districts
55 A 115	JENKINS, JEFFREY G	1.75	Red Bud
55 A 117	R & J LAND DEVELOPMENT, LLC	4.33	Red Bud



Note:
Frederick County Dept of Planning & Development
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Map Created: November 2, 2015

0 0.02 0.04 0.08 Miles

Property Removed from the 2015-2020 Agricultural & Forestal Districts



 50 Foot Buffer

 Parcels

Agricultural & Forestal District


 Red Bud

PIN	Owner	Acres	Ag & Forestal Districts
55 A 177	SCHULLER, WILLIAM HAMPTON JR	0.38	Red Bud
55 A 178A	SCHULLER, WILLIAM H SR & GENEVIEVE	1.28	Red Bud



Note:
Frederick County Dept of Planning & Development
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0 0.025 0.05 0.1 Miles



Property Removed from the 2015-2020 Agricultural & Forestal Districts



 50 Foot Buffer

 Parcels

Agricultural & Forestal District

 South Frederick District

PIN	Owner	Acres	Ag & Frestal Districts
61 A 43E	MELBY, CAROL J	1.00	South Frederick
61 A 44	SNAPP, JOSEPH DAVISON	2.20	South Frederick



Note:
Frederick County Dept of Planning & Development
107 N Kent St. Suite 202, Winchester, VA 22601
540 - 665 - 5651
Map Created: November 2, 2015

0 0.025 0.05 0.1 Miles

Property Removed from the 2015-2020 Agricultural & Forestal Districts



 50 Foot Buffer

 Parcels

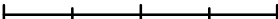
Agricultural & Forestal District

 South Frederick District

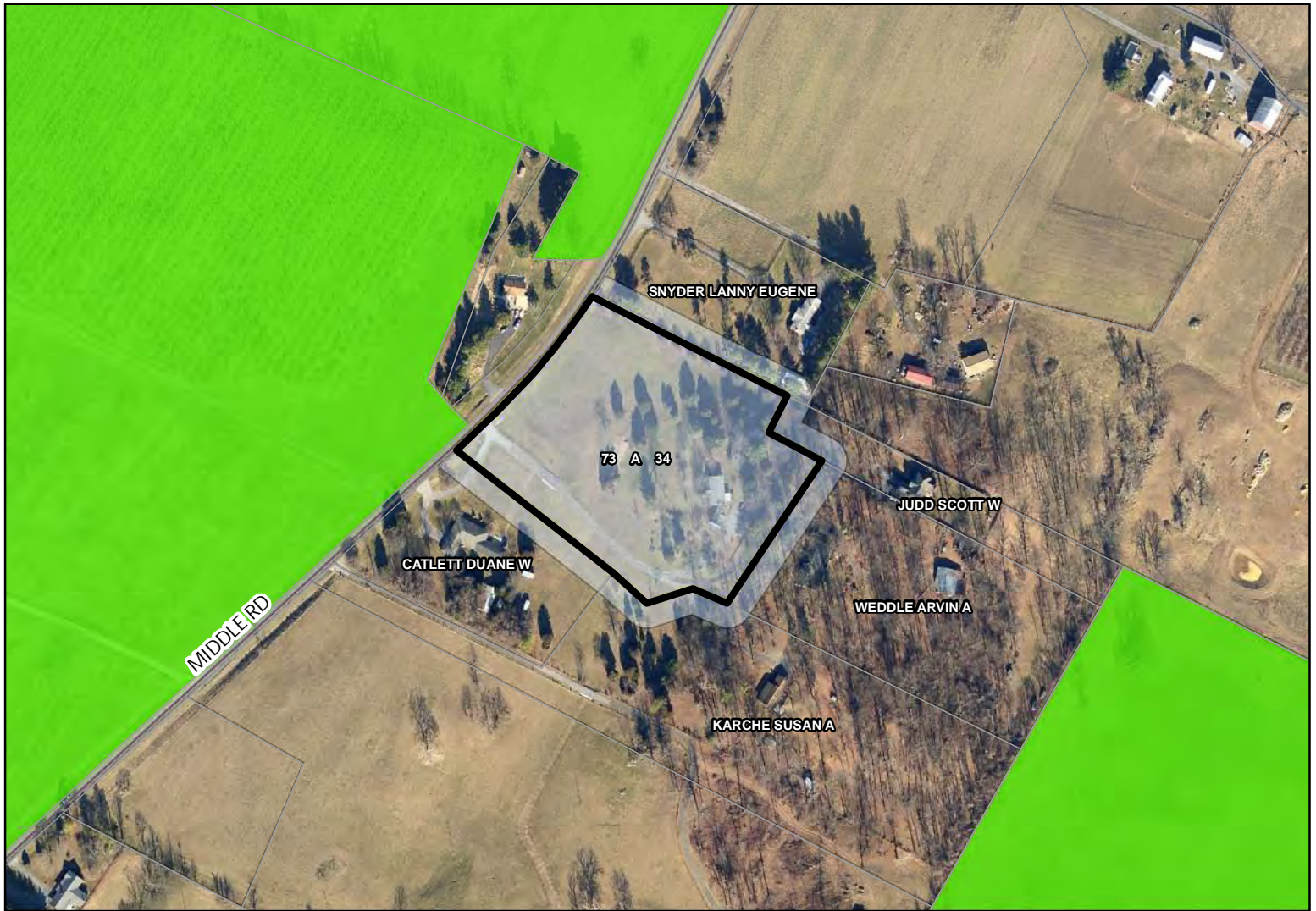
PIN	Owner	Acres	Ag & Forestal Districts
73 A 64A	DILLENDER, HOLLY B & SAMUEL C JR	2.32	South Frederick



