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 VIA ZOOM
AGENDA
TUESDAY, DECEMBER 1, 2020 at 2:00 P.M.

1. Call to Order

2. Establish a Quorum

3. Public Hearings:
   A. PROJECT: VA2020-00001 Corbett Agricultural Barn
      Property Owner/Applicant: Michael & Michelle Corbett/Michael Corbett
      STAFF: Francis MacCall

   B. PROJECT: AP2020-00003 North Pointe PDMC Development
      Appellant: Stewart Wright
      Staff: Bart Svoboda

4. Approval of Minutes
   A. November 10, 2020

5. Old Business

6. New Business

7. Adjournment

This meeting is being held pursuant to and in compliance with Ordinance No. 20-A(14), An Ordinance to Ensure the Continuity of Government During the COVID-19 Disaster. 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. Participation will include the opportunity to comment on those matters for which comments from the public will be received. https://www.albemarle.org/government/community-development/advisory-boards/board-of-zoning-appeals.

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: Francis H MacCall
PUBLIC HEARING: December 1, 2020

STAFF REPORT: VA2020-00001 Corbett Agricultural Barn

OWNER/APPLICANT: Michael S and Michelle V Corbett
PARCEL ID: 06900-00-00-020C0
ZONING: Rural Areas, RA
ACREAGE: 5.00 acres
LOCATION: The property is located at 8979 Dick Woods Road in western Albemarle County. One dwelling is located on the property. Please refer to the Map and Plat of the Property (Attachment A) for reference.

TECHNICAL REQUEST AND EXPLANATION: The applicants request a "variance to the setback requirements on the front boundary to build an agricultural barn" (Attachment B). Albemarle County Code § 18-10.4 provides that the front setback for primary and accessory structures in the Rural Areas is 75 feet. The applicant is proposing that an accessory structure ("the barn") be located 36 feet from the right of way of Dick Woods Road, a variance of 39 feet.

BACKGROUND:
In July of 2020, the applicant applied for building permit B2020-01626FB (Attachment C) for the barn. Staff informed the applicant that the location of the barn would require the approval of a variance to the front setback.

QUALIFYING CONDITIONS:
Under Virginia Code § 15.2-2309(2) (Attachment D), the BZA may "grant upon appeal or original application in specific cases a variance as defined in § 15.2-2201, provided that the burden of proof shall be on the applicant for a variance to prove by a preponderance of the evidence that his application meets the standard for a variance as defined in § 15.2-2201 and the criteria set out in this section."

The following lays out the standard for a variance as defined in *Virginia Code* § 15.2-2201 and § 15.2-2309(2), which Albemarle County establishes in County Code § 18-34.4(i) (Attachment E). Both are outlined below.

Virginia Code § 15.2-2201 - Definitions
A variance is defined as "a reasonable deviation from those provisions regulating the shape, size, or area of a lot or parcel of land or the size, height, area, bulk, or location of a building or structure when" the following four standards are met

1. *The strict application of the ordinance would unreasonably restrict the utilization of the property, and*

2. *Such need for a variance would not be shared generally by other properties, and*

3. *Provided such variance is not contrary to the purpose of the ordinance.*

4. *It shall not include a change in use, which change shall be accomplished by a rezoning or by a conditional zoning.*

And

County Code § 18-34.4(i) provides:
The Board shall grant a variance if the evidence shows:

(i) that strict application of the terms of the ordinance would unreasonably restrict the utilization of the property; or

(ii) that granting the variance would alleviate a hardship due to a physical condition relating to the property or improvements thereon at the time of the effective date of the ordinance;

and all of the following:

1. *Good faith acquisition and hardship not self-inflicted. The property interest for which the variance is being requested was acquired in good faith, and any hardship was not created by the applicant for the variance.*

2. *No substantial detriment. Granting the variance will not be a substantial detriment to adjacent property and nearby properties in the proximity of that geographical area.*

3. *Condition of situation not general or recurring. The condition or situation of the property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted as an amendment to the ordinance.*

4. *Use variance prohibited. Granting the variance does not result in a use that is not otherwise permitted on the property or a change in the zoning classification of the property.*

5. *Special use permit or special exception not available. The relief or remedy sought by the variance application is not available through a special use permit or special exception authorized by this chapter when the application is filed.*

STAFF ANALYSIS:
Staff has evaluated this application against the above variance standards.

Virginia Code § 15.2-2201
Standard: The provisions regulating the… location of a building or structure when the following four standards are met;

1. *The strict application of the ordinance would unreasonably restrict the utilization of the property, and*
   Staff: The owners already reasonably utilize the property with an existing single-family residence and an ongoing agricultural operation. The proposed addition of a new freestanding structure would expand on that existing reasonable utilization of the property. Staff cannot definitively state that the strict application of the 75' front setback would unreasonably restrict the property's expanded utilization.

2. *Such need for a variance would not be shared generally by other properties, and*
   Staff: Staff believes that there are no other properties in the area that generally share the need for a similar variance.

3. *Provided such variance is not contrary to the purpose of the ordinance.*
   Staff: Staff believes that granting the variance is not contrary to the Zoning Ordinance purposes outlined in *County Code* § 18-1.4 (Attachment F). The applicant's efforts to both keep the structure out of the stream buffer and properly restore the buffer by utilizing the Water Protection Ordinance will promote these purposes.

4. *It shall not include a change in use, which change shall be accomplished by a rezoning or by a conditional zoning.*
   Staff: There would be no change in the use of the property if the variance were granted.

County Code § 18-34.4(i)

Standard: *The strict application of the terms of the ordinance would unreasonably restrict the utilization of the property; or*

Staff: The owners already reasonably utilize the property with an existing single-family residence and an ongoing agricultural operation. The proposed addition of a new freestanding structure would expand on that existing reasonable utilization of the property. Staff cannot definitively state that the strict application of the 75' front setback would unreasonably restrict the property's expanded utilization.

Standard: *Granting the variance would alleviate a hardship due to a physical condition relating to the property or improvements thereon at the time of the effective date of the ordinance;*

Staff: Placing the barn to meet the 75' front setback would push the structure into the stream buffer. The proposal is to locate the barn out of the buffer, closer to the street than the required 75'. The preferred location of any structure is a building site. A building site is an area with no steep slopes, no floodplain, and no stream buffer. Steep slopes and stream buffer cover the site almost entirely. The area that remains on the property that is not within the stream buffer or steep slopes is an area to the west of the dwelling and across the stream buffer and an area to the north of the property (the proposed location). Staff believes that the property's physical conditions create a hardship for adequately locating the barn within a building site and meeting the required setback.

And

1. *The property interest for which the variance is being requested was acquired in good faith, and any hardship was not created by the applicant for the variance.*
   Staff: This application meets this standard. The property was acquired in good faith, and any hardship was not created by the applicant.

2. *Granting the variance will not be a substantial detriment to adjacent property and nearby properties in the proximity of that geographical area.*
   Staff: This application meets this standard. Staff has not identified a substantial detriment to adjacent and nearby properties. Staff believes that placing the barn in the stream buffer would be more detrimental to that buffer by creating a sizeable impervious surface.

3. *The condition or situation of the property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted as an amendment to the ordinance.*
   Staff: This application meets this standard. The property's condition is not of so general or recurring nature that requires the regulations to be updated by an amendment to the ordinance. Most stream buffers do not cover 90% of the surrounding properties.

4. *Granting the variance does not result in a use that is not otherwise permitted on the property or a change in the zoning classification of the property.*
   Staff: This application meets this standard. The granting of the variance would not result in a use not otherwise permitted on the property.

5. *The relief or remedy sought by the variance application is not available through a special use permit or special exception authorized by this chapter when the application is filed.*
   Staff: This application meets this standard. The RA zoning district regulations for setbacks are not subject to a special use permit or special exception.

STAFF RECOMMENDATION:
Since staff cannot definitively state that the strict application of the 75' front setback would unreasonably restrict the utilization of the property, staff cannot recommend the approval of this variance application. Staff does believe that granting the variance would alleviate a hardship due to a physical condition relating to the property and that the five additional criteria for granting a variance have been met.

PROPOSED MOTIONS:
The following motions are offered for consideration and action by the Board:

If the Board finds legal grounds to grant this variance:

I move to grant variance application VA2020-00001 (Corbett Agricultural Barn) to allow the proposed barn to be located 36 feet from the right-of-way of Dick Woods Road, a variance of 39 feet, with the following conditions

1. **The proposed barn is limited to the activities described by the applicant that support the farm operations, including storing farm vehicles and farm implements and providing a space to process crops.**

2. **The proposed barn may not be used as a dwelling unit.**

If the Board chooses to deny this variance:

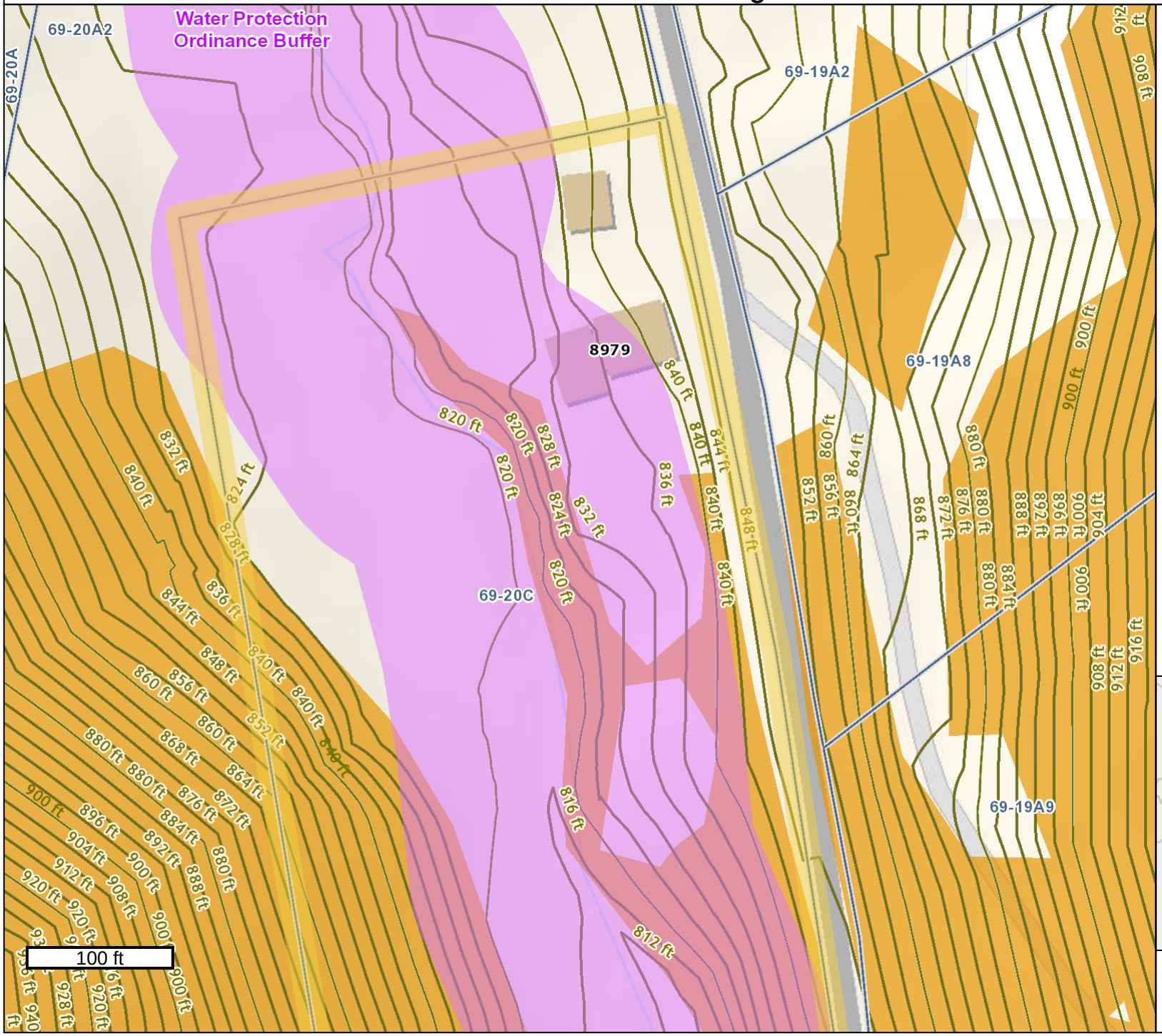
I move to deny the variance application VA2020-00001 Corbett Agricultural Barn (Provide the stated reason(s) for denial)

Attachments:

Attachment A: Map and Plat of the Property
Attachment B: Variance Application VA2020-00001 Corbett Agricultural Barn
Attachment C: Building Permit B2020-01626FB
Attachment D: Virginia Code § 15.2-2309(2)
Attachment E: County Code § 18-34.4(i)
Attachment F: County Code § 18-1.4

VA2020-01 Corbett Agricultural Barn

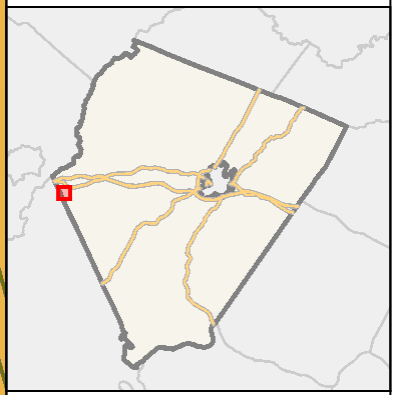
ATTACHMENT A



Legend

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

- Overlays
  - Water Protection Ordinance Buffers
- Parcel Info
  - Parcels
- Elevation
  - Y2018 Elevation Contours
    - Y2018 Elevation Contours (100 ft)
    - Y2018 Elevation Contours (60 ft)
    - Y2018 Elevation Contours (40 ft)
    - Y2018 Elevation Contours (20 ft)
    - Y2018 Elevation Contours (4 ft)
- Zoning Info
  - Flood Hazard Overlay (100 Year Flo
- Steep Slopes Overlay
  - Critical Slopes
  - Steep Slopes - Managed
  - Steep Slopes - Preserved

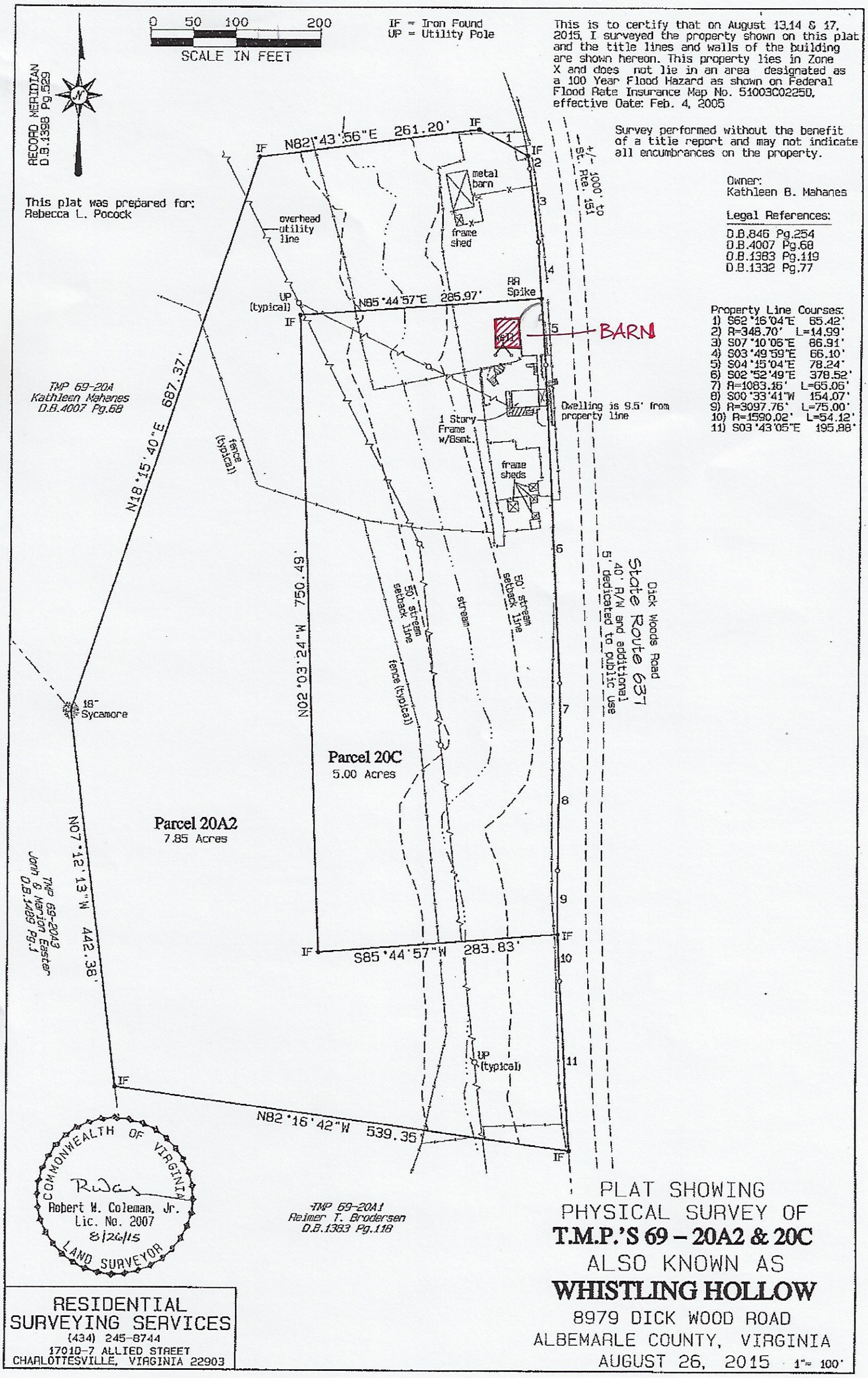


GIS-Web
Geographic Data Services
www.albemarle.org/gis
(434) 296-5832

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.

November 3, 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)


0 50 100 200
SCALE IN FEET
IF = Iron Found
UP = Utility Pole
This is to certify that on August 13,14 & 17, 2015, I surveyed the property shown on this plat and the title lines and walls of the building are shown hereon. This property lies in Zone X and does not lie in an area designated as a 100 Year Flood Hazard as shown on Federal Flood Rate Insurance Map No. 51003C0225D, effective Date: Feb. 4, 2005
Survey performed without the benefit of a title report and may not indicate all encumbrances on the property.
RECORD MERIDIAN D.B.1398 Pg.529
This plat was prepared for: Rebecca L. Pocock
Owner: Kathleen B. Mahanes
Legal References:
D.B.846 Pg.254
D.B.4007 Pg.68
D.B.1383 Pg.119
D.B.1332 Pg.77
Property Line Courses:
1) S62°16'04"E 65.42'
2) R=348.70' L=14.99'
3) S07°10'06"E 86.91'
4) S03°49'59"E 66.10'
5) S04°15'04"E 78.24'
6) S02°52'49"E 378.52'
7) R=1083.16' L=65.05'
8) S00°33'41"W 154.07'
9) R=3097.76' L=75.00'
10) R=1590.02' L=54.12'
11) S03°43'05"E 195.88'
N82°43'56"E 261.20'
+/- 1000' to Rte. 151
metal barn
overhead utility line
frame shed
UP (typical)
N85°44'57"E 285.97'
RB Spike
BARN
Dwelling is 9.5' from property line
1 Story Frame w/Bsmt.
frame sheds
fence (typical)
N18°15'40"E 687.37'
N02°03'24"W 750.49'
50' stream setback line
stream
Dick Woods Road
State Route 637
40' R/W and additional 5' dedicated to public use
18" Sycamore
Parcel 20C
5.00 Acres
Parcel 20A2
7.85 Acres
S85°44'57"W 283.83'
N07°12'13"W 442.38'
N82°16'42"W 539.35'
TMP 69-20A3 John & Marion Easter D.B.1489 Pg.1
TMP 69-20A
Kathleen Mahanes D.B.4007 Pg.68
TMP 69-20A1 Reimer T. Brodersen D.B.1383 Pg.118
COMMONWEALTH OF VIRGINIA
Robert W. Coleman, Jr.
Lic. No. 2007
8/26/15
LAND SURVEYOR
RESIDENTIAL SURVEYING SERVICES
(434) 245-8744
1701D-7 ALLIED STREET
CHARLOTTESVILLE, VIRGINIA 22903
PLAT SHOWING
PHYSICAL SURVEY OF
T.M.P.'S 69 – 20A2 & 20C
ALSO KNOWN AS
WHISTLING HOLLOW
8979 DICK WOOD ROAD
ALBEMARLE COUNTY, VIRGINIA
AUGUST 26, 2015 1"= 100'
15-125

Corbett Barn Variance Application Description

Dear Board of Zoning Appeals,

In December 2019, we purchased Whistlin' Hollow Farm (Parcels 69-20C and 69-20A2) with plans to rehabilitate and sensibly expand an historic 90 year-old farmhouse and 13-acre agricultural property. The grounds had previously thrived as a successful family farm, raising Katahdin Sheep, Sebastopol Geese, and Guinea Hens, as well as growing a variety of fruits and vegetables. Sadly, this farm had not been maintained by the most recent owners — who neglected the outbuildings, pastures, garden beds — and allowed their horses to damage a delicate ecological refuge area. Since we purchased the land, we have actively restored the garden beds, started growing crops for a local CSA market, established a new flock of chicken layers, and are actively collaborating with the James River Association on restoring the stream buffer.

We are applying for a variance to the setback requirements on the front boundary to build an agricultural barn to support our farm operations in the most practical and least disruptive location on the farm. The barn will allow us to replace several dilapidated outbuildings, house our farm vehicles (tractor & implements), and provide a space to process our crops.

The barn — a classic, traditional-looking structure — was intentionally designed to minimize new land disturbance and fit the existing topography and site features. Our intention is to be good stewards of the farm and make conscientious choices to restore the health and productivity of the riparian area, pastures, and garden beds. We hope to build the current design in the proposed location for the following reasons:

- The barn is designed to minimize additional cut and fill by taking advantage of a retaining wall recently rebuilt to stabilize the only existing parking area on the site, which had been severely compromised. **When the property was purchased, the current parking and access area was held up by a pressure treated beam retaining wall that was failing due to poor DIY construction, lack of care, and many years of significant water run-off from a neighboring property. Due to the increasingly heavy rains, it was clear that we would (1) have no place to park and (2) no means to access our house at grade without shoring up the parking lot with a concrete replacement wall. Since this location is also a perfect place for a barn to house farm equipment and implements, the new retaining wall can also serve as the foundation wall, supporting access and entry into the barn.**

- By taking advantage of already established infrastructure — the driveway, parking area, and retaining wall — these features don't need to be created or expanded into productive pasture or the sensitive buffer areas.
- The proposed location minimizes disturbance from construction and long-term use in the stream protection area. We are working to improve the condition of the stream buffer for water quality, habitat, and flood mitigation purposes, and we don't want to offset our progress by converting a section of the stream protection area to a new building site.
- We are currently in the process of restoring and expanding the old farmhouse, which is located just 9.5 feet from the edge of the property line. The barn, to be located about 50 feet North from the farmhouse, will be 36 feet from the property line. The proximity of the original house to the road makes the barn feel significantly set back from the road. The barn is also designed as a Bank Barn to drop the building profile and tuck it into the hillside to minimize visual impact from the road, and to match the grade of the parking lot, which is already 8 feet lower than the road.





- With the extreme rains and flooding we've had recently, we've seen the stream jump out of its banks on a more regular basis. We urgently see the need to invest in stream stabilization and re-vegetation strategies, and we fear adding another structure in this area will further compromise the function of the stream protection zone to absorb flood waters, as well as put the structure and its uses at risk. A recent visit from Kory Kirtland, the NRCS District Conservationist, and Anne Marie Roberts of the James River Association, both confirmed the wisdom and benefits of the proposed location.

We first consulted Albemarle County Engineering staff about our plans and their effect on the stream buffer in November 2019, but were not made aware of any front setback requirements. In response to our submitted Farm Building Exemption form, County staff

has explained they cannot grant exception to the front setback and must therefore recommend the structure encroach into the stream protection buffer. This seems to be an illogical and unfortunate consequence of the usually well-intentioned rules, which is why we are now applying for a variance to build in the front setback area.

We thank you for working with us to find a mutually beneficial solution, which we all earnestly believe is in the best interests of the environment, our county, and our lovely farm. We ultimately and passionately want to take advantage of the existing topography and site layout, minimizing new land disturbance, protect sensitive areas, and restore agricultural use of the land. We plan to spend a great deal of time and money repairing and enhancing the current riparian buffer — so putting the barn further down onto the property from the current parking area will not only damage the pristine area we are seeking to preserve — but also contradicts the purpose of the county's stream protection ordinance in the first place.

We would like to stress that the current topography of the property contains a parking area just below the road, and that the rest of the land slopes quite steeply down from there, leaving no space for parking or conveniently accessing anything (house or barn) other than from this area. Putting the barn 20 feet further west would require an enormous amount of fill, great expense, and an extremely unattractive causeway from the current parking/access/entry area to the barn. The site is tight and the barn will be fairly obscured by a new privacy fence, and is still out of the riparian buffer we are seeking to remediate. These plans reflect the best practices and priorities enjoined by the county.

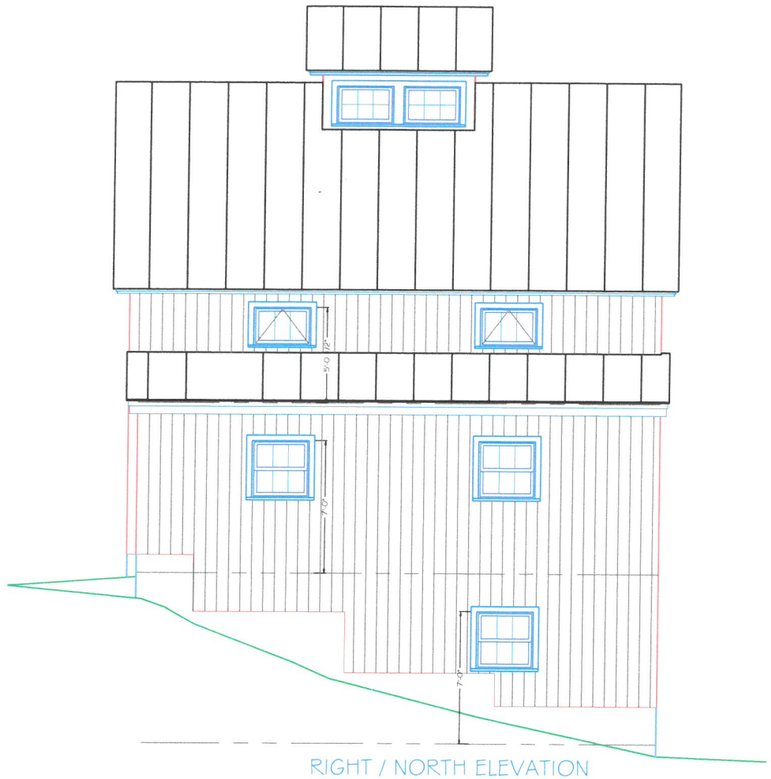
Thanks again for your help and consideration — we really do appreciate it.

Michael & Michelle Corbett
Round Top Roots Farm





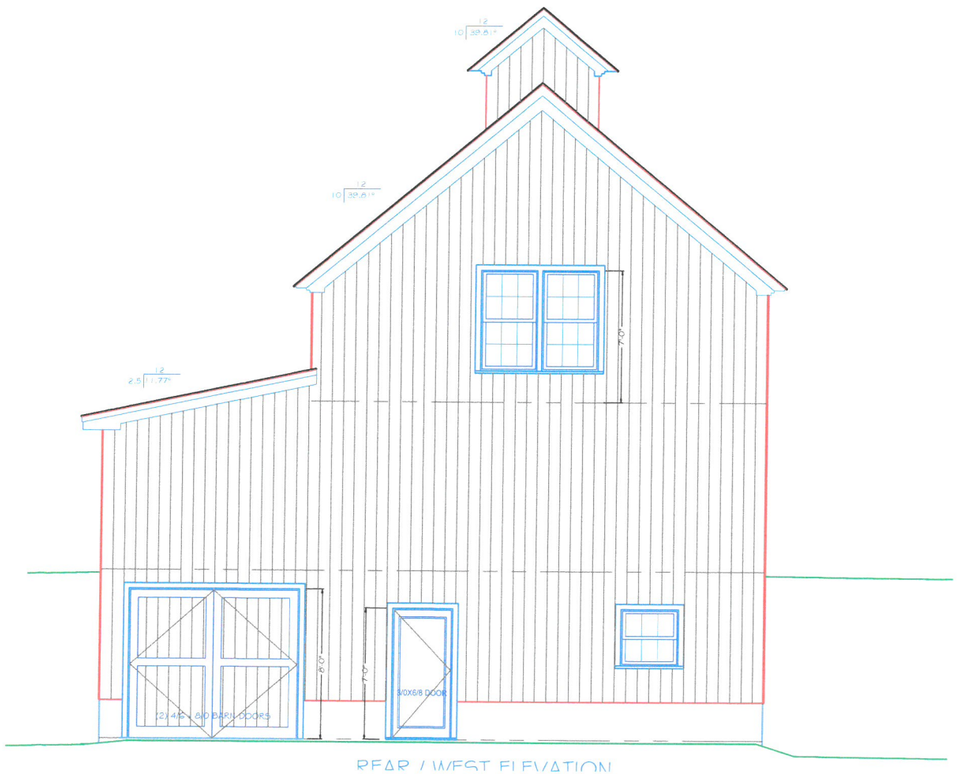
FRONT / EAST ELEVATION



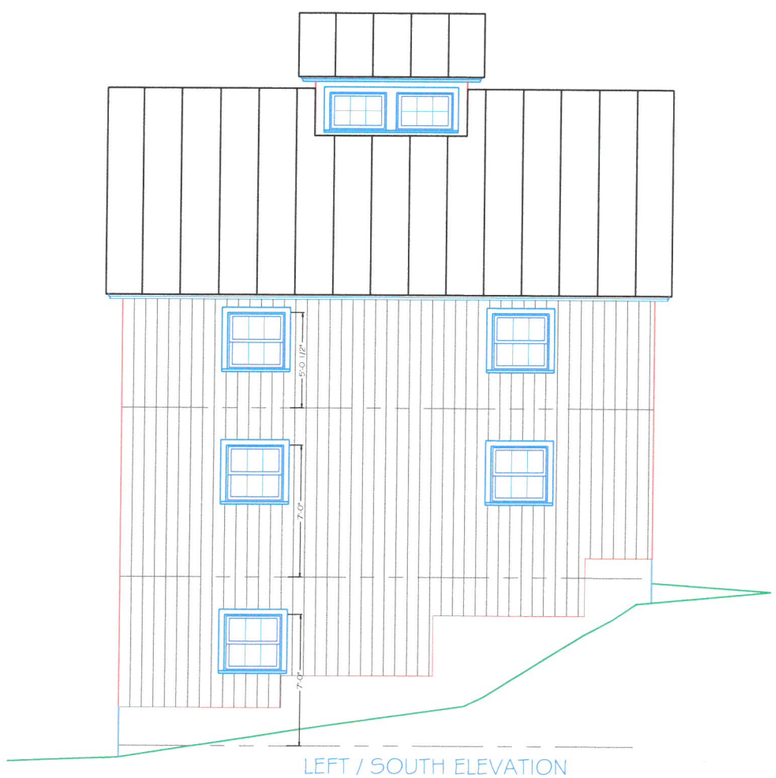
RIGHT / NORTH ELEVATION

CORBETT BARN

GEOBARN



REAR / WEST ELEVATION



LEFT / SOUTH ELEVATION

PROJECT:

CORBETT
BARN
AFTON, VIRGINIA

ARCHITECT OF RECORD:

BUILDER:

GEOBARNS, LLC
923 KINGS HIGHWAY
WHITE RIVER JCT., VT 05001
PHONE: (802) 359-1912

MEP ENGINEER:

STRUCTURAL ENGINEER:

DRAWING TITLE:

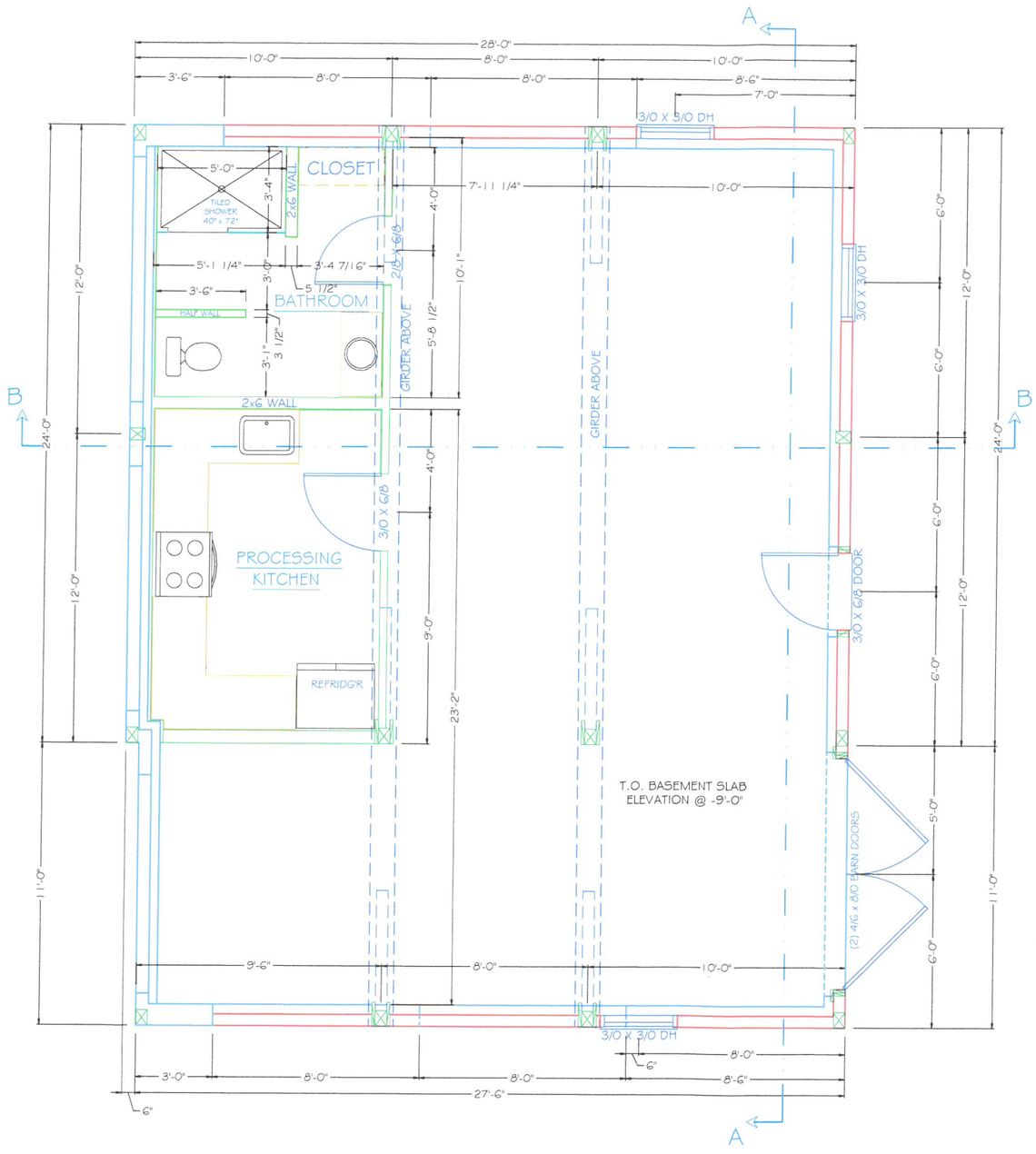
COVER

DATE: 06-3-2020
DRAWN BY: DMS
SCALE:
1/8" = 1'-0"

REVISIONS

07/10/2020
07/16/2020
10/02/2020

COVER



BASEMENT FLOOR PLAN

PROJECT:
CORBETT
BARN
AFTON, VIRGINIA

ARCHITECT OF RECORD:

BUILDER:
GEOBARNS, LLC
923 KINGS HIGHWAY
WHITE RIVER JCT., VT 05001
PHONE: (802) 359-1912

MEP ENGINEER:

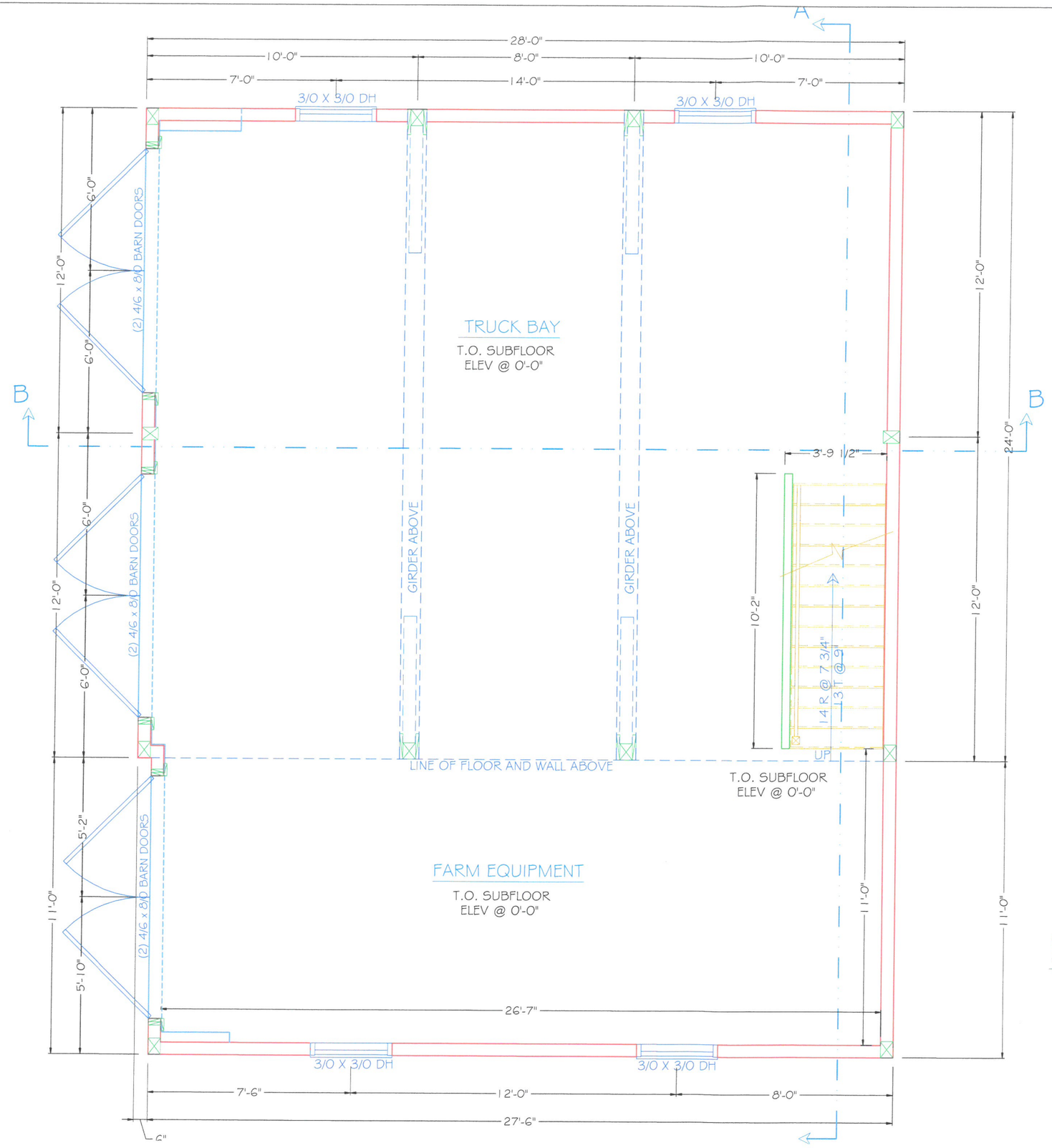
STRUCTURAL ENGINEER:

DRAWING TITLE:
BASEMENT FLOOR PLAN

DATE: 06-3-2020
DRAWN BY: DMS
SCALE:
1/4" = 1'-0"

REVISIONS
07/10/2020
07/16/2020
10/02/2020

A2.0



FIRST FLOOR PLAN

PROJECT:
CORBETT
BARN
AFTON, VIRGINIA

ARCHITECT OF RECORD:

BUILDER:
GEOBARNS, LLC
923 KINGS HIGHWAY
WHITE RIVER JCT., VT 05001
PHONE: (802) 359-1912

MEP ENGINEER:

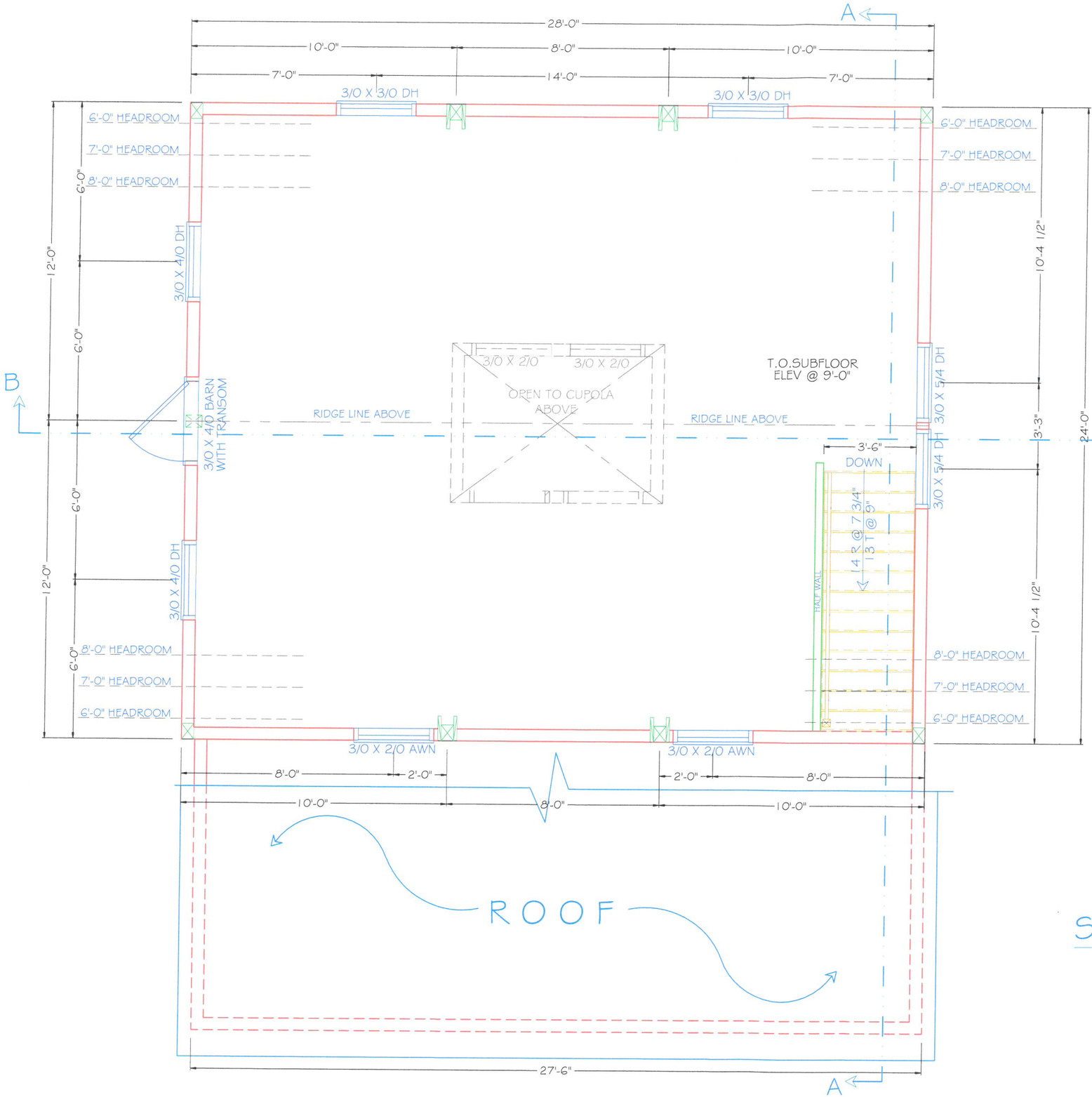
STRUCTURAL ENGINEER:

DRAWING TITLE:
FIRST FLOOR PLAN

DATE: 06-3-2020
DRAWN BY: DMS
SCALE:
1/4" = 1'-0"

REVISIONS
07/10/2020
07/16/2020
10/02/2020

A2.1



SECOND FLOOR PLAN

PROJECT:
CORBETT
BARN
AFTON, VIRGINIA

ARCHITECT OF RECORD:

BUILDER:
GEOBARNS, LLC
923 KINGS HIGHWAY
WHITE RIVER JCT., VT 05001
PHONE: (802) 359-1912

MEP ENGINEER:

STRUCTURAL ENGINEER:

DRAWING TITLE:
SECOND FLOOR PLAN

DATE: 06-3-2020
DRAWN BY: DMS
SCALE:
1/4" = 1'-0"

REVISIONS
07/10/2020
07/16/2020
10/02/2020

A2.2

ATTACHMENT C

County of Albemarle

Community Development Department
401 McIntire Road Charlottesville, VA 22902-4596

Building Permit Application

Inspection Line: (434) 972-4179 Voice: (434) 296-5832

PARCEL/OWNER INFORMATION

TMP

Current Owner(s): Michael & Michelle Corbett

STREET ADDRESS

House #	Street Name	Apt / Suite
8979	Dick Woods Road	

BUILDING WORK INFORMATION

Work Class:	Frame Type:	Water Supply Type:	Sewage Disposal Type:	Footing / Foundation Type:
☐ Addition	☐ Concrete	☐ Artesian Well	☐ None	☐ Basement
☐ Alteration	☐ Masonry	☐ None	☑ Private	☐ Crawl Space
☐ Demolition	☐ Other	☑ Private	☐ Public	☐ None
☑ New	☐ Steel	☐ Central Well	☐	☐ Other
☐ Other	☐ Vinyl	☐ Public	☐	☑ Slab
☐ Remodel	☑ Wood	☐	☐	☐

Jurisdictional Area:

Other Foot / Found Desc.:

Work Valuation: 150,000

Power Company: CVEC

Work Description: Unconditioned barn space to support agricultural operations.

Directions: From Rt. 250, turn right on Rt 151 South, then left on Dick Woods Road.
Barn location is 1/2 mile down Dick Woods Road on the right hand side.

Use Group:

Construction Type:

Square Footages:

# of Stories	2	Porches	
1st Floor		Decks	
2nd Floor		Garage	
3rd Floor		Swimming Pool	
Finished Basement		Unfinished Basement	980
Other Habitable		Other Unfinished	1652
Total Habitable Sq. Footage		**Total Unfinished Sq. Footage**	2632
		Total Building Sq. Footage	2632

Setbacks:

Front: Rear:

Left Side: Right:

Zoning Pre-Construction? ☐
Fire Alarms Required? ☐
Fire Sprinkler NAPA Code ☐

Land Use? ☐
Bldg Pre-Construction? ☐

PROPOSED USE INFORMATION

Dwelling Units		Accessory Structures		Mobile / Prefab. Homes		Mobile Offices/Prefab. Units	
Carports		Bedrooms		Baths		Paint Spray Booths	
Garages	x			Kitchens		Swimming Pools/Hot Tubs/Spas (Res. Only)	
Other	Farm use			Elevators/Escalators/Lifts			

APPLICATION CONTACT INFORMATION

Primary Contact

Name	Casey Williams	Phone #	240-994-2206	
Street Name	1607 Jamestown Drive	Fax #		
City / State	Charlottesville, VA	Zip Code	22901	
E-mail	casey@geobarns.com	Cellular #	240-994-2206	

Owner / Applicant

Name	Michael & Michelle Corbett	Phone #	302-858-1100	
Street Name	8979 Dick Woods Road	Fax #		
City / State	Afton, VA	Zip Code	22920	
E-mail		Cellular #		

Mechanics Lien

Name		Phone #		
Street Name		Fax #		
City / State		Zip Code		
E-mail		Cellular #		

General Contractor

Name	Three Notch'd Construction, LLC	Phone #	434-939-7700	
Street Name	6577 Jarmans Gap Road	Fax #		
City / State	Crozet, VA	Zip Code	22932	
E-mail		Cellular #	434-939-7700	

SUB-CONTRACTOR INFORMATION

Business Name:	License Types:	State License #	Locality License #

If you're building a new home on vacant land in the Rural Area, please call the Assessor's office at 434-296-5856 to check on any possible tax consequences of this action.

ATTACHMENT C

Separate permits may be required for Electrical, Plumbing, Heating, Ventilating, and Air Conditioning.

This permit becomes null and void if work or construction authorized is not commenced within six (6) months, or if construction or work is suspended or abandoned for a period of six (6) months at any time after work is commenced.

I hereby certify that I have read and examined this application and know the same to be accurate and correct. All provisions of laws and ordinances governing this type of work will be complied with, whether specified herein or not. The granting of a permit does not presume to give authority to violate or cancel the provisions of any other state or local law regulating construction or the performance of construction.

By signing this building permit, the owner and/or their agent hereby grant employees of the Albemarle County Community Development & Real Estate Departments the right to enter and inspect the subject property Monday through Friday between the hours of 8:00 a.m. and 5:00 p.m., holidays excepted.

If you are not the owner of record, please check which applies:

☑ I certify that I am the agent for PRINT OWNER NAME Michael & Michelle Corbett, The Owner, and am authorized to submit this application on behalf of the Owner under the agency granted to me.

☐ I am neither the Owner nor the Owner's agent. I certify that written notice of this application, by providing a copy of this application, will be mailed to the Owner at the following address:

PRINT ADDRESS CITY/STATE ZIP CODE

_____,

within 10 days of today's date as required by Virginia Code §15.2-2204(H). I understand that, if I do not provide the notice to the Owner as provided herein, the building permit application and every other subsequent approval, permit, or certificate related thereto could be determined to be void.

_____ 7/20/20

Signature of Owner, Contractor, or Authorized Agent — Date

_____ _____

Signature of Owner, Contractor, or Authorized Agent — Date

ELECTRONIC RECORDS STATEMENT: Albemarle County is creating and using electronic records and electronic signatures as allowed by the Uniform Electronic Transactions Act (Virginia Code § 59.1-479 et. Seq.). As an applicant to the Building Permit process, you may consent to receive or have online access to electronic records and receive and create records having electronic signatures related to Building Permits, Correspondence, Inspection Tickets, and Certificates of Occupancy (the Building Permit transactions).

CW 7/20/20

Initials of Owner, Contractor or Authorized Agent — Date

Your agreement to conduct Building Permit transactions by electronic means does not prevent you from refusing to conduct other transactions by electronic means.

0 50 100 200
SCALE IN FEET

IF = Iron Found
UP = Utility Pole

This is to certify that on August 13,14 & 17, 2015, I surveyed the property shown on this plat and the title lines and walls of the building are shown hereon. This property lies in Zone X and does not lie in an area designated as a 100 Year Flood Hazard as shown on Federal Flood Rate Insurance Map No. 51003C0225D, effective Date: Feb. 4, 2005

Survey performed without the benefit of a title report and may not indicate all encumbrances on the property.

RECORD MERIDIAN
D.B.1398 Pg.529

This plat was prepared for:
Rebecca L. Pocock

Owner:
Kathleen B. Mahanes

Legal References:
D.B.846 Pg.254
D.B.4007 Pg.68
D.B.1383 Pg.119
D.B.1332 Pg.77

Property Line Courses:
1) S62°16'04"E 65.42'
2) R=348.70' L=14.99'
3) S07°10'06"E 86.91'
4) S03°49'59"E 66.10'
5) S04°15'04"E 78.24'
6) S02°52'49"E 378.52'
7) R=1083.16' L=65.05'
8) S00°33'41"W 154.07'
9) R=3097.76' L=75.00'
10) R=1590.02' L=54.12'
11) S03°43'05"E 195.88'

N82°43'56"E 261.20'

+/- 1000' to Rte. 151

metal barn

overhead utility line

frame shed

UP (typical)

N85°44'57"E 285.97'

RB Spike

BARN

Dwelling is 9.5' from property line

1 Story Frame w/Bsmt.

frame sheds

fence (typical)

N18°15'40"E 687.37'

50' stream setback line

stream

50' stream setback line

Dick Woods Road
State Route 637
40' R/W and additional 5' dedicated to public use

N02°03'24"W 750.49'

18" Sycamore

Parcel 20C
5.00 Acres

Parcel 20A2
7.85 Acres

N07°12'13"W 442.38'

S85°44'57"W 283.83'

N82°16'42"W 539.35'

TMP 69-20A3
John & Marion Easter
D.B.1489 Pg.1

TMP 69-20A
Kathleen Mahanes
D.B.4007 Pg.68

TMP 69-20A1
Reimer T. Brodersen
D.B.1383 Pg.118

COMMONWEALTH OF VIRGINIA
Robert W. Coleman, Jr.
Lic. No. 2007
8/26/15
LAND SURVEYOR

RESIDENTIAL
SURVEYING SERVICES
(434) 245-8744
1701D-7 ALLIED STREET
CHARLOTTESVILLE, VIRGINIA 22903

PLAT SHOWING
PHYSICAL SURVEY OF
T.M.P.'S 69 – 20A2 & 20C
ALSO KNOWN AS
WHISTLING HOLLOW
8979 DICK WOOD ROAD
ALBEMARLE COUNTY, VIRGINIA
AUGUST 26, 2015 1"= 100'

15-125

Code of Virginia
Title 15.2. Counties, Cities and Towns
Chapter 22. Planning, Subdivision of Land and Zoning

§ 15.2-2309. Powers and duties of boards of zoning appeals

Boards of zoning appeals shall have the following powers and duties:

1. To hear and decide appeals from any order, requirement, decision, or determination made by an administrative officer in the administration or enforcement of this article or of any ordinance adopted pursuant thereto. The decision on such appeal shall be based on the board's judgment of whether the administrative officer was correct. The determination of the administrative officer shall be presumed to be correct. At a hearing on an appeal, the administrative officer shall explain the basis for his determination after which the appellant has the burden of proof to rebut such presumption of correctness by a preponderance of the evidence. The board shall consider any applicable ordinances, laws, and regulations in making its decision. For purposes of this section, determination means any order, requirement, decision or determination made by an administrative officer. Any appeal of a determination to the board shall be in compliance with this section, notwithstanding any other provision of law, general or special.

2. Notwithstanding any other provision of law, general or special, to grant upon appeal or original application in specific cases a variance as defined in § 15.2-2201, provided that the burden of proof shall be on the applicant for a variance to prove by a preponderance of the evidence that his application meets the standard for a variance as defined in § 15.2-2201 and the criteria set out in this section.

Notwithstanding any other provision of law, general or special, a variance shall be granted if the evidence shows that the strict application of the terms of the ordinance would unreasonably restrict the utilization of the property or that the granting of the variance would alleviate a hardship due to a physical condition relating to the property or improvements thereon at the time of the effective date of the ordinance, or alleviate a hardship by granting a reasonable modification to a property or improvements thereon requested by, or on behalf of, a person with a disability, and (i) the property interest for which the variance is being requested was acquired in good faith and any hardship was not created by the applicant for the variance; (ii) the granting of the variance will not be of substantial detriment to adjacent property and nearby properties in the proximity of that geographical area; (iii) the condition or situation of the property concerned is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted as an amendment to the ordinance; (iv) the granting of the variance does not result in a use that is not otherwise permitted on such property or a change in the zoning classification of the property; and (v) the relief or remedy sought by the variance application is not available through a special exception process that is authorized in the ordinance pursuant to subdivision 6 of § 15.2-2309 or the process for modification of a zoning ordinance pursuant to subdivision A 4 of § 15.2-2286 at the time of the filing of the variance application. Any variance granted to provide a reasonable modification to a property or improvements thereon requested by, or on behalf of, a person with a disability may expire when the person benefited by it is no longer in need of the modification to such property or improvements provided by the variance, subject to the provisions of state and federal fair housing laws, or the Americans with Disabilities Act of 1990 (42 U.S.C. § 12131 et seq.), as applicable. If a request for a reasonable modification is made to a locality and is appropriate

under the provisions of state and federal fair housing laws, or the Americans with Disabilities Act of 1990 (42 U.S.C. § 12131 et seq.), as applicable, such request shall be granted by the locality unless a variance from the board of zoning appeals under this section is required in order for such request to be granted.

No variance shall be considered except after notice and hearing as required by § 15.2-2204. However, when giving any required notice to the owners, their agents or the occupants of abutting property and property immediately across the street or road from the property affected, the board may give such notice by first-class mail rather than by registered or certified mail.

In granting a variance, the board may impose such conditions regarding the location, character, and other features of the proposed structure or use as it may deem necessary in the public interest and may require a guarantee or bond to ensure that the conditions imposed are being and will continue to be complied with. Notwithstanding any other provision of law, general or special, the property upon which a property owner has been granted a variance shall be treated as conforming for all purposes under state law and local ordinance; however, the structure permitted by the variance may not be expanded unless the expansion is within an area of the site or part of the structure for which no variance is required under the ordinance. Where the expansion is proposed within an area of the site or part of the structure for which a variance is required, the approval of an additional variance shall be required.

3. To hear and decide appeals from the decision of the zoning administrator after notice and hearing as provided by § 15.2-2204. However, when giving any required notice to the owners, their agents or the occupants of abutting property and property immediately across the street or road from the property affected, the board may give such notice by first-class mail rather than by registered or certified mail.

4. To hear and decide applications for interpretation of the district map where there is any uncertainty as to the location of a district boundary. After notice to the owners of the property affected by the question, and after public hearing with notice as required by § 15.2-2204, the board may interpret the map in such way as to carry out the intent and purpose of the ordinance for the particular section or district in question. However, when giving any required notice to the owners, their agents or the occupants of abutting property and property immediately across the street or road from the property affected, the board may give such notice by first-class mail rather than by registered or certified mail. The board shall not have the power to change substantially the locations of district boundaries as established by ordinance.

5. No provision of this section shall be construed as granting any board the power to rezone property or to base board decisions on the merits of the purpose and intent of local ordinances duly adopted by the governing body.

6. To hear and decide applications for special exceptions as may be authorized in the ordinance. The board may impose such conditions relating to the use for which a permit is granted as it may deem necessary in the public interest, including limiting the duration of a permit, and may require a guarantee or bond to ensure that the conditions imposed are being and will continue to be complied with.

No special exception may be granted except after notice and hearing as provided by § 15.2-2204. However, when giving any required notice to the owners, their agents or the occupants of abutting property and property immediately across the street or road from the property affected,

the board may give such notice by first-class mail rather than by registered or certified mail.

7. To revoke a special exception previously granted by the board of zoning appeals if the board determines that there has not been compliance with the terms or conditions of the permit. No special exception may be revoked except after notice and hearing as provided by § 15.2-2204. However, when giving any required notice to the owners, their agents or the occupants of abutting property and property immediately across the street or road from the property affected, the board may give such notice by first-class mail rather than by registered or certified mail. If a governing body reserves unto itself the right to issue special exceptions pursuant to § 15.2-2286, and, if the governing body determines that there has not been compliance with the terms and conditions of the permit, then it may also revoke special exceptions in the manner provided by this subdivision.

8. The board by resolution may fix a schedule of regular meetings, and may also fix the day or days to which any meeting shall be continued if the chairman, or vice-chairman if the chairman is unable to act, finds and declares that weather or other conditions are such that it is hazardous for members to attend the meeting. Such finding shall be communicated to the members and the press as promptly as possible. All hearings and other matters previously advertised for such meeting in accordance with § 15.2-2312 shall be conducted at the continued meeting and no further advertisement is required.

Code 1950, §§ 15-831, 15-850, 15-968.9; 1950, p. 176; 1962, c. 407, § 15.1-495; 1964, c. 535; 1972, c. 695; 1975, cc. 521, 641; 1987, c. 8; 1991, c. 513; 1996, c. 555;1997, c. 587;2000, c. 1050; 2002, c. 546;2003, c. 403;2006, c. 264;2008, c. 318;2009, c. 206;2015, c. 597;2018, c. 757.

The chapters of the acts of assembly referenced in the historical citation at the end of this section may not constitute a comprehensive list of such chapters and may exclude chapters whose provisions have expired.

Section 34.4 - Variances.

i. *Criteria to establish basis to grant a variance*. The board shall grant a variance if the evidence shows: (i) that strict application of the terms of the ordinance would unreasonably restrict the utilization of the property; or (ii) that granting the variance would alleviate a hardship due to a physical condition relating to the property or improvements thereon at the time of the effective date of the ordinance; and all of the following:

    1. *Good faith acquisition and hardship not self-inflicted*. The property interest for which the variance is being requested was acquired in good faith and any hardship was not created by the applicant for the variance.
    2. *No substantial detriment*. Granting the variance will not be a substantial detriment to adjacent property and nearby properties in the proximity of that geographical area.
    3. *Condition of situation not general or recurring*. The condition or situation of the property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted as an amendment to the ordinance.
    4. *Use variance prohibited*. Granting the variance does not result in a use that is not otherwise permitted on the property or a change in the zoning classification of the property.
    5. *Special use permit or special exception not available*. The relief or remedy sought by the variance application is not available through a special use permit or special exception authorized by this chapter when the application is filed.

j. *Factors not to be considered*. The board shall not base any decision on the merits of the purpose and intent of any relevant provision in the zoning ordinance.

k. *Time for decision*. The board shall schedule a reasonable time for the hearing on an application so that it may make its decision within 90 days after the date the application was deemed to be complete. This 90-day period is directory, not mandatory.

l. *Action by the board; vote required to grant variance*. The concurring vote of three members of the board is required to grant a variance.

m. *Conditions on variance.* In granting a variance, the board may impose conditions, as follows:
    1. *Nature of conditions*. The board may impose reasonable conditions regarding the location, character, and other features of the proposed structure or use as it may deem necessary in the public interest.
    2. *Guarantee or bond to ensure compliance*. The board also may require that the applicant provide a guarantee or bond to ensure that the conditions imposed are being and will continue to be complied with.
    3. *Conditions deemed to be essential and nonseverable*. Except as the board may specify in a particular case, any condition imposed on a variance shall be deemed to be essential and nonseverable from the variance itself and any condition determined to be invalid, void or unlawful shall invalidate the variance.

n. *Effect of granting variance; expansion of structure*. The property upon which a property owner has been granted a variance shall be treated as conforming for all purposes under state law and this chapter; however, any structure permitted by a variance may not be expanded unless the expansion is within an area of the site or part of the structure for which no variance is required under this chapter. If an expansion is proposed within an area of the site or part of the structure for which a variance is required, the approval of an additional variance shall be required.

Sec. 1.4 - Purposes.

The purposes of this chapter are to promote the public health, safety, convenience, and welfare and to accomplish the objectives of Virginia Code §§ 15.2-2200 and 15.2-2283 . To these ends, this chapter is intended to:

A. Provide for adequate light, air, convenience of access, and safety from fire, flood, impounding structure failure, crime and other dangers;

B. Reduce or prevent congestion in the public streets;

C. Facilitate creating a convenient, attractive and harmonious community;

D. Facilitate providing adequate police and fire protection, disaster evacuation, civil defense, transportation, water, sewerage, flood protection, schools, parks, forests, playgrounds, recreational facilities, airports and other public requirements;

E. Protect against destroying or encroaching upon historic areas;

F. Protect against one or more of the following: overcrowding of land, undue density of population in relation to the community facilities existing or available, obstruction of light and air, danger and congestion in travel and transportation, or loss of life, health, or property from fire, flood, impounding structure failure, panic or other dangers;

G. Encourage economic development activities that provide desirable employment and enlarge the tax base;

H. Provide for preserving agricultural and forestal lands and other lands of significance for the protection of the natural environment;

I. Protect approach slopes and other safety areas of licensed airports, including United States government and military air facilities;

J. Promote creating and preserving affordable housing suitable for meeting the current and future needs of the County as well as a reasonable proportion of the current and future needs of the planning district within which the locality is situated;

K. Provide reasonable protection against encroachment upon military bases, military installations, and military airports and their adjacent safety areas, excluding armories operated by the Virginia National Guard; and

L. Protect surface water and ground water as defined in Virginia Code § 62.1-255 .

STAFF: Bart Svoboda
PUBLIC HEARING: December 1, 2020

STAFF REPORT: AP2020-00003

APPLICANT/APPELLANT: Stewart Wright

Subject Tax Parcel Numbers:
Tax Map 32, Parcels 20, 20A, 20A1, 20A2, 20A3, 22H, 22K, 23, 23A, 23B, 23C, 23D, 23E, 23F, 23G, 23H, 23J, and 29I (collectively - the "Property")

Location:
The North Pointe Property is located in northern Albemarle County between Seminole Trail (Route 29) and Pritchett Lane (State Route 785), as shown on the attached map (Attachment A).

Background: On August 2, 2006, the County approved the North Pointe rezoning (ZMA200000009) and special use permit (SP200200072) with proffers/conditions (Attachment B). After many years, development began in early 2019. In the fall of 2019, the County began to receive complaints regarding the development.

Determination and Appellant's Appeal: On August 26, 2020, the Appellant filed a complaint (ZVIO202000249) regarding the construction entrances along Pritchett Lane. In response, based on inspections of the Property, the proffers/conditions, and the evidence available, the Zoning Administrator issued an Official Determination of No Violation Found (Attachment C). Specifically, the Zoning Administrator concluded that utilizing access points from Pritchett Lane for construction was permitted.

Grounds for Zoning Administrator's Determination: The Zoning Administrator based the determination on inspections of the Property, the ZMA200000009 proffers, and SP200200072 conditions, specifically condition 9 (Attachment B). The proffers do not prohibit the use of a construction entrance along Pritchett Lane or any other roadway. Condition 9 only addresses the design standard, timing for dedication, and approximate location of a 50-foot public right-of-way.

Staff's Response to Appeal:

1. The Appellant's first argument (Attachment D) is that the special use permit conditions do not allow for temporary construction easements as a type of extension to Pritchett Lane.

   Although the proffers/conditions do speak to various road standards, they do not prohibit the use of construction entrances. It is inaccurate to conclude that an accessory use is prohibited if it is not specifically mentioned in a proffer or special use permit condition. The proffers and conditions clearly address design criteria, approximate location, and timing for dedication of the right-of-way to public use. However, there is no mention of either allowing or prohibiting specific accessory uses such as a construction entrance. Conditions similar to the examples below would have been necessary to exclude or restrict specific uses.

Example 1 – SP-20020-00017 (Attachment E)

The Albemarle County Board of Supervisors, at its meeting on July 10, 2002, unanimously approved the above-noted request. Please note that this approval is subject to the following conditions:

1. There shall be no on-site sales.
2. There shall be no outdoor storage of materials.
3. All solvents/paints shall be disposed of, in accordance with all applicable hazardous waste regulations.
4. All production activity of custom-made furniture shall occur within the designated workshop;
5. The workshop shall not exceed 1,152 square feet, as shown on Attachment A (on file in Clerk's office).
6. The applicant shall obtain a Zoning Clearance for this use within sixty (60) days of approval or this special use permit shall expire.

Example 2 – ZMA-2016-00009 (Attachment F)

2. a) The following by right uses in Highway Commercial (HC) zoning shall not be permitted:
   - i. Pipe and tobacco shops
   - ii. Barber/Beauty shops
   - iii. Laundromats
   - iv. Farmer's Markets
   - v. Funeral Homes
   - vi. Wayside Stands
   - vii. Hospitals
   - viii. Restaurant drive thru windows

   b) The following use shall be restricted:
   - i. Cemeteries – The existing cemetery shall not be expanded.
   - ii. Mini-storage – Shall be limited to the Secondary Development Zone or the upper floors within the Primary Development Zone.

Example 3 – ZMA-2013-00012 (Attachment G)

10. Construction Traffic Management Plan. Prior to, or in conjunction with, submitting the first initial site plan, erosion and sediment control plan, grading plan, preliminary subdivision plat or, if a preliminary subdivision plat is not submitted, the first final subdivision plat, the Owner shall submit a Construction Traffic Management Plan (the "CTM Plan"). The purpose of the CTM Plan shall be to minimize conflicts between construction vehicles related to developing the Property and pedestrians, cyclists, equestrian riders, and motor vehicles on Glenmore Way and at the intersection of Glenmore Way and the construction entrance to be established at Main

6

Street, as depicted on the Application Plan, while the Property is being developed. The CTM Plan shall include the following elements:

2. In response to the Appellant's second argument, staff agrees that staff cannot administratively amend a special use permit.
   However, staff has not made any administrative amendments to the proffers or special use permit conditions.

Summary:

On September 21, 2020, the Zoning Administrator issued an Official Determination of No Violation Found (Attachment C). Based on inspections of the Property and the proffers/conditions, the evidence supports the determination that the construction access points on Pritchett Lane are compliant with the zoning ordinance and special use permit conditions.

Because the Zoning Administrator's determination was and is correct, staff asks that the Board of Zoning Appeals affirm this determination.

Proposed Motion:

I move that the Board of Zoning Appeals affirm the Zoning Administrator's determination of No Violation Found (Attachment C).

Attachments:

Attachment A: Current GIS Map of the Property

Attachment B: ZMA-200000009 and SP-200200072 North Pointe Conditions - Dated August 23, 2006

Attachment C: Official Determination of No Violation Found (ZVIO202000249)

Attachment D: AP201900004 Application

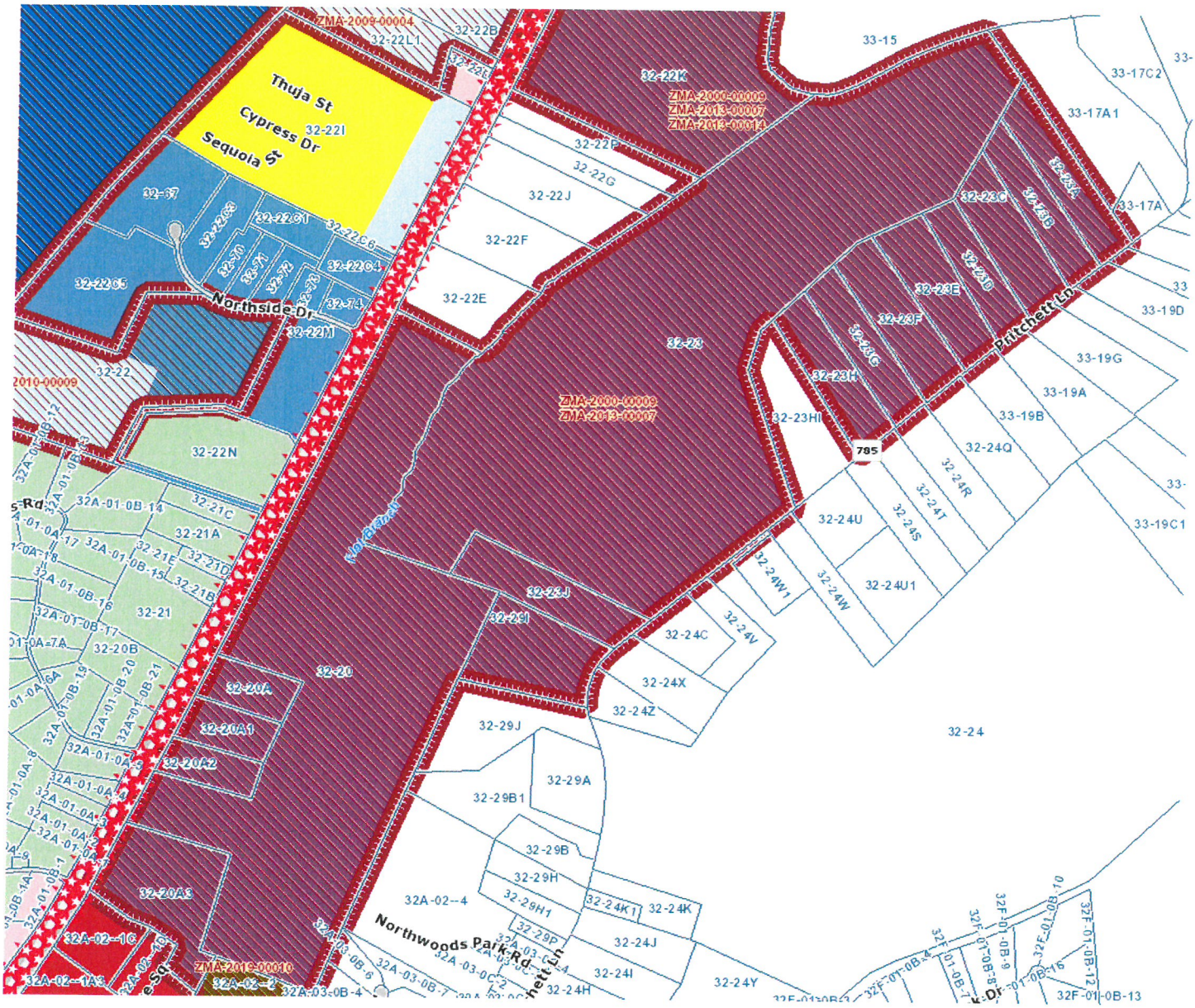
Attachment E: SP-20020-00017 Conditions

Attachment F: ZMA-2016-00009 Proffer Statement

Attachment G: ZMA-2013-00012 Proffer Statement

ATTACHMENT A

Zoning Map



ATTACHMENT 2

COUNTY OF ALBEMARLE
Department of Community Development
401 McIntire Road, Room 227
Charlottesville, Virginia 22902-4596
Phone (434) 296-5832 Fax (434) 972-4012

August 23, 2006

Donald J. Wagner
GEMC & Riverbend, LP
PO Box 5526
Charlottesville, VA 22905

RE: ZMA-00-009 North Pointe PD-MC (SignS #97, 98, 99)

AND

SP-02-072 North Pointe Residential Uses (SignS #97, 98, 99)
Tax Map 32 Parcels 20, 20a, 20a1, 20a2, 20a3, 22h 22k, 23, 23a, 23b, 23c, 23d, 23e, 23 f, 23g, 23h, 23j and 29i

Dear Mr. Wagner:

The Board of Supervisors approved ZMA-2000-009 North Pointe on August 2, 2006. Your rezoning from RA Rural Area to PD-MC Planned Development Mixed Commercial was approved in accordance with the attached proffers dated July 20, 2006. An application plan/plan of development dated June 13, 2006 was approved as part of the rezoning. Please refer to these documents for any future applications and requests on this property.

On August 2, 2006, the Albemarle County Board of Supervisors also took action on SP 2002-072 North Pointe to allow Residential Uses on Tax Map 32 Parcels 20, 20a, 20a1, 20a2, 20a3, 22h 22k, 23, 23a, 23b, 23c, 23d, 23e, 23 f, 23g, 23h, 23j and 29i in the Rivanna Magisterial District. This special use permit was approved based on the following conditions:

1. Residential mix. The dwelling units within the Project shall consist of the following three types: (a) single-family detached, including carriage house units; (b) multi-family; and (c) other (consisting of townhouses, duplexes, attached housing, condominiums in the commercial areas and any other unidentified housing types). The minimum number of each of the three dwelling unit types shall be 205 of the 893 total permitted dwelling units.

2. Phasing of residential units. Beginning from the date of approval of the first commercial building permit, the owner shall record subdivision plats creating a minimum of forty (40) lots for single family detached residential units each year thereafter until plats have been recorded creating lots for a minimum of two hundred (200) single family detached residential units. If the owner records subdivision plats creating lots for more than forty

ATTACHMENT B

(40) single family detached residential units in any year (including any year prior to the date of approval of the first commercial building permit), the excess lots shall be credited to the lots required in subsequent years.

3. Conservation areas. The conservation areas shown on the Application Plan shall remain undisturbed and shall be protected from development impacts to the satisfaction of the County's program authority for the Water Protection Ordinance (Chapter 17 of the Albemarle County Code) (the "Program Authority"); except that the pedestrian paths shown on the Application Plan may be placed in a conservation area where shown on the Application Plan. Storm drainage outfalls and other pedestrian paths may only be placed in conservation areas if the Program Authority finds that no other location is reasonably available and that the disturbance is necessary for such a proposed use. Notwithstanding the terms of this Condition 3 to the contrary, the Program Authority may approve a utility main within a conservation area, even if it is not shown on the Application Plan, and the Program Authority may approve other disturbances and/or measures as may be appropriate in the Program Authority's discretion to further protect a conservation area.

4. Conservation areas with utilities. The conservation areas with utilities shown on the Application Plan shall remain undisturbed and shall be protected from development impacts to the satisfaction of the Program Authority; except that:

   A. The streets and pedestrian paths shown on the Application Plan may be placed in a conservation area with utilities where shown on the Application Plan. Other pedestrian paths, other streets, and sanitary sewers, storm drainage outfalls, and/or stream mitigation measures may only be placed in a conservation area with utilities if the Program Authority finds that no other location is reasonably available and the disturbance is necessary for such a proposed use. In any event, the construction, maintenance and use of the improvements shall have the minimum environmental impact on the conservation area with utilities necessary for the improvements to be established and maintained, and the long-term impacts shall be adequately mitigated. Nothing in this condition shall be construed to obviate the requirements established for stream buffers under Chapter 17 of the Albemarle County Code or shall constitute a waiver of such requirements.

   B. Erosion and sediment control structures and measures shall be permitted within a conservation area with utilities solely to address impacts from authorized land disturbing activity within such area, unless otherwise requested by the Owner and approved by the Program Authority.

   C. The Program Authority may approve other disturbances and/or measures as may be appropriate in the Program Authority's discretion to further protect a conservation area with utilities.

5. Open space. The Owner shall restrict from development all open space areas designated as greenway, buffer areas and park areas shown on the Application Plan. This condition shall not apply to development parcels, conservation areas, and conservation areas with utilities shown on the Application Plan.

A. Open space areas not dedicated to public use shall be for the use and enjoyment of the residents of the Project, subject to the restrictions that may be imposed by any declaration recorded as part of a conveyance of these areas to a homeowner's association. Open space areas dedicated to public use shall be for the use and enjoyment of the public, including the residents of the Project.

B. No structural improvements other than utilities, pedestrian and biking trails, and common area amenities such as playgrounds, picnic areas, hardscapes, and PAR exercise equipment shall be established and maintained in the open space areas.

6. Aggregate set aside for open-space related areas. In no event shall the total area of open-space related areas comprised of the conservation areas (Condition 3), conservation areas with utilities (Condition 4), open space (Condition 5), greenway (Conditions 5 and 7), and landscaped buffer areas (Conditions 5 and 8) shown on the Application Plan, be less than a total of thirty-five percent (35%) of the total land within the Project to be developed for residential uses, as shown on Sheet G to the Application Plan entitled "Open Space and Green Way Plan," dated March 6, 2006 ("Sheet G").

7. Rivanna greenway/access. The Owner shall reserve for dedication to public use a greenway along the boundary of the Project and adjacent to the Rivanna River, between the flood plain line and a preservation area (hereinafter, the "greenway") as shown on Sheet G.

A. The Owner may grant such utility easements across the greenway as are required for a forced main utility and for the proposed uses shown on the Application Plan, each with the prior written consent of the County. Erosion and sediment control structures and measures shall be permitted within a greenway solely to address impacts from authorized land disturbing activity within the greenway, except as otherwise requested by the Owner and approved by the Program Authority.

B. The Owner shall dedicate to public use the greenway and all pathways shown through land depicted on Sheet G as "Greenway"; provided, however, that the property owners within the Project shall have access to and over such pathways at all times the pathways are open to the public. The greenway and pathways shall be dedicated either upon the request of the County, or in conjunction with the platting of the residential lots adjacent to the section of the greenway to be dedicated. If the greenway and pathways are dedicated by platting, the greenway and pathways shall be set apart on the plat for public use with a notation that the greenway and pathways are dedicated for public use. If the County accepts dedication of the lake referenced in section VI of the Proffer Statement for the Project (ZMA 2000-009), upon request by the County, the Owner shall dedicate to public use the access pathway east of the middle entrance and leading to Flat Branch as shown on Sheet G.

C. Access easements to the Rivanna River shall be provided as shown on the Application Plan for the benefit and use by property owners within the Project.

D. The Owner shall be responsible for the costs of drafting the deeds of dedication, having required surveys conducted and plats prepared, and recordation costs.

8. Landscaped buffer between residential areas and rural areas. Before the County issues a certificate of occupancy for the first dwelling unit constructed on any of the lots shown on the Application Plan abutting the areas shown on the Application Plan as "Open Space Buffer (30')" along Pritchett Lane (Lots A1-6, H8-20, L15-34 and N2-5), the Owner shall establish and thereafter maintain a heavily vegetated buffer in the open space buffer common areas. The buffer, where one does not already exist, shall be planted in accordance with a landscaping plan approved by the County. The landscaping plan shall include the following: (i) an informal mix of screening trees, loosely staggered, fifteen (15) feet on-center; (ii) the same species of screening trees shall be clustered in groups and alternate groups of screening trees shall be provided to create a naturalistic rural landscape; (iii) large and medium shade trees shall be interspersed among the screening trees; (iv) clusters of ornamental trees shall be provided in groups of 3's and 5's; and (v) tall shrubs shall be massed to help integrate the proposed plantings into a naturalistic rural landscape. The features described in (i) through (v) herein define a "naturalistic rural landscape." Approved plant species shall be obtained from the Albemarle County Recommended Plants List and the buffer design shall be subject to the review and approval of the Director of the Department of Community Development. The Owner shall maintain the buffer.

9. Extensions. Unless the dedication of public right-of-way and the construction of such streets or accessways, as applicable, are required in conjunction with the approval of a subdivision plat under Albemarle County Code § 14-409 and related sections, or their successors, the following streets or accessways, as applicable, shall be constructed and rights-of-way shall be reserved for dedication to public use as provided herein:

   A. Extensions to Pritchett Lane. The Owner shall design and construct as emergency access ways extensions to Pritchett Lane within the fifty (50) foot wide rights-of-way located between Lots H-9 and H-10 and Lots L-16 and L-17, respectively, as shown on the Application Plan, subject to the following:

      1. The emergency accessways shall be designed and graded to accommodate a minimum Virginia Department of Transportation standard for a public street as determined by the County Engineer, and constructed using pervious parking pavers or other materials sufficient to support fire and other emergency vehicles, but that support grass or other ground cover, in conjunction with the construction of the streets serving Lots H-7 and L-14, respectively.

      2. The fifty (50) foot wide rights-of-way shall be dedicated to public use upon request by the County, together with all necessary right-of-way for the fifty (50) foot wide rights-of-way to be geometrically connected to adjoining streets as approved by the County Engineer.

      3. If requested by the County within ten (10) years after the first certificate of occupancy is issued for a dwelling unit within the H or L sections shown on the Application Plan, and after the property on the east side of Pritchett Lane opposite the respective emergency access ways has been upzoned, the Owner shall convert and upgrade the emergency access ways to the applicable Virginia Department of Transportation public street standards for acceptance into the state highway system. Subject to weather delays or force majeure, the construction of

the upgrades shall be completed for such acceptance within one hundred eighty (180) days after the request by the County.

B. Extension to Tax Map 32, Parcel 23HI. In the event that any of the residential units within the Project adjacent to Tax Map 32, Parcel 23HI are developed under a site plan, the Owner shall design and construct extensions to Tax Map 32, Parcel 23HI by way of two streets within the fifty (50) foot wide rights-of-way located as shown on the Application Plan and identified by the notation "R.O.W. Reserved for Future Dedication," adjacent to the church property identified as Tax Map 32, Parcel 23HI that fronts on Pritchett Lane. The exact location of the rights-of-way shall be fixed by the applicable final site plan.

1. The streets shall be designed and constructed to applicable Virginia Department of Transportation public street standards. The streets shall be constructed in conjunction with the applicable final site plan, or at such other time authorized by the County Engineer under such terms and conditions the County Engineer determines to be appropriate, including the requirement that the Owner provide adequate surety or other guarantee that the streets will be constructed and maintained until accepted into the state highway system.

2. The streets shall be constructed as close to the property line between the Project and Tax Map 32, Parcel 23HI as determined by the County Engineer to be feasible without obtaining offsite construction easements. The rights-of-way shall be graded as close as possible to the Project property line.

3. To allow the completion of street improvements to and beyond the Project property line, temporary construction easements on the Owner's property and outside of the rights-of-way to be dedicated shall be reserved on the applicable final site plan. The site plan also shall include a note stating that no improvements shall be established within the reserved area. Within ninety (90) days after request by the County, the easements shall be granted. No improvements shall be located within the temporary construction easements until the construction of the street improvements onto Tax Map 32, Parcel 23HI has been completed so that the need for the temporary construction easements no longer exists.

4. Within ninety (90) days after request by the County after Tax Map 32, Parcel 23HI has been upzoned, the Owner shall dedicate to public use the streets and rights-of-way and offer the street for acceptance into the state highway system.

10. Overlot grading plan. For all subdivisions with lots less than 15,000 square feet in size and not otherwise requiring a site plan, a lot grading plan ("Overlot Grading Plan") must be approved by the County Engineer prior to the issuance of a building permit for a new residence on any such lot(s). The Overlot Grading Plan must satisfactorily demonstrate compliance with all Erosion and Sediment Control requirements for drainage conveyed across such lot(s). An "Agreement in Lieu of a Plan" will be allowed for building permits, provided the general drainage patterns and grading matches that shown on the Overlot Grading Plan. The Overlot Grading Plan may be revised at any time by the subdivision developer or individual lot owners, provided all work can be accomplished within their

property lines or within available easements. All amendments shall be subject to the review and approval by the County Engineer.

A. The Overlot Grading Plan shall be drawn to scale not greater than one (1) inch equals fifty (50) feet, with all proposed grading shown at contour intervals not greater than two (2) feet interpolated and shall demonstrate to the satisfaction of the County Engineer that:

   1. All concentrated runoff is conveyed across lots using vegetated swales or underground drainage structures in a manner that does not result in flooding of buildings or erosion as a result of the grading. For the purposes of this requirement, flows from roof downspouts will be considered concentrated flows if not adequately dispersed before reaching the property line.

   2. Overland relief is assured in the event that drainage structures do not function. Overland relief will be considered satisfied if buildings are designed to have finished floors at least one (1) foot above low points for any drainage area which includes the house. With dams and similar impoundments, this should be measured from the top of the dam.

B. The County Engineer may allow other drainage structures (e.g., riprap ditches) where it has been determined this change will not significantly impact usable yards (e.g., cobblestone swale next to a driveway), where slopes are too steep for vegetated swales (e.g., steeper than 33% grades), or where the change would better mitigate impacts on adjoining properties (e.g., matches offsite drainage structure).

C. Public drainage across lots shall be in storm sewers except open drainage ways may be allowed if the plat restricts construction of a building within fifty (50) feet of a proposed open drainageway. If a storm sewer is used across lots, easement widths must be sufficient to allow excavation with 1:1 side slopes on the trench, sufficient room on one side of the trench to stockpile excavated materials, sufficient room on the opposite side of the trench to allow for movement of materials, and adequate room for a backhoe boom to swing. Fences, walls, driveways, and other uses are not allowed within the easements, except where a "hold harmless" clause is included in the easement agreement.

D. No surface drainage may flow across more than three (3) lots or one-half (1/2) acre, whichever is greater, before being collected in a storm sewer or directed to a drainage way outside of the lots.

E. Retaining walls higher than four (4) feet (measured from the top of the face to the ground on the downhill side) shall be designed by a professional engineer to assure long-term stability. Retaining walls building using a VDOT standard or a pre-engineered product that includes certification are not required to provide a separate professional engineer's certification provided the building contractor provides an affidavit that the wall was constructed consistent with the standard. Retaining walls higher than four (4) feet in useable yards or places where the public might walk must include a railing similar in design to what is required for elevated decks. In circumstances where it is questionable whether a railing is required, the County

Engineer will make the determination. The builder must provide evidence of the ability to maintain any retaining wall which could not be maintained without the use of adjoining property.

F. Except for the main entrance to the dwelling, which shall be governed by Condition 10 (G), the Plan shall demonstrate that an area at least five (5) feet in width, or to the lot line if the distance is less than five (5) feet, from any possible doorways to dwellings as shown on the Plan or from the edges of any grade level patios as shown on the Plan that will not be served by a stairway, has grades no steeper than ten percent (10%) perpendicular to the exterior wall.

G. In lieu of the foregoing provisions, the grading plan for the residential units located in the southeastern portion of the Project as shown on the Application Plan shall be included as part of the site development plan application for the appurtenant commercial area as shown on the Application Plan.

H. Any requirement of this condition may be waived by the County Engineer by submitting a waiver request with the preliminary plat. If such a request is made, it shall include: (i) a justification for the request contained in a certified engineer's report; (ii) a vicinity map showing a larger street network at a scale no smaller than one (1) inch equals six hundred (600) feet; (iii) a conceptual plan at a scale no smaller than one (1) inch equals two hundred (200) feet showing surveyed boundaries of the property; (iv) topography of the property at five (5) foot intervals for the property being subdivided and on abutting lands to a distance of five hundred (500) feet from the boundary line or a lesser distance determined to be sufficient by the agent; (v) the locations of streams, stream buffers, steep slopes, floodplains, known wetlands; and (vi) the proposed layout of streets and lots, unit types, uses, and location of parking, as applicable. In reviewing a waiver request, the County Engineer shall consider whether the alternative proposed by the Owner satisfies the purpose of the requirement to be waived to at least an equivalent degree. In approving a waiver, the County Engineer shall find that requiring compliance with the requirement of this condition would not forward the purposes of the County's Subdivision and Water Protection Ordinances or otherwise serve the public interest; and granting the waiver would not be detrimental to the public health, safety or welfare, to the orderly development of the Project, and to the land adjacent thereto.

I. The Owner may request that the Plan be amended at any time. All amendments shall be subject to the review and approval by the County Engineer.

11. Sanitary sewers. All residential uses shall be served by gravity sanitary sewers; however, basements may be served by grinder pumps.

In addition, the Board approved the following WAIVERS:

1. Section 21.7 minimum yard requirement waiver to allow for alternative setbacks in accordance with the application plan; and
2. Section 4.2 of the Zoning Ordinance related to critical slopes, as shown on the application plan.

Please be advised that although the Albemarle County Board of Supervisors took action on the project noted above, no uses on the property as approved above may lawfully begin until all applicable approvals have been received and conditions have been met. This includes:

- **compliance with applicable PROFFERS;**
- **compliance with conditions of the SPECIAL USE PERMIT;**
- **approval of and compliance with SITE PLAN(S) AND/OR SUBDIVISION PLAT(S); and**
- **approval of a ZONING COMPLIANCE CLEARANCE.**

In the event that the use, structure or activity for which this special use permit is issued is not commenced within twenty-four (24) months from the date of Board approval, it shall be deemed abandoned and the permit terminated. The term "commenced" means "construction of any structure necessary to the use of the permit."

If you have questions or comments regarding the above-noted action, please do not hesitate to contact Sherri Proctor at 296-5832.

Sincerely,

V. Wayne Cilimberg
Director of Planning

VWC/aer

Cc: Violet Hills Association, etal
C/o Greater Eastern Management Co.
Post Office Box 5526, Charlottesville, VA 22905

Amelia McCulley
Tex Weaver
Chuck Proctor
Sherri Proctor
Steve Allshouse
Sarah Baldwin
Bruce Woodzell (Real Estate)

PROFFER STATEMENT
NORTH POINTE CHARLOTTESVILLE, LLC
REZONING APPLICATION: #ZMA-2000-009, SP -2002-72

July 20, 2006

With respect to the property described in rezoning application #ZMA-2000-09 and SP-2002-72 (the "ZMA"), CWH Properties Limited Partnership is the fee simple owner and North Pointe Charlottesville, LLC is the contract purchaser of Tax Map 32, Parcels 20, 20A, 20A1, 20A2, 20A3 and 29I (the "North Pointe Property"), Violet Hill Associates, L.L.C. is the fee simple owner of Tax Map 32, Parcels 23, 23A, 23B, 23C, 23D, 23E, 23F, 23G, 23H and 23J (the "Violet Hill Property"), Virginia Land Trust is the fee simple owner of Tax Map 32, Parcel 22K (the "Virginia Land Trust Property") and the Edward R. Jackson Trust is the fee simple owner of Tax Map 32, Parcel 22H (the "Jackson Trust Property"). The respective parties are collectively referred to herein as the "Owner", which term shall include any successors in interest. The North Pointe Property, the Violet Hill Property, the Virginia Land Trust Property and the Jackson Trust Property are referred to collectively as the "Property".

Pursuant to Section 33.3 of the Albemarle County Zoning Ordinance, Owner hereby voluntary proffers the conditions listed in this Proffer Statement, which shall be applied to the North Pointe Property if the ZMA is approved by Albemarle County. These conditions are proffered as part of the ZMA and it is agreed that: (1) the ZMA itself gives rise to the need for the conditions, and (2) such conditions have a reasonable relation to the rezoning requested.

This Proffer Statement shall relate to the multi-page application plan entitled "North Pointe Community", prepared by Keeney & Co., Architects, as revised through June 13, 2006 and attached hereto as Exhibit A (the "Application Plan"), and the Albemarle County Code in effect as of the date of this Proffer Statement (the "County Code"). The North Pointe Community shall be referred to as the "Project".

I. THIS SECTION INTENTIONALLY DELETED

II. ENTRANCE CORRIDOR

2.1 **Creation of a 50-Foot Buffer along the Entrance Corridor**. Within six (6) months after the acceptance by the Virginia Department of Transportation ("VDOT") of the Road Improvements as defined in Section 5.3 that are along the northbound lanes of U.S. Route 29, Owner shall plant and thereafter maintain at all times a landscaped buffer, including hedgerows, along the Entrance Corridor frontage parcels owned by Owner. The buffer will consist of a minimum 50-foot wide continuous visual landscape area that shall be subject to Albemarle County Architectural Review Board ("ARB") review and approval (the "Buffer"). In the event VDOT at any time in the future reduces any portion of the Buffer located on VDOT property, the Owner shall compensate for such reduction by extending the Buffer on Owner's property in order to maintain a minimum 40-foot Buffer, even if such compensation shall require the removal of parking adjacent to such Buffer.

2.2 **Appearance of Storm Water Management ("SWM") Facilities.** The SWM facilities visible from the Entrance Corridor identified on the Application Plan (stormwater management facilities 1, 2, and 10) shall be shown on a plan and be subject to ARB review and approval. SWM 1 shall be designed such that its shape, placement, and land form (grading) transition between the adjacent conservation area and the adjacent hard edge of the parking lot and buildings. The plan for SWM 1 shall be submitted to the ARB with the first ARB submission for Building 14 or 19 identified on Sheet B to the Application Plan ("Sheet B"), or any such building that is proposed to be located where Building 14 is located on Sheet B pursuant to the terms of Section 3.2. SWM 2 shall have a more structured appearance than SWM 10 (see below) and shall be designed such that its shape, placement, and land form (grading) transition between the adjacent conservation area and the adjacent hard edge of the parking lot and buildings. The plan for SWM 2 shall be submitted to the ARB with the first ARB submission for any of Buildings 26 through 31. SWM 10 shall be designed such that its shape, placement, and land form (grading) are integral with the adjacent conservation area. The plan for SWM 10 shall be submitted to the ARB at the time road plans are submitted to the County and VDOT for Northwest Passage.

III. DENSITIES

3.1 **Total Buildout.** The total number of dwelling units within the Project shall not exceed eight hundred ninety-three (893). Subject to Section 3.2, the building footprints and gross floor areas of commercial, office, and other uses, and the building footprints of hotels shall not exceed those set forth in the Land Use Breakdown Table on Sheet A to the Application Plan ("Sheet A").

3.2 **Limited Adjustments to the Elements of the Application Plan**. The gross floor area of the buildings used for commercial, office, other uses, and hotels shown on Sheet A may be adjusted within a range of up to ten percent (10%), provided that the maximum gross floor area for each category of uses shown on Sheet A is not exceeded. The footprints of Buildings 6, 14 and 36 as shown on Sheet A can be interchanged. Notwithstanding the terms of this Section 3.2 to the contrary, Building 14 shall not initially exceed 88,500 square feet, provided, however, that after two years following the issuance of the certificate of occupancy for Building 14, Building 14 may be adjusted within a range of up to ten percent (10%), and if Building 14 is located in the location shown on Sheet B, any such expansion shall be located to the east so that the additional space is located along North Pointe Boulevard. Notwithstanding the terms of this Section 3.2 to the contrary, but subject to the provisions of Section 8.1, the County may authorize Building 21 as shown on Sheet A to be adjusted by more than ten percent (10%).

IV. STORMWATER MANAGEMENT AND STREAM BED CONSERVATION

4.1 **Flood Plain**. The area of the 100-year flood plain within the Project shall remain undisturbed except for road crossings, public utility facilities and their crossings, and pedestrian and biking trails, and only to the extent such exceptions are permitted by County ordinances and regulations. Upon the request of the County, Owner shall provide a survey and prepare the necessary documentation and dedicate the land within such flood plain to the County.

4.2 **Stormwater Management Plan**. The stormwater/best management practices ("BMP") plan for the Project shall be prepared, and all stormwater management facilities for the Project shall be designed and constructed, to accommodate all current stormwater discharge from Tax Map Parcel 032A0-02-00-00400 (Northwoods Mobile Home Park Development) and from the existing developments on the northeast and northwest corners of Proffit Road and U.S. Route 29, specifically the following parcels shown on the current Albemarle County tax maps: tax map 32, parcels 38, 38A, 39, and 39A; tax map 32A, parcels 2-1, 2-1A, 2-1A1, 2-1B, 2-1C and 2-1D. The stormwater management facilities shall mitigate the stormwater quality and quantity impacts, for the stormwater generated both within the Project and for such existing offsite conditions as described herein, as though the entire preexisting condition of the drainage area is an undeveloped wooded site and is being developed to the existing off-site conditions and the proposed on-site conditions. In addition, biofilters shall comprise a minimum of thirty-three and one-third percent (33 1/3%) of the total required parking lot landscaped areas within the "Commercial Area" of the Project, as such Commercial Area is delineated on Sheet G of the Application Plan ("Sheet G").

4.3 **Erosion and Sediment Control**.

(a) The Owner shall, to the "maximum extent practicable", provide such additional appropriate erosion and sediment control measures that exceed State and Local minimum standards. If there is a disagreement regarding whether the standard of "maximum extent practicable" is satisfied, the Virginia Department of Conservation and Recreation will be provided an opportunity to review and advise on such question.

(b) Post-Construction Stormwater Management: The Owner shall, to the maximum extent practicable, provide post-construction stormwater BMPs that are designed to achieve an average annual sediment removal rate of 80% as published by the Center for Watershed Protection in Article 64 of The Practice of Watershed Protection (2000 edition). These will include, but are not limited to, bioretention, bioretention filters and wet retention basins.

4.4 **Stream Buffer and Restoration**. Upon the commencement of the applicable comment period, the Owner shall notify the County and provide the County with a copy of any application(s) to the U.S. Army Corps of Engineers and/or DEQ for any stream disturbance. In addition, if necessary, after first looking on-site for mitigation opportunities available to satisfy the permitting process, the Owner shall contact the County for a list of off-site opportunities within Albemarle County for such mitigation, and shall look for such mitigation opportunities off-site.

V. TRANSPORTATION

5.1 **Internal Street Construction Standards**. Public streets, which in any event shall include at least Leake Road, North Pointe Boulevard, Northside Drive East and Northwest Passage, shall be (i) constructed in accord with the illustrative urban design cross sections shown on Sheet D-1 to the Application Plan ("Sheet D-1") and also in accordance with VDOT design standards pursuant to detailed plans agreed to between Owner and VDOT, and (ii) dedicated for

public use and offered for acceptance into the state highway system. Trees (with a maximum spacing of fifty (50) feet), landscaping and sidewalks as shown on Sheet D-1 shall be installed and maintained by the Owner in accordance with County or VDOT standards, unless VDOT or the County agrees in writing to assume this responsibility.

5.2 **Timing of Completion for Internal Streets**. Before issuance of certificates of occupancy, Owner shall complete that segment of an internal street as shown on Sheet D-1 within the Project which serves the building or residence for which a certificate of occupancy is sought with at least the stone base and all but the final layer of plant-mix asphalt. The final layer of plant-mix asphalt shall be installed within one (1) year following the issuance of the first certificate of occupancy for a building or residence served by the affected street segment.

5.3 **Road Improvements.** Owner shall design and construct all of the road improvements referenced in Sections 5.3.1(a), 5.3.1(b) and 5.3.1(c) below, which are also shown on Sheet D-1 to the Application Plan and on Sheet E to the Application Plan entitled "External Road Improvement Plan" ("Sheet E") (collectively, the "Road Improvements"), unless such Road Improvements are first constructed or bonded by others. The various phases of the Road Improvements are also shown for illustrative purposes on a color-coded copy of Sheet B that is attached hereto as Exhibit B. Owner shall dedicate to public use any required right-of-way that it now or hereafter owns in fee simple. For purposes of this Section 5.3, the use of the term "road" as it applies to internal streets shall also have the same meaning as the word "street" in the Albemarle County Subdivision Ordinance (Chapter 14 of the Albemarle County Code) where applicable.

5.3.1 **Design and Phasing.** All Road Improvements shall be designed and phased as follows:

Design. The Road Improvements shall be shown on detailed road plans satisfying VDOT design standards which shall be submitted by the Owner for review and, when satisfactory, approved by VDOT and the County (except for the Road Improvements to U.S. Route 29, which shall be subject only to VDOT approval) (hereinafter, the "Approved Road Plans"). The Approved Road Plans shall show the width and length (except as specified in Sections 5.3.1(a)(1)(ii) and (v) and Section 5.3.1(b)(1)(i)), location, type of section, and geometrics of all lane improvements as required by VDOT design standards. All of the Road Improvements shall be constructed in compliance with the Approved Road Plans. The Road Improvements to U.S. Route 29 shall be based on the then-current VDOT design speed and cross-slope requirements. Notwithstanding the provisions of this paragraph to the contrary, in the event that the internal residential street designs as shown on Sheet D-1 are not accepted by VDOT, the Owner shall submit detailed road construction plans for such streets to the County for review and, when satisfactory, approval, subject also to the County's approval of private streets under the Subdivision Ordinance (Ch. 14 of the Albemarle County Code).

Phasing. The Road Improvements shall be constructed and completed in three phases as set forth below:

(a) **Phase I Road Improvements**. Prior to approval of the first commercial subdivision plat or site plan within the Project, Owner shall obtain all associated permits and post all associated bonds required for the construction of the following (collectively, the "Phase I Road Improvements"):

(1) Southernmost Entrance on U.S. Route 29:

(i) U.S. Route 29 Southbound – correction of the vertical curvature in the roadway just north of the entrance.

(ii) U.S. Route 29 Southbound construction of a continuous 12 foot wide through lane (with shoulders or guard rail as required by VDOT) starting at a point that is 1000 feet north of the southernmost entrance and extending south to Airport Road.

(iii) U.S. Route 29 Southbound – construction of dual left turn lanes with taper at the crossover.

(iv) U.S. Route 29 Southbound – construction of right turn lane with taper to serve northernmost entrance to SR 1515.

(v) U.S. Route 29 Northbound – construction of a continuous 12 foot wide through lane (with shoulders or guard rail as may be required by VDOT) extending from Proffit (Airport) Road (Route 649) to the Northwest Passage entrance.

(vi) U.S. Route 29 Northbound – construction of a right hand turn lane at the Southernmost entrance, the geometrics of which will be subject to VDOT approval.

(vii) U.S. Route 29 Northbound – construction of left turn lane with taper into SR 1515.

(viii) SR 1515 Eastbound – construction and/or restriping to provide left turn lane with taper.

(ix) Installation of a traffic signal with 8 phase timing, video detection and associated intersection improvements at the intersection with U.S. Route 29.

(x) Close existing crossover at U.S. Route 29 and Southernmost Entrance to SR 1515.

(xi) Proposed Entrance Road between North Pointe Boulevard and U.S. Route 29.

(2) North Pointe Boulevard, Leake Road and Proffit Road:

(i) Leake Road and North Pointe Boulevard, in accordance with the design cross-sections shown on Sheet D-1, from Proffit Road to either Northside Drive East or, if Northside Drive East has not yet been constructed to the roundabout at North Pointe Boulevard, North Pointe Boulevard shall be extended to Northwest Passage. The Owner shall provide a fifty (50) foot public right-of-way along Leake Road and shall construct a two-lane public street to be accepted by VDOT and as much of the other improvements shown on the cross-sections as possible within the available right-of-way as reasonably determined by the County Engineer.

(ii) The roundabout, or such other improvements as may be approved by VDOT and the County, at the intersection of Leake Road and Proffit Road shown on Sheet B and an additional westbound right turn lane on Proffit Road from Leake Road to U.S. Route 29 as shown on Sheet E. In addition, for property acquisition that is required for the off-site public right-of-way for construction of the improvements required by this Section 5.3.1(a)(2)(ii), the Owner shall make a cash contribution or provide a letter of credit in a form approved by the County Attorney for such purpose in the amount as deemed necessary for the property acquisition by the County Attorney, provided that such amount shall not exceed one hundred fifty percent (150%) of the County's fair market value appraisal prepared for acquisition and condemnation purposes. The cash contribution or letter of credit described in this Section 5.3.1(a)(2)(ii) shall be used to pay for the total cost of the right of way acquisition. The total cost of the right of way acquisition for the off-site property necessary to construct the improvements required by this Section 5.3.1(a)(2)(ii) shall include the normal costs associated with acquiring land, buildings, structures, easements and other authorized interests by condemnation or by purchase including, but not limited to, land acquisition, engineering, surveying, and reasonable attorneys fees. The cash contribution or the letter of credit shall be provided by the Owner within thirty (30) days upon request by the County. If the property is acquired by purchase, the contribution for the purchase price shall not exceed one hundred fifty percent (150%) of the County's fair market value appraisal prepared for condemnation purposes without the consent of the Owner. If the cost of the right of way acquisition exceeds the amount previously contributed, then the Owner shall reimburse the County all such excess costs within thirty (30) days upon request by the County. The County shall refund to the Owner all excess contributions upon completion of the land acquisition.

(iii) Intentionally Omitted

(iv) An additional through lane eastbound on Proffit Road from U.S. Route 29 to the roundabout at the intersection of Leake Road and Proffit Road. In addition, for property acquisition that is required for the off-site public right-of-way for construction of the improvements required by this Section 5.3.1(a)(2)(iv), the Owner shall make a cash contribution or provide a letter of credit in a form approved by the County Attorney for such purpose in the amount as deemed necessary for the property acquisition by the County Attorney, provided that such amount shall not exceed one hundred fifty percent (150%) of the County's fair market value appraisal prepared for acquisition and condemnation purposes. The cash contribution or letter of

credit described in this Section 5.3.1(a)(2)(iv) shall be used to pay for the total cost of the right of way acquisition. The total cost of the right of way acquisition for the off-site property necessary to construct the improvements required by this Section 5.3.1(a)(2)(iv) shall include the normal costs associated with acquiring land, buildings, structures, easements and other authorized interests by condemnation or by purchase including, but not limited to, land acquisition, engineering, surveying, and reasonable attorneys fees. The cash contribution or the letter of credit shall be provided by the Owner within thirty (30) days upon request by the County. If the property is acquired by purchase, the contribution for the purchase price shall not exceed one hundred fifty percent (150%) of the County's fair market value appraisal prepared for condemnation purposes without the consent of the Owner. If the cost of the right of way acquisition exceeds the amount previously contributed, then the Owner shall reimburse the County all such excess costs within thirty (30) days upon request by the County. The County shall refund to the Owner all excess contributions upon completion of the land acquisition.

Completion of the Phase I Road Improvements. Within fifteen (15) months after the issuance of the first building permit for a commercial building within the lands subject to the first commercial subdivision plat or site plan within the Project, or prior to the issuance of a certificate of occupancy for such building, whichever is earlier, all of the Phase I Road Improvements shall be accepted by VDOT for public use or bonded for VDOT's acceptance if such Road Improvements are a primary highway, or accepted by VDOT for public use or bonded to the County for VDOT's acceptance if such Road Improvements are a secondary highway.

(b) **Phase II Road Improvements**. Prior to approval of the first site plan that would authorize the aggregate commercial, office and hotel gross floor area as shown on Sheet A within the Project to exceed two hundred ninety thousand (290,000) square feet, Owner shall obtain all associated permits and post all associated bonds required for the construction of the following (collectively, the "Phase II Road Improvements"):

(1) Middle Entrance on U.S. Route 29 (Northside Drive East/SR 1570):

(i) U.S. Route 29 Southbound – construction of a continuous 12 foot wide through lane (with shoulders or guard rail as may be required by VDOT) starting at a point that is 1000 feet north of the Middle entrance and extending to the point where it connects with the portion of the lane constructed pursuant to Section 5.3.1(a)(1)(ii).

(ii) U.S. Route 29 Southbound - construction of dual left turn lanes with taper.

(iii) U.S. Route 29 Southbound – construction of a right turn lane with taper.

(iv) U.S. Route 29 Northbound – construction of a right hand turn lane at the Middle Entrance, the geometrics of which will be subject to VDOT approval.

(v) U.S. Route 29 Northbound – construction of left turn lane with taper.

(vi) SR 1570 Eastbound construction of or restriping of lanes to result in separate left, through and right turn movements.

(vii) Entrance road Westbound installation of a traffic signal with 8 phase timing, video detection and associated intersection improvements on U.S. Route 29.

~~(ix)~~(viii) Existing crossover at Cypress Drive – construction to close the crossover.

(ix) Frontage road from Cypress Drive to SR 1570 – construction of a public street to serve properties currently accessing U.S. Route 29 through Cypress Drive.

(2) Northside Drive East between U.S. Route 29 and North Pointe Boulevard as shown on Sheet D-1.

Completion of the Phase II Road Improvements. Within fifteen (15) months after the issuance of the first building permit for a building within the lands subject to the first subdivision plat or site plan that would authorize the aggregate commercial, office and hotel gross floor area as shown on Sheet A within the Project to exceed two hundred ninety thousand (290,000) square feet, or prior to the issuance of a certificate of occupancy for any building that causes such gross floor area to exceed two hundred ninety thousand (290,000) square feet, whichever is earlier, all of the Phase II Road Improvements shall be accepted by VDOT for public use or bonded for VDOT's acceptance if such Road Improvements are a primary highway, or accepted by VDOT for public use or bonded to the County for VDOT's acceptance if such Road Improvements are a secondary highway.

(c) **Phase III Road Improvements**. Prior to the earliest of: (i) the approval of the first subdivision plat or site plan that would authorize the aggregate number of dwelling units within the Project to exceed five hundred thirty-three (533); (ii) the approval of a subdivision plat or site plan for any development of either the Virginia Land Trust Property (Tax Map 32, Parcel 22K) or the Jackson Trust Property (Tax Map 32, Parcel 22H) or any portion thereof; or (iii) the five (5) year anniversary of the date of issuance of the first certificate of occupancy for a building or premises within the Project, Owner shall obtain all associated permits and post all associated bonds required for the construction of the following road improvements to the extent any such road improvements have not already been completed:

(1) Northernmost Entrance (opposite Lewis & Clark Drive) on U.S. Route 29:

(i) U.S. Route 29 Southbound – construction of left turn lane with taper.

(ii) Northwest Passage from U.S. Route 29 to North Pointe Boulevard.

(iii) U.S. Route 29 Northbound – construction of a right hand turn lane, the geometrics of which will be subject to VDOT approval.

(iv) If not already constructed, North Pointe Boulevard between Northside Drive East and Northwest Passage.

(v) If the traffic signal to be constructed by others is in place prior to Owner commencing work on this Northernmost Entrance, and such traffic signal only includes three legs, Owner shall add the fourth leg to the signal, which shall include additional mast arms, signal heads and ancillary equipment necessary to support Northwest Passage's use of the intersection, as determined by VDOT. If such traffic signal is not in place and the vehicular traffic generated by the Project causes the VDOT signal warrants to be met, and VDOT requires that a traffic signal be installed as a condition of the entrance permit, Owner shall install such traffic signal.

(2) Notwithstanding any other provision contained in this Proffer Statement, within one hundred eighty (180) days after written notice from the County that it intends to build an elementary school on the School Lot (as "School Lot" is defined in Section 9.1), the Owner shall submit road plans for the construction of Northwest Passage from North Pointe Boulevard to U.S. Route 29 to VDOT and to the County for review, and when satisfactory, approval. Furthermore, within twelve (12) months after issuance of the building permit for construction of the elementary school, and if not already completed, Owner will complete (i) Northwest Passage from North Pointe Boulevard to U.S. Route 29, (ii) the improvements set forth in Section 5.3.1(c)(1) above, and (iii) North Pointe Boulevard from Northside Drive East to Northwest Passage. To allow the development of the School Lot, the Owner shall grant all temporary easements as necessary to allow ingress and egress for vehicles and construction equipment, grading, the installation and maintenance of erosion and sediment control structures or measures, and any other associated construction easements, as such temporary easements are shown on the subdivision plat or site plan for the School Lot and mutually agreed to by the Owner and the developer of the School Lot.

Completion of the Phase III Road Improvements. Within twelve (12) months after the occurrence of the applicable event in Section 5.3.1(c) which required the Owner to obtain all associated permits and post all associated bonds required for the construction of the Phase III Road Improvements, all of the Phase III road improvements shall be accepted by VDOT for public use or bonded for VDOT's acceptance if such Road Improvements are a primary highway, or accepted by VDOT for public use or bonded to the County for VDOT's acceptance if such Road Improvements are a secondary highway.

5.3.2 Upon request by the County, Owner shall make a cash contribution to the County or VDOT for the cost of a cable or wireless radio system that will link one or more of the signals between Lewis and Clark Drive and Airport Road; provided, however, that the total cash contribution shall not exceed thirty-five thousand dollars ($35,000). Subject to matters of force

majeure, if the County does not request the funds, or does request the funds but the construction of the system does not begin by the later of December 31, 2010 or three (3) years after completion of all of the Road Improvements, said funds shall be refunded to the Owner.

5.3.3 Prior to the approval of plans for improvements at any U.S. Route 29 intersection, Owner shall provide VDOT traffic signal network timing plans that VDOT finds acceptably address the impacts of the proposed traffic signals for peak traffic periods.

5.3.4 **Regional Transportation Study; Cash Contribution**. Upon request by the County, Owner shall make a cash contribution of one hundred thousand dollars ($100,000) to the County for the purposes of funding a regional transportation study for the Route 29 corridor, which includes the South Fork and North Fork of the Rivanna River and the Hollymead Growth Area of which North Pointe is a part. The contribution shall be made within thirty (30) days after requested by the County anytime after the rezoning is approved. If the request is not made within one (1) year after the date of approval of the first final site plan for the first commercial building within the Project, this proffer shall become null and void. If such cash contribution is not expended for the stated purpose within three (3) years from the date the funds were contributed to the County, all unexpended funds shall be refunded to the Owner.

VI. OPEN SPACE AREAS AND GREENWAY

6.1 **Pedestrian Pathways**. All pedestrian pathways shall be classified as shown on the Pedestrian Pathway Key on Sheet G and, except for the pathways to be constructed by the County, shall be shown on the subdivision plat or site plan for the underlying or adjacent lands within the Project. The pathways shall be constructed by Owner as Class A or Class B trails as identified on Sheet G, and in accordance with the applicable design and construction standards in the County's Design Standards Manual. Such construction shall be in conjunction with the improvements for the subdivision plat or site plan, as the case may be, and bonded with the streets if the pathways are a subdivision improvement, or with a performance bond if the pathways are a site plan improvement. The pathway shown on Sheet G along Flat Branch north and south of Northside Drive East shall not continue through a culvert if a culvert is used for the stream crossing. The pathway intended for the culvert between Park E and Park F under North Pointe Boulevard shall conform to the applicable standards in VDOT's "Subdivision Street Guidance" and Owner shall maintain the pathway if it is not accepted by VDOT for maintenance.

6.2 **Lake**. Upon request by the County, Owner shall dedicate to the County the lake shown on the Application Plan for public use, provided that such lake will be available for use by Owner for stormwater management as described in Sheet C to the Application Plan entitled "Stormwater Management and Stream Conservation Plan" ("Sheet C").

VII. THIS SECTION INTENTIONALLY DELETED

VIII. PUBLIC INFRASTRUCTURE AND FACILITIES PROFFERS

8.1 **Branch Library.**

(a) Upon request by the County, Owner shall dedicate to the County the fee simple interest in the land shown on Sheet B as a library, consisting of a 15,000 square foot fully graded pad site, with utilities, to accommodate a 12,500 square foot building footprint, a five foot perimeter strip and up to a 25,000 square foot building, together with a nonexclusive easement to the adjacent common area for ingress, egress, construction staging and sufficient County Code required parking, stormwater detention and water quality facilities for the location of a freestanding Jefferson-Madison Regional Library and such other uses that are compatible with the proposed surrounding uses, as determined by the County (the "Library Lot"). Notwithstanding the terms of the prior sentence to the contrary, if the requirements for the library building require a larger building footprint, the County may authorize the library building footprint to be larger than as stated in the prior sentence, provided, however, that the size of the area shown as "Park H" on Sheet B ("Park H") and/or the size of the adjacent parking area immediately north of the Library Lot on Sheet B (the "Library Parking Lot") shall be adjusted accordingly to accommodate such larger building footprint. The Owner shall not be responsible for any utility tap fees, but Owner shall complete construction of the Library Parking Lot and other parking areas serving the Library Lot. The Owner shall permit the County to use the Library Parking Lot and/or, if not already constructed, Park H, for purposes of construction staging. Within twelve (12) months after written notice from the County that it intends to begin construction of the library, the Owner shall make the access roads and the area of the Library Parking Lot available with at least a four inch compacted stone base for use as access and construction staging. Such street access serving the Library Lot and the Library Parking Lot shall be completed and available for use no later than ten (10) months after issuance of the building permit for the library, provided, however, that asphalt pavement in areas used for construction staging by the County shall not be required to be installed until thirty (30) days (or such longer reasonable time as may be necessary due to weather conditions) after the County has removed its construction-related materials and equipment. Upon the request of the County, Park H shall also be dedicated to public use, but the Owner shall not be responsible for maintaining such park. Owner shall be responsible for maintenance of the Library Parking Lot and other parking spaces serving the Library Lot and the County shall have no obligation to be a member of any owner's association. The County's request for dedication of the land for the Library Lot and Park H shall be made within three (3) years following the latter to occur of (i) issuance of the first residential building permit within the Project, (ii) Owner's completion of the infrastructure (including but not limited to streets, water, sewer, electric, gas) required for the use of the Library Lot, or (iii) December 31, 2010. If a request for such dedication is not made within three (3) years following the later of these dates, this proffer will be null and void.

(b) **Green Roof**. In the event that the requirements for the library building require a larger building footprint, and the County elects to authorize the library building footprint to be larger than 12,500 square feet pursuant to section 8.1(a) above, and in the further event that the building is developed as a condominium and the County requests the Owner to assume ownership for a portion of the larger building, Owner shall accept such ownership at a reasonable price upon which the parties may mutually agree, and shall contribute to the County,

on a pro rata basis based on the proportional size of the portion of the library building owned by the Owner relative to the size of the library building as a whole, the cost of designing and constructing such building. These costs may include, if desired by the County, installation of a "green roof," and any additional expenses associated with structurally reinforcing the roof as necessary to support the green roof. Within ten (10) days after receipt of a request for payment by the County that is accompanied by documentation to support the progress payment amount as provided in the construction contract, the Owner shall submit such payments to the County. Alternatively, in the event the County elects to design the library building as a Leadership in Energy and Environmental Design ("LEED") building, the Owner shall contribute to the County, on a pro rata basis based on the proportional size of the portion of the library building owned by the Owner relative to the size of the library building as a whole, the additional costs of constructing the library building to obtain LEED certification for the building. Within ten (10) days after receipt of a request for payment by the County that is accompanied by documentation to support the progress payment amount as provided in the construction contract, the Owner shall submit such payments to the County. The design of the green roof, or the criteria utilized to obtain the LEED certification, as applicable, shall be in the County's discretion.

8.2 **Affordable Housing**. Subject to the terms and conditions of this Section 8.2, the Owner shall provide a minimum of forty (40) "for-sale" residential dwelling units as affordable dwelling units, a minimum of sixty-six (66) "for-rent" residential dwelling units as affordable dwelling units, and a minimum of four (4) Carriage House Units (as Carriage House Units are defined in Section 8.2(d)). The forty (40) "for-sale" residential dwelling units shall be comprised of the following types of dwelling units: twelve (12) from multi-family; twelve (12) from "other" (consisting of townhouses, duplexes, attached housing, condominiums in the commercial areas and other unidentified housing types); and sixteen (16) from single family detached, each at the sale prices and under the terms and conditions set forth in this Section 8.2. The Owner shall convey the responsibility of constructing the affordable units to the subsequent owners of lots within the Property.

(a) Multi-Family and "Other" For-Sale Affordable Units. For multi-family and "other" for-sale affordable dwelling units within the Property, such affordable units shall be affordable to households with incomes less than eighty percent (80%) of the area median family income (the "Affordable Unit Qualifying Income"), such that the housing costs consisting of principal, interest, real estate taxes and homeowners insurance (PITI) do not exceed thirty percent (30%) of the Affordable Unit Qualifying Income, provided, however, that in no event shall the selling price of such affordable units be less than the greater of One Hundred Ninety Thousand Four Hundred Dollars ($190,400) or sixty-five percent (65%) of the applicable Virginia Housing Development Authority ("VHDA") maximum mortgage for first-time home buyers at the beginning of the 90-day identification and qualification period referenced in Section 8.2(f).

(b) Single Family Detached For-Sale Affordable Units ("Moderately-Priced Units"). For single family detached for-sale affordable units within the Property ("Moderately-Priced Units"), such Moderately-Priced Units shall be affordable to households with incomes less than one hundred twenty percent (120%) of the area median family income (the "Moderately-Priced Unit Qualifying Income"), such that the housing costs consisting of PITI do

not exceed thirty percent (30%) of the Moderately-Priced Unit Qualifying Income, provided, however, that in no event shall the selling price of such Moderately-Priced Units be required to be less than the greater of Two Hundred Thirty Eight Thousand Dollars ($238,000) or eighty percent (80%) of the applicable VHDA maximum mortgage for first-time home buyers at the beginning of the 90-day identification and qualification period referenced in Section 8.2(f).

(c) For-Rent Affordable Units. For a period of five (5) years following the date the certificate of occupancy is issued by the County for each for-rent affordable unit, or until the units are sold as low or moderate cost units qualifying as such under either the Virginia Housing Development Authority, Farmers Home Administration, or Housing and Urban Development, Section 8, whichever comes first (the "Affordable Term"), such units shall be rented to households with incomes less than the Affordable Unit Qualifying Income. No for-rent affordable unit may be counted more than once towards the number of for-rent affordable dwelling units required by this Section 8.2.

(i) Conveyance of Interest. All deeds conveying any interest in the for-rent affordable units during the Affordable Term shall contain language reciting that such unit is subject to the terms of this Section 8.2(c). In addition, all contracts pertaining to a conveyance of any for-rent affordable unit, or any part thereof, during the Affordable Term, shall contain a complete and full disclosure of the restrictions and controls established by this Section 8.2(c). Prior to the conveyance of any interest in any for-rent affordable unit during the Affordable Term, the then-current owner shall notify the County in writing of the conveyance and provide the name, address and telephone number of the potential grantee, and state that the requirements of this Section 8.2(c)(i) have been satisfied.

(ii). Annual Reporting. During the Affordable Term and within ninety (90) days following the end of each calendar year, the then-current owner shall provide to the Albemarle County Housing Office a certified annual report of all for-rent affordable units for the immediately preceding year in a form and substance reasonably acceptable to the County Housing Office. Subject to all federal, state and local housing laws, and upon reasonable notice during the Affordable Term, the then-current Owner shall make available to the County at the then-current Owner's premises, if requested, any reports, copies of rental or lease agreements, or other data pertaining to rental rates as the County may reasonably require.

(d) Carriage House Units. Carriage House Units shall meet the requirements for a single family dwelling as defined in the Virginia Uniform Statewide Building Code, shall be on the same parcel as the primary dwelling unit to which it is accessory, and shall not be subdivided from the primary residence ("Carriage House Units"). The subdivision restriction shall be included on the plat creating such parcels and be incorporated into each deed conveying title to such parcels.

(e) Each subdivision plat and site plan for land within the Property which includes affordable units (which, for this Section 8.2(e) shall include Moderately-Priced Units) shall designate the lots or units, as applicable, that will, subject to the terms and conditions of this proffer, incorporate affordable units as described herein. The first such subdivision plat or site plan shall include a minimum of three (3) such affordable units. Thereafter, and until the

total number of affordable dwelling units proffered hereunder shall have been fulfilled, the Owner shall provide a minimum of three (3) such affordable dwelling units per year. Each final subdivision plat and final site plan also shall include a running total of the number and percentage of affordable units previously provided and proposed to be provided by the subdivision plat or site plan. For purposes of this Section 8.2(e), such units shall be deemed to have been provided when the subsequent owner/builder provides written notice to the County Housing Office or its designee that the unit(s) will be available for sale, as required by Section 8.2(f) below. In the event that the Owner provides more than three (3) affordable dwelling units in a single year, the Owner may "carry over" or "bank" credits for such affordable units, such that the additional affordable units which exceed the minimum annual requirement may be allocated toward the minimum number of affordable units required to be provided for any future year. The maximum number of affordable units that may be carried over or banked shall not exceed twelve (12) per year. Notwithstanding the terms of this Section 8.2(e) to the contrary, upon the written request of the Owner, the County may authorize an alternative process and/or schedule for the provision and/or delivery of such affordable units upon a determination that the request is in general accord with the purpose and intent of Section 8.2 and/or otherwise furthers the goals of providing affordable housing in the County.

(f) All purchasers of the for-sale affordable units shall be approved by the Albemarle County Housing Office or its designee. The subsequent owner/builder shall provide the County or its designee a period of ninety (90) days to identify and prequalify an eligible purchaser for the affordable unit. The ninety (90)-day period shall commence upon written notice from the then-current owner/builder that the unit(s) will be available for sale. If the County or its designee does not provide a qualified purchaser who executes a contract of purchase during this ninety (90)-day period, the then-current owner/builder shall have the right to sell the unit(s) without any restriction on sales price or income of the purchaser(s), provided, however, that any unit(s) sold without such restriction shall nevertheless be counted toward the number of affordable units required to be provided pursuant to this terms of this Section 8.2. The requirements of this Section 8.2 shall apply only to the first sale of each of the affordable units.

(g) The County shall have the right, from time to time, on reasonable notice and subject to all applicable privacy laws, to inspect the records of Owner or any successors in interest for the purposes of assuring compliance with this proffer.

(h) Cash Proffer. Within sixty (60) days after the Board of Supervisors approval of ZMA 2000-009, the Owner shall cause to be contributed three hundred thousand dollars ($300,000) cash to the County of Albemarle for the Albemarle Housing Initiative Fund or such other similar fund as may be established or authorized by the County. The contribution shall be to fund affordable home ownership loan programs within the Project and other areas of Albemarle County, including those provided by non-profit housing agencies such as the Piedmont Housing Alliance, Habitat for Humanity, and the Albemarle Housing Improvement Program. If such cash contribution is not expended for the stated purpose within five (5) years from the date the funds were contributed to the County, all unexpended funds shall be refunded to the Owner.

IX. EDUCATIONAL AND OTHER PUBLIC FACILITIES

9.1 **Elementary School Site**. Within two hundred seventy (270) days following request by the County, Owner shall dedicate to the County the land shown on the Application Plan as "Elementary School 12.85 Acres Schematic Layout", consisting of approximately 12.85 acres (or a smaller portion of such land in the County's sole discretion) (the "School Lot"). Prior to dedication, the School Lot shall be graded and compacted by Owner to a minimum of 95% compaction as measured by a standard Proctor test with suitable material for building construction as certified by a professional engineer or as otherwise approved by the County Engineer to establish a fully graded pad site to accommodate an elementary school. The recreational field improvements shown on the Application Plan shall be fine graded and have top soil and soil amendments added, and the mains for an underground irrigation system serving the recreational fields shall be installed. Such improvements shall be reasonably equivalent to those existing at the recreational fields at Baker-Butler Elementary School, exclusive of any above ground improvements. The pedestrian pathways as shown on the perimeter of the School Lot on the Application Plan shall be reflected on the subdivision plat prepared by Owner creating the School Lot and the pathways shall be installed when the site is graded for the recreation fields. The Owner shall provide all utilities to the School Lot. The dedication shall include easements across Owner's land for access to and use of Storm Water Basins 5 and 10 shown on the Application Plan, together with all temporary construction easements to allow Stormwater Basin 10 to be redesigned and enlarged, if necessary, to accommodate the School Lot stormwater. The School Lot shall be used as an elementary school site, but if the County determines that the School Lot will not be used as an elementary school site, it shall be used by the County for park and recreational purposes serving both the North Pointe community and the region. If the County does not request by December 31, 2010 that the School Lot be dedicated, the Owner shall be under no further obligation to dedicate the School Lot for the purpose described herein, but shall, by January 30, 2011, contribute five hundred thousand dollars ($500,000) cash to the County to be used by the County for projects identified in the County's CIP reasonably related to the needs of the North Pointe community, and in such event the School Lot may be used for other residential purposes as approved by the County after request by Owner for an amendment to the Application Plan. After dedication and before the County uses the School Lot for a school or for park and recreational purposes, and if requested by the County, Owner shall maintain the School Lot until requested by the County to no longer do so, subject to the Owner's right to exclusive use of the School Lot for park and recreational purposes. Such park and recreational purposes shall be only those uses shown on an approved final site plan or subdivision plat for the area that includes the School Lot. Upon being requested by the County, Owner shall cease all use and maintenance of the School Lot and remove all improvements established by Owner that the County requests be removed. The County shall not be obligated to pay Owner for any improvements established by Owner that the County retains. The deed of dedication for the School Lot shall provide that if the County accepts title to the School Lot and then does not construct either a park or a school within twenty (20) years following the date the Board of Supervisors approves ZMA 2000-009, then upon Owner's request title to the School Lot shall be transferred to Owner at no expense to Owner.

9.2 **Bus Stop Turnoffs, Bus Stop Improvements, and Bus Service.**

(a) Owner shall construct ten (10) public bus stop turnoffs as shown on the Application Plan, or otherwise two (2) in the southernmost residential area, four (4) in the commercial areas and four (4) in the other residential areas, each in a location mutually acceptable to Owner and the County. The bus stop turnoffs shall be approved with street construction plans for the Project and bonded and constructed with the streets.

(b) Upon the request by the County, Owner shall contribute the total sum of twenty five thousand dollars ($25,000) cash towards the design and construction of the above ground bus stop improvements such as benches and shelters meeting standards established by the County at each bus stop. If the County does not request the funds, or requests the funds but does not construct the bus stop improvements by the later of December 31, 2015 or three (3) years after completion of the road network that includes the bus stop turnoffs, then subject to matters of force majeure, the unexpended funds shall, in the discretion of the County, either be returned to Owner or applied to a project identified in the County's capital improvements program within or adjacent to the Project that benefits the Project.

(c) Within thirty (30) days after the introduction of public transportation to the Project, Owner shall contribute twenty-five thousand dollars ($25,000) cash to the County to be used for operating expenses related to such service, and shall thereafter annually contribute Twenty-Five Thousand Dollars ($25,000) cash to the County to be used for operating expenses related to such service for a period of nine (9) additional years, such that the total funds contributed to the County pursuant to this Section 9.2(c) shall not exceed Two Hundred Fifty Thousand Dollars ($250,000). If the introduction of public transportation to the Project does not commence by the later of ten (10) years after the Board of Supervisors approves ZMA 2000-009, or seven (7) years after the date of the issuance of the first certificate of occupancy for the first commercial building within the Project, this Section 9.2(c) shall become null and void.

X. ACCESS TO ADJACENT PROPERTIES

10.1 **Dedication of Right-of-Way-Extension to Parcel 22E.** Unless the dedication of public right-of-way and the construction of such street are required in conjunction with the approval of a subdivision plat under Albemarle County Code § 14-409 and related sections, or their successors:

Owner shall reserve the fifty (50) foot wide right-of-way located within the area shown on Sheet B and identified as a "50' R.O.W. Reserved for Future Dedication" connecting a right-of-way from the proposed middle entrance road into North Pointe to the southern property line of Tax Map 32, Parcel 22E ("TMP 32-22E"). Prior to the issuance of a building permit for Building 32 as shown on the Application Plan, Owner shall record in the Clerk's Office of the Circuit Court of Albemarle County, a current, irrevocable deed of dedication dedicating to public use for road purposes, the area labeled "50' R.O.W. Reserved for Future Dedication." Owner acknowledges that if it is not part of a subdivision plat approved by the County, such offer of dedication must be first reviewed and approved by the Board of Supervisors and accepted by the Board. Such deed of dedication shall include the following conditions: (i) that TMP 32-22E

shall have been upzoned; and (ii) that prior to its use for road purposes, there shall have been constructed on the land so dedicated a road approved by the County and accepted by VDOT for public use or bonded for VDOT's acceptance. At the time of the construction of the access road serving Building 32, the Owner shall construct the intersection curb radii or the road serving TMP 32-22E and extend construction of such road for at least a minimum of one hundred (100) feet from Northside Drive East. The Owner shall also place at the end of such extended road, a sign, approved by the County, advising and notifying the public that such right-of-way is the location of a future road extension. Owner shall grant temporary construction easements as determined necessary by the County Engineer to allow for the road to be extended to TMP 32-22E, which construction easements shall be on Owner's property and outside of the dedicated right-of-way, and shall be established by the applicable site plan. No improvements shall be located within the temporary construction easements until construction of such road has been completed.

10.2 **Access to Tax Map 32A, Section 2, Parcel 4 (current Northwoods Mobile Home Park Property).** Unless the dedication of public right-of-way and the construction of such street are required in conjunction with the approval of a subdivision plat under Albemarle County Code § 14-409 and related sections, or their successors:

Owner shall reserve an area in the location labeled "50' R.O.W. Reserved for Future Dedication" at the eastern end of the main commercial access road from U.S. Route 29 on Sheet B for access to Tax Map 32A, Section 2, Parcel 4 ("TMP 32A-2-4"). Prior to the issuance of a building permit for Building 6 or Buildings V1 through V6, each as shown on the Application Plan, whichever is earlier, Owner shall record in the Clerk's Office of the Circuit Court of Albemarle County, a current, irrevocable deed of dedication dedicating to public use for road purposes, the area labeled "50' R.O.W. Reserved for Future Dedication." Owner acknowledges that if it is not part of a subdivision plat approved by the County, such offer of dedication must be first reviewed and approved by the Board of Supervisors and accepted by the Board. Such deed of dedication shall include the following conditions: (i) that TMP 32A-2-4 shall have been upzoned; and (ii) that prior to its use for road purposes, there shall have been constructed on the land so dedicated a road approved by the County and accepted by VDOT for public use or bonded for VDOT's acceptance. At the time of the construction of the roundabout serving Building 6 and Buildings V1 through V6 the Owner shall construct the intersection curb radii and extend construction of the road for a distance of at least thirty feet beyond the roundabout. The Owner shall also place at the end of such extended road, a sign, approved by the County, advising and notifying the public that such right-of-way is the location of a future road extension. After dedication and before the conditions of the dedication have been satisfied, and if requested by the County, Owner shall maintain the dedicated land until requested by the County to no longer do so, subject to the Owner's right to exclusive use of the dedicated land for park, recreational, and/or greenspace purposes. Upon being requested by the County, Owner shall cease all use and maintenance of the dedicated land and remove all improvements established by Owner (if any) that the County requests be removed. Owner shall grant temporary construction easements as determined necessary by the County Engineer to allow for the road to be extended to TMP 32A-2-4, which construction easements shall be on Owner's property and outside of the dedicated right-of-way, and shall be established by the applicable site plan. No improvements

shall be located within the temporary construction easements until construction of such road has been completed.

XI. SIGNATORY

12.1 **Certificate**. The undersigned certify that they are the only owners of the Property, which is the subject of ZMA-2000-09 and SP 2002-72.

12.2 **The Owner**. These proffers shall run with the Property and each reference to Owner within these proffers shall include within its meaning, and shall be binding upon, Owner's successor(s) in interest and/or the developer(s) of the Property or any portion of the Property.

(Signature Pages Immediately Follow)

This Proffer Statement may be signed in counterparts and/or via facsimile with the same full force and effect as if all signatures were original and on one document.

Signatures of Contract Purchaser and All Owners

Contract Purchaser:
NORTH POINTE CHARLOTTESVILLE, LLC

By: Great Eastern Management Company, Manager

By: _____
its: President CEO

Date: July 21, 2006

COMMONWEALTH OF VIRGINIA
CITY OF CHARLOTTESVILLE

The undersigned Notary Public in and for the jurisdiction aforesaid hereby certifies that Charles Rotgin, Jr., whose name as President of Great Eastern Management Company, Manager of North Pointe Charlottesville, LLC, a Virginia limited liability company, is signed to the foregoing Proffer Statement bearing the date as of July 20, 2006, acknowledged the same before me in my jurisdiction aforesaid on behalf of said limited liability company.

Given under my hand this 21st day of July, 2006.

My commission expires: March 31, 2009

Notary Public

[SEAL]

VIRGINIA LAND TRUST

By: _____

its: Trustee

Date: July 21, 2006

COMMONWEALTH OF VIRGINIA
COUNTY OF ALBEMARLE

The undersigned Notary Public in and for the jurisdiction aforesaid hereby certifies that Charles William Hurt, whose name as Trustee of Virginia Land Trust, a Virginia land trust, is signed to the foregoing Proffer Statement bearing the date as of July 20, 2006, acknowledged the same before me in my jurisdiction aforesaid on behalf of said Trust.

Given under my hand this 21st day of July, 2006.

My commission expires: June 30, 2009

Stephen M. Molton
Notary Public

[SEAL]

VIOLET HILL ASSOCIATES, L.L.C.

By: _____

its: Manager

Date: _____

COMMONWEALTH OF VIRGINIA
COUNTY OF ALBEMARLE

The undersigned Notary Public in and for the jurisdiction aforesaid hereby certifies that Charles William Hurt whose name as Manager of Violet Hill Associates, L.L.C., a Virginia limited liability company, is signed to the Proffer Statement bearing the date as of July 20, 2006, acknowledged the same before me in my jurisdiction aforesaid on behalf of said limited liability company.

Given under my hand this 21st day of July, 2006.

My commission expires: June 30, 2009

Stephen M. Melton
Notary Public

[SEAL]

CWH PROPERTIES LIMITED PARTNERSHIP

By: _____

its: General Partner

Date: _____

COMMONWEALTH OF VIRGINIA
COUNTY OF ALBEMARLE

The undersigned Notary Public in and for the jurisdiction aforesaid hereby certifies that Charles William Hurt, whose name as General Partner of CWH Properties Limited Partnership, a Virginia limited partnership, is signed to the foregoing Proffer Statement bearing the date as of July 20, 2006, acknowledged the same before me in my jurisdiction aforesaid on behalf of said partnership.

Given under my hand this 21st day of July, 2006.

My commission expires: June 30, 2009

_____
Notary Public

[SEAL]

EDWARD R. JACKSON TRUST

By: Bank of America, NA, Trustee

By: Patricia A. Bibb

its: Estate Settlement Officer

Date: 7-21-06

COMMONWEALTH OF VIRGINIA
CITY OF CHARLOTTESVILLE

The undersigned Notary Public in and for the jurisdiction aforesaid hereby certifies that Patricia A. Bibb, whose name as Estate Settlement Officer of Bank of America, NA, Trustee of the Edward R. Jackson Trust, is signed to the foregoing Proffer Statement bearing the date as of 7/21, 2006, acknowledged the same before me in my jurisdiction aforesaid on behalf of said Trust.

Given under my hand this 21st day of July, 2006.

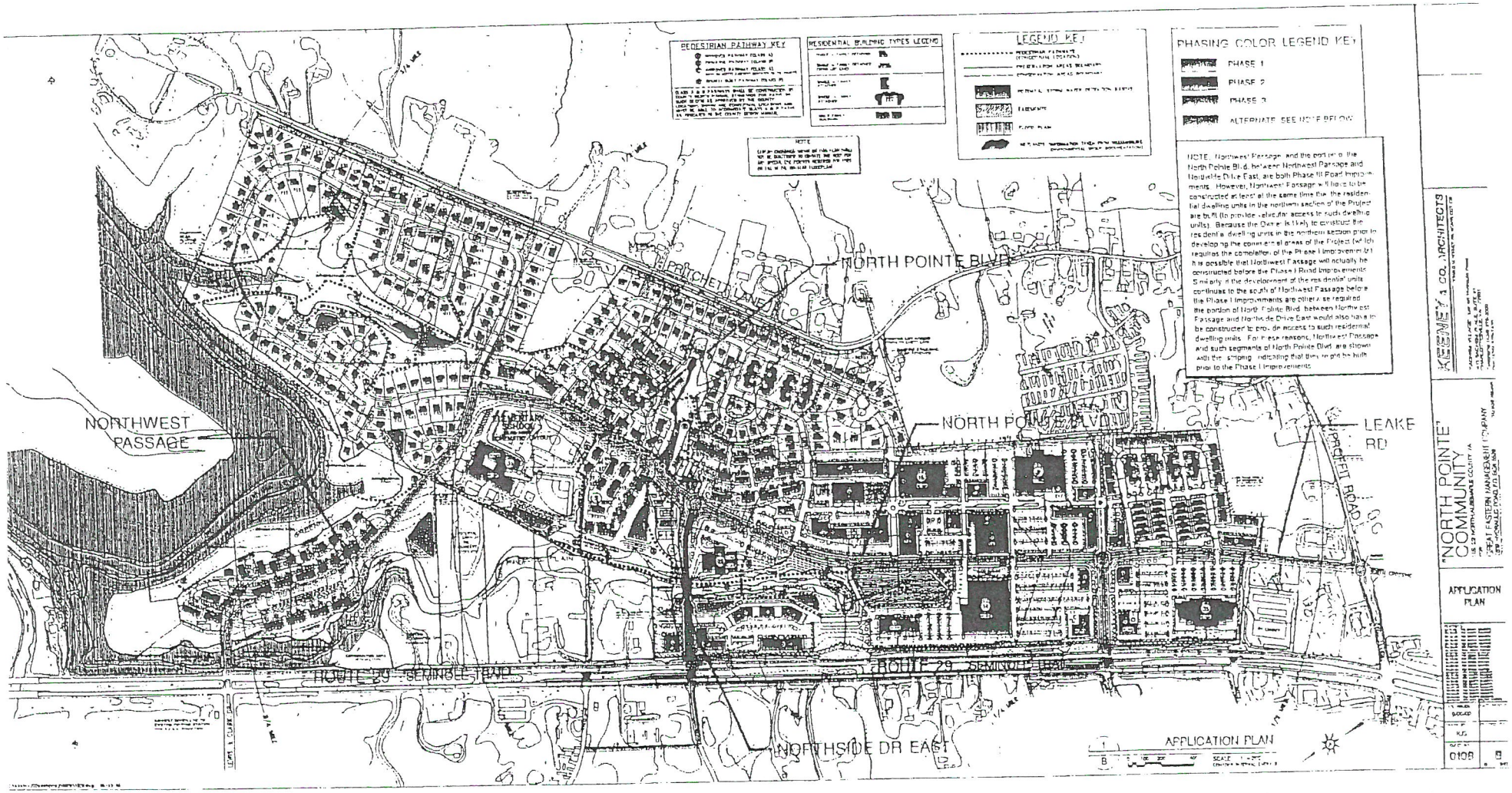
My commission expires: May 31, 2008

Donna J. Butler
Notary Public

[SEAL]

\\REA\275754.17
1252007v3
1262446v12

EXHIBIT B


PEDESTRIAN PATHWAY KEY
RESIDENTIAL BUILDING TYPES LEGEND
LEGEND KEY
PHASING COLOR LEGEND KEY
PHASE 1
PHASE 2
PHASE 3
ALTERNATE SEE NOTE BELOW
NOTE: Northwest Passage, and the portion of the North Pointe Blvd. between Northwest Passage and Northside Drive East, are both Phase III Road Improvements. However, Northwest Passage will have to be constructed at least at the same time that the residential dwelling units in the northern section of the Project are built (to provide vehicular access to such dwelling units). Because the Owner is likely to construct the residential dwelling units in the northern section prior to developing the commercial areas of the Project (which requires the completion of the Phase I Improvements), it is possible that Northwest Passage will actually be constructed before the Phase I Road Improvements. Similarly, if the development of the residential units continues to the south of Northwest Passage before the Phase I Improvements are otherwise required, the portion of North Pointe Blvd. between Northwest Passage and Northside Drive East would also have to be constructed to provide access to such residential dwelling units. For these reasons, Northwest Passage and such segments of North Pointe Blvd. are shown with the stripping indicating that they might be built prior to the Phase I Improvements.
NORTH POINTE BLVD
PRITCHETT LANE
NORTHWEST PASSAGE
NORTH POINTE BLVD
LEAKE RD
PRITCHETT ROAD
ROUTE 29 SEMINOLE BLVD
ROUTE 29 SEMINOLE TRAIL
NORTHSIDE DR EAST
APPLICATION PLAN
KIMLEY-HORN & ASSOCIATES
"NORTH POINTE COMMUNITY"
APPLICATION PLAN
0109

ATTACHMENT C

COUNTY OF ALBEMARLE
Community Development Department
401 McIntire Road
Charlottesville, Virginia 22902-4579

FAX (434) 972-4126 TELEPHONE (434) 296-5832 TTD (434) 972-4012

September 21, 2020

Stewart Wright
3540 Pritchett Lane
Charlottesville, VA 22911

RE: OFFICIAL DETERMINATION OF NO VIOLATION FOUND (ZVIO202000249)
North Pointe / Violet Hill Associates
P.O. Box 5526
Charlottesville, VA 22905-5526
Tax Map 32 Parcels 20, 20a, 20a1, 20a2, 20a3, 22h, 22k, 23, 23a, 23b, 23c, 23d, 23e, 23f, 23g, 23h, 23j, and 29i (collectively - The Property)

Dear Mr. Wright:

In response to your multiple concerns provided personally and in writing on several different occasions with various staff members, County staff have investigated the Property described above. Based on inspections of the Property and the evidence available, I have concluded that utilizing access points for construction from Pritchett Lane is permitted.

Therefore, it is my official determination that the construction access points on Pritchett Lane are compliant with the zoning ordinance and special use permit condition 9 (SP2002-072 attached).

Anyone aggrieved by this determination may appeal it within thirty (30) days of this notice, in accordance with *Virginia Code* § 15.2-2311. Any determination not so appealed is final and unappealable.

An appeal may be taken only by filing an appeal application with the Zoning Administrator and the Board of Zoning Appeals, in accordance with *Albemarle County Code* § 18-34.3, along with a fee of $258. Additionally, a separate fee is required for the cost of providing notice and advertising of the appeal for a public hearing.

Applications for Appeal of the Zoning Administrator's Determination are available at the Department of Community Development located at 401 McIntire Road, Charlottesville, Virginia 22902 or online at https://www.albemarle.org/home/showdocument?id=216 This form applies to appeals of decisions of the zoning administrator or any other administrative officer pertaining to the Zoning Ordinance.

Regulations pertaining to the filing of an appeal to the Board of Zoning Appeals are outlined in *Albemarle County Code* § 18-34.3, which may be reviewed online at https://library.municode.com/va/albemarle_county/codes/code_of_ordinances?nodeId=CH18ZO_ARTIVPR_S34BOZOAP_S34.3APORREDEDEBOZOAP.

Sincerely,

Bart J. Svoboda

Bart J. Svoboda
Zoning Administrator
County of Albemarle, Virginia

CC: North Pointe / Violet Hill Associates

ATTACHMENT D

FOR OFFICE USE ONLY AP # 2020 00003 SIGN # _____

ZONING ORDINANCE SECTION: _____

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

Application for Appeal of Zoning Administrator's Determination

☑ **Appeal of Zoning Administrator's Determination = $258**

FEES to be paid after staff review for public notice:

Appeals of the Zoning Administrator require a public hearing by the Board of Zoning Appeals. Virginia State Code requires that notice for public hearings be made by publishing a legal advertisement in the newspaper and by mailing letters to adjacent property owners.

The total fee for public notice will be provided to the applicant after the final cost is determined and must be paid before the application is heard by a public body. Staff estimates the total cost of legal advertisement and adjacent owner notification to be between $350 and $450. This estimate reflects the average cost of public notice fees, but the cost of certain applications may be higher.

➢ 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
➢ Legal advertisement (published twice in the newspaper for each public hearing)	Actual cost (averages between $150 and $250)

Contact Person (Who should we call/write concerning this project?): Stewart Wright

Address 3540 Pritchett Lane City Charlottesville State VA Zip 22911

Daytime Phone (434) 422-7113 Fax # (___) _____ E-mail maycraft2300@gmail.com

Owner of Record Stewart Wright

Address 3540 Pritchett Lane City Charlottesville State VA Zip 22911

Daytime Phone (434) 422-7113 Fax # (___) _____ E-mail maycraft2300@gmail.com

Applicant (Who is the Contact person representing?): SAME as above

Address _____ City _____ State _____ Zip _____

Daytime Phone (___) _____ Fax # (___) _____ E-mail _____

Project Name: North Pointe

Tax map and parcel: 18 parcels - see SP 2002-72 **Zoning:** PDMC

Physical Street Address (if assigned): No street address assigned

Location of property (landmarks, intersections, or other): North of Airport Rd. between Rt. 29 North and Pritchett Lane

The following information shall be submitted with the application and is to be provided by the applicant:

1) Completed application including subject of appeal.
2) Justification for applicant's position, including error in Zoning Administrators determination. You may use the space below to provide this information or submit an attached sheet.
3) If applicable, a copy of the latest deed for the property involved, and the approved and recorded plat.
4) If applicable, the appropriate drawings showing all existing and proposed improvements on the property and any special conditions for the situation that may justify the appeal.
5) Reference to the relevant Zoning Ordinance section or other applicable regulations or case precedence to justify the appeal.
6) Appropriate fee made payable to the County of Albemarle.

Explanation of error in determination and justification of applicant's position:

See Attachment

Owner/Applicant Must Read and Sign

I hereby certify that the information provided on this application and accompanying information is accurate, true and correct to the best of my knowledge and belief.

Stewart A. Wright
Signature of Owner or Contract Purchaser, Agent

Date: 9/30/2020

Stewart A. Wright
Print Name

(434) 422-7113
Daytime phone number of Signatory

Board of Zoning Appeals Action/vote:

Board of Zoning Appeals Chairman's signature: _____ Date: _____

Subject Of Appeal - Noncompliance with conditions of SP 202-72

Justification for applicant's position, including error in Zoning Administrator's determination:

The Zoning Administrator determined that the construction access points on Pritchett Lane are compliant with the zoning ordinace and the conditions of Special Use Permit 2002-72 regarding extensions to Pritchett Lane. That is an error. Temporary construction easements are not a stated allowed type of extension to Pritchett Lane in the conditions of the special use permit. The County permitted an additional type of extension to Pritchett Lane when they approved the temporary construction easements. The resulting massive amount of construction traffic allowed by the temporary construction easement also greatly intensified the use of the emergency access easement well beyond what the special use permit allowed. The County cannot administratively amend a special use permit. Therefore, to add a new type of extension and intensify the use of a previously approved extension to Pritchett Lane the developer should have been required to amend the special use permit.

Relevant Zoning Ordinance sections or other applicable regulations:

Chapter 18, Section 33.8

Special Use Permit 2002-72 conditions

also 18.3, 25A.2.1, and 25A.4.1

ATTACHMENT E

COUNTY OF ALBEMARLE
Department of Planning & Community Development
401 McIntire Road, Room 218
Charlottesville, Virginia 22902-4596
(434) 296 - 5823
Fax (434) 972 - 4012

July 18, 2002

William A. or Jill Trischman-Marks
5026 Burnley Lane
Barboursville, VA 22923

RE: SP-02-17 Marks Construction; Tax Map 22, Parcel 28A

Dear Mr. & Mrs. Marks:

The Albemarle County Board of Supervisors, at its meeting on July 10, 2002, unanimously approved the above-noted request. Please note that this approval is subject to the following conditions:

1. There shall be no on-site sales.
2. There shall be no outdoor storage of materials.
3. All solvents/paints shall be disposed of, in accordance with all applicable hazardous waste regulations.
4. All production activity of custom-made furniture shall occur within the designated workshop;
5. The workshop shall not exceed 1,152 square feet, as shown on Attachment A (on file in Clerk's office).
6. The applicant shall obtain a Zoning Clearance for this use within sixty (60) days of approval or this special use permit shall expire.

In the event that the use, structure or activity for which this special use permit is issued shall not be commenced within twenty-four (24) months after the issuance of such permit, the same shall be deemed abandoned and the authority granted thereunder shall thereupon terminate. For purposes of this section, the term "commenced" shall be construed to include the commencement of construction of any structure necessary to the use of such permit within two (2) years from the date of the issuance.

Before beginning this use, you must obtain a zoning clearance from the Zoning Department. Before the Zoning Department will issue a clearance, you must comply with the conditions in this letter. For further information, please call Jan Sprinkle at 296-5832.

If you should have any questions or comments regarding the above-noted action, please do not hesitate to contact me.

Sincerely,

V. Wayne Cilimberg
Director of Planning & Community Development

VWC/jcf

Cc: Amelia McCulley
Steve Allshouse
Jack Kelsey
Matt Grimes, VDOT
Tex Weaver

ATTACHMENT F

Original Proffers X
Amendment _____

PROFFER STATEMENT

ZMA No. **2016-09**

Tax Map and Parcel Number(s): **04500-00-00-112E0, 04500-00-00-11200**

Owner(s) of Record: **Brian J, McMahon & Stephen K von Storch (TMP 04500-00-00-112E0)**
Stuard R Wood (TMP 04500-00-00-11200)

Date of Proffer Signature: **December 9, 2016**

4.428 acres to be rezoned from **R-6 Residential** to **HC – Highway Commercial with restrictions.**

Brian J, McMahon & Stephen K von Storch (TMP 04500-00-00-112E0) Stuard R Wood (TMP 04500-00-00-11200)

are the owners (the "Owners") of Tax Map and Parcels **04500-00-00-112E0 and 04500-00-00-11200** (the "Property") which is the subject of rezoning application **ZMA No. 2016-09**, a project known as the Wood von Storch Rezoning (the "Project").

Pursuant to Section 33.3 of the Albemarle County Zoning Ordinance, the Owner hereby voluntarily proffers the conditions listed below which shall be applied to the Property if it is rezoned to the zoning district identified above. These conditions are proffered as a part of the requested rezoning and the Owner acknowledges that the conditions are reasonable.

The Owners shall construct improvements on the Property in general accordance with the Concept Plan prepared by Stoneking von Storch Architects entitled "3400 Berkmar Drive Concept Plan" dated November 16, 2016 which is attached hereto and other applicable County zoning and site plan requirements as determined by the Director of Planning and the Zoning Administrator. To be in general accord with the Concept Plan, future development shall reflect the following major elements as shown on the Concept Plan:

a. **Primary Development Zone** - Fronting on Berkmar Drive and extending into the collective properties approximately 50% of the total property depth. Within the Primary Development Zone, buildings shall have relegated parking as defined in proffer 7 below and pedestrian access from Berkmar Drive.
b. **Frontage Zone** – An area fronting on Berkmar Drive of approximately 378 feet, in which buildings must occupy a minimum of thirty-five percent (35%) of the total Frontage Zone and provide for pedestrian access from Berkmar Drive.
c. **Cemetery Zone** – An area at the northwestern corner of the site, along Berkmar Drive in which a preexisting cemetery has been identified and shall be preserved or removed in accordance with the laws of the State of Virginia.
d. **Reservation Areas** – An area along Berkmar Drive between the existing right-of-way and a building setback line measured on the property, 44 feet from the Center Line of the Berkmar Drive Right and a 40 foot wide area along the northern property boundary as shown on the Concept Plan, subject to the terms in proffers 6 and 8 below.

2. a) The following by right uses in Highway Commercial (HC) zoning shall not be permitted:
   i. Pipe and tobacco shops
   ii. Barber/Beauty shops
   iii. Laundromats
   iv. Farmer's Markets
   v. Funeral Homes
   vi. Wayside Stands
   vii. Hospitals
   viii. Restaurant drive thru windows

   b) The following use shall be restricted:
   i. Cemeteries – The existing cemetery shall not be expanded.
   ii. Mini-storage – Shall be limited to the Secondary Development Zone or the upper floors within the Primary Development Zone.

3. Retail uses will be limited to no more than 25,000 square feet of the total floor area built on the site. This represents approximately 25% of the projected total floor area projected to be built on the Property.

4. Eating establishments built on the property shall be limited to 1,500 square feet or less per establishment.

5. Residential uses shall be secondary and limited to the upper floors of multi-story buildings.

6. Owners shall reserve an area along the Berkmar Drive frontage between the edge of the existing right-of-way and a building setback line measured on the property, 44 feet from the Center Line of the Berkmar Drive Right of Way (Reserved Area) until the Small Area Plan for Berkmar Drive is completed. This reservation, or a portion thereof, will terminate upon determination by the County in the Small Area Plan that some or all of such Reserved Area is not needed (The Reservation Period). The Reserved Area shall remain free of buildings or other obstructions during the Reservation Period. However, the Owners reserve the right to construct turn and taper lane improvements within the Reserved Area. If the determination of the County in the Small Area Plan is that the Reserved Area, or a portion thereof, will be needed for future Berkmar widening or improvements, then the Reserved Area, or a portion thereof, shall be dedicated to the County upon demand.

7. The Owner shall restrict parking uses to the side or rear of buildings within the Primary Development Zone. The front minimum parking setbacks shall be no closer to the right-of-way than any existing or proposed primary structure in the Primary Development Zone.

8. Owners shall reserve an area 40 feet wide along the northern property boundary as shown on the Concept Plan until the Small Area Plan for Berkmar Drive is completed. This reservation, or a portion thereof, will terminate upon determination by the County in the Small Area Plan that some or all of such Reserved Area is not needed but not later than January 1, 2020 (The Reservation Period). The Reserved Area shall remain free of buildings or other significant obstructions during the Reservation Period. However, the Owners reserve the right to construct parking lots within the Reserved Area. If the determination of the County in the Small Area Plan is that the Reserved Area, or a portion thereof, will be needed for a future connector road from Berkmar Drive to Rte 29, then the Reserved Area, or a portion thereof, may be acquired by the County or VDOT for such purpose.

9. Owner shall delineate the boundaries of the cemetery identified on the Concept Plan and submit a treatment plan for such cemetery for approval by the County Director of Community Development, or designee at the plan or plat review stage of any development on the property which could impact the cemetery.

OWNERS:

Brian J. McMahon

Stephen K. von Storch

Robin M. Wood

9. Owner shall delineate the boundaries of the cemetery identified on the Concept Plan and submit a treatment plan for such cemetery for approval by the County Director of Community Development, or designee at the plan or plat review stage of any development on the property which could impact the cemetery.

OWNERS:

Brian J. McMahon

Stephen K. von Storch

Robin M. Wood

ATTACHMENT G

PROFFER STATEMENT

RIVANNA VILLAGE

Date: **June 13, 2014**

ZMA #: 2013-00012

Tax Map Parcel #: 07900-00-00-025A0, 08000-00-00-04600, 08000-00-00-046A0, 08000-00-00-046C0, 08000-00-00-046D0, 08000-00-00-046E0, 08000-00-00-05000, 08000-00-00-05100, 08000-00-00-052A0, 08000-00-00-055A0, 093A1-00-00-00300, 093A1-00-00-00400, & 093A1-00-00-00200 (the "Property")

Rezone two parcels totaling 1.76 acres from Rural Areas (RA) to Neighborhood Model Development (NMD), and rezone eleven parcels totaling 93.0 acres (by current plat, or 94.05 acres by County Assessor's records) from NMD to NMD.

Total Land Area: 94.76 acres by current plat (95.81 acres by County Assessor's Records)

Pursuant to Sections 33.4 and 33.7 of the Albemarle County Zoning Ordinance, the Owner hereby voluntarily proffers the conditions listed herein below which shall be applied to Rivanna Village (hereinafter the 'Property") if the Zoning Map Amendment (hereinafter the "ZMA") is approved by the County of Albemarle (the "County"). These conditions are proffered as a part of the requested ZMA and it is agreed that: (1) the ZMA itself gives rise to the need for the conditions, and (2) such conditions have a reasonable relation to the rezoning requested.

The term "Owner" as referenced herein shall mean the owner of record and successors in interest of parcels 07900-00-00-025A0, 08000-00-00-04600, 08000-00-00-046A0, 08000-00-00-046C0, 08000-00-00-046D0, 08000-00-00-046E0, 08000-00-00-05000, 08000-00-00-05100, 08000-00-00-052A0, 08000-00-00-055A0, 093A1-00-00-00300, and 093A1-00-00-00400.

Although tax map parcel 093A1-00-00-00200 is part of the Property that is subject to the ZMA, neither such parcel, nor the owner thereof shall be subject to the terms, conditions, and obligations imposed by this proffer statement.

The Application Plan shall refer to that certain Application Plan prepared by Terra Concepts dated July 15, 2013, last revised June 9, 2014 (the "Application Plan"). The Code of Development shall refer to the Code of Development for Rivanna Village dated June 9, 2013 (the "Code of Development").

The headings of the proffers and conditions set forth below have been prepared for convenience or reference only and shall not control or affect the meaning or be taken as an interpretation of any provisions of the proffers.

This proffer statement shall supersede and replace in all respects the proffer statement approved by the Board of Supervisors on June 13, 2007 in connection with ZMