COUNTY OF ALBEMARLE
Department of Community Development
401 McIntire Road, North Wing
Charlottesville, Virginia 22902-4579
Phone (434) 296-5832 Fax (434) 972-4126

ALBEMARLE COUNTY BOARD OF ZONING APPEALS
ELECTRONIC MEETING
AGENDA
TUESDAY, JULY 7, 2020 at 2:00 P.M.

1. Call to Order

2. Establish a Quorum

3. Public Hearing:
   A. Project Number: SP202000009 North Pointe Middle Entrance Sign
      Property Owner/Applicant: CWH Properties Limited Partnership
      TMP: 03200-00-00-02000
      Staff: Bart Svoboda

4. Approval of Minutes
   A. June 2, 2020

5. Old Business

6. New Business

7. Adjournment

This meeting is being held pursuant to Ordinance No. 20-A(8): An Ordinance to Ensure the Continuity of Government During the Covid-19 Disaster. Opportunities for the public to access and participate in this electronic meeting are (or will be) provided at http://www.albemarle.org/department.asp?department=cdd&relpage=24716.

BOARD OF ZONING APPEALS ELECTRONIC MEETING GUIDELINES

Thank you for attending the Board of Zoning Appeals (BZA) electronic meeting. The following information is provided to help ensure the meeting proceeds as efficiently and effectively as possible. As a courtesy to others, please turn off all unused cell phones during the meeting.

General Information:

This meeting is recorded and later transcribed into minutes approved at a later meeting date.

Each item set for public hearing will begin with a presentation of the staff report. Next, the applicant or appellant for that item will be invited to speak. During the course of the process, the Chairman will open the public hearing to comments from the public. At the end of these proceedings the Chairman will announce that the public hearing is closed. Once the public hearing is closed, no further public comments will be allowed unless the Board asks for additional information from the applicant or appellant. For staff and applicants, there is a **15 minute time limit for presentations and a 5 minute time limit for rebuttal comments.**

The BZA reserves the right to digress from these guidelines in any particular case.

To Members of the Public:
If you wish to address the BZA during the public hearing, please follow the instructions below:
- Log in/call in early.
- Via Web: Use the "Raise Hand" icon to notify the BZA Clerk that you would like to sign up to address a public hearing item. The Clerk will acknowledge you and list your name on the sign-up sheet for the specific public hearing item. When the public hearing is opened, the Clerk will introduce each speaker for comment.
- Via Phone: Press *9 to notify the BZA Clerk that you would like to sign up to address a public hearing item. The Clerk will acknowledge you and list your name on the sign-up sheet for the specific public hearing item. When the public hearing is opened, the Clerk will introduce each speaker for comment.

If you do not sign up to speak prior to the meeting, an opportunity to sign up will be given prior to the close of the public hearing. When this opportunity is announced, follow the directions above to notify the BZA Clerk that you would like to provide comment on a public hearing item.

Time keeping is conducted through a timer. Each speaker is allotted **three (3) minutes** to comment. The timer will commence when you begin speaking; you will be notified when three minutes has ended, and you are requested to bring your comments to a close as your microphone will be muted after several seconds.

In order to give all speakers equal treatment and courtesy, the BZA requests that speakers adhere to the following guidelines:

- When called to address the BZA, please state your name. For uncommon spellings, please spell your name for the record.
- Address comments directly to the BZA as a whole - open public debate is prohibited.
- You may email written statements and other relevant material to BoardofZoningAppeals@albemarle.org to be included in the record.
- If you represent a group or organization, you may identify the group to be recognized.
- If you exceed your allotted time, you will be asked to end your comments and the microphone will be muted.
- If a speaker does not use all allocated time, the unused time may not be shared with another speaker.
- Speakers are permitted one opportunity to comment during each of the public comment periods per meeting.

Additional Guidelines for Applicants and Appellants addressing the Board:

- Understand that the Board of Zoning Appeals cannot change County ordinances.
- The BZA reserves the right to place additional time limitations on speakers, as necessary.

STAFF: Bart Svoboda
PUBLIC HEARING: July 7, 2020

STAFF REPORT: SP2020-00009 North Pointe Middle Entrance Sign in a Public Right-of-way

PETITION: David Mitchell (Applicant) is petitioning the Board of Zoning Appeals for a special use permit for a sign to be located in a proposed public right-of-way at the middle entrance to the approved planned development known as North Pointe along Seminole Trail (Rt. 29N), per Section 4.15.7(c) of the Albemarle County Zoning Ordinance.

APPLICANT'S PROPOSAL: The Applicant proposes to erect a sign 10.5 ft x 3.0 ft. in size (31.5 square feet) at the entrance to the North Pointe Development currently under construction (Attachments A and B). The proposed sign will comply with the sign regulations in terms of size and height.

LOCATION AND DESCRIPTION OF THE PROPERTY: The subject property (Parcel ID 03200-00-00-020000) is located along the northbound lane of Seminole Trail (Rt. 29N) about .75 miles north of the intersection of Seminole Trail (Route 29N) and Proffit Road (Route 649). The North Point Development is designed to have three entrances from Seminole Trail. The applicant is proposing the sign with this proposal to be installed in the median of the middle entrance. The property is zoned Planned Development Mixed Commercial and is also located in an Entrance Corridor Overlay (Attachment C).

CHARACTER OF THE AREA: The subject property is zoned Planned Development Mixed Commercial (PD-MC). Various site plan and subdivision applications have been reviewed or are currently being reviewed for compliance with the approved zoning and all applicable ordinances. The properties surrounding the subject property are zoned Rural Areas (RA), and Residential (R15) as well as Heavy Industrial (HI), and Residential (R1) across Seminole Trail. The sign is proposed to be at the middle entrance, and that entrance aligns with the Northside Drive entrance on the southbound land of Seminole Trail. This property is located within the Places 29 Master Plan Comprehensive Plan Area (Attachment C).

REASON FOR REVIEW (Attachment F): *County Code §18-4.15.7* permits signs in a public right-of-way only by special use permit.

A sign in a public right-of-way shall satisfy the following:

The sign:

(i) shall be either a subdivision sign or a sign at an entrance to a planned development authorized by sections 19, 20, 25, 25A, and 29;

The sign is proposed to be located at the middle entrance of the development zoned PD-MC.

(ii) the subdivision or planned development shall abut the public right-of-way in which the sign will be located;

The development abuts Seminole Trail (Route 29N), a public right-of-way and the sign will be within the public right-of-way of the proposed road that is identified as the middle entrance to the development.

(iii) the regulations applicable to freestanding signs for the subdivision or planned development, except for setback regulations, shall apply unless the Virginia Department of Transportation imposes more restrictive standards; and

The sign will meet all the applicable regulations for a freestanding sign except the setback as the sign is proposed to be within a public right-of-way and not setback from it. No additional requirements have been imposed by VDOT.

(iv) the applicant submits a written statement from the Virginia Department of Transportation, stating that it will permit the sign to be located in the public right-of-way.

The Virginia Department of Transportation has provided a written statement that will permit the sign to be located in the public right-of-way.

PLANNING AND ZONING HISTORY: ZMA 2000-00009 approved the North Pointe planned development in 2006.

The Architectural Review Board (ARB) provided conditional approval of application ARB 2020-28 on June 15, 2020 (Attachment D).

ARB REVIEW: This property is located on Seminole Trail (Route 29N), which is an entrance corridor (EC). Because the proposed sign would be visible from the EC, it is subject to ARB approval of a certificate of appropriateness. The ARB, by a vote 5:0, approved the Certificate of Appropriateness (ARB2020-28) on June 15, 2020.

The ARB conditional approval criteria address such factors as sign base design, lighting and landscaping. These design criteria support the purposes of the sign regulations in terms of the general welfare, appearance of streets, and enhancement of the County's attractiveness for economic development.

STAFF COMMENT:

Under *County Code § 18-34.5(i)*, The board shall reasonably consider the following factors when it is reviewing and acting on a special use permit: (underline emphasis added):

1. *No substantial detriment. The proposed special use will not be a substantial detriment to adjacent lots.*

The proposed sign would be perpendicular to the road and meets all applicable regulations for freestanding signs within the PD-MC zoning district. With the sign as proposed and subject to the applicable ARB design criteria, staff believes that there will be no substantial detriment to adjacent lots and roadways, or the purpose and intent of the Entrance Corridor overlay district.

2. *Character of the nearby area is unchanged. The character of the district will not be changed by the proposed special use.*

   With the sign as proposed and subject to the applicable ARB design criteria, staff believes that there will be no change to the character of the district.

3. *Harmony. The proposed special use will be in harmony with the purpose and intent of this chapter, with the uses permitted by right in the district, with the regulations provided in sections 4 and 5, as applicable, and with the public health, safety, and welfare.*

   As previously noted, this proposal is in harmony with applicable Zoning Ordinance regulations, and there are no applicable regulations in Section 5 for signs.

4. *Consistency with the Comprehensive Plan. The proposed special use will be consistent with the comprehensive plan.*

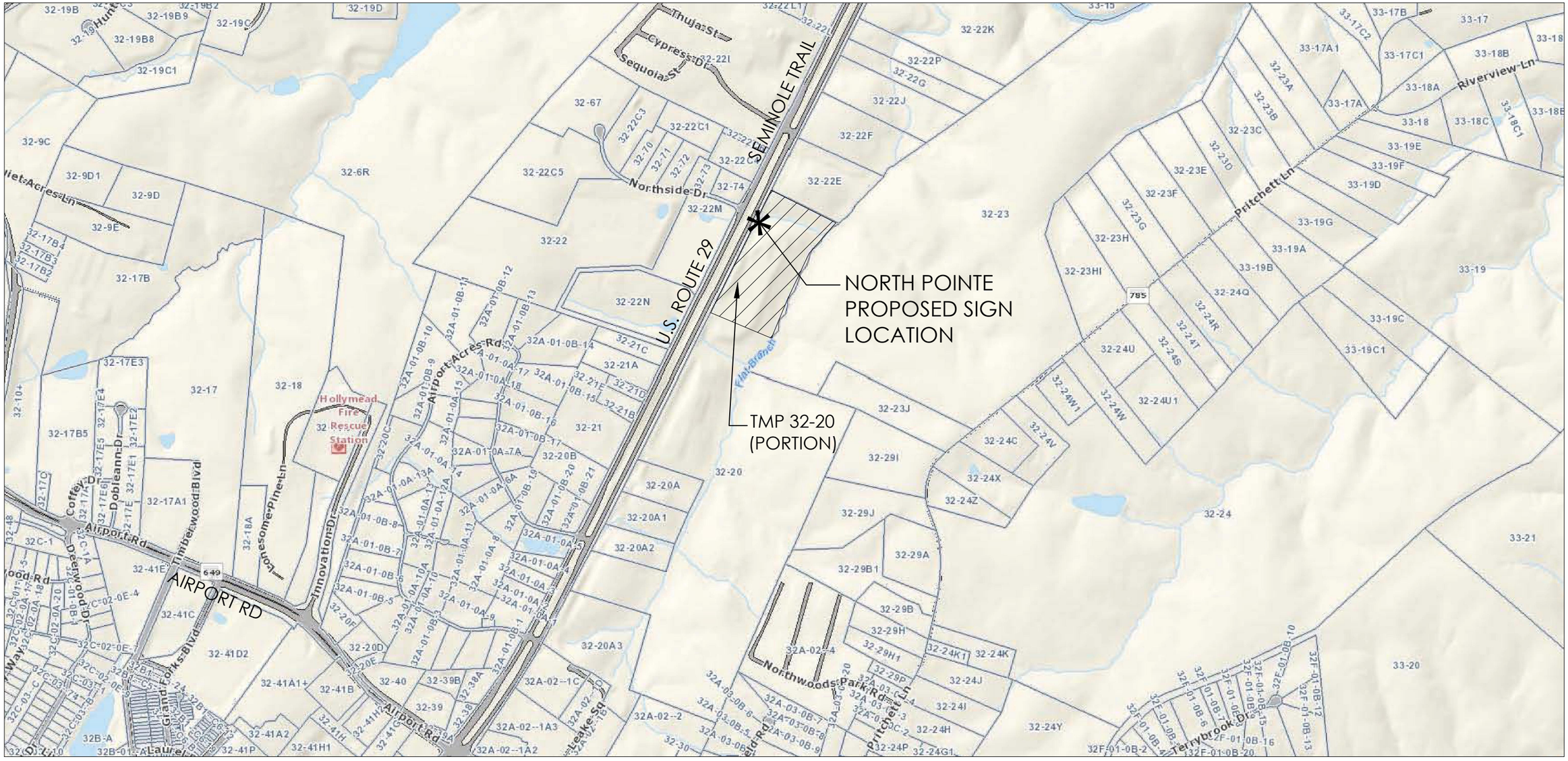
   The subject property is within the Places 29 Master Plan Comprehensive Plan Area. The Comprehensive Plan does not directly address uses such as this. However, if the sign meets the ARB design criteria, it would be consistent with the Comprehensive Plan. (Attachment E for the Comprehensive Plan Map.)

Staff believes that this proposal satisfies the goals of the sign regulations and the criteria for issuance of a special use permit subject to the proposed conditions. Though staff does not typically attach conditions of approval that are already requirements of the Zoning Ordinance, compliance with the ARB design criteria is critical to this sign satisfying the criteria for issuance of a special use permit. Therefore, staff has included a condition referring to the certificate of appropriateness, in order to incorporate the ARB's design criteria.

SUMMARY: Staff recommends approval of this request, with the following conditions:

1. Provide authorization from the Virginia Department of Transportation for the final location of the sign.
2. The sign shall comply with the conditions outlined for the certificate of appropriateness as approved by the Architectural Review Board, Attachment D of the report.

Attachment A – Proposed Sign Design
Attachment B – Sign Location Aerial Photo
Attachment C – Zoning Map and Entrance Corridor Overlay
Attachment D – ARB conditional approval
Attachment E – Comprehensive Plan Map
Attachment F – Albemarle County Ordinance References



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NORTH POINTE: MIDDLE ENTRANCE SIGN

ALBEMARLE COUNTY, SPECIAL USE PERMIT PLAN, MAY 4, 2020

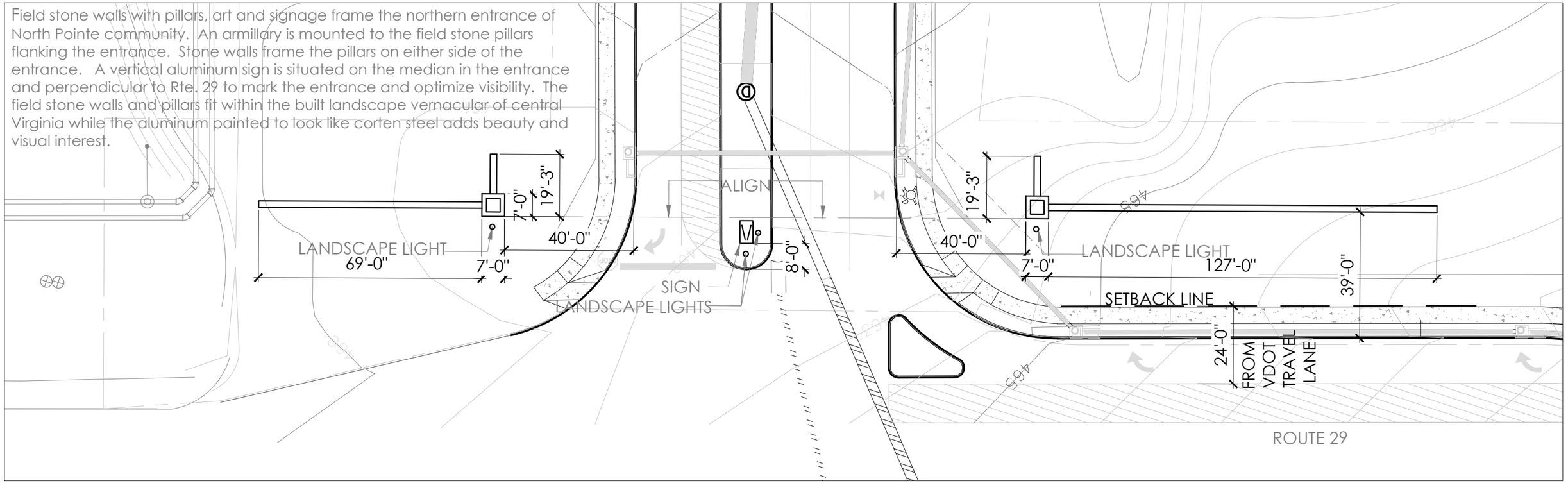
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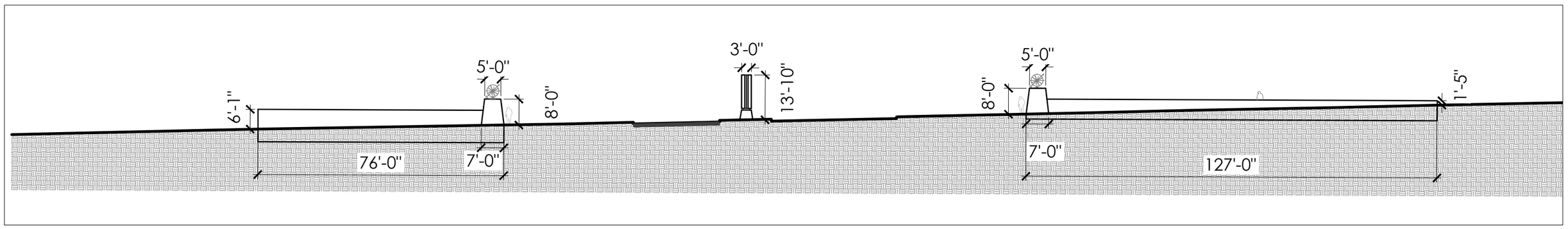
VICINITY MAP

L 1.00

Field stone walls with pillars, art and signage frame the northern entrance of North Pointe community. An armillary is mounted to the field stone pillars flanking the entrance. Stone walls frame the pillars on either side of the entrance. A vertical aluminum sign is situated on the median in the entrance and perpendicular to Rte. 29 to mark the entrance and optimize visibility. The field stone walls and pillars fit within the built landscape vernacular of central Virginia while the aluminum painted to look like corten steel adds beauty and visual interest.



1 OVERALL PLAN
SCALE : 1:30



2 OVERALL FRONT ELEVATION
SCALE : 1:30

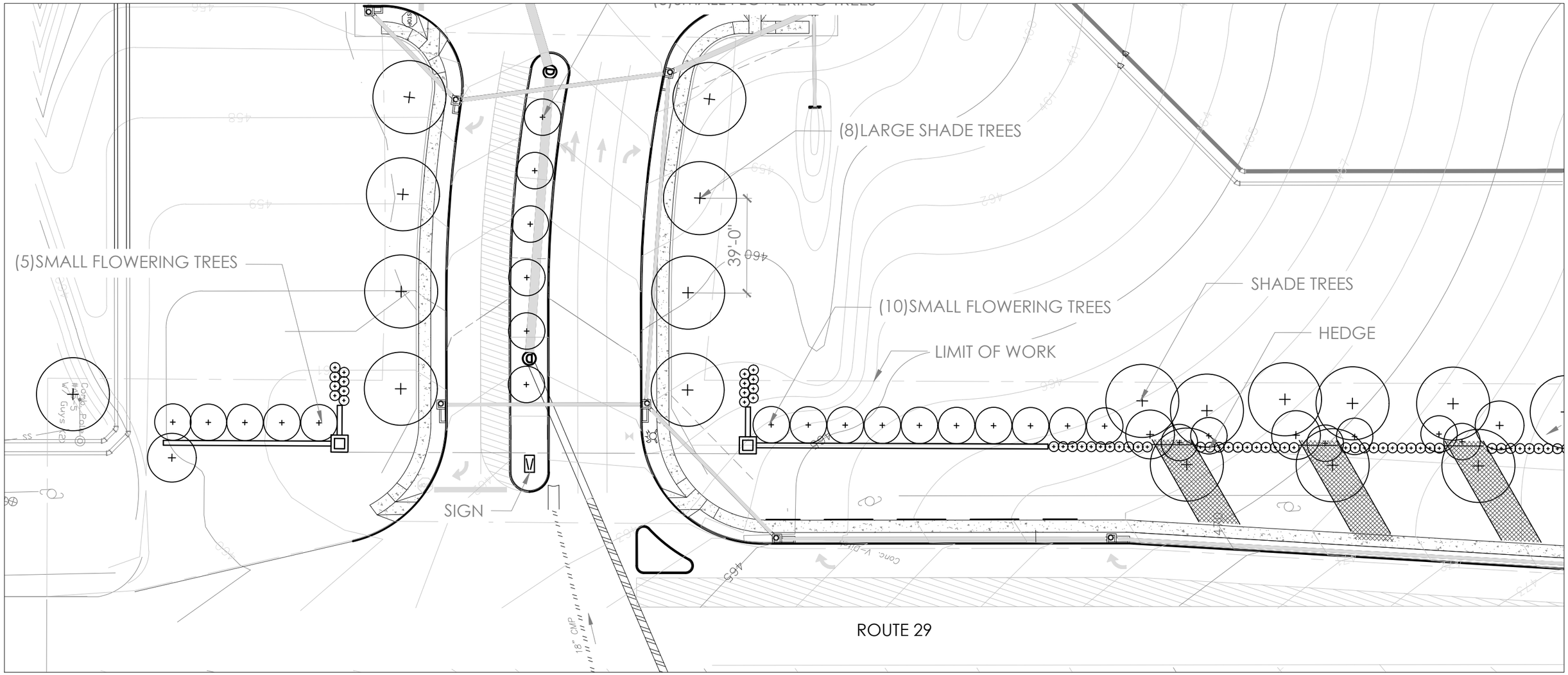
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NORTH POINTE: MIDDLE ENTRANCE SIGN
ALBEMARLE COUNTY, SPECIAL USE PERMIT PLAN, MAY 4, 2020

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OVERALL PLANS
L 1.01



1 OVERALL PLANTING PLAN
SCALE : 1:40

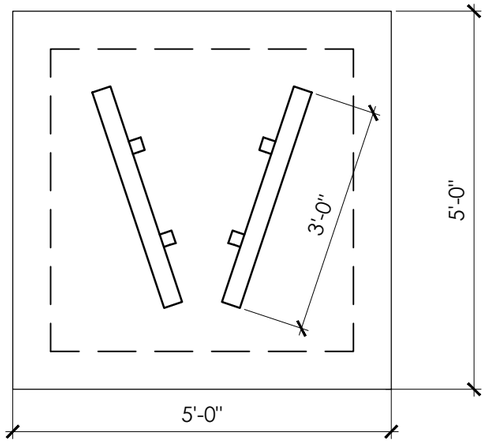
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NORTH POINTE: MIDDLE ENTRANCE SIGN
ALBEMARLE COUNTY, SPECIAL USE PERMIT PLAN, MAY 4, 2020

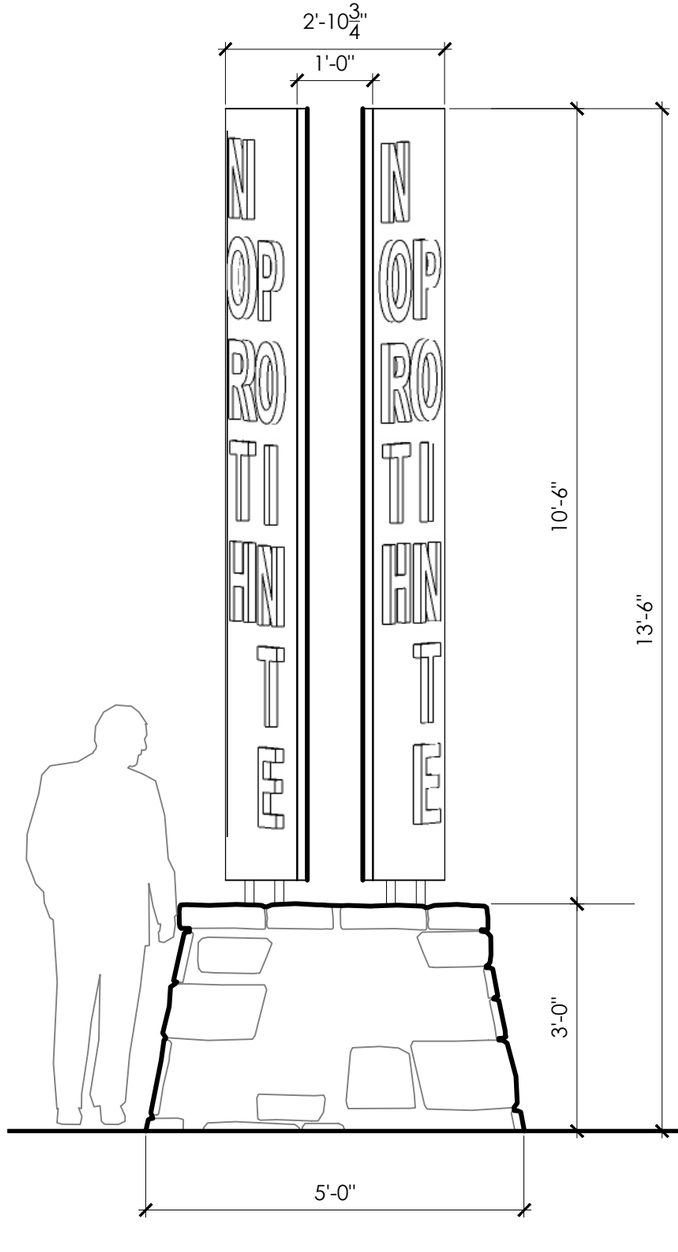
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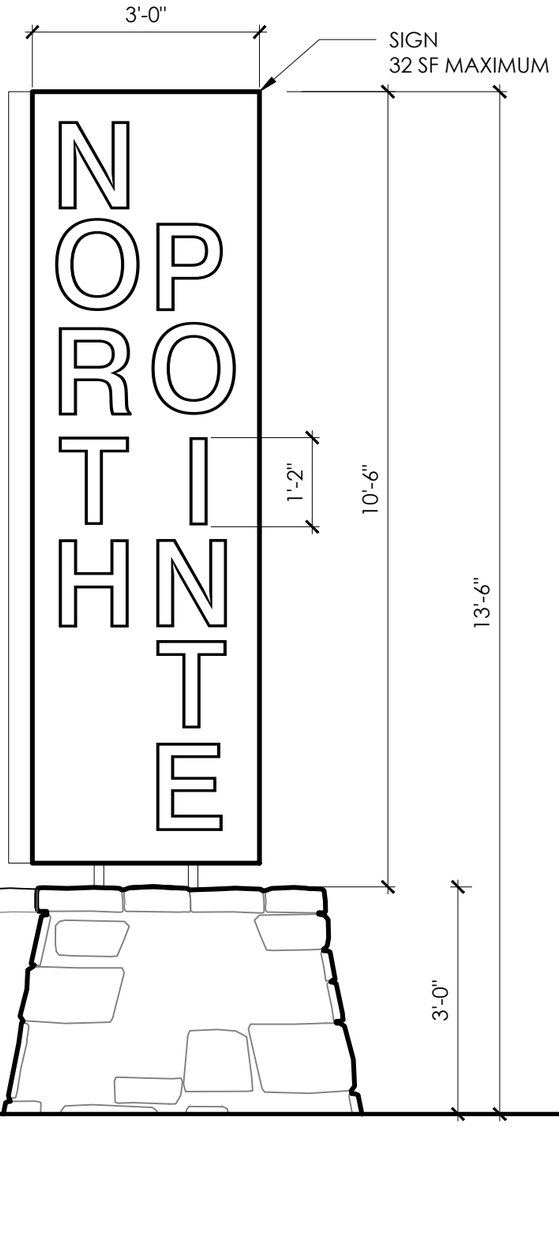
PLANTING PLAN
L 1.02



1 PLAN
SCALE : 1:2



2 FRONT ELEVATION
SCALE : 1:2



3 SIDE ELEVATION (WIDEST SIDE OF SIGN)
SCALE : 1:2

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NORTH POINTE: MIDDLE ENTRANCE SIGN

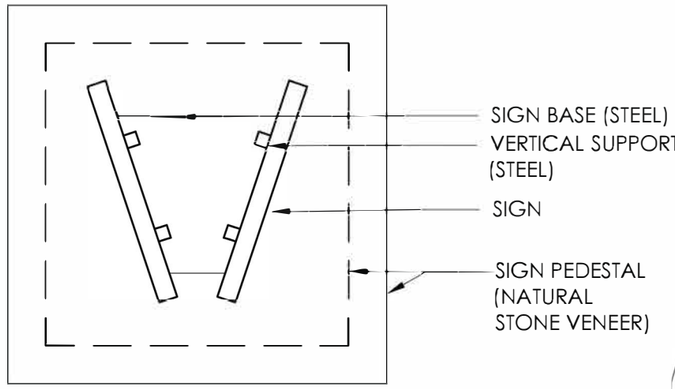
ALBEMARLE COUNTY, SPECIAL USE PERMIT PLAN, MAY 4, 2020

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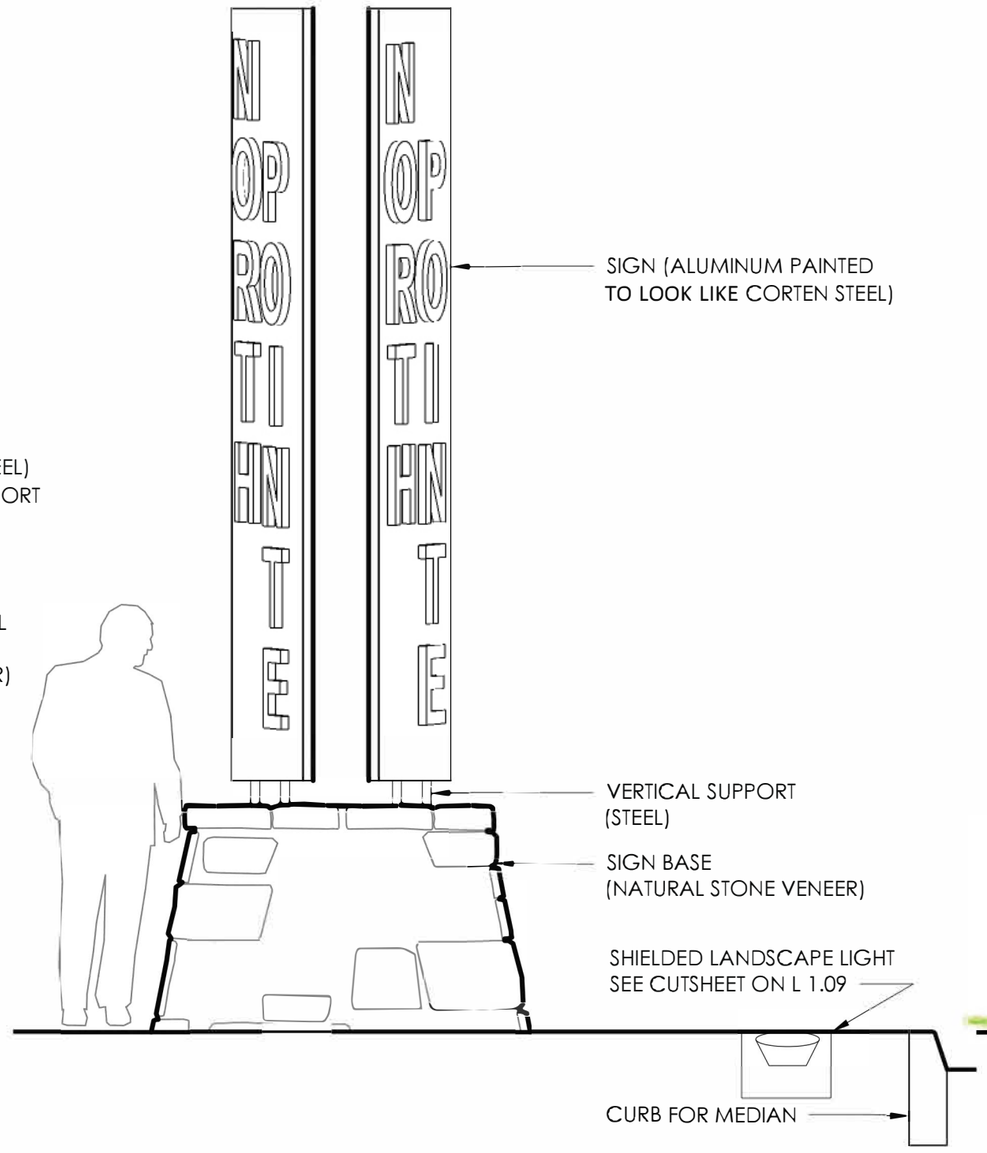
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ENTRY SIGN DIMENSIONS

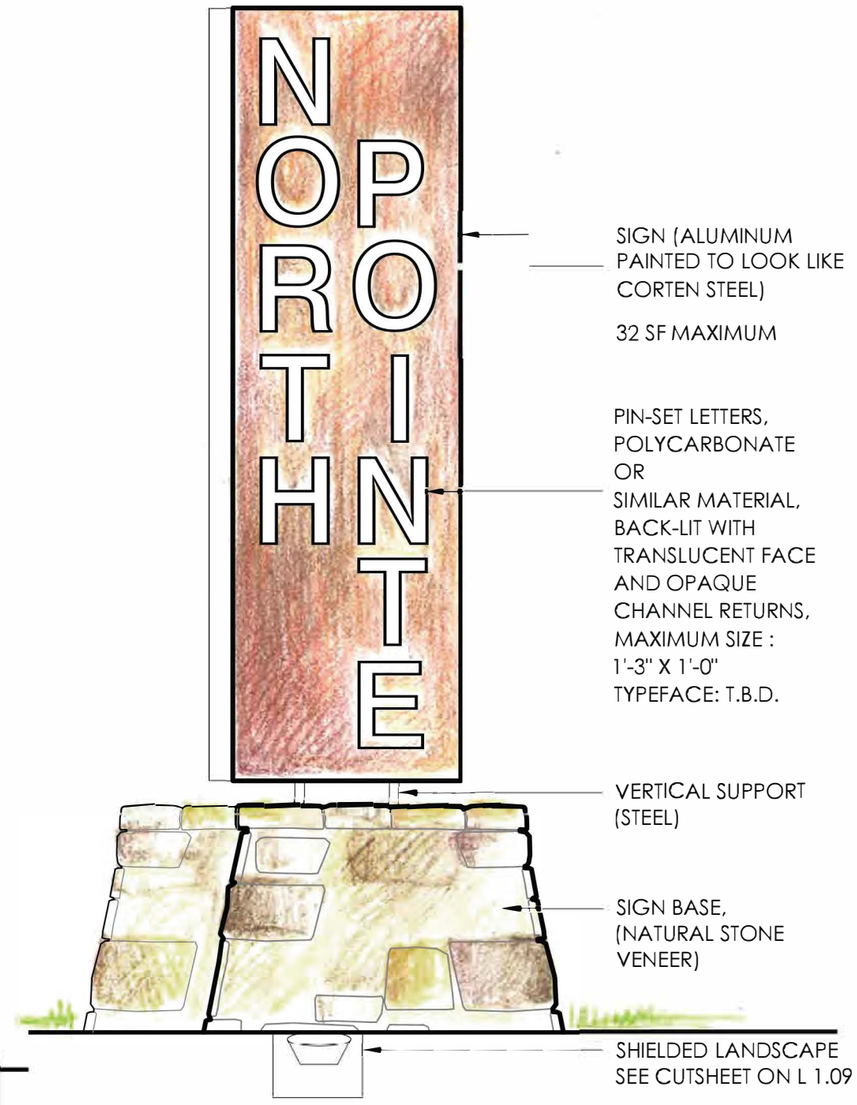
L 1.03



1 PLAN
SCALE : 1:2



2 FRONT ELEVATION
SCALE : 1:2



3 SIDE ELEVATION (WIDEST SIDE OF SIGN)
SCALE : 1:2

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NORTH POINTE: MIDDLE ENTRANCE SIGN

ALBEMARLE COUNTY, SPECIAL USE PERMIT PLAN, MAY 4, 2020

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ENTRY SIGN MATERIALS

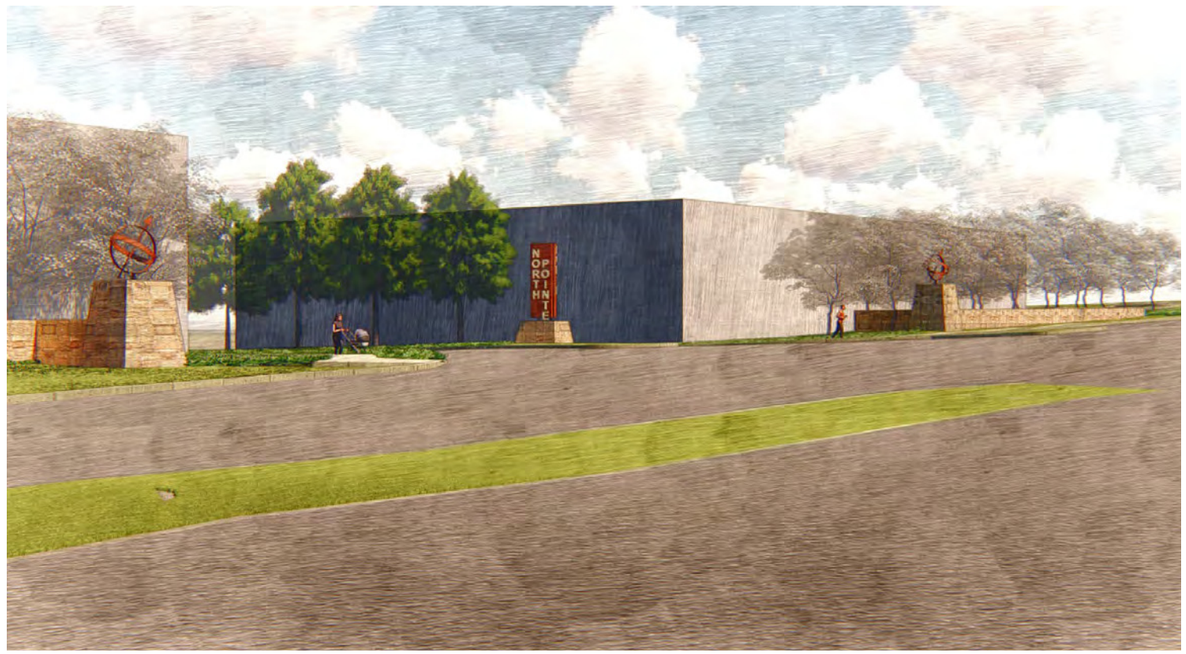
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VIEW FROM RTE 29, NORTHBOUND



DAYTIME



VIEW FROM RTE 29, SOUTHBOUND



EVENING

Attachment B LOCATION MAP

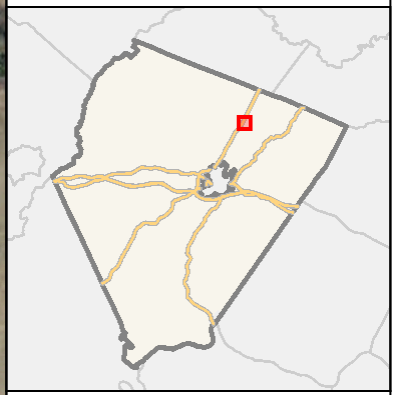


Legend

(Note: Some items on map may not appear in legend)

Parcel Info

- ☐ Parcels



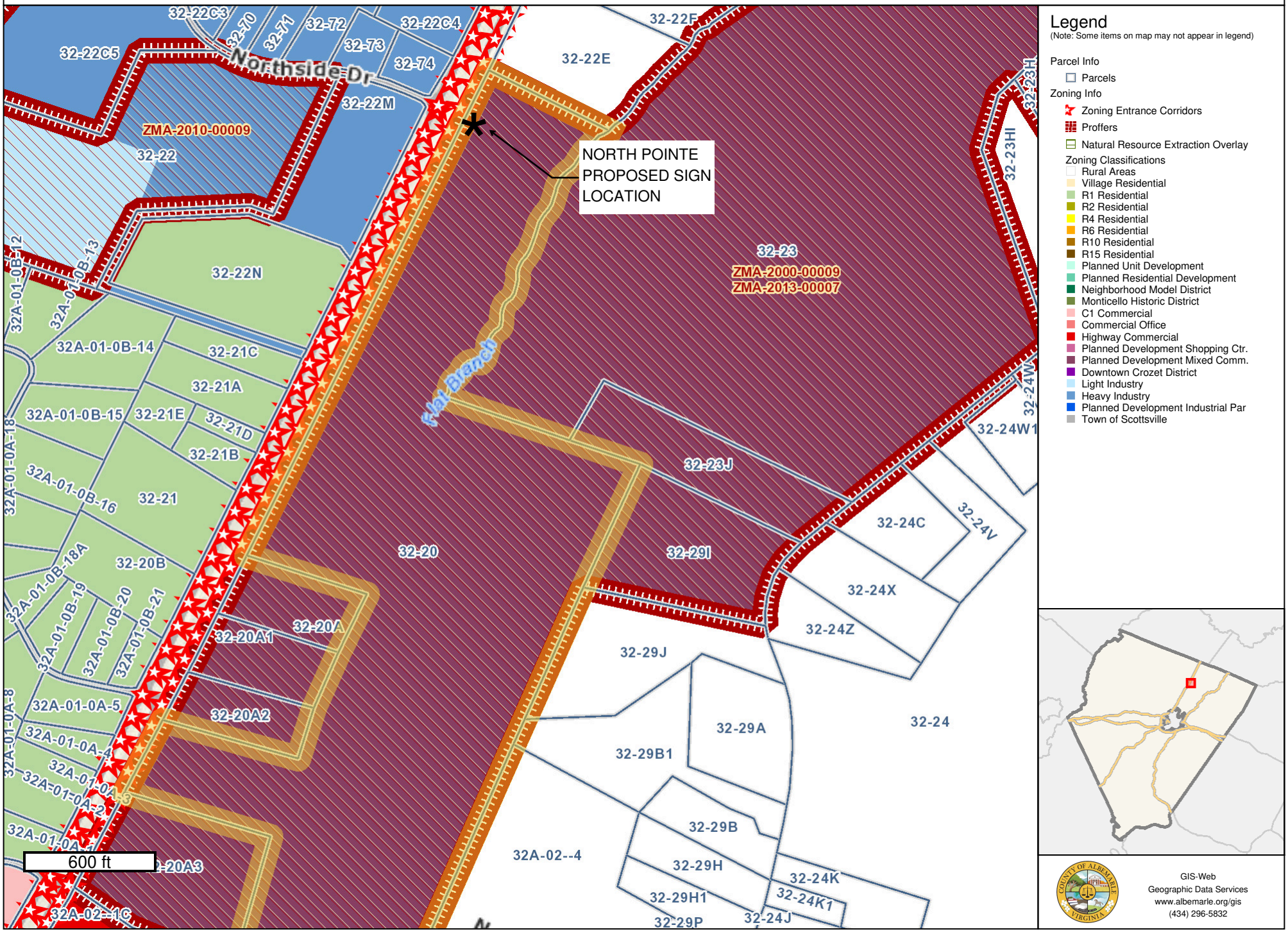
GIS-Web
Geographic Data Services
www.albemarle.org/gis
(434) 296-5832

Any determination of topography or contours, or any depiction of physical improvements, property lines or boundaries is for general information only and shall not be used for the design, modification, or construction of improvements to real property or for flood plain determination.

June 1, 2020

Map elements may scale larger than GIS data measured in the map or as provided on the data download page due to the projection used. Map Projection: WGS84 Web Mercator (Auxiliary Sphere) (EPSG 3857)

Attachment C ZONING MAP



Legend

(Note: Some items on map may not appear in legend)

Parcel Info
- Parcels

Zoning Info
- Zoning Entrance Corridors
- Proffers
- Natural Resource Extraction Overlay

Zoning Classifications
- Rural Areas
- Village Residential
- R1 Residential
- R2 Residential
- R4 Residential
- R6 Residential
- R10 Residential
- R15 Residential
- Planned Unit Development
- Planned Residential Development
- Neighborhood Model District
- Monticello Historic District
- C1 Commercial
- Commercial Office
- Highway Commercial
- Planned Development Shopping Ctr.
- Planned Development Mixed Comm.
- Downtown Crozet District
- Light Industry
- Heavy Industry
- Planned Development Industrial Par
- Town of Scottsville

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June 1, 2020

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Attachment D

COUNTY OF ALBEMARLE
Department of Community Development
401 McIntire Road, North Wing
Charlottesville, Virginia 22902

Phone (434) 296-5832 **Fax (434) 972-4126**

June 16, 2020

David Mitchell
Great Eastern Management Company
2619 Hydraulic Road
Charlottesville, VA 22906

ARB-2020-28: North Point Community Entrance Sign (TMP 03200-00-00-02000)

Dear Mr. Mitchell,

The Albemarle County Architectural Review Board reviewed the above noted item at its meeting on Monday, June 15, 2020. The Board unanimously approved the request, pending staff administrative approval of the following conditions:

1. Add a note to the drawings stating that the stone for the sign and sculpture bases will match the stone approved for the walls along Rt. 29.
2. Limit lighting to external fixtures that illuminate the entire sign or provide external illumination combined with halo lighting of the letters.
3. Add a note to the sign drawings stating that the ground mounted fixtures will be aimed to illuminate only the sign.
4. Revise the planting plan to show low landscaping at the base of the sign, coordinated with other nearby planting.
5. Note that the ARB has no objection to the proposed location in the median.

Please provide:

1. A full set of revised drawings, in both paper and PDF format, addressing each of these conditions. Include updated revision dates on each drawing.
2. A memo including detailed responses indicating how each condition has been satisfied. If changes other than those requested have been made, identify those changes in the memo also. Highlighting the changes in the drawing with “clouding” or by other means will facilitate review and approval.
3. The attached “Revised Application Submittal” form. This form must be returned with your revisions to ensure proper tracking and distribution.

When staff's review of this information indicates that all conditions of approval have been met, a Certificate of Appropriateness may be issued.

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

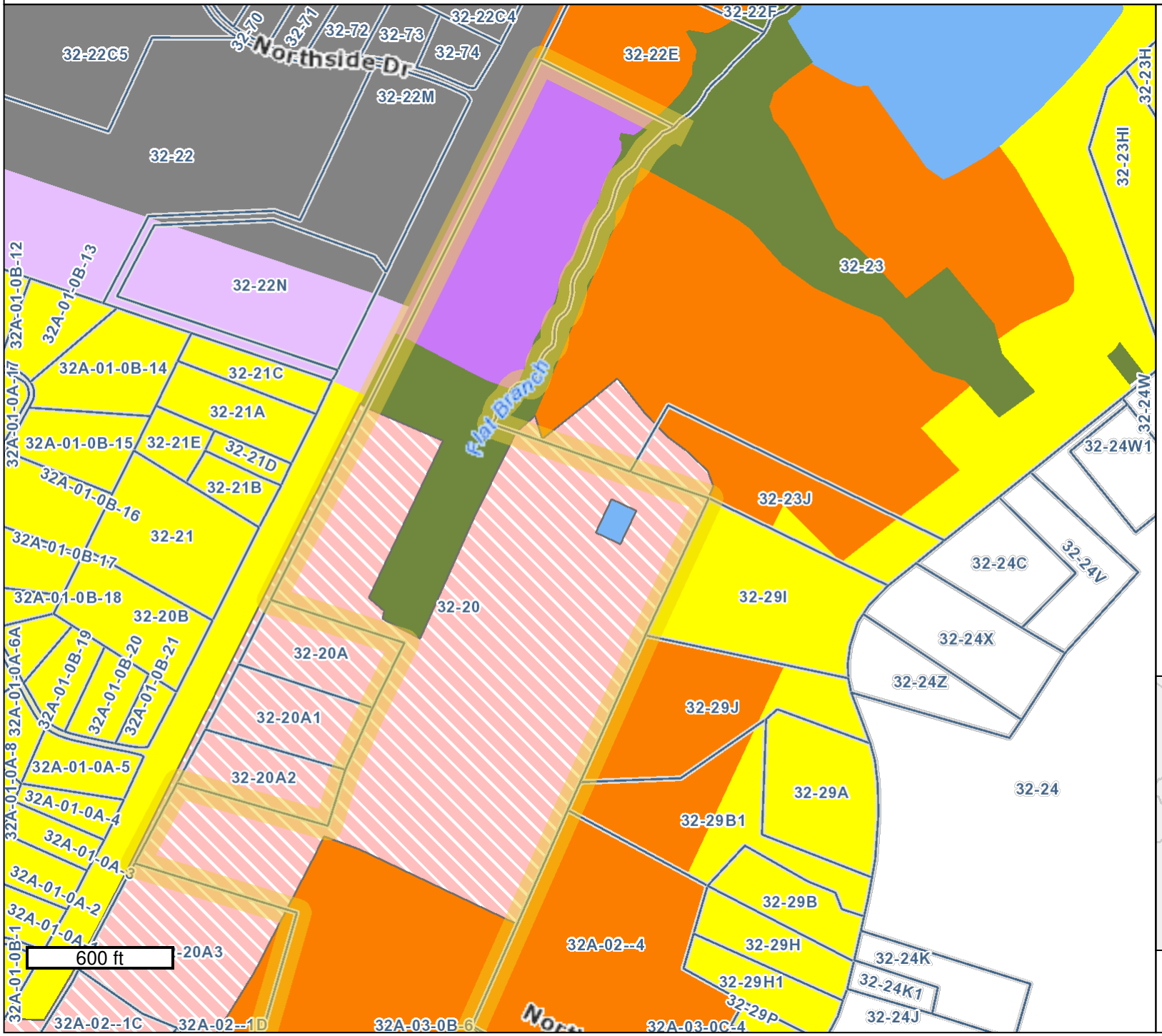
Sincerely,

Margaret Maliszewski
Chief of Planning/Resource Management
434-296-5832 x3276
mmaliszewski@albemarle.org

cc: CWH Properties Limited Partnership
P.O. Box 5526
Charlottesville, VA 22905

File

Attachment E



Legend

(Note: Some items on map may not appear in legend)

Parcel Info

- Parcels

Comp Plan Land Use Info

Places29 Master Plan Land Use

- Airport District
- Small Area Plan
- Urban Mixed Use (in Centers)
- Urban Mixed Use (around Centers)
- Commercial Mixed Use
- Urban Density Residential
- Neighborhood Density Residential
- Office / R & D / Flex / Light Industrial
- Light Industrial
- Heavy Industrial
- Institutional
- Public Open Space
- Private Open Space



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June 1, 2020

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Sec. 4.15.11 - Maximum sign number, area, and height, and minimum sign setback in the C-1, CO, HC, PD-SC, PD-MC, HI, LI, and PD-IP zoning districts.

The maximum number of signs permitted, sign area, and sign height, and the minimum sign setback are as follows for each sign for each sign within the Commercial (C-1), Commercial Office (CO), Highway Commercial (HC), Planned Development-Shopping Center (PD-SC) and Planned Development-Mixed Commercial (PD-MC) Heavy Industry (HI), Light Industry (LI) and Planned Development-Industrial Park (PD-IP) districts:

Freestanding [2, 3]	1 per street frontage, or 2 per entrance, per lot with 100 or more feet of continuous street frontage plus 1 per lot if the lot is greater than 4 acres and has more than 1 approved entrance on its frontage	**32 square feet**, plus bonus tenant panels; if more than 1 sign at an entrance, no single sign shall exceed 16 square feet	In the C-1 and HC districts, 12 feet; **16 feet** in all other districts	5 feet

3. Freestanding signs; bundle signs; electric message signs. The freestanding signage permitted may include one off-site bundle sign allowed by special use permit under section 4.15.7(b) and one electric message sign allowed by special use permit under section 4.15.7(d). An off-site bundle sign shall count as a freestanding sign on the lot on which the sign is located.

4.15.7 - Signs authorized by special use permit; off-site directional signs, off-site bundle signs, signs in a public right-of-way, electric message signs.

The following signs are authorized by a special use permit granted by the board of zoning appeals under section 34.5, provided that a sign permit required by section 4.15.5 is also obtained for the sign, the sign complies with all applicable requirements of this section 4.15, and the following:

c. *Signs in a public right-of-way.* A proposed sign in a public right-of-way shall satisfy the following:

1. *Eligibility*. The sign: (i) shall be a either a subdivision sign or a sign at an entrance to a planned development authorized by sections 19, 20, 25, 25A, and 29; (ii) the subdivision or planned development shall abut the public right-of-way in which the sign will be located; (iii) the regulations applicable to freestanding signs for the subdivision or planned development, **except for setback regulations**, shall apply unless the Virginia Department of Transportation imposes more restrictive standards; and (iv) the applicant submits a written statement from the Virginia Department of Transportation stating that it will permit the sign to be located in the public right-of-way.

2. *Authorized locations*. The sign shall be located only where the Virginia Department of Transportation authorizes it to be located.

Application for Special Use Permit

IMPORTANT: Your application will be considered **INCOMPLETE** until all of the required attachments listed on page 2 have been submitted with the appropriate signature on page 3. Also, please see the list on page 4 for the appropriate fee(s) related to your application.

PROJECT NAME: (how should we refer to this application?) North Pointe Middle Entrance

PROPOSAL/REQUEST: Middle Entrance Sign

ZONING ORDINANCE SECTION(S): Sec. 4.15 - Signs

EXISTING COMP PLAN LAND USE/DENSITY: Hollymead / Places 29, Urban Mixed Use (In Centers)

LOCATION/ADDRESS OF PROPERTY FOR SPECIAL USE PERMIT:
US 29 North

TAX MAP PARCEL(s): TM 32, P 20

ZONING DISTRICT: Planned Development Mixed Commercial

 # OF ACRES TO BE COVERED BY SPECIAL USE PERMIT (if a portion, it must be delineated on a plat): _____

Is this an amendment to an existing Special Use Permit? If Yes provide that SP Number. SP-_____	☐ **YES** ☑ **NO**
Are you submitting a preliminary site plan with this application?	☑ **YES** ☐ **NO**

Contact Person (Who should we call/write concerning this project?): Rebecca Costanzo (use cell # during COVID: 804-380-9953)

Address 418 E Main Street City Charlottesville State VA Zip 22902

Daytime Phone (434) 295-8177 Fax # (____) _____ E-mail rcostanzo@waterstreetstudio.net

Owner of Record David G. Mitchell

Address 2619 Hydraulic Road City Charlottesville State VA Zip 22906

Daytime Phone (434) 296-4141 Fax # (____) _____ E-mail david@southern-classic.com

Applicant (Who is the Contact person representing?): David G. Mitchell

Address 2619 Hydraulic Road City Charlottesville State VA Zip 22906

Daytime Phone (296) 296-4141 Fax # (____) _____ E-mail david@southern-classic.com

Does the owner of this property own (or have any ownership interest in) any abutting property? If yes, please list those tax map and parcel numbers:

TM 32, P 20-20A3, 23-23J, 29I

FOR OFFICE USE ONLY SP # _____ SIGN #_____

Fee Amount $_____ Date Paid _____By who? _____ Receipt # _____Ck#_____ By:_____

ZONING ORDINANCE SECTION_____

Concurrent review of Site Development Plan? YES____ NO _____

County of Albemarle
Department of Community Development
401 McIntire Road Charlottesville, VA 22902 Voice: (434) 296-5832 Fax: (434) 972-4126

REQUIRED ATTACHMENTS & OTHER INFORMATION TO BE PROVIDED for THE APPLICATION TO BE OFFICIALLY SUBMITTED & DEEMED COMPLETE

- ☑ **Application Signature Page**
- ☑ **One (1) completed & signed copy of the** Checklist for a Special Use Permit.
- ☐ **One (1) copy of the Pre-application Comment Form received from county staff**
- ☑ **One (1) copy of any special studies or documentation as specified in the Pre-application Comment Form,**
- ☑ **Seventeen (17) folded copies** of a Conceptual Plan.
- ☑ **Seventeen (17) copies** of a written narrative

The narrative must be laid out to identify each of the bulleted TITLES as follows:

- **PROJECT PROPOSAL**
  The project proposal, including
  - its public need or benefit;
  - how the special use will not be a substantial detriment to adjacent lots,
  - how the character of the zoning district will not be changed by the proposed special use, and
  - how the special use will be in harmony with the following;
    - the purpose and intent of the Zoning Ordinance,
    - the uses permitted by right in the zoning district,
    - the regulations provided in Section 5 of the Zoning Ordinance as applicable, and
    - the public health, safety and general welfare.

  (be as descriptive as possible, including details such as but not limited to the number of persons involved in the use, operating hours, and any unique features of the use)

- **CONSISTENCY WITH COMPREHENSIVE PLAN**
  The proposed project's consistency with the comprehensive plan, including the land use plan and the master plan for the applicable development area;

- **IMPACTS ON PUBLIC FACILITIES & PUBLIC INFRASTRUCTURE**
  The proposed project's impacts on public facilities and public infrastructure.

- **IMPACTS ON ENVIRONMENTAL FEATURES**
  The proposed project's impacts on environmental features.

☑ **One (1) copy of the most recent recorded plat**, that shows the Deed Book/Page Number, of the parcel(s) composing the proposed project, or a boundary survey if a portion of one or more parcels compose the proposed project, both of which shall include a metes and bounds description of the boundaries.

☑ **Taxes, charges, fees, liens owed to the County of Albemarle**
As the owner/agent I certify that any delinquent real estate taxes, nuisance charges, stormwater management utility fees, and any other charges that constitute a lien on the subject property, which are owed to the County of Albemarle and have been properly assessed against the subject property, **have been paid.**

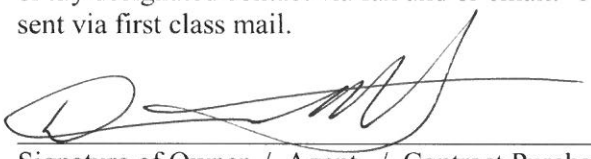
PLEASE CONSULT THE LIST OF ITEMS WHICH WILL BE REVIEWED BY STAFF
LINKED HERE

APPLICATION SIGNATURE PAGE

If the person signing the application is someone other than the owner of record, then a signed copy of the **"CERTIFICATION THAT NOTICE OF THE APPLICATION HAS BEEN PROVIDED TO THE LANDOWNER"** form must be provided in addition to the signing the application below. (page 5)

Owner/Applicant Must Read and Sign

By signing this application, I hereby certify that I own the subject property, or have the legal power to act on behalf of the owner of the subject parcel(s) listed in County Records. I also certify that the information provided on this application and accompanying information is accurate, true, and correct to the best of my knowledge. By signing this application, I am consenting to written comments, letters and or notifications regarding this application being provided to me or my designated contact via fax and or email. This consent does not preclude such written communication from also being sent via first class mail.



Signature of Owner / Agent / Contract Purchaser

May 4, 2020
Date

David G. Mitchell
Print Name

(434) 296-4141
Daytime phone number of Signatory

Required FEES to be paid once the application is deemed complete:

What type of Special Use Permit are you applying for?
Staff will contact you regarding the fee once the application is deemed complete

❑ New Special Use Permit	$2,150
❑ Additional lots under section 10.5.2.1	$1,075
❑ Public utilities	$1,075
❑ Day care center	$1,075
❑ Home Occupation Class B	$1,075
❑ To amend existing special use permit	$1,075
❑ To extend existing special use permit	$1,075
❑ Farmer's markets without an existing commercial entrance approved by the VDOT or without existing and adequate parking	$527
❑ Farmer's markets with an existing commercial entrance approved by the VDOT and with existing and adequate parking	$118
ADDITIONAL FEES	
❑ Initial notice fee provided in conjunction with an application, for preparing and mailing notices and published notice	$435
❑ ALL SPECIAL USE PERMITS - FIRE RESCUE REVIEW FEE	$50
☑ Signs under section 4.15.5 and 4.15.5A (filed for review by the Board of Zoning Appeals under the Variance Schedule)	$538

Other FEES that may apply:

Fees for re-advertisement and notification of public hearing after advertisement of a public hearing and a deferral is made at the applicant's request

➢ Preparing and mailing or delivering up to fifty (50) notices	$215 + actual cost of first-class postage
➢ Preparing and mailing or delivering each notice after fifty (50)	$1.08 for each additional notice + actual cost of first-class postage
➢ Published notice (published twice in the newspaper for each public hearing)	Actual cost based on a cost quote from the publisher (averages between $150 and $250)
➢ Application for uses under sections 5.1.47 or 5.2A	NO FEE

➢ Special Exception – provide written justification with application	$457
Resubmittal fees for original Special Use Permit fee of $2,150	
➢ First resubmission	FREE
➢ Each additional resubmission **(TO BE PAID WHEN THE RESUBMISSION IS MADE TO INTAKE STAFF)**	$1,075
Resubmittal fees for original Special Use Permit fee of $1,075	
➢ First resubmission	FREE
➢ Each additional resubmission **(TO BE PAID WHEN THE RESUBMISSION IS MADE TO INTAKE STAFF)**	$538

The full list of fees can be found in **Section 35 of the Albemarle County Zoning Ordinance.**

CERTIFICATION THAT NOTICE OF THE APPLICATION HAS BEEN PROVIDED TO THE LANDOWNER

This form must accompany this zoning application if the application is not signed by the owner of the property.

I certify that notice of the application for, _____
[Name of the application type & if known the assigned application #]

was provided to _____
[Name(s) of the record owners of the parcel]

the owner of record of Tax Map and Parcel Number _____

by delivering a copy of the application in the manner identified below:

☐ Hand delivery of a copy of the application to _____
[Name of the record owner if the record owner is a person; if the owner of record is an entity, identify the recipient of the record and the recipient's title or office for that entity]

on _____
Date

☐ Mailing a copy of the application to _____
[Name of the record owner if the record owner is a person; if the owner of record is an entity, identify the recipient of the record and the recipient's title or office for that entity]

on _____ to the following address _____
Date

_____
[Address; written notice mailed to the owner at the last known address of the owner as shown on the current real estate tax assessment books or current real estate tax assessment records satisfies this requirement].

NOT APPLICABLE

_____
Signature of Applicant

_____
Print Applicant Name

_____
Date

SPECIAL USE PERMIT CHECKLIST for

North Pointe Middle Entrance, Middle Entrance Sign / TM 32, P 20

Project Name / Tax Map Parcel Number

After the mandatory pre-application meeting, county staff will mark this checklist appropriately so that it is clear to the applicant the information from Section 33.4 (c) that must be submitted with the official application

Name or initials of staff filling out form

Required for application? (County Staff) X		Provided with application (Applicant) X	SECTION 33.4(c)
YES	NO		
		X	**A narrative of the project proposal, including its public need or benefit;**
		X	**A narrative of the proposed project's consistency with the comprehensive plan, including the land use plan and the master plan for the applicable development area;**
		X	**A narrative of the proposed project's impacts on public facilities and public infrastructure.**
		X	**A narrative of the proposed project's impacts on environmental features.**
			A narrative of the proffers proposed to address impacts from the proposed project.
			One or more maps showing the proposed project's regional context and existing natural and manmade physical conditions;
			A conceptual plan showing, as applicable:
		X	**1) the street network, including circulation within the project and connections to existing and proposed or planned streets within and outside of the project;**
		X	**2) typical cross-sections to show proportions, scale and streetscape/cross-sections/circulation;**
			3) the general location of pedestrian and bicycle facilities;
			4) building envelopes;
			5) parking envelopes;

			6) public spaces and amenities;
			7) areas to be designated as conservation and/or preservation areas;
			8) conceptual stormwater detention facility locations;
		X	**9) conceptual grading;**
		X	**Other special studies or documentation, if applicable, and any other information identified as necessary by the county on the pre-application comment form.**

Please note: There are additional submittal requirements outlined on the official application for a Special Use Permit.

Rebecca Costanzo

May 4, 2020

Signature of person completing this checklist **Read and Sign** Date

I hereby state that, to the best of my knowledge, the official application submitted contains all information marked on this checklist as required for application.

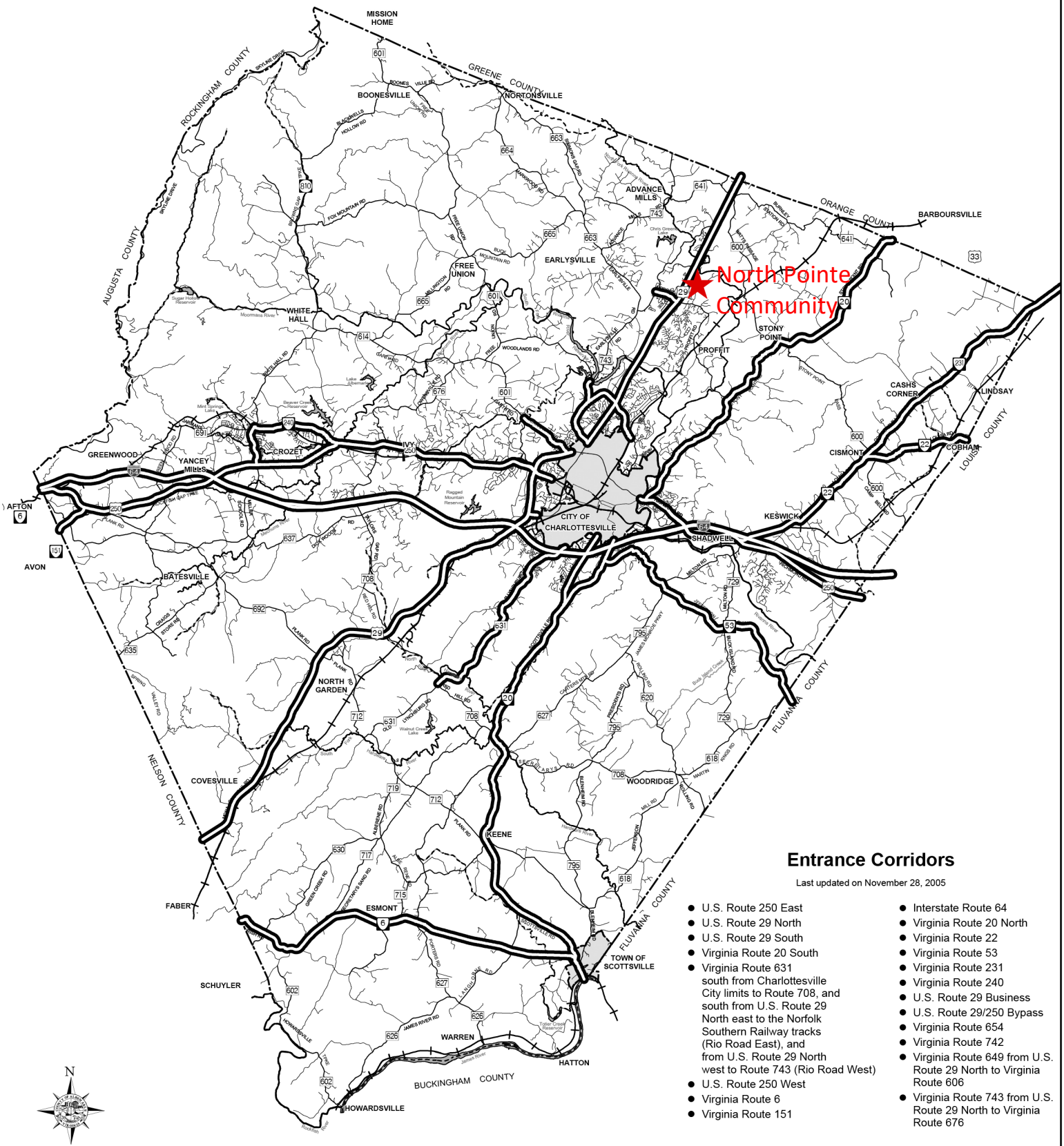
Rebecca Costanzo

office: 434.295.8177
cell(use during COVID: 804-380-9953

Print Name Daytime phone number of Signatory

County of Albemarle

Virginia



Entrance Corridors

Last updated on November 28, 2005

- U.S. Route 250 East
- U.S. Route 29 North
- U.S. Route 29 South
- Virginia Route 20 South
- Virginia Route 631 south from Charlottesville City limits to Route 708, and south from U.S. Route 29 North east to the Norfolk Southern Railway tracks (Rio Road East), and from U.S. Route 29 North west to Route 743 (Rio Road West)
- U.S. Route 250 West
- Virginia Route 6
- Virginia Route 151
- Interstate Route 64
- Virginia Route 20 North
- Virginia Route 22
- Virginia Route 53
- Virginia Route 231
- Virginia Route 240
- U.S. Route 29 Business
- U.S. Route 29/250 Bypass
- Virginia Route 654
- Virginia Route 742
- Virginia Route 649 from U.S. Route 29 North to Virginia Route 606
- Virginia Route 743 from U.S. Route 29 North to Virginia Route 676

Entrance Corridors
Major Roads
Railroads
Streams
County Boundary
Incorporated Town or City Boundary

Interstate Highway
US Highway
VA Primary Highway
VA Secondary Highway

0 1 2 3 4 5 6 Miles

0 1 2 3 4 5 6 7 8 9 Kilometers

Prepared by: Department of Community Development
Office of Geographic Data Services
This Map is for Display Purposes Only.

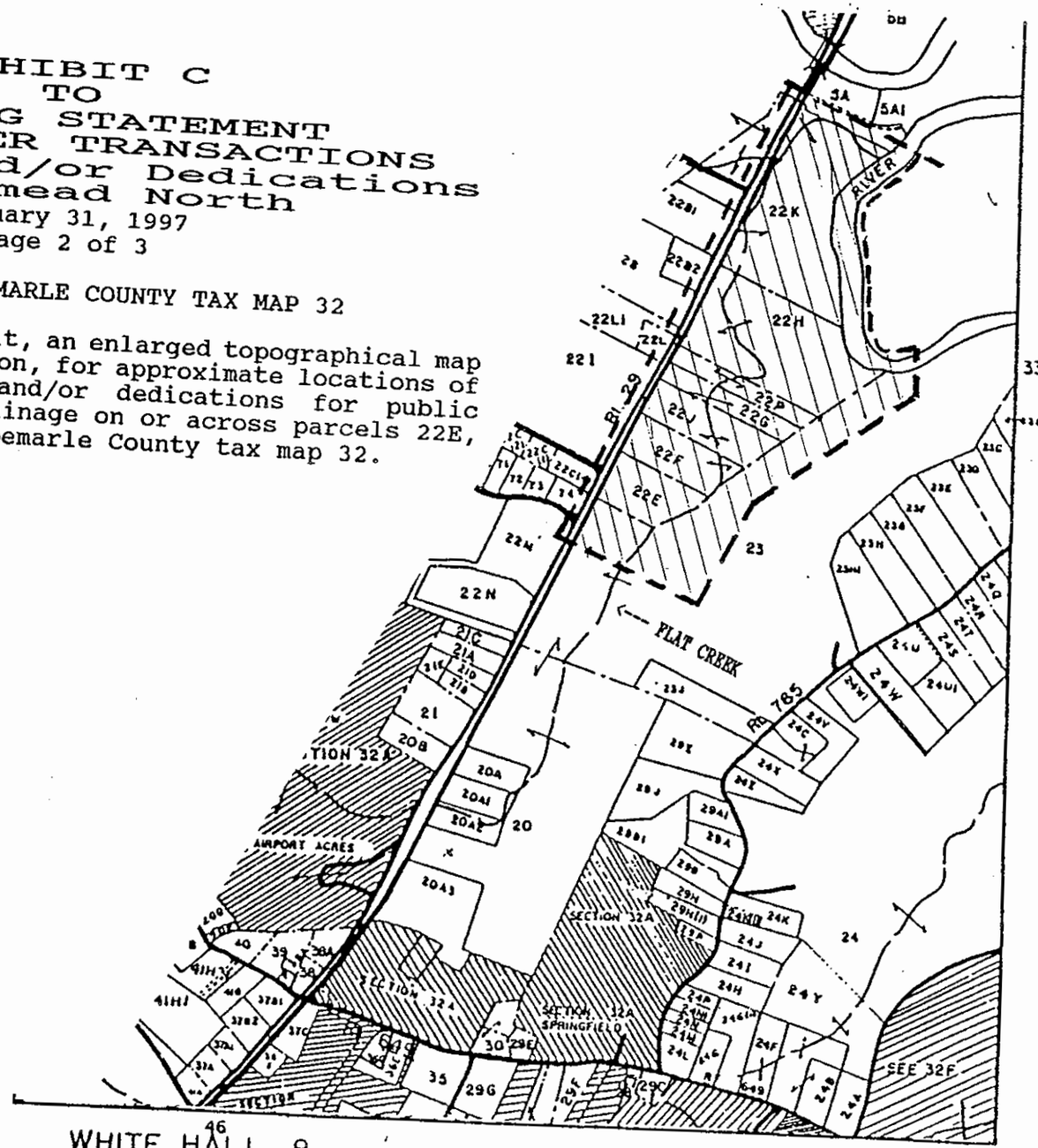
MAP CREATED: 9/11/2009

EXHIBIT C
TO
CLOSING STATEMENT
HURT/HEINER TRANSACTIONS
Easements and/or Dedications
Hollymead North

January 31, 1997

PORTION OF ALBEMARLE COUNTY TAX MAP 32

See Page 3 of this exhibit, an enlarged topographical map of the area hatched hereon, for approximate locations of anticipated easements and/or dedications for public roads, utilities and drainage on or across parcels 22E, F, G, H, J, K and P, Albemarle County tax map 32.



North Pointe Middle Entrance, Middle Entrance Sign
SUP
Narrative

- **Project Proposal**

The proposed entrance at North Pointe Community embodies the vernacular tradition and natural beauty of Albemarle's Entrance Corridors with its use of stone pillars and walls and beautiful native plantings, while creating a distinctive brand and sense of place that attracts residents and tourists with its distinctive painted aluminum sign and armillary accents.

1. Preserve the rights of free speech and expression;

Design is a subjective matter, but we believe that the variety created from the unique visions of the many developers and other property along Rte. 29 gives the Entrance Corridor visual interest.

2. Promote the general health, safety and welfare, including the creation of an attractive and harmonious environment;

With regards to public health, safety, and general welfare, per the discussion between the owner and VDoT's Adam J. Moore on January 31, 2020, the sign's location in the future right-of-way is anticipated to be approved through VDoT's Land Use Permit process. The sign is outside of the safety clear zone.

The entrance sign is designed for safe and easy wayfinding for motorists. Its V-shape is thoughtfully angled towards both Northbound and Southbound lanes, so that drivers can read the sign without having to turn their heads. The clarity of the large sans serif typeface makes for easy reading, and the subtle illumination of the sign letters, the pillars, and armillary at night, make identification clearer.

3. Protect the public investment in the creation, maintenance, safety, and appearance of its streets, highways, and other areas open to the public;

The Rte. 29 Entrance Corridor is an important thoroughfare for tourists as well as current and future residents. We have carefully considered maintaining the unique character of our region, through the design and use of local materials.

4. Improve vehicular and pedestrian safety by avoiding saturation and confusion in the field of vision and by directing and controlling vehicular traffic and pedestrians;

As mentioned above, the design of the sign is intended to promote safe and easy wayfinding. There are dedicated sidewalks that are setback from the curb to encourage pedestrian movement in a safe zone.

5. Protect and enhance the county's attractiveness to tourists and other visitors as sources of economic development; and protect property values.

The stone walls with plantings and meadow species serve to frame the entrance, but also further screen the sunken parking lots. The owner is investing in high-quality materials to promote the aesthetic beauty of Albemarle County.

• **Consistency with Comprehensive Plan**

The proposed project's consistency with the comprehensive plan, including the land use plan and the master plan for the applicable development area;

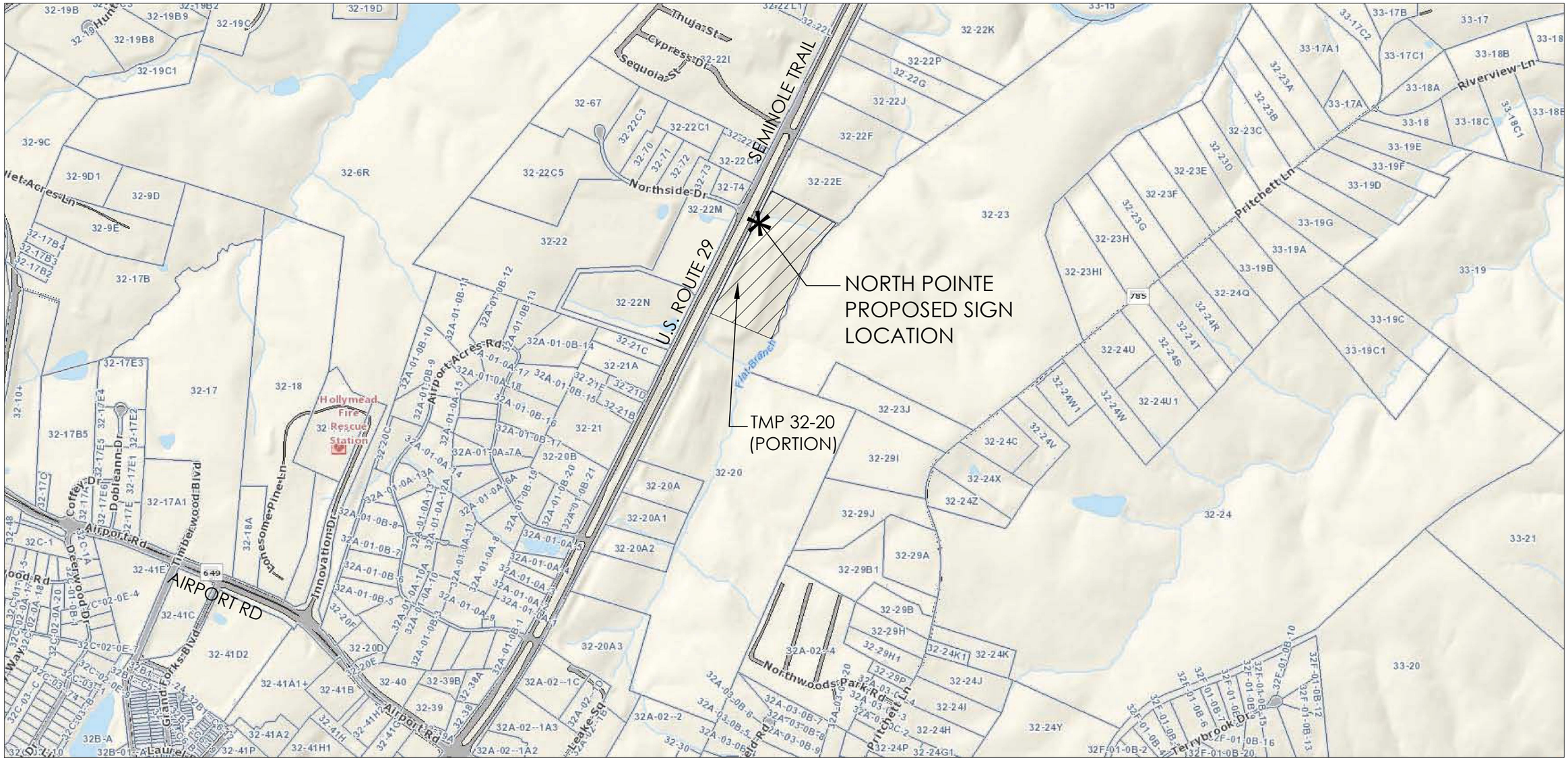
In general, the entrance walls and sign help create an identity and sense of place for the North Pointe Community, which attracts residents to these denser communities, and allows the rest of the county to preserve its rural character. Our Entrance Corridor Frontage is designated by the Comprehensive Plan as "Landscaped Development Frontage." To achieve the goals of the county's plan, the walls, entrance sign, and planting create an attractive buffer between Rte. 29 and its sidewalks, screening the parking lots. The alternating pattern of the groundcover in the planting strip creates additional visual interest. The use of aluminum painted to look like corten steel in the sign gives the sign an industrial feel, inviting people to enjoy the mix of uses that are promoted by the Comprehensive Plan.

• **Impacts on Public Facilities and Public Infrastructure**

Refer to the owner's conversation with VDoT's Adam J. Moore, and forthcoming Land Use Permit through VDoT.

• **Impacts on Environmental Features**

The thoughtful use of a mostly native plant palette at the entrance (and throughout) North Pointe Community creates habitat for pollinators and other fauna, reduces heat island effect, and mitigates stormwater loads.



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NORTH POINTE: MIDDLE ENTRANCE SIGN

ALBEMARLE COUNTY, SPECIAL USE PERMIT PLAN, MAY 4, 2020

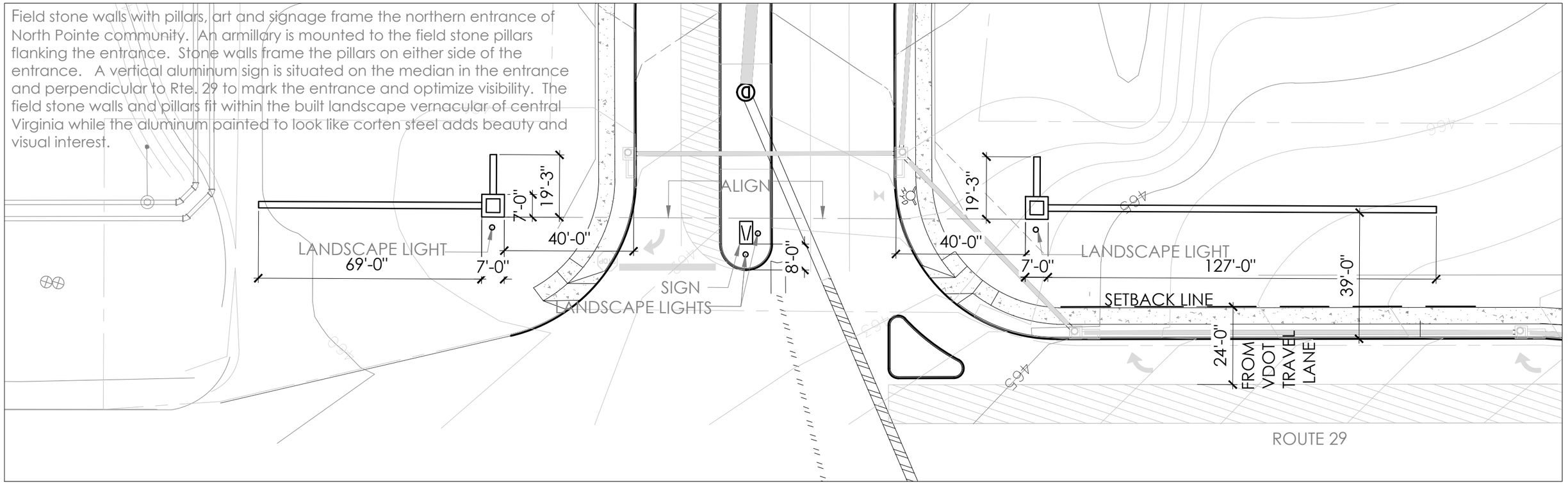
0 500' 1000' 2000'

N

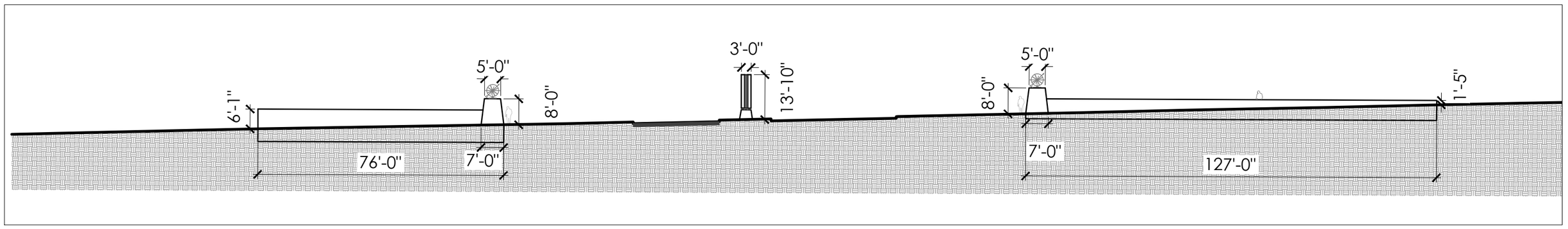
VICINITY MAP

L 1.00

Field stone walls with pillars, art and signage frame the northern entrance of North Pointe community. An armillary is mounted to the field stone pillars flanking the entrance. Stone walls frame the pillars on either side of the entrance. A vertical aluminum sign is situated on the median in the entrance and perpendicular to Rte. 29 to mark the entrance and optimize visibility. The field stone walls and pillars fit within the built landscape vernacular of central Virginia while the aluminum painted to look like corten steel adds beauty and visual interest.



1 OVERALL PLAN
SCALE : 1:30



2 OVERALL FRONT ELEVATION
SCALE : 1:30

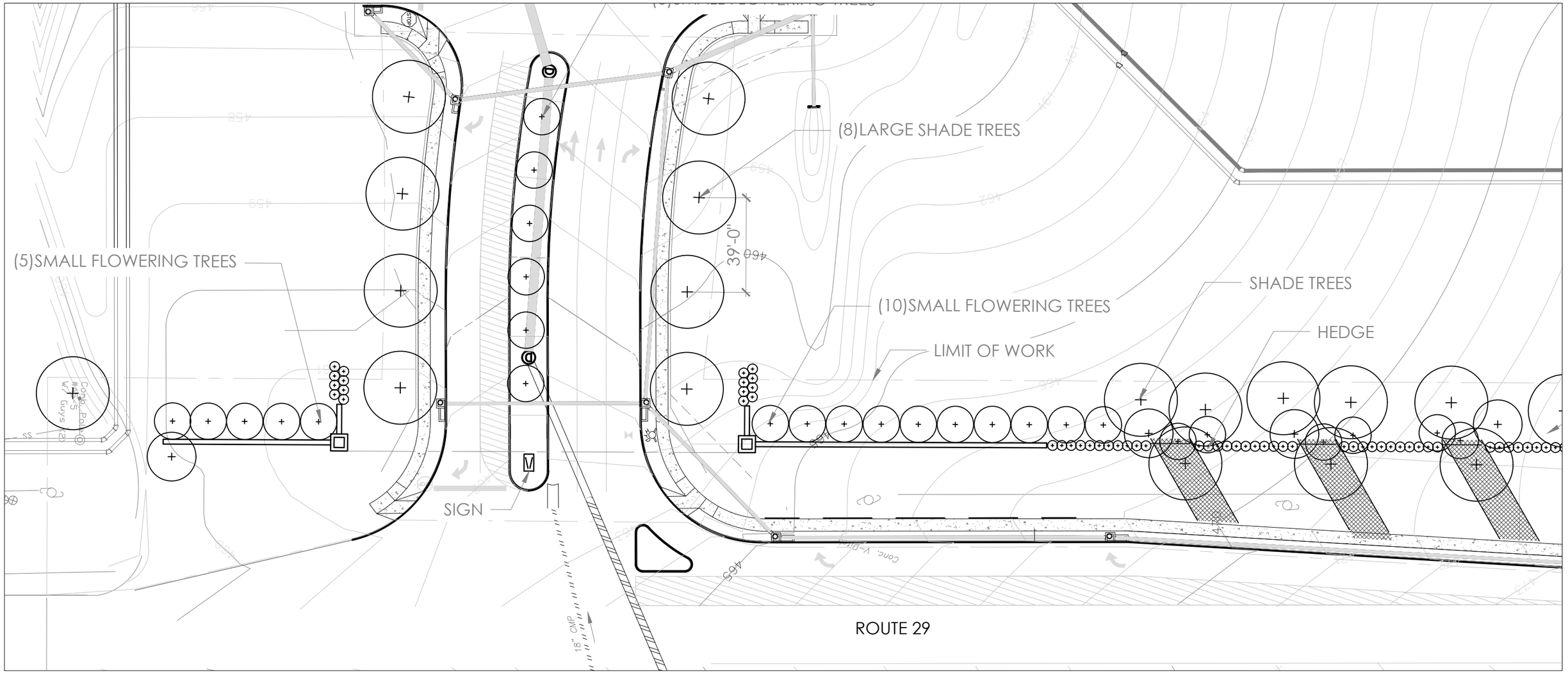
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NORTH POINTE: MIDDLE ENTRANCE SIGN
ALBEMARLE COUNTY, SPECIAL USE PERMIT PLAN, MAY 4, 2020

0 15 30 60

N

OVERALL PLANS
L 1.01



1 OVERALL PLANTING PLAN
SCALE : 1:40

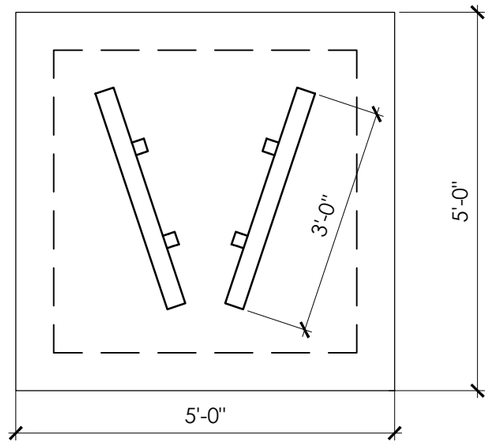
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NORTH POINTE: MIDDLE ENTRANCE SIGN
ALBEMARLE COUNTY, SPECIAL USE PERMIT PLAN, MAY 4, 2020

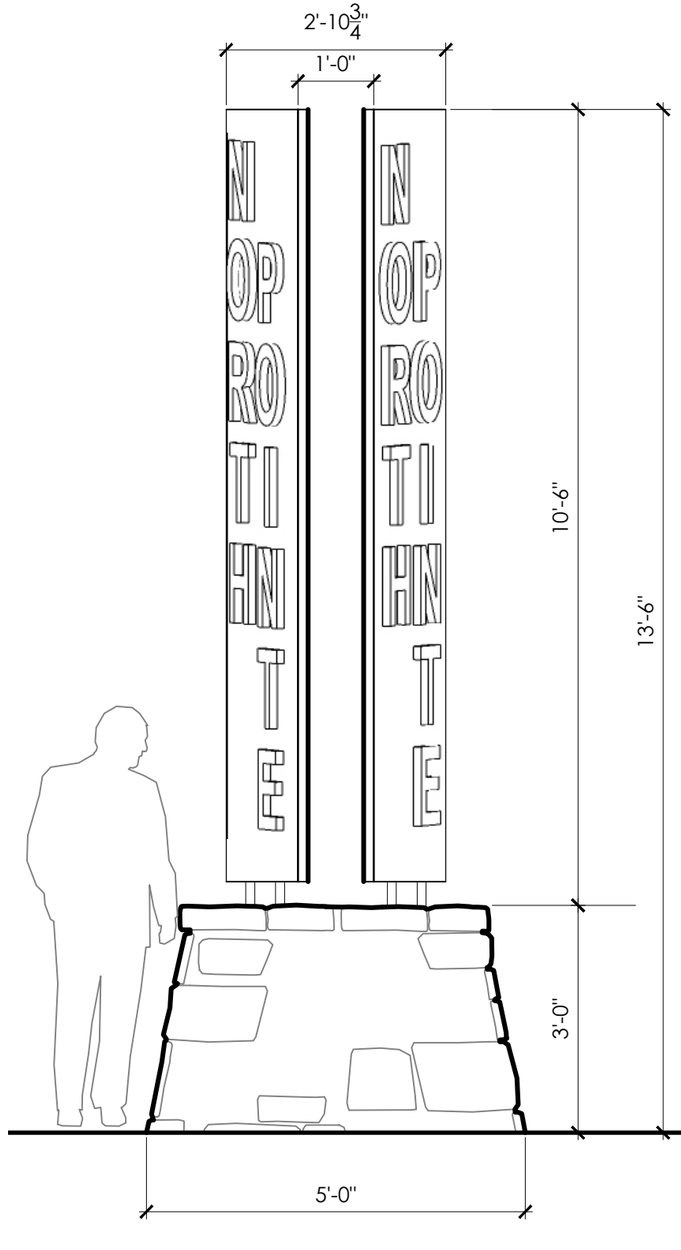
0 20 40 80

N

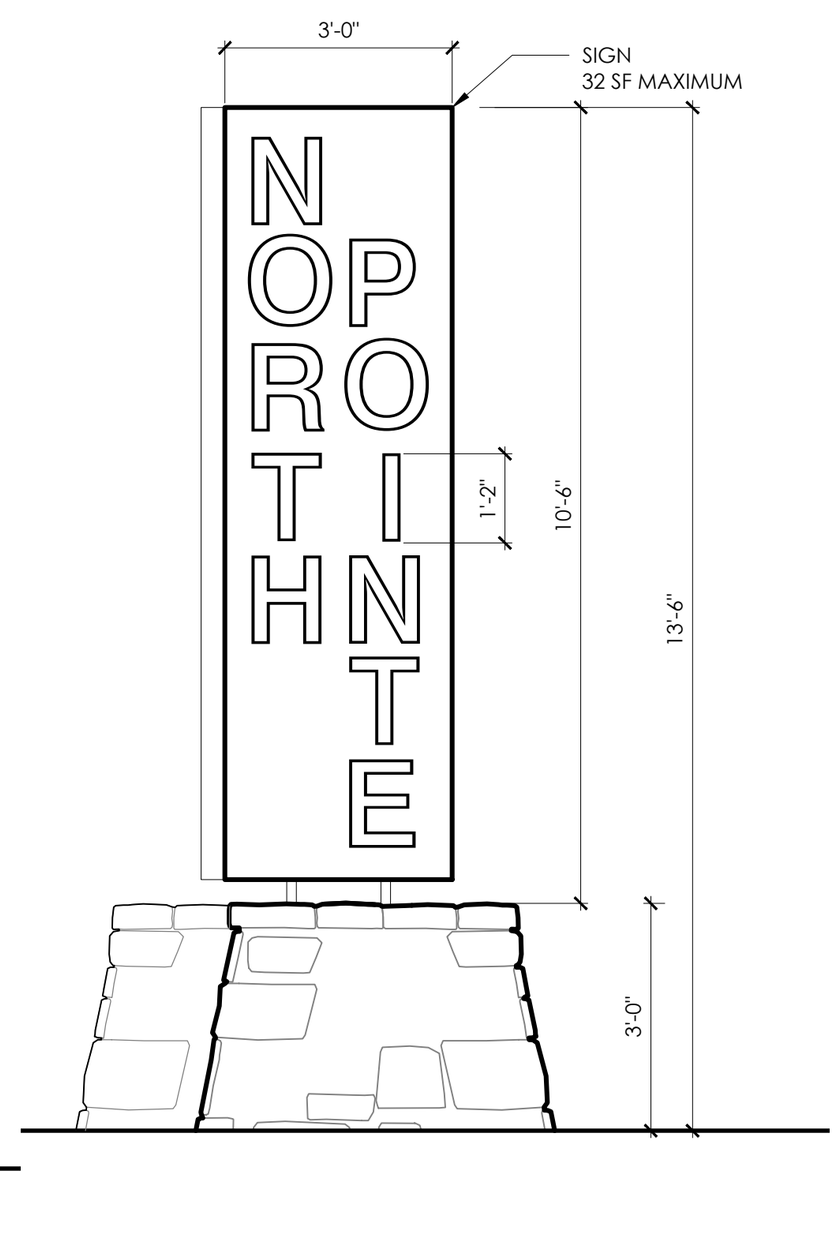
PLANTING PLAN
L 1.02



1 PLAN
SCALE : 1:2



2 FRONT ELEVATION
SCALE : 1:2



3 SIDE ELEVATION (WIDEST SIDE OF SIGN)
SCALE : 1:2

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NORTH POINTE: MIDDLE ENTRANCE SIGN

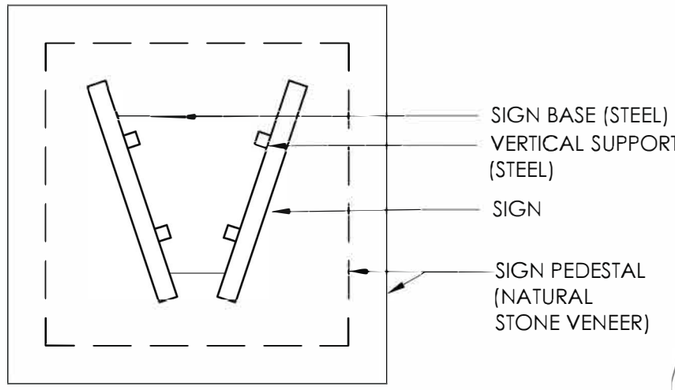
ALBEMARLE COUNTY, SPECIAL USE PERMIT PLAN, MAY 4, 2020

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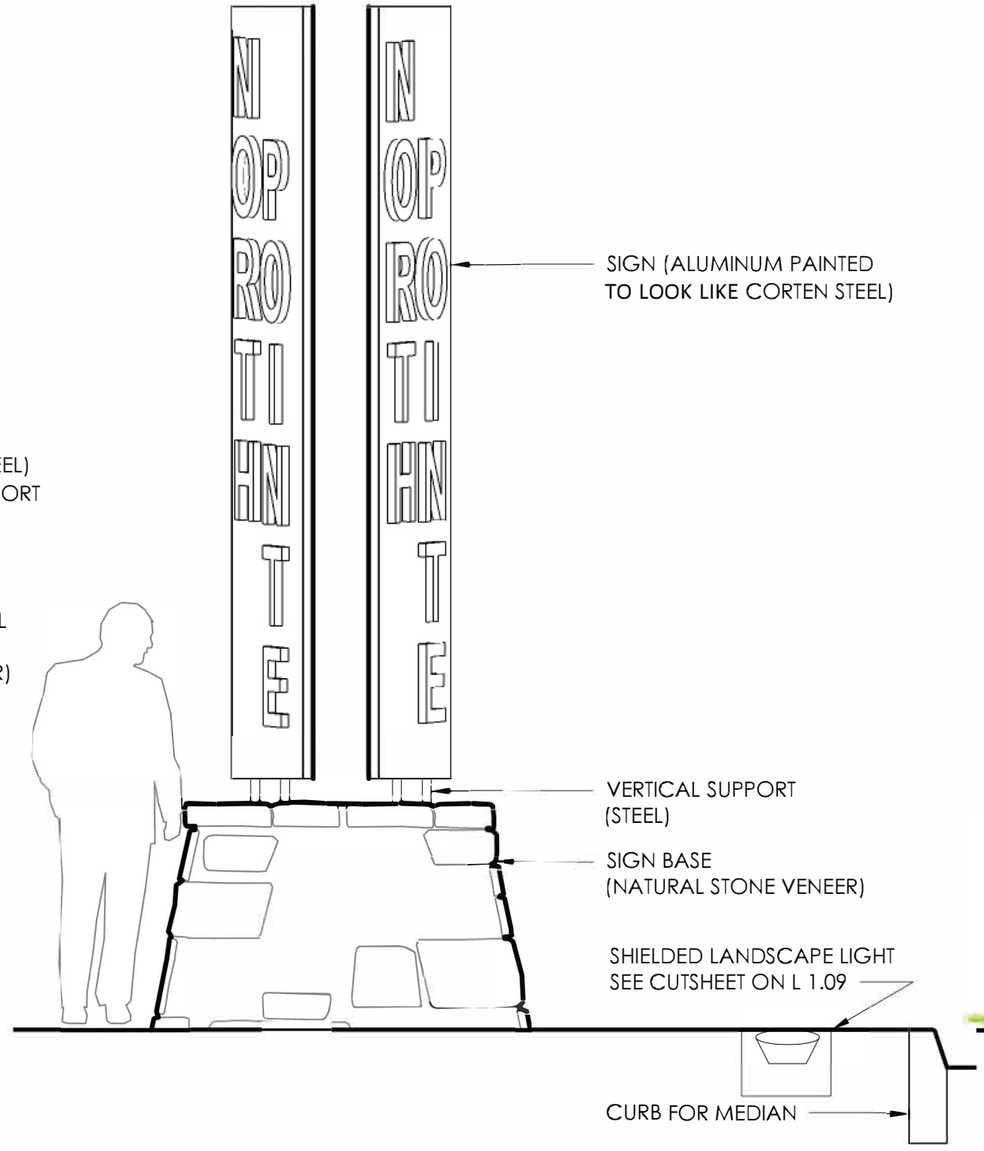
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ENTRY SIGN DIMENSIONS

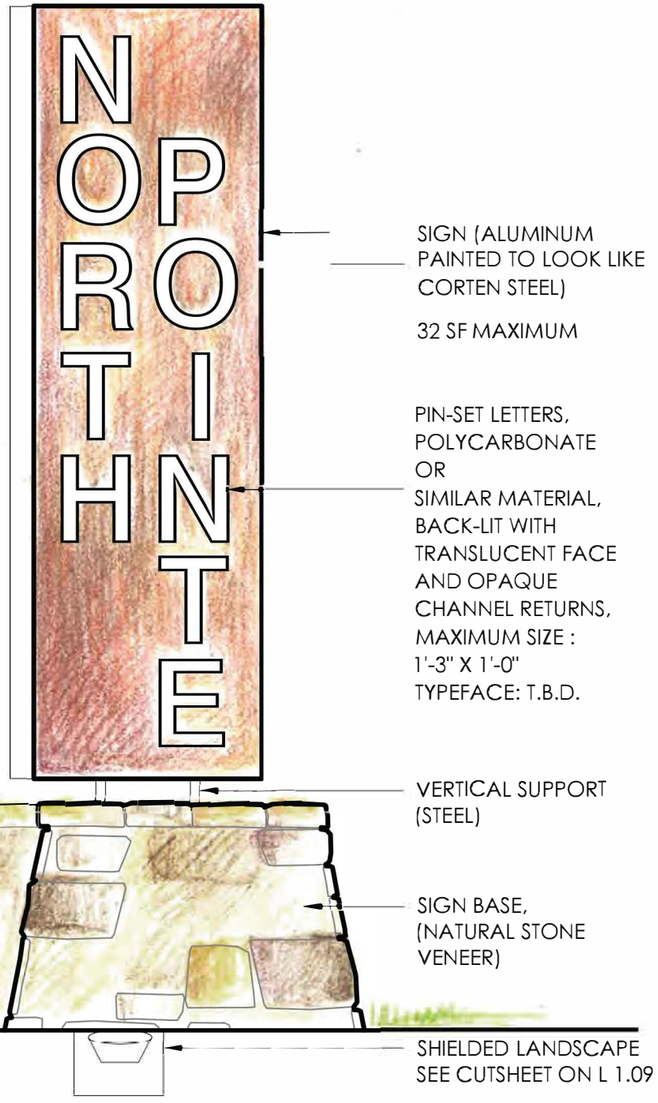
L 1.03



1 PLAN
SCALE : 1:2



2 FRONT ELEVATION
SCALE : 1:2



3 SIDE ELEVATION (WIDEST SIDE OF SIGN)
SCALE : 1:2

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NORTH POINTE: MIDDLE ENTRANCE SIGN

ALBEMARLE COUNTY, SPECIAL USE PERMIT PLAN, MAY 4, 2020

0 1 2 4

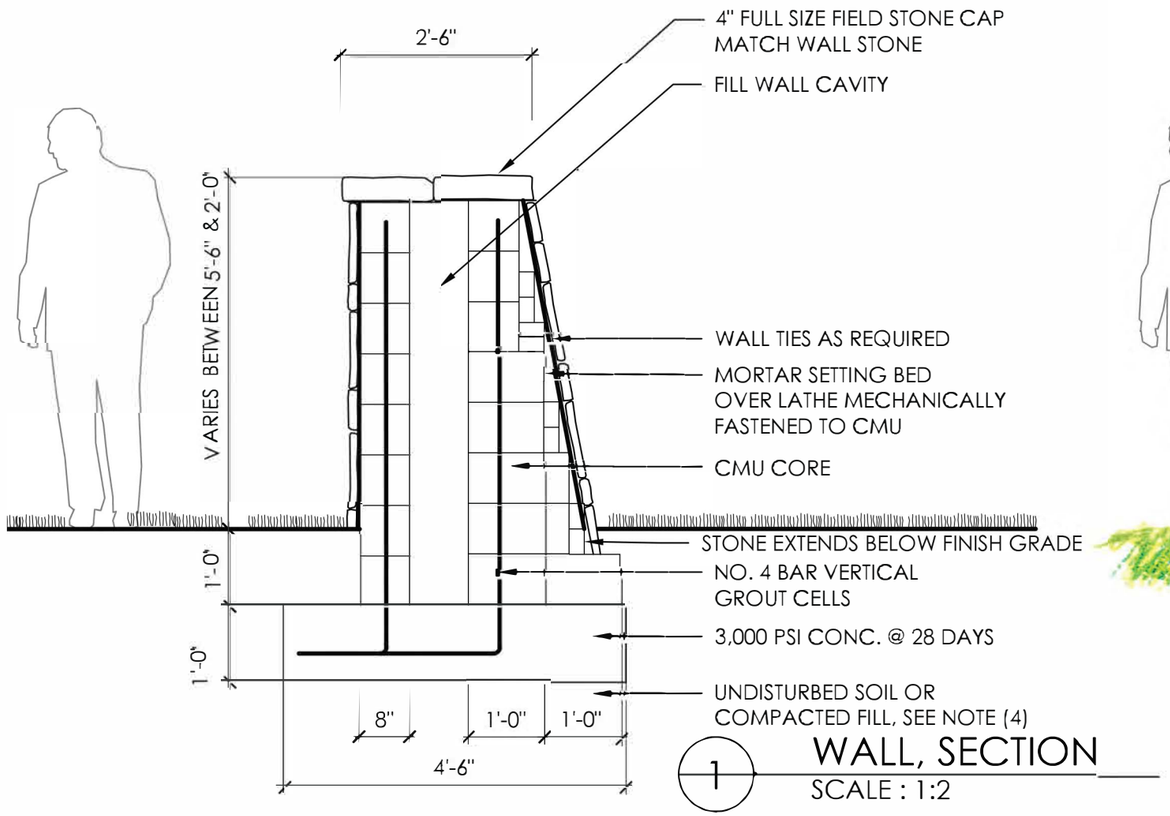
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ENTRY SIGN MATERIALS

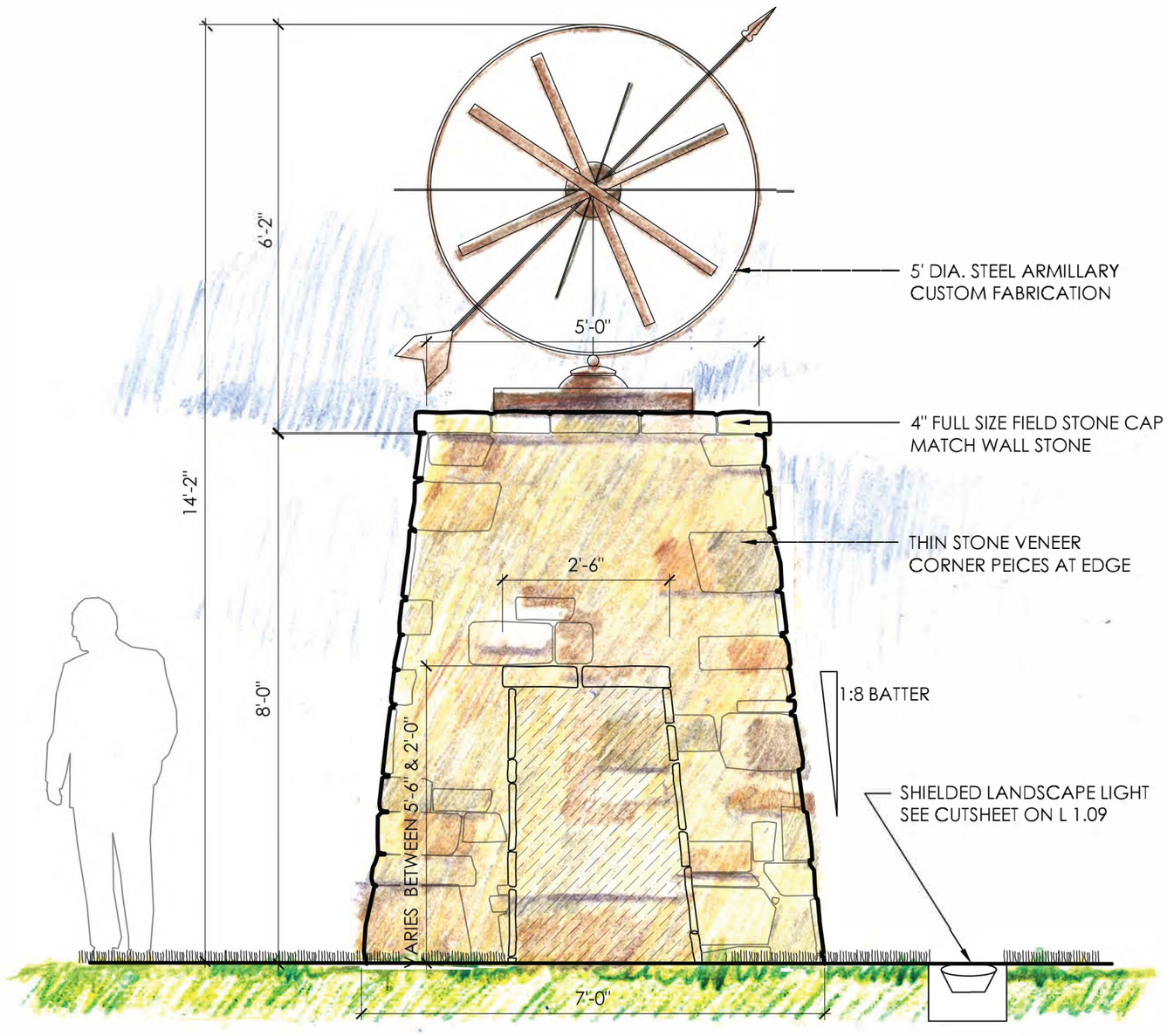
L 1.04

NOTES:

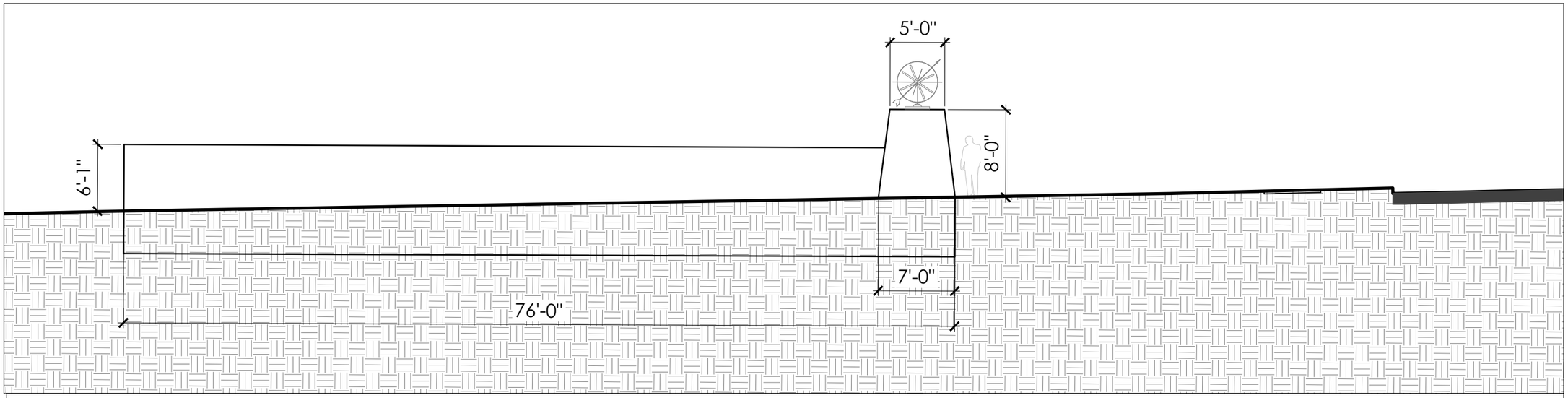
1) TOP OF FOOTING SHALL BE 1'-6" MIN. BELOW FINISHED GRADE.
2) SUBMIT SAMPLE OF STONE AND PREPARE MOCK-UP.
3) VERIFY THAT ALL COMPACTED FILL SUPPORTING STRUCTURAL ELEMENTS HAS A MINIMUM BEARING CAPACITY OF 2,000 P.S.F.
5) DO NOT SCALE WALL DETAIL DRAWINGS.



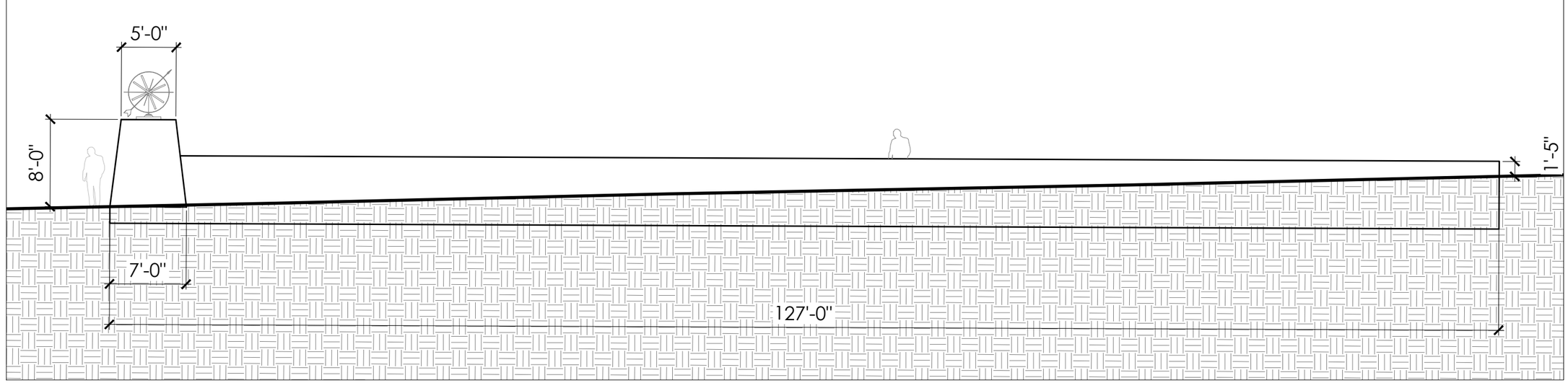
1 WALL, SECTION
SCALE : 1:2



2 ENTRY PIER, SECTION
SCALE : 1:2



1 ELEVATION, WALL 1
SCALE : 1:10



2 ELEVATION, WALL 2
SCALE : 1:10

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NORTH POINTE: MIDDLE ENTRANCE SIGN
ALBEMARLE COUNTY, SPECIAL USE PERMIT PLAN, MAY 4, 2020

0 5 10 20

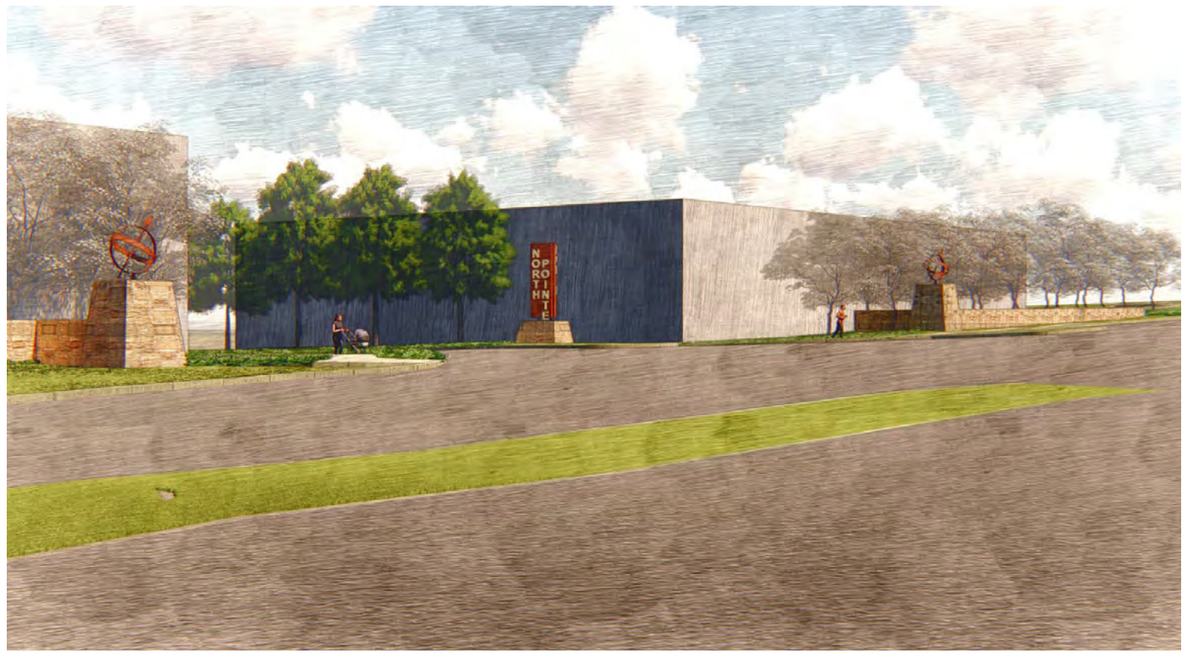
WALLS, ENLARGED ELEVATIONS
L 1.06



VIEW FROM RTE 29, NORTHBOUND



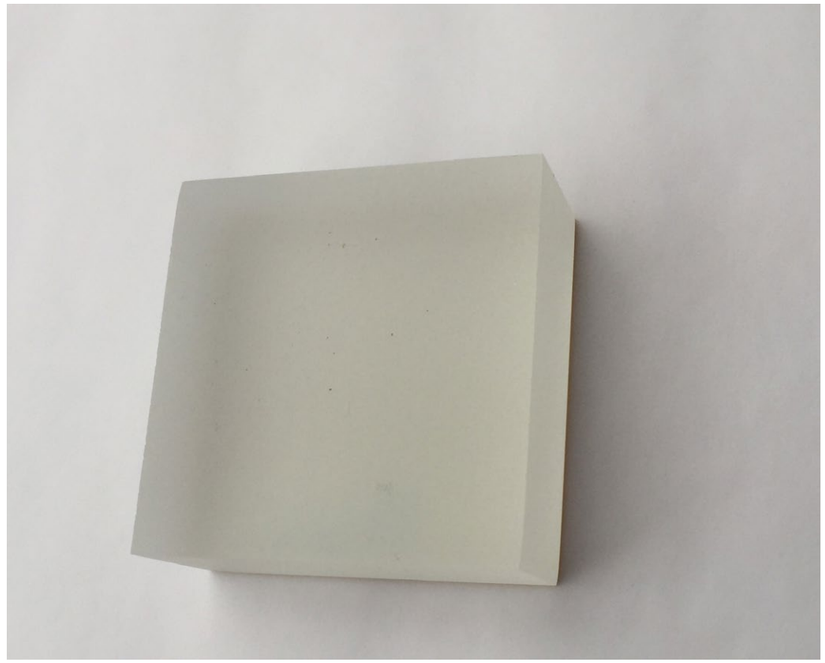
DAYTIME



VIEW FROM RTE 29, SOUTHBOUND



EVENING



LETTER COLOR: 3M CHROMA IVORY, OR SIMILAR COLOR



ARMILLARY: MATERIAL T.B.D.



STONE



CORTEN STEEL (NOT SPECIFIED FOR THE SIGN)



ALUMINUM, PAINTED TO LOOK LIKE CORTEN STEEL

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NORTH POINTE: MIDDLE ENTRANCE SIGN

ALBEMARLE COUNTY, SPECIAL USE PERMIT PLAN, MAY 4, 2020

MATERIALS PALETTE

L 1.08

HADCO
by signify

Landscape

i2.5

Composite inground



Project:

Location:

Cat.No:

Type:

Lamps: Qty:

Notes:

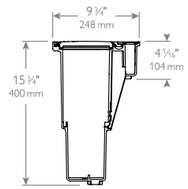
SHIELDED
LANDSCAPE
LIGHT

Integrated lamp (PAR30) and Integrated module

Ordering guide **Example: i2.5NLED12SPW**

Series	Finish	Lamping	Optics	CCT
i2.5	N	LED13	NF	W
i2.5 Inground with Trim Ring	**N** Natural Cast Bronze **SS** Stainless Steel	**LED12** 12W integrated lamp	**SP** Spot	**W** Warm* **C** Cool*
		LED13 13W PAR30 Long integrated lamp	**NF** Narrow Flood	**W** Warm
		[blank] integrated module	**SP** Spot **NF** Narrow Flood **FL** Flood	**W** Warm **C** Cool

* Must order LEDADP, Adaptor Ring if ordering an internal accessory.
Available with LED Lamp or LED Moudule: Fixtures with MR16 lamp will be shipped with lamp installed. Lamps not sold separately. Fixtures with PAR38 LED lamp will be shipped with fixture loose, not installed. Must order Adaptor Ring (LEDADP) if ordering an internal accessory.



Features
- 120 Volt
- PAR30L LED
- LED module

LED lamp
- 25,000 hours life (no mercury).
- 12W with 22° or 25° beam spread. Color temp. (CCT): cool white (4,000K nom) or warm white (2,700K nominal).
- 13W with 25° beam spread (only sold integral to i2.5 fixture). Color temp. (CCT): warm white (2,700K nom).

LED module
4,000K CCT or 3,000K CCT. Approx. 50,000 hours of operational life (at 25°C ambiant temperature and 70% lumen maintenance). >80CRI

Aiming
Offers 15° either side of vertical and full 360° rotation. Angle degree marks for precise vertical aiming with tool-less aiming.

Housing
Single-piece compression molded, fiberglass reinforced polyester composite housing. Separate sealed compartments. Potted factory seal with anti-wicking wiring. Hinged lens ring with captive lens and fasteners. Only two fasteners required to secure lens ring. UL Listed silicone-filled wire nuts provided–no encapsulant required.

Trim (supplied standard)
Natural cast bronze or cast stainless steel. Secured with stainless steel screws.

Gasket
Single-piece wrap around molded 100% silicone for lens assembly. Gasket for J-box cover is single-piece die-cut neoprene.

Finish
Natural Cast Bronze has satin matte finish and will age over time. Stainless Steel has satin matte finish.

Lens
Clear convex, tempered borosilicate for high-impact resistance. 3,000lb live-load rated, drive-over.

Optics
Available with spot, narrow flood or flood beam pattern. EnduraLED lamps: spot or flood beam pattern.

Electrical
LED module is a key-slotted ballast assembly with quick disconnects mounted to cast aluminum bracket for easy maintenance. e-Vision electronic ballasts automatically detect 120-277 volts, 50/60 Hz, HPF. Ballasts provide ± 5% lamp power regulation with ± 10% input voltage regulation. Incandescent (MR16) - utilizes stepdown transformer.

IP68 rating
Dust-tight and dual rated – sealed against direct jets of water and against continuous immersion up to a depth of 1 meter (3.28 feet).

Socket
Incandescent PAR30 Long
EnduraLED: Medium Base.

i2.5

Composite inground

Electrical Assembly
120 VAC input; 50-60Hz.

Note: LED lamp option is only available in 120V.

Lamp only: 12 total watts consumed Operating start temperature -40 C (-40 F).

ADA compliant
Compliant when used in concrete and flush-mounted with CPS15.

Optical Assembly
Clear, slightly convexed, molded borosilicate glass, high impact, 3000 lb. live load rated, drive-over glass, with molded wrap around 100% silicone lens gasket. Optional lens assemblies include cool touch lens, reducing lens temperatures by 35%, ice blue lens, linear or multi-directional spread lens. Integral collimating spot (10˚) optics. Integral collimating narrow flood (26˚) optics. Integral collimating wide flood (38˚) optics. Clear tempered glass affixed at 10˚ angle for natural cleaning. Sealed optical chamber. Aiming 15˚ either side of vertical and full 360˚ rotation. Angle degree marks for precise vertical aiming with tool-less LOC-AIM®. Handle enables easy tool-less removal of optical assembly for hot aiming and re-lamping, simply press-fit back into place.

Accessories (sold separately)
Secured with stainless steel screws.



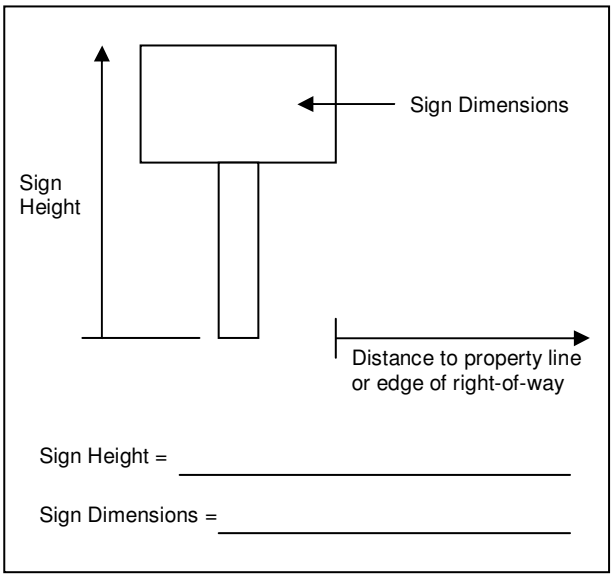
Half dome: Field adjustable for directional glare control. Natural cast bronze or cast stainless steel.

Rock Guard: Natural cast bronze or cast stainless steel.

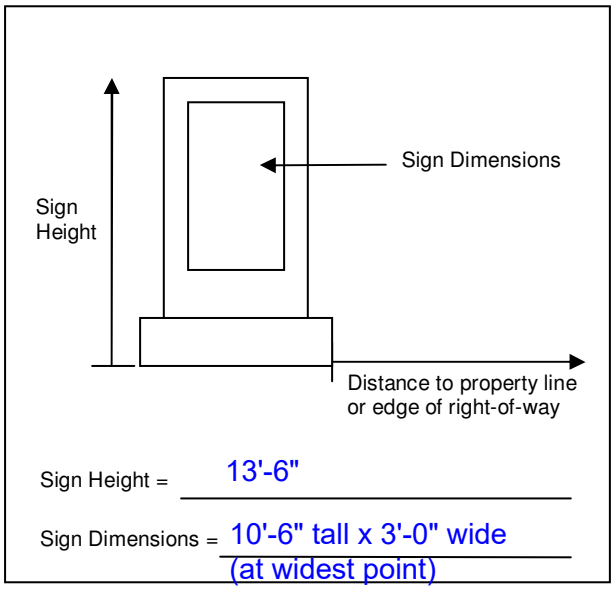
Labels
ETL and cETL listed. Suitable for wet locations. Manufactured to ISO 9001:2008 Standards. 10-year limited warranty.



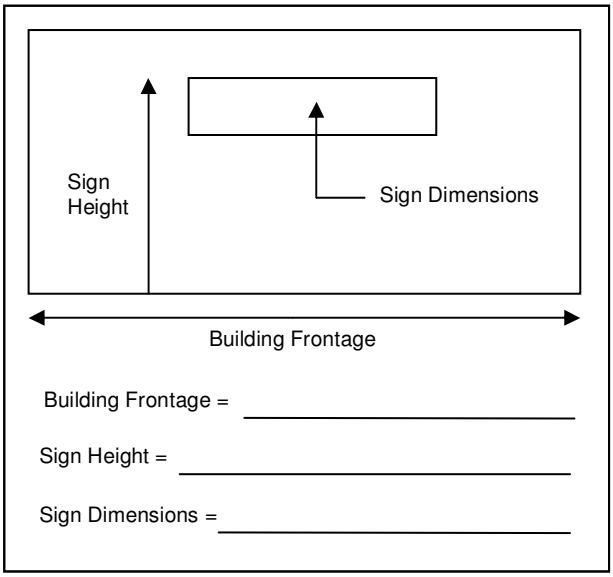
Sign Diagrams



Pole-Mounted Sign – Diagram 1
(Generally not acceptable in the ECs)



Monument Sign – Diagram 2



Wall Sign – Diagram 3

If multiple wall signs are proposed, list dimensions here:

Sign 2 Height = _____ Sign 4 Height = _____

Sign 2 Dimensions = _____ Sign 4 Dimensions = _____

Sign 3 Height = _____ Sign 5 Height = _____

Sign 3 Dimensions = _____ Sign 5 Dimensions = _____

ALBEMARLE COUNTY BOARD OF ZONING APPEALS
ELECTRONIC MEETING
TUESDAY, JUNE 2, 2020 – 2:00 P.M.

Board Members present:	Marcia Joseph Ed Robb John Shepherd Randy Rinehart
Staff Members present:	Bart Svoboda, Zoning Administrator Francis MacCall Lisa Green Bill Fritz Marsha Alley, BZA Clerk and Recorder
County Attorney:	Andy Herrick, Deputy County Attorney
BZA Attorney:	James Bowling, IV

1. Call to Order

The meeting was called to order at 2:00 p.m. by Chairman John Shepherd. He said this is an electronic meeting and asked for patience as they become familiar with this meeting alternative. He read the following statement:

This meeting is being held pursuant to and in compliance with Emergency Ordinance No. 20-A(6); An Emergency Ordinance to Ensure the Continuity of Government During the Covid-19 Disaster

The BZA Members who are electronically present at this meeting are John Shepherd, Randy Rinehart, Marcia Joseph, and Ed Robb (Vice Chair).

The persons responsible for receiving public comment are the Board of Zoning Appeals of Albemarle County.

The opportunities for the public to access and participate in the electronic meeting are posted on the Albemarle County website on the Board of Zoning Appeals home page and on the Albemarle County calendar.

2. Establish a Quorum

The BZA established a quorum, with four members present.

Ms. Joseph, Mr. Robb, Mr. Rinehart, and Mr. Shepherd each stated their presence.

Mr. Shepherd introduced others in attendance: James Bowling (BZA Attorney); Andy Herrick (Deputy County Attorney); Bart Svoboda, Francis MacCall, Marsha Alley, and Bill Fritz (County Staff); and Valerie Long (Counsel for Yancey Lumber Mill).

3. Deferral Request

A. AP202000001 R. A. Yancey Lumber Corporation – 55-111B, 55-112

Mr. Shepherd said in reviewing the background of this issue, he has come to appreciate how difficult and frustrating this has been for all sides. He noted that the application for the special exemptions was submitted on

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January 26, 2018, almost two and a half years ago. He said the stakes are high for the public, the company, and the process.

Mr. Shepherd said today, however, there are only two rather narrow issues before the BZA. He said one was a public hearing for the BZA to consider the appeal of the Zoning Administrator's determination that there are two setback violations on this site. He said the other is a request to the defer the hearing on the appeal until the August BZA meeting. He said they will take up the deferral request first, then hold the public meeting if, and only if, the Board denies the deferral request.

Mr. Shepherd asked participants to understand that their scope was limited to the deferral request and the validity of the violation notice. He said they are not going to deal with the long-term remedies for this situation. He said there is a process in place to do that. He said hearings to consider the requests for special exemptions are scheduled to be conducted by the Planning Commission on June 23, and by the Board of Supervisors on July 15. He said this is where the matter will truly be resolved in the long-term.

Mr. Shepherd said he would start with the deferral. He noted the discussion of the deferral is not a public hearing, meaning they will not take public comment during this portion of the meeting, but that they will have the right to ask anyone present any questions that would clarify the situation.

Mr. Shepherd said Mr. Svoboda, Zoning Administrator, would explain the issues of the deferral request.

Mr. Svoboda said staff made a brief analysis based on the factors to consider out of the BZA's Rules of Order. He said favorable factors in a deferral may promote fairness in the process. He said the applicant has argued that Special Exception requests had been delayed by COVID-19 pandemic protocols. He said Consideration #4 is that the outcome of the Special Exception request is uncertain, and any deferral [inaudible] the appellant to resolve the underlying issues so that the BZA action might be unnecessary.

Mr. Svoboda said regarding unfavorable factors, Consideration #2 says a deferral may be considered a convenience or a personal benefit to the applicant. He said Consideration #3 says a deferral may delay enforcement or abatement of the zoning violation that is adversely affecting an abutting property, a neighbor, the neighborhood, or the public.

Mr. Svoboda concluded staff's remarks, noting there were two proposed motions.

Ms. Valerie Long, representative for the appellant, asked if she had a time limit on her presentation.

Mr. Shepherd replied they were using the same time limits for this meeting as they normally would. He said the appellant will have 15 minutes to present, then another 5 minutes to rebut.

Ms. Long said she was representing R.A. Yancey Lumber Corporation on this matter. She said she was joined by Patrick May (Vice President of the company), who was newly authorized to lead the company's participation throughout the process and work towards bringing the entire site fully into compliance with all regulations. She said several other representatives of the company were participating as well.

Ms. Long said as stated in her written request, she requests that the BZA grant a short deferral of this matter so that they can continue the Special Exception process that, as Mr. Shepherd noted, they have been diligently pursuing for two and a half years. She said although the original application was submitted in January of 2018, they first met with Mr. Svoboda's predecessor Amelia McCulley (the Zoning Administrator at the time) in December of 2017.

Ms. Long said in specifically addressing the factors to be considered in considering an appeal, she will reiterate some of the points she made in the deferral request letter and supplement that as appropriate. She said the County has been working diligently with the County staff on the Special Exception requests for two and a half years. She said if not for the COVID-19 delay, those requests would have been heard by now. She said the Board was originally scheduled to take action on the requests in April, and the County staff have been graciously working with the appellant throughout to coordinate the timing of the two hearings so that they have the opportunity to have the discretion of the Special Exception requests prior to the appeal hearing.

Ms. Long said they were very understanding of the need and importance of having to delay those applications, in light of a worldwide pandemic. She said they also understand that the County needed several weeks to work out the logistics for meeting remotely. She said they were as patient as they could be and did continually request that the County schedule the meetings on the Special Exceptions as the absolute earliest possible time. She said nevertheless, it will end up being a three-month delay by the time the first meeting takes place at the end of June.

Ms. Long said they were merely asking for the opportunity to continue that process first, since the outcome has the potential to resolve the underlying issue. She said the Special Exception requests were submitted two years before the Notice of Violation was issued by the County.

Ms. Long said denying the appeal deferral request would ignore the constructive work that the applicant has undertaken over the past two and a half years to address the situation. She said thus, it is only fair to grant a short delay for this appeal hearing in light of the three-month delay in hearing the Special Exception requests. She said it would, in their opinion, promote fairness in the process.

Ms. Long said similarly, they contend that a short deferral would provide an opportunity to resolve the underlying issue. She said they understand there are no assurances that the Board of Supervisors will grant the Special Exception requests, but that there is certainly the potential. She said those hearings have been rescheduled and advertised, and they are moving forward on that. She said if the Board approves the Special Exception application, this appeal would be moot and unnecessary, and it would resolve the underlying issue of the appeal.

Ms. Long said the Rules of Procedure do not require the BZA to make a finding that it would absolutely resolve the underlying issue of the appeal, but merely have the potential to do so. She noted the rules say, “may allow the underlying issue to be resolved.” She said this would also promote judicial efficiency, avoid wasting the time of the Board, County staff, members of the public, and the appellant unnecessarily. She said if the underlying issue is resolved, hearing the issue that day would be, in her opinion, wasteful of those scarce resources.

Ms. Long added that granting the appeal deferral would not be solely for the convenience or for the personal benefit of the company. She said it would respect the time and resources that the County staff and other County elected official and representatives have put in on this request over the past two and a half years. She said the County has been extremely cooperative and helpful to the appellant over this time and has expended vast resources in collaboratively working with the appellant, members of the public, and nearby neighbors. She said she thinks that denying the deferral request would be counterproductive to those issues, and thus would not be a personal benefit to the company.

Ms. Long said deferral would also promote judicial efficiency, which is not a personal benefit of the company, and would avoid wasting the time and resources of the members of the community, since the appeal might be moot and unnecessary upon action of the County Board of Supervisors on the Special Exceptions.

Ms. Long said similarly, deferral would not unreasonably delay an abatement of the violation. She said the equipment that the Swales have repeatedly cited as creating the noise issue is not 35 feet from their property, as has been stated. She said that in fact, the piece of equipment that they have regularly stated is their main source of aggravation is located straddling the line of the 100-foot setback. She said she would present an exhibit of this.

Ms. Long said there is a partially constructed piece of equipment that is 35 feet from the corner of their property line. She said that piece of equipment is only partially constructed, is not in operation, and is not making a single sound or emitting any noise, and certainly not emitting any vibration.

Ms. Long noted with regard to vibration, the company is in compliance with the County's vibration ordinance according to their professional consultant, who has studied the issue. She said the appellant submitted a report to the County, to that effect.

Ms. Long said as the Swales and their counsel are aware, and as stated in materials the appellant has submitted to the public, the company has made numerous commitments to reduce future noise issues upon the approval of the Special Exception. She said they know the merits are substance of the Special Exception requests and are not before the BZA that day but that she wanted to make the Board aware of those issues.

Ms. Long said upon others, the appellant has proposed that upon approval of the Special Exception, the equipment that is causing noise will be enclosed within a building, which has always been part of the plan. She said specific noise limits would be adhered to, which are detailed in the application materials. She said there would be sound attenuation materials added to the inside of the walls of the building that will enclose the equipment, which is a stacker to reduce noise. She said the company would add an additional sound barrier wall to further reduce noise levels.

Ms. Long said she would share an exhibit that references the statement regarding the distance of the equipment to the adjacent parcel. She presented a page from the application materials for the Special Exception to help orient everyone. She said these were unfortunately left out of the BZA's supplemental packet.

Mr. Bowling said if they were in Ms. Long's email, he had forwarded this along to the BZA members.

Ms. Long said for everyone's benefit, including anyone watching who had not seen the materials before, she would use the exhibit to help orient everyone. She indicated on the exhibit to Route 250, to the main mill building, to the Swales' property line, and a black line that was the property boundary line. She said the red line on the exhibit was the 100-foot setback line for buildings from adjacent parcels. She indicated to a piece of equipment that was labeled "new stacker," noting this is the only equipment in operation currently. She said this was completed prior to any Special Exceptions being submitted, and long before any violation was noticed. She said as they could see, it was not 35 feet from the property line but was straddling the 100-foot line. She indicated to the distance of 35 feet in another location.

Ms. Long indicated on the exhibit to the new sorter. She said this is the piece of equipment that is under construction and only partially constructed. She said construction was halted when the appellant first met with the Zoning Administrator in December of 2017. She said the company did this voluntarily once it became clear

that they needed to cease construction. She said the new sorter is only partially constructed, is not operational, and is not emitting any noise or vibration.

Ms. Long said although the plans would make it appear that this is a single building (and that eventually, it will look like a single building), currently there is no building between the two, but a concrete barrier wall. She said the stacker is operational, which is the only stacker they have available. She indicated on the exhibit to the old original stacker, which was so dysfunctional and dangerous it was causing numerous employee accidents. She said it was so old, they cannot order new parts for it, which is why a new stacker had to be built.

Ms. Long said the Special Exception, if approved, would enable the appellant to continue construction of the sorter, complete that sorter, and integrate the two pieces of equipment together (which would, on its own, substantially reduce the noise). She said it will also allow them to build a building to enclose that, build the sound barrier wall that will overlap the wall on the two buildings, and to insert the sound attenuation materials inside. She reiterated that the equipment is not 35 feet from the Swales' property line, as has been regularly stated.

Ms. Long said as such, for all the reasons she has previously stated in the application materials and today, she would respectfully request that the BZA grant the appellant's deferral request. She said it equates to a two-month deferral. She said they endured what will be a three-month delay on the Special Exception hearings through no one's fault. She said they understand it was unavoidable. She said they ask for the BZA's consideration to allow that process to continue and be completed, since they have been working on it for so long and so diligently, and the County has expended extraordinary expense in pursuing that request. She said it would be extraordinarily challenging for this business to continue without the ability to continue operations.

Mr. Shepherd asked if Mr. Svoboda or anyone on staff wished to use 5 minutes to add to their presentation.

Mr. Andy Herrick (County Attorney's Office) said that as Mr. Shepherd recognized, the scope of the matter before the Board, at least at this moment on the agenda, is very narrow. He said that the one and only question is whether to grant the applicant's request to defer its appeal.

Mr. Herrick said that page 12 of the BZA's main package is the Notice of Violation that was delivered to the appellant. He said that the one and only violation was cited in the Notice of Violation is that the piece of equipment constructed in the VDOT right of way, and the new sorter stacker constructed on these parcels, do not meet the required setbacks. He said there are only one or two (depending on how one looks at it) violations that have been noticed, and that this is the only issue that is under appeal, if they even hear the appeal that day.

Mr. Herrick said that before getting to this issue, however, the applicant has made a request that the appeal be deferred. He said that the appeal is laid out beginning on page 6 of the main package. He said that Ms. Long wrote a letter that articulated why she and her client believe that the appeal should be deferred, Mr. Blaine (on behalf of the neighbors) has responded on page 105 of the supplemental package and has laid out the reasons why he and his client believe that the matter should not be deferred today.

Mr. Herrick said that either way, the basis for the BZA's decision is spelled out in Rule 2D of the BZA's Rules of Procedure, which was included on page 4 of the main package. He encouraged the BZA members to look through Rule 2D for the five considerations when deciding deferral requests. He said that staff, in looking at this issue, honed in on two different considerations of those five that seemed to address the situation. He said that Consideration #3 is whether the deferral would delay the enforcement or abatement of a violation that is adversely affecting an abutting property, a neighbor, the neighborhood, or the public. He said that as the BZA

has seen, they have received a number of complaints from affected neighbors complaining about quality of life issues in the neighborhood.

Mr. Herrick said that, on the other hand, Consideration #4 is about whether the deferral would allow the appellant or applicant to resolve the underlying issues so that BZA action might be unnecessary. He said that as Ms. Long has indicated, the applicant has made various Special Exception requests, which are going to the Planning Commission and the Board of Supervisors and are not before the BZA today.

Mr. Herrick said that it seemed to staff as though those two considerations are the competing considerations for the BZA in whether or not to grant a deferral. He said that at this point in the agenda, they are only looking at whether or not the deferral should be granted , and if the BZA decides to take up the appeal that day, the one and only issue would be whether the Zoning Administrator's determination of a setback violation was correct or not.

Mr. Shepherd asked if anyone from the County side wished to use the rest of the 5 minutes, if there was time left. Hearing no remarks, he asked Ms. Long if she had any concluding remarks.

Ms. Long said she appreciated the Board's thoughtful consideration of this request in light of all of the circumstances involved. She said the company is diligently pursuing the Special Exceptions and asks for the BZA's consideration of the reasons stated and the ability to continue the process they have been working on for so many years now.

Mr. Shepherd directed the discussion to the BZA members, noting that each member would be asked to offer a comment or question, if they choose, then move onto the next member. He asked Ms. Joseph if she had questions or comments.

Ms. Joseph said in the letter, it states that the letter is to "notify to stop the activity or use outlined above immediately." She said it then offers the fact that there is an appeal process. She asked County staff if, once the letter is written telling someone to cease and desist, and they appeal it, they are able to continue working with the pieces of equipment that are not in compliance.

Mr. Svoboda replied that under the Code of Virginia, an appeal to the BZA stays enforcement action.

Ms. Joseph said this means they can continue their operations within these pieces that are outside of the property line, and within the required setback.

Mr. Svoboda said this was correct.

Ms. Joseph asked if a deferral until August would allow the company to continue the operation until August, unless they receive the Special Exception.

Mr. Svoboda replied that it would continue the stay of enforcement action, and that this was correct.

Mr. Bowling asked if the deferral is set for August or for July 15.

Ms. Joseph said the applicant has requested the deferral to the BZA August meeting. She said July is when the Board of Supervisors would hear the Special Exception.

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Ms. Joseph said what happens with the appeal process had been her major question. She said she figured, looking at the timeline of the project, that the appeal would allow them to continue using the property and not stop the activities on the property.

Mr. Herrick clarified that this appeal simply delays enforcement of the violation in the courts.

Ms. Joseph said it essentially allows production and activities to continue on the site the way it has been.

Mr. Herrick said that there was not necessarily a free pass. He said that if the operator continues to operate in violation, additional violations may be incurred. He said that it was not as though the operator was getting a free pass, but simply that State law prohibits the County from seeking enforcement in the courts while an appeal is pending.

Ms. Joseph asked if there was anything retroactive. She asked about monetary penalties. She said she was trying to figure out why the letter would then be sent asking to cease and desist by a certain date if the company can appeal it and continue operations and not have to cease and desist by a certain date. She asked if this was correct.

Mr. Herrick replied that it was not that they can continue and be in compliance with the law. He said that in a typical case that is not appealed, if the activity continued unabated, the County would file a warrant in debt and pursue civil penalties in the General District Court. He said that because the applicant filed an appeal in this case, the County is prohibited by State law from seeking that sort of enforcement at this point.

Mr. Robb said he did not have the letter that Mr. Blaine wrote (dated May 29) in front of him, but that he recalled that the last paragraph stated that Mr. Blaine was representing the Swales and that they would work with the appellant to address the issues and details. He said to him, he took that message to be that the Swales were more than willing to be cooperative. He said the BZA members then received messages from David and Lisa Swales (dated May 31) that they did not agree with the letter that Mr. Blaine wrote, who was representing them. He said this was confusing to him and asked where they should go with this question.

Mr. Shepherd asked if the question was what to make of the Swales saying they would not object to the deferral and if the Swales would support this deferral if there was no further use of the machine. He said he wanted to make sure the question was right before asking Mr. or Mrs. Swales to respond to that.

Mr. Shepherd said under the circumstances, it would be fair to allow the Swales to respond to that. He cautioned that he wanted to confine the discussion to the narrow points that are set forth in the Notice of Violation that they are focused on. He said he did not want to get outside of that discussion. He said it would be proper to ask the Swales to respond, however, if they wish to do so.

Mr. Bowling pointed out that he saw a request on his screen by Steve Blaine for the right to clarify.

Mr. Shepherd said he did not see that, but he would start with Mr. Blaine if he was present.

Ms. Alley said she saw Mr. Blaine's hand raised and asked if they should ask Mr. Swales if he wanted to defer to Mr. Blaine to comment, or for his preference.

Ms. Alley informed Mr. Swales that he could choose to talk with the BZA or defer to Mr. Blaine as his representative.

Mr. Swales replied that he was happy to defer to Mr. Blaine.

Ms. Alley asked Mr. Blaine to address the BZA.

Mr. Blaine said his letter addresses the very narrow point, as the County Attorney has pointed out, that is before the BZA, which is whether or not the delay should be granted. He said his clients and other neighbors have expressed their general displeasure and have noted the problems that the mill has caused for them. He said there have been materials and information about the Special Exception that goes to the merits of the underlying case, which is what the clients and neighbors are focusing on in their objections.

Mr. Blaine said they hired a lawyer to focus on the procedural matters, which is what his letter is intended to address. He said as a procedural matter, his clients can only get some redress here by at least stopping the operations that are ongoing that would otherwise be in violation of the ordinance. He said he understands reference was made to the sorter stacker, which is 35 feet from the property line. He said the fact of the matter is that the stacker that is operational, as Ms. Long indicates, violates the setback and has been permitted to be operated without any attenuation of the noise all during the time of the Special Exception application.

Mr. Blaine said their objection is to continue to allow the violation of the ordinance, which is prejudiced to his clients, at the convenience of the company. He said as a compromise, they would offer that rather than litigate the actual notice of the violation, if there is a grant of a stay, at least ask the company to stay their illegal activity until the Special Exception may be heard. He said it seems like a small request but is the time of year when his clients want to enjoy their patio and backyard. He said they want to continue to work with the applicant, and as Ms. Long has indicated, they have reached out to his clients. He said they have not addressed the injuries to his clients, at this point.

Mr. Blaine said he hoped this clarifies that this is not in conflict. He said he represents his clients, who reviewed his letter before he sent it in. He said it is a difference of a general objection versus his specific objection to the delay and offer of a compromise.

Mr. Rinehart commented that he was trying to understand why the appellant could not negotiate in the period of time until August and deal with the Board of Supervisors, and why they should stop operation in that short period of time. He said he was sympathetic to the neighbors, read all the letters, and looked at the noise and vibrations. He said he was struggling with why they could not defer this and allow the parties to work it out versus stopping the whole operation and costing people's jobs for several months. He said he was not insensitive to the noise that the neighbors are currently under. He said this was a statement and that he did not have any questions.

Mr. Shepherd said it was a new idea for him to think of the sorter being separate from the stacker. He said he thought this was one machine. He asked what, exactly, is the subject of the Notice of Violation. He asked if it was the new sorter, or the old stacker, or if this is thought of as one thing. He said the Notice of Violation did not clearly identify what, exactly, is being referred to and used rather general terms about the machines. He clarified he was asking if both the sorter and the stacker are in violation by the Notice of Violation, or only the sorter.

Mr. Herrick replied that the Notice of Violation cites the piece of equipment constructed in the VDOT right of way as one piece.

Mr. Shepherd asked if this was the debarker on Route 250.

Mr. Herrick replied that he believed this was the piece of equipment that most closely encroaches into the right of way. He said that the second piece is the new sorter/stacker constructed on the parcels. He said that he would defer to Mr. Svoboda or to Ms. Green, who he understood wrote the letter, to clarify what structures or equipment might be referred to.

Ms. Alley said Mr. Patrick May had his hand raised, and that she recalled he is with Yancey Lumber Corporation. She said Mr. May may be able to answer and asked if he should be allowed to speak.

Mr. Herrick said it was his understanding that Mr. Shepherd was looking for clarification on the Notice of Violation and the contents of that. He said he would suspect that either Mr. Svoboda or Ms. Green would be the best ones to answer the question.

Ms. Alley agreed and said she just wanted to let everyone know that Mr. May's hand was raised.

Ms. Joseph asked Mr. Shepherd if Ms. Green could be asked to speak, since she wrote the letter.

Ms. Lisa Green asked if the BZA was asking about the Notice of Violation that was written in 2019.

Mr. Shepherd said yes.

Ms. Green said this was based on the list of buildings for setbacks that Zoning looked at with all the buildings in total to see what did not meet the current regulations. She said it had nothing to do with the Special Exceptions coming forth. She said anything new that had been built was not deemed as something that had a permit or nonconforming. She asked if this answered the question.

Mr. Shepherd replied no.

Mr. Svoboda said the sorter/stacker is multiple pieces of equipment and is one lengthy process. He said when they look at it on the drawings that are labeled, it is one long piece of equipment that Ms. Long had brought up on her drawing.

Mr. Svoboda presented an exhibit and indicated to the long piece of equipment.

Ms. Green said based on the current conversation, it seemed to be only about the sorter/stacker, but the violation letter had been written about several other buildings or corners of building for the parcel in total.

Mr. Shepherd said his understanding was that they were looking at something narrower than an entire nonconformity study of the site and that they were only talking about two pieces of equipment.

Mr. Herrick said that this was correct and referred back to the Notice of Violation. He said that if they did not defer the appeal, the underlying question is whether the Zoning Administrator was correct in the Notice of Violation letter on December 20. He said that the Notice of Violation letter only cites setback violations as to the piece of equipment constructed in the VDOT right of way and the new sorter/stacker constructed on these parcels. He said that this is the very limited scope of the underlying issue that would be before the BZA if the deferral were not granted.

Mr. Robb said the day prior, he visited the site, and the sorter and stacker, though in line with one another, are two different buildings. He said one is a metal frame that was under construction and is now halted. He said he wanted there to be the understanding that it was not one building.

Ms. Joseph said she would also like to ask a question that Ms. Green brought up. She said she wanted to clarify that there was no building permit issued for either of these that are discussed in the official determination, and that neither the equipment that is in the VDOT right of way or the new sorter/stacker ever received any kind of building permit approval from the County.

Mr. Shepherd asked if there was any disagreement with that from County staff or the appellant.

Mr. Herrick replied that he would have to defer to Mr. Svoboda or Ms. Green.

Mr. Svoboda said there were permits that were applied for in some instances, but not issued, as they went through the process. He said depending on whether or not they were talking about equipment or buildings would depend on whether or not building permits are needed. He said as they go to put buildings around the equipment, the buildings would require permits but not necessarily the equipment.

Ms. Long asked Ms. Joseph if she could respond to the question.

Mr. Shepherd said yes.

Ms. Long said neither piece of equipment has a building around it yet. She said there is a plan to do that, and that the company very much wants to do so. She said in order to construct a building, however, they need a building permit, and in order to obtain a building permit, they need relief from the setback regulations, which is why they applied for that relief two and a half years ago.

Ms. Long said the company has long wanted to enclose the equipment in a building to reduce any noise from them. She said they have repeatedly stated this to the neighbors, but they are not authorized to do this until the Special Exception is granted. She said they are hopeful that this will occur in mid-July.

Ms. Long added that there is no longer any equipment located in the VDOT right of way. She said among other measures that the company has undertaken, they spent ten months working with VDOT and purchased 10 feet of land across the entire frontage of the property along Route 250 to buy back land from VDOT (which was acquired by VDOT when Route 250 was widened many decades ago). She said it was originally the company's land, and they had to buy it back, which took quite a long time going through the VDOT process. She said that equipment is no longer located in the VDOT right of way.

Ms. Long also added that the appellant disputes the merits of the zoning violation, which is why they have it on appeal. She requested the BZA grant the appellant the opportunity to continue to work through the Special Exception process, given there is a chance it may allow the underlying issue to be resolved. She said if not, they will welcome the opportunity to come back before the BZA and discuss this violation appeal on the merits.

Mr. Shepherd asked Mr. Bill Fritz to describe what has been happening between the County and the company since the request was made for the Special Exceptions two and a half years ago, how this process has been progressing, and if he sees any significant effect on that process by anything the BZA might do that day (i.e. deferral or making a ruling on the violation).

Mr. Fritz said if the BZA were to hold the hearing that day and find that no violation existed, there would be two fewer Special Exceptions the Board of Supervisors would need to consider. He said if the BZA upholds the Zoning Administrator's decision, then those Special Exceptions would go before the Board of Supervisors. He

said the BZA acting or not acting that day does not impact the Special Exceptions, as there are numerous Special Exceptions for a wide range of matters.

Mr. Fritz said the applicant made an initial application. He said they have done sound studies. He said there was also the significant issue that, with the exception of a building permit for an expansion of the office building up front, there have been no building permits for any structures out there. He said all the buildings do not have building permits, so staff has been working to figure out how to retroactively issue those building permits, and that this work has been picking up lately.

Ms. Long asked if she could weigh in on this.

Mr. Shepherd replied yes.

Ms. Long said to the specific question about the delay, in addition to the many challenges with this process, the company spent about one year with the Special Exception request on hold because there was an issue that came up with the company. She said there was a hum or noise coming from what turned out to be a fan that is part of the boiler of one of the kilns. She said in approximately August of 2018, while the company was diligently pursuing the Special Exception requests, the company undertook routine maintenance and replaced the fan, which unfortunately created a noise at a certain decibel or frequency that was quite loud and disruptive to the community. She said the company figured this out on their own, after some testing, and immediately undertook measures to correct the problem.

Ms. Long said unfortunately, it turned out to be far more challenging to correct than anyone had ever anticipated. She said they consulted with numerous industry experts and consultants around the country, and expended hundreds of thousands of dollars on silencing mufflers for the stack and other mechanisms to attempt to mitigate the noise. She said during that time, the company scaled back their operations substantially and did not operate the kiln at night so that they could avoid any noise or further disruption of the neighbors. She said they also essentially turned the kiln off during the holidays and on weekends. She said they worked very hard with the community. She said it was a very challenging time for the company and for the community.

Ms. Long said they did not feel it was appropriate to bring the Special Exception requests before the Planning Commission and the Board of Supervisors at that time. She said they recognized that the most immediate focus by the company should be on fixing the problem with the fan noise. She said they had thought initially that this might take a month or two, at most, but it unfortunately took nearly a year, perhaps even longer. She said they had three pieces of equipment specially designed, engineered, and manufactured at substantial expense on rush orders. She said one was manufactured and shipped in Canada, and one was manufactured in England. She said the company diligently pursued the issue to its resolution and that it has been fixed.

Ms. Long said they then immediately resumed work on the Special Exception. She said they did not want to bring the requests immediately before the Planning Commission and the Board, as they knew they needed to take a month or so to allow things to settle out. She said they also wanted to allow some time to have the new fan and new noise cancelling mechanism work and confirm that it would be effective before moving forward with the public hearing. She said other than that, they followed up and had a new round of noise and vibration tests taken to confirm or update any readings that had occurred in the past year. She said they had detailed plans prepared and updated to substantially address the Special Exception requests.

Ms. Long said Mr. Fritz was correct that there were a number of Special Exception requests but that she wanted to note that the particular reason for that is because it was specifically suggested to the appellant when they first met with the County Zoning Administrator in late 2018. She said they agreed with the suggestion and that it

made sense not only to ask for relief from setback regulations from any new equipment they wanted to complete and bring into operation, but that they look at any regulations that the company is essentially grandfathered by and ask for relief from those regulations as well. She said this would result in the entire site being in compliance with all regulations.

Ms. Long said this mill began operation in this location 71 years ago, in 1949. She said all of the regulations that are at issue were adopted in 1980. She said many of the Special Exception requests that are pending are essentially to ask for relief from regulations that the company is exempt from as a legal nonconforming. She said that not all, but several, of them are. She said it was suggested that they assemble a comprehensive package of Special Exception requests and submit them all at one time so that there would be no question about the company's compliance in the future. She said that is why there is a package of them.

Mr. Shepherd said one issue hanging over the discussion is the suggestion that there is a request that the neighbors would ask the company to suspend certain activities pending the resolution of the Special Exceptions. He asked if this was something the company wishes to pursue or agree to.

Ms. Alley reminded Mr. Shepherd that Mr. May had his hand raised to speak.

Ms. Long said Mr. May would like to respond and that she believed it would be appropriate for him to do so. She asked if she could add a few comments first.

Ms. Long said as noted by Mr. Blaine, she and the company have met with the Swales on a number of occasions. She said Mr. May has been meeting with them regularly. She said the company has had noise studies taken at their property at their request. She said they have worked very hard to better understand their concerns and work with them on compromise options.

Ms. Long said the company is absolutely willing to compromise and try to address issues anywhere and everywhere they possibly can, so long as they do not require the business to shut down. She said unfortunately, shutting down the stacker would do just that. She said it would shut down the entire business and that they could not continue their operations in any viable fashion without the ability to continue operating the stacker.

Ms. Long said she wished there were an opportunity to construct a building around the equipment that day. She said today, they would build the sound barrier wall and add the insulating noise attenuation material to it. She said unfortunately, they are not able to do so until the Special Exception is granted, if it is. She said if not, they will have serious issues to contend with. She said the appellant knows this, which is why they are working hard to do it, but that shutting down the stacker is not a compromise position from the company's perspective, unfortunately.

Ms. Long said in their numerous meetings with the Swales, they have continuously stated they do not wish the mill to have to shut down. She said they are very understanding of the Swales' position and the aggravation they have endured. She said if the stacker shuts down, however, it kills the business, all the jobs that come with it, and all the economic revenue that comes to the County right now. She said they have a study from the County's Economic Development Office that demonstrates that the company contributes $32 million to the County.

Ms. Long said this delay in having the Special Exception heard by the Planning Commission and Board of Supervisors was not due to the company. She said it was an unfortunate delay they had absolutely no choice in. She said they wish they had been able to continue, but it was a terrible timing situation. She said they were ready to go a week before the first meeting was cancelled.

Ms. Long said this delay was not due to the company. She said they think it is only fair, reasonable, and appropriate that they be granted a one-month or two-month delay. She said they would like two months but would take one if they have to. She said they suffered what would be a three-month delay on the Special Exception request. She said they were just asking that the company not be penalized and prohibited from carrying out that process and given the opportunity for the Board of Supervisors to consider those requests before this hearing on the appeal.

Ms. Long said she would like Mr. May to weigh in further to address the question.

Mr. May said Ms. Long summed up the issue well. He said both pieces of equipment are critical. He said everything that the mill does is essentially streamlined from one piece of equipment to another, and they are all tied to one another. He said when one piece goes down, the entire business comes to a stop.

Mr. May said they are happy to work with the Swales and the neighbors. He said he has slowed down the stacker and is looking at putting in supports that will help dampen the sound, since that seems to be the major issue they have. He said he has tried to get their support so they can put a building around that stacker so that they can dampen the noise and reduce any discomfort it causes the neighbors.

Mr. May said the main point is that both pieces of equipment are critical to the company's existence and that without them, the company is no longer there.

Ms. Alley said Mr. Blaine's hand was raised as well.

Mr. Shepherd called on Mr. Blaine to speak.

Mr. Blaine said his understanding of the company's position is that they went forward with installing equipment that violates the ordinance. He said their relief requires a legislative act, and they are saying they must shut the entire company down if they are not given that. He asked what they did before they built the new sorter/stacker. He said what the company said is that they had out-of-date former equipment, and either abandoned it or ceased maintaining it to pursue new equipment that cannot be operated legally. He said they made a decision as a company to give the County no choice, as what they are saying is that they must have the Special Exceptions, or they are going out of business. He asked how the County can regulate businesses to go forward in that manner and posture, then leave the legislative organization no choice.

Mr. Blaine said the company had a choice to go forward with this and did so a year and a half ago while violating the ordinances. He said he realized they were not issued a "cease and desist" until December, but the fact of the matter was that they were giving the County no option. He said this is not the way businesses should be allowed to operate and be regulated.

Ms. Long asked if she could respond to this.

Mr. Shepherd said yes.

Ms. Long said she believed that the appellant long ago ventured beyond the question at issue here, which is on the deferral request. She said she realized that as part of the Board's decision-making process, it is very helpful to have additional background information and to answer their specific questions, and that she appreciated the opportunity to provide this background information. She asked to focus on the specific question at issue on the deferral and those factors in the BZA's Rules of Procedure about fairness, the potential ability to resolve the

underlying issue before the appeal, and the fact that this is not solely for the convenience of the company because the need for the deferral is in no way due to the company's delay. She said the delay was forced upon them.

Ms. Long said the company has been working diligently to try to address the concerns. She said they are asking for a delay to complete an expensive, time-consuming process that they have undertaken for several years and have been pursuing diligently. She said she believes this is what is important here.

Ms. Long said Mr. Blaine may have his own opinions on how the Board of Supervisors should consider the Special Exception and may have the same comments as to how the BZA should handle the appeal itself. She said this is not what the question is at the moment. She said the question is on the deferral request only.

Ms. Long said the appellant believes it is entirely reasonable to have the ability to continue the same order that this process has continued since the violation was issued, which is to allow the Special Exception process to go forward first. She said it would be inappropriate to not allow that process to continue, given that the delay was not due to the applicant's actions, and certainly was not to any benefit to the applicant. She said every day that goes by makes it more and more challenging for this company, so they have desperately begged to get before the Planning Commission and Board of Supervisors for many months.

Ms. Alley noted that Mr. May's hand was raised.

Mr. Shepherd said he wanted to wrap up the hearing soon but that he wanted to hear from Mr. May.

Mr. May said Ms. Long covered everything he wanted to say and had no extra comments to add.

Mr. Shepherd said they had heard what they needed to hear. He said he could ask for a motion, or circle through the Board members to make statements and get a general idea of what they would like to do.

MOTION: Mr. Rinehart moved to defer AP202000001 R.A. Yancey Lumber Corporation 55-111B and 55-112 to the August 4, 2020 BZA meeting. Mr. Robb seconded the motion.

Ms. Joseph said she felt that they were just looking at this determination of violation. She said she appreciated that there were so many people from the public that have weighed into this and hoped that they will be seen and heard at the Planning Commission meeting and the Board of Supervisors meeting. She said the BZA has read letters from the Swales, Tom Goeke, Heather Dickey, Alice Faintich, Debbi Meslar-Little, Terry Maynard, and Lillian Mezey. She said she did read all the letters and was sure the rest of the BZA read them, so they do take these into account.

Ms. Joseph said this determination of violation, however, only deals with two things, and it is the fact that there is a piece of equipment constructed in a VDOT right of way and the new sorter/stacker constructed on these parcels do not meet the required setbacks. She said what they have heard is that the applicant has purchased property from VDOT, so hopefully this was taken care of, but that they have already heard from Mr. Fritz and Ms. Long that these issues will perhaps be taken care of if they get approval from the Board of Supervisors.

Ms. Joseph said right now, however, all of the other issues that people are concerned about are the purview of the Board of Supervisors. She said the BZA just cannot do that. She said the only thing the BZA was looking at are the violations stated in the letter of December 20, 2019. She said this is her reasoning for being able to support this deferral request.

Mr. Robb echoed Ms. Joseph's comments and, as he stated his feelings earlier, had nothing to add.

Mr. Shepherd said he clearly saw both sides of the issue and that both sides are very compelling. He noted that in general, this matter has been under active discussion for almost two and a half years. He said there is a process undergoing to resolve this once and for all. He said they were only really there at the meeting because of the intervention of the virus, which delayed the timeline that the Planning Commission and Board of Supervisors were on to address this, which then brings in the BZA out of the necessity of meeting the 90-day requirement, which he felt was unfortunate.

Mr. Shepherd said he wanted to allow the process to stay on the track it is on but wanted to make clear to everyone that if this is deferred to the August 4 meeting and is not resolved by then, on August 4 they would take this up again with none of the mitigating circumstances before them and will simply look at the violation itself and take action. He said he could clearly see the power behind both arguments, but with that said, with the history of this, the intervention of the virus, and the opportunity to make a clear and definitive determination in August makes him want to support the motion.

Mr. Shepherd asked Ms. Alley to call for the vote.

Ms. Alley called for the vote from each member. The motion passed unanimously (4-0).

Mr. Rinehart asked a technical question regarding the possibility of a Board of Supervisors outcome that did not please the applicant which resulted in them appearing before the BZA and the legal notice requirements for hearing the time on August 4. He said perhaps Mr. Svoboda could respond to that.

Mr. Svoboda said if the hearing is scheduled for August 4, the County would meet whatever their required advertising and notification requirements are under the local ordinance and under State Code.

Mr. Rinehart asked if this would still give staff enough time, even if they were waiting for the Board of Supervisors' decision.

Mr. Svoboda replied yes.

Mr. Shepherd thanked everyone who weighed in on the matter, adding he hoped it would have a good resolution. He acknowledged that not everyone attending was satisfied.

Ms. Long said she appreciated the Board's support.

4. Approval of Minutes
A. February 4, 2020
MOTION: Mr. Rinehart moved to approve the February 4, 2020 minutes. Mr. Robb seconded the motion.

Ms. Joseph said she would assume where some things were struck out and replaced with different words, these would not be shown in the final minutes.

Ms. Alley said this was correct.

Mr. Shepherd said he clearly remembered reading the minutes carefully as they were preparing for the appeal and found that they accurately reflected the discussion and particularly the decisions and findings they made.

The motion passed unanimously (4-0).

Mr. Shepherd asked Mr. Herrick to inform the courts that the minutes were approved and valid.

Mr. Herrick said that Ms. Alley could substitute these now-approved final minutes of February 4, 2020 into the record, if this is what the BZA would like her to do.

Mr. Shepherd said yes.

Ms. Joseph said she would like Ms. Alley to let her know when the minutes are finished so she can come in and sign them.

Ms. Alley said she would do this.

Ms. Joseph said she wanted to interject something regarding the deferral request. She said that as Ms. Long said as she was leaving, she appreciated the Board's support for the item. She noted that she was not offering Ms. Long support for the Special Exception. She said she was simply voting on what was before the BZA. She said she wanted this included in the minutes.

Mr. Bowling expressed that it was too late for this.

Ms. Joseph said the minutes had not been done for this yet.

Mr. Bowling said he meant it was too late as far as the matter was concerned. He said the statement could appear in the minutes but that the matter was done.

Ms. Joseph said she just wanted the statement in the minutes. She said the comment was said after she had made the vote, and that she did not want it misconstrued that she was adding her support for the Special Exception.

5. Old Business

A. Training Update

Mr. Svoboda said the training was on hold and that he would check with the Circuit Court to see how or where they are, if possible, in the process for the Board's new member. He said they would also try to time the training to be able to train everyone at once, including a new member. He said if this process goes longer, however, they may get together with the current members.

Mr. Rinehart said he assumed they would be looking at the fall for training rather than encumbering vacations and members or staff going out of town.

Mr. Svoboda said there was a July meeting scheduled and now one in August.

Ms. Alley noted that it was July 7.

Mr. Rinehart referred to the training and asked if Mr. Svoboda's intent was to tie it in with a meeting.

Mr. Svoboda replied that depending on the item and the timing they have to get prepared for it, training would probably not be in July or August. He said July may not give staff enough time to prepare and that there could be a number of speakers at the August appeal, which could take some time. He said the training was more likely

to happen in September or October. He said he would take a harder look at the July agenda and see if they have some time to get started on the training.

Mr. Shepherd said it was important to include the new member in the training. He said he hoped the court would move quickly on that, as it would be a great way to serve as an orientation for the new member and also allow the Board to get to work together on something before actually getting a hearing. He said it was important to wait for that. He said when they know the new person is on board, they can focus on finding a time that works for everyone. He said it was important to all do the training together, and perhaps this meant waiting until the fall.

Mr. Svoboda said this was up to the Board.

Mr. Shepherd said he didn't plan on anything anymore and that he wanted to meet in person, but they cannot. He said it was hard to make definite plans at this point but that they would do the best they could with this.

Mr. Rinehart asked if, with as few people that would be in the training, there would be any reason why they couldn't have social distancing in Lane Auditorium so they could be in person for that training.

Mr. Svoboda replied that he would check on the policy. He said they are currently reviewing moving into Phase II and moving towards normalcy. He said he would check on what they have available per the guidelines.

Mr. Herrick said that the scheduling of the building is up to the County Executive. He said that immediately before the Board of Supervisors started doing virtual meetings, their final in-person meetings in Lane Auditorium required them to sit in every other seat. He said that the six-person Board of Supervisors was able to meet at the dais. He said that ultimately, this is a question for the County Executive and when exactly the County will reopen the County Office Building.

Mr. Shepherd said many adjustments were being made these days, and perhaps it would be possible to meet in some other venue where they are in an area outside, for instance. He expressed he was open to ideas and appreciated face-to-face meetings, especially for the training, which would benefit from the flow of give and take and face-to-face conversation and would be stilted in a virtual situation. He said he would like something better than just a PowerPoint. He said they can take this on when they are a full Board, and that Mr. Svoboda had a sense of the Board as he is making the plans.

Mr. Rinehart asked Mr. Herrick if they could legally have a Zoom training follow-up to this meeting to hone in on how they did and procedurally, how they might modify up and coming hearings. He asked if this was appropriate.

Mr. Herrick replied that he was happy to provide training or education on whatever topics Board members would like. He said that he always prefers to give training in more general terms rather than reference to any specific applications.

Mr. Rinehart clarified he was talking about this Zoom hearing, where he saw some things that they need to improve on. He asked if they could have another training session just on conducting themselves on Zoom.

Mr. Herrick replied yes, noting that he was sure Ms. Alley, IT staff, and others would be happy to provide more Zoom training, especially if they are just focused on the topic of how to conduct Zoom meetings specifically, not considering applications or any other business before the BZA.

Ms. Joseph asked Mr. Svoboda if he receives any new information about the new BZA member, could he let the members know what is going on.

Mr. Svoboda replied yes.

Ms. Joseph agreed with Mr. Rinehart, adding she would like more of an idea of how to proceed, including who is speaking and not speaking and how they enter into the conversation. She expressed that it seems to follow a looser format than when they are sitting on the dais. She said she would like to work through this also.

Mr. Herrick said that as an initial suggestion, there are other public bodies of the County that are meeting via Zoom. He said that evening at 6:00 p.m., he would be involved in another Zoom meeting with the Planning Commission. He said that if members are interested in how other public bodies are handling Zoom, the Planning Commission would be meeting that evening, and the Board of Supervisors would have a Zoom meeting the next day in the afternoon. He said that members are welcome to tune in to those meetings online.

Mr. Svoboda recommended that when Board members look at those other bodies' meetings, they look at them through the operation of the meeting and not necessarily from the public view of receiving the presentation.

Mr. Shepherd said he would benefit from that and would take up that suggestion.

Mr. Robb asked about his technical issues and what he could do to resolve them.

Mr. Svoboda said he would have Ms. Alley call Mr. Robb to help work out the issues.

Ms. Alley said she would touch base with Mr. Robb the next day to come up with alternatives.

7. Adjournment

MOTION: At 3:44 p.m., Mr. Rinehart moved to adjourn the meeting. Ms. Joseph seconded the motion, which passed unanimously (4-0).

(Recorded by Marsha Alley and transcribed by Beth Golden)

Respectfully Submitted,

_____

Marcia Joseph, Secretary Board of Zoning Appeals

DRAFT