Note:
Frederick County Dept of Planning & Development
107 N Kent St. Suite 202, Winchester, VA 22601
540 - 665 - 5651
Map Created: November 2, 2015

0 0.02 0.04 0.08 Miles


Property Removed from the 2015-2020 Agricultural & Forestal Districts



 50 Foot Buffer

 Parcels

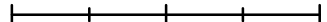
Agricultural & Forestal District

 South Frederick District

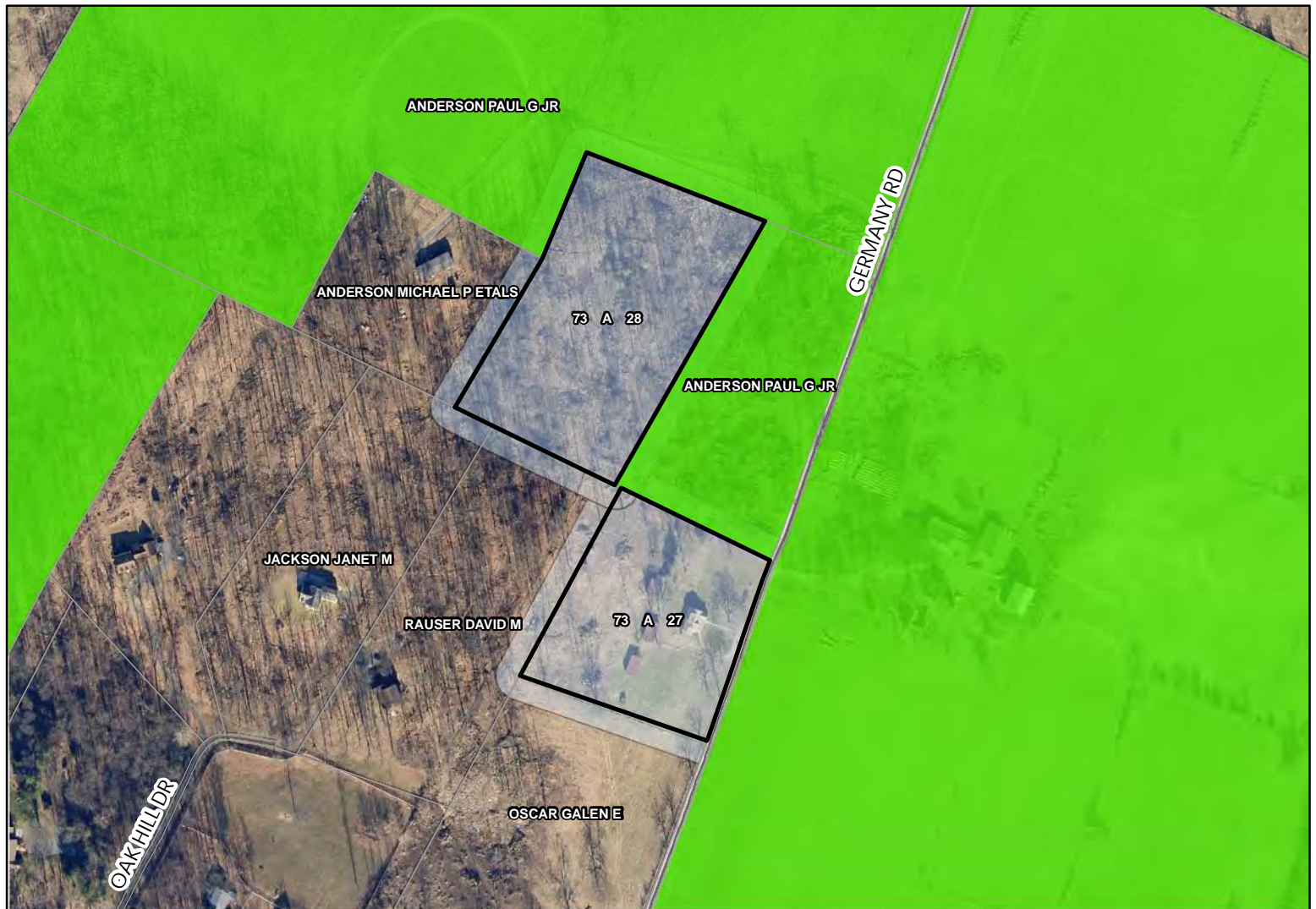
PIN	Owner	Acres	Ag & Forestal Districts
73 A 34	HAMILTON, CHARLES A.	4.80	South Frederick



Note:
Frederick County Dept of Planning & Development
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0 0.025 0.05 0.1 Miles


Property Removed from the 2015-2020 Agricultural & Forestal Districts



 50 Foot Buffer

 Parcels

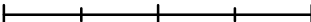
Agricultural & Forestal District

 South Frederick District

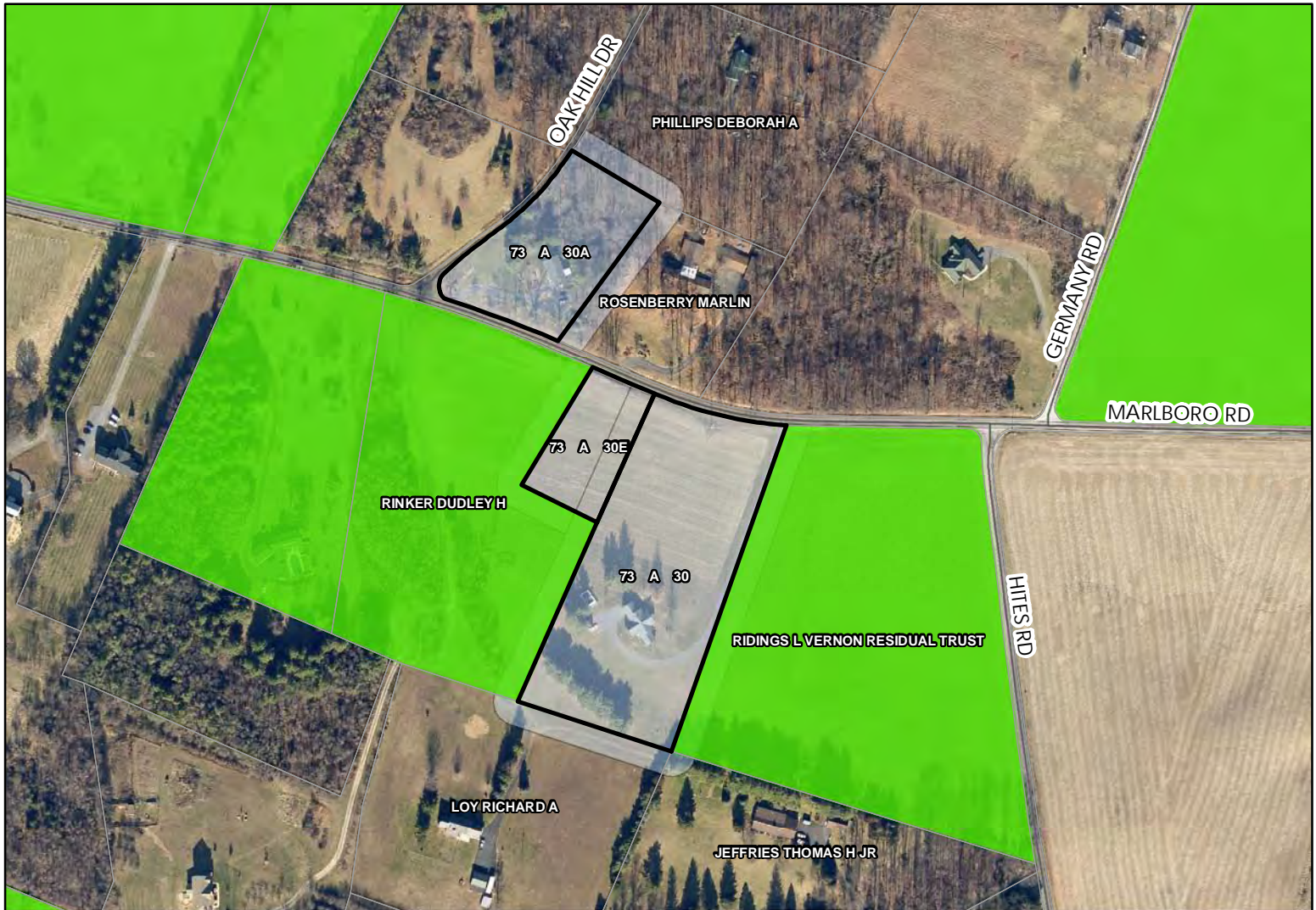
PIN	Owner	Acres	Ag & Forestal Districts
73 A 27	COOLEY, MARTHA	4.00	South Frederick
73 A 28	RIDINGS, L VERNON RESIDUAL TRUST	4.00	South Frederick



Note:
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 50 Foot Buffer

 Parcels

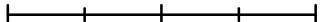
Agricultural & Forestal District

 South Frederick District

PIN	Owner	Acres	Ag & Forestal Districts
73 A 30	RINKER, DUDLEY H.	4.83	South Frederick
73 A 30A	NOFFKE, KENTON L & KATHY C	1.71	South Frederick
73 A 30E	RINKER, DUDLEY H.	1.01	South Frederick



Note:
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0 0.025 0.05 0.1 Miles


Property Removed from the 2015-2020 Agricultural & Forestal Districts



 50 Foot Buffer

 Parcels

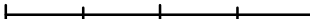
Agricultural & Forestal District

 South Frederick District

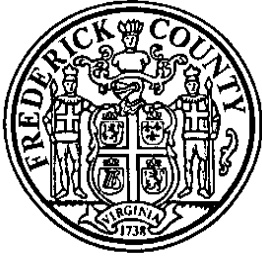
PIN	Owner	Acres	Ag & Forestal Districts
74 A 10F	EARHART, LARRY L & JOYCE C	1.46	South Frederick



Note:
Frederick County Dept of Planning & Development
107 N Kent St. Suite 202, Winchester, VA 22601
540 - 665 - 5651
Map Created: November 2, 2015

0 0.025 0.05 0.1 Miles


ADDITION



Action:

BOARD OF SUPERVISORS: November 12, 2015 ☐APPROVED ☐DENIED

**INCLUSION OF 35 PARCELS LESS THAN 5 ACRES
INTO THE 2015-2020 AGRICULTURAL & FORESTAL DISTRICTS**

WHEREAS, the inclusion of parcels, each less than 5 acres in size which are not adjacent nor encapsulated by existing Ag District and are adjacent to existing Ag District into the 2015-2020 Agricultural & Forestal Districts was considered. The properties are identified by Property Identification Numbers 85-A-33, 85-A-25, 86-A-230A, 86-A-231, 86-A-245, 86-A-264A, 86-A-264, 86-A-33, 43-A-159, 55-A-118, 62-A-27, 61-A-43E, 73-A-38, 73-12-11, 73-12-26, 73-12-23, 31-A-170, 31-A-171, 85-A-132, 44-A-28C, 44D-2-6, 55-A-14, 55-A-117, 55-A-115, 55-A-178A, 55-A-177, 61-A-44, 73-A-64A, 73-A-34, 73-A-28, 73-A-27, 73-A-30A, 73-A-30E, 73-A-30, 74-A-10F as shown on the tables below; and

PIN	Owner	Acres	Ag & Forestal Districts
Not Adjacent nor Encapsulated by existing Ag District			
85-A-33	JUDD, JESSIE F	0.37	Double Church
85-A-25	SIEVER, ROGER DALE	0.50	Double Church
86-A-230A	GORE, JEFFERY M & JOSEPH F	0.97	Double Church
86-A-231	GORE, FRED B ET ALS	2.50	Double Church
86-A-245	BOOTH, JOHN H. & VIRGINIA G.	0.50	Double Church
86-A-264A	RITENOUR, SHIRLEY	0.53	Double Church
86-A-264	RITENOUR, SHIRLEY	0.50	Double Church
86-A-33	STELZL, BETTY R	0.12	Double Church
43-A-159	R & J LAND DEVELOPMENT, LLC	2.00	Red Bud
55-A-118	STULTZ, DAWN M	1.13	Red Bud
62-A-27	COPENHAVER, WILLIAM R	1.30	South Frederick
61-A-43E	MELBY, CAROL J	1.00	South Frederick
73-A-38	ORNDORFF, MARK A & ROXANNA M	3.57	South Frederick
73-12-11	MURPHY, CHARLES R & VICKY O	2.86	South Frederick
73-12-26	MENEFEE, DAVID & JULIE	2.29	South Frederick
73-12-23	HLAVINKA, DAVID D & PATRICIA E	2.98	South Frederick

PIN	Owner	Acres	Ag & Forestal Districts
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Adjacent to Existing Ag District

31-A-170	FRUIT HILL ORCHARD INC	0.34	Apple Pie Ridge
31-A-171	FRUIT HILL ORCHARD INC	1.07	Apple Pie Ridge
85-A-132	RITENOUR, SANDRA R	3.67	Double Church
44-A-28C	BODEN, ROBERT R. JR. & MARSHA	4.30	Red Bud
44D-2-6	WILLIS, CHARLES I	2.37	Red Bud
55-A-14	LAM, ERNEST L	2.00	Red Bud
55-A-117	R & J LAND DEVELOPMENT, LLC	4.33	Red Bud
55-A-115	JENKINS, JEFFREY G	1.75	Red Bud
55-A-178A	SCHULLER, WILLIAM H SR & GENEVIEVE	1.28	Red Bud
55-A-177	SCHULLER, WILLIAM HAMPTON JR	0.38	Red Bud
61-A-44	SNAPP, JOSEPH DAVISON	2.20	South Frederick
73-A-64A	DILLENDER, HOLLY B & SAMUEL C JR	2.32	South Frederick
73-A-34	HAMILTON, CHARLES A.	4.80	South Frederick
73-A-28	RIDINGS, L VERNON RESIDUAL TRUST	4.00	South Frederick
73-A-27	COOLEY, MARTHA	4.00	South Frederick
73-A-30A	NOFFKE, KENTON L & KATHY C	1.71	South Frederick
73-A-30E	RINKER, DUDLEY H.	1.01	South Frederick
73-A-30	RINKER, DUDLEY H.	4.83	South Frederick
74-A-10F	EARHART, LARRY L & JOYCE C	1.46	South Frederick

WHEREAS, the Board of Supervisors held a public hearing on August 12, 2015 to consider the addition of the above-referenced parcels but was postponed for 90 days; and

WHEREAS, the Board of Supervisors held a public hearing and recommended approval of this addition on November 12, 2015; and

WHEREAS, the Frederick County Board of Supervisors finds the inclusion of the 35 parcels, each less than 5 acres in size which are not adjacent nor encapsulated by existing Ag District and are adjacent to existing Ag District contributes to the conservation and preservation of agricultural and forestal land in Frederick County;

NOW, THEREFORE, BE IT ORDAINED by the Frederick County Board of Supervisors as follows:

The Frederick County Board of Supervisors hereby adopts the inclusion of 35 parcels less than 5 acres which are not adjacent nor encapsulated by existing Ag District and are adjacent to existing Ag District as shown on the tables into the 2015-2020 Agricultural & Forestal Districts totaling 70.94± acres with an expiration date of May 27, 2020.

This ordinance shall be in effect on the day of adoption.

Passed this 12th day of November, 2015 by the following recorded vote:

Richard C. Shickle, Chairman	_____	Gary A. Lofton	_____
Robert A. Hess	_____	Robert W. Wells	_____
Gene E. Fisher	_____	Charles S. DeHaven, Jr.	_____
Blaine P. Dunn	_____		

A COPY ATTEST

Brenda G. Garton
Frederick County Administrator

CONSENT AGENDA

R



COUNTY of FREDERICK

Department of Planning and Development

540/ 665-5651

Fax: 540/ 665-6395

Memorandum

To: Frederick County Board of Supervisors

From: Mark R. Cheran, Zoning and Subdivision Administrator

Date: November 12, 2015

RE: Santa Maria Estates – Knock Lane

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

Knock Lane, State Route Number 1601

0.15 miles

Staff is available to answer any questions.

MRC/dlw



**RESOLUTION
BY THE
FREDERICK COUNTY BOARD OF
SUPERVISORS**

The Board of Supervisors of Frederick County, in regular meeting on the 12th day of November, 2015, adopted the following:

WHEREAS, the streets described on the attached Form AM-4.3, fully incorporated herein by reference, are shown on plats recorded in the Clerk's Office of the Circuit Court of Frederick County; and

WHEREAS, the Resident Engineer of the Virginia Department of Transportation has advised this Board that the streets meet the requirements established by the Subdivision Street Requirements of the Virginia Department of Transportation; and

WHEREAS, the County and the Virginia Department of Transportation have entered into an agreement on June 9, 1993, for comprehensive stormwater detention which applies to this request for addition; and

NOW, THEREFORE, BE IT RESOLVED, this Board requests the Virginia Department of Transportation to add the streets described in the attached Form AM-4.3 to the secondary system of state highways, pursuant to 33.2-705, Code of Virginia, and the Department's Subdivision Street Requirements; and

BE IT FURTHER RESOLVED, this Board guarantees a clear and unrestricted right-of-way, as described, and any necessary easements for cuts, fills and drainage; and

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

Richard C. Shickle, Chairman _____

Gary A. Lofton _____

Robert A. Hess _____

Robert W. Wells _____

Blaine P. Dunn _____

Gene E. Fisher _____

Charles S. DeHaven, Jr. _____

A COPY ATTEST

Brenda G. Garton
Frederick County Administrator

In the County of Frederick

By resolution of the governing body adopted November 12, 2015

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

A Copy Testee

Signed (County Official): _____

Report of Changes in the Secondary System of State Highways

Project/Subdivision Santa Maria Estates - Knock Lane

Type Change to the Secondary System of State Highways:

Addition

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

Reason for Change: New subdivision street

Pursuant to Code of Virginia Statute: §33.2-705

Street Name and/or Route Number

◆ **Knock Lane, State Route Number 1601**

Old Route Number: 0

-
- From: Route 1641, Santa Maria Drive

To: 0.15 Mile East of Route 1641, Santa Maria Drive, a distance of: 0.15 miles.

Recordation Reference: Instr. 070003116, Page 0570

Right of Way width (feet) = 50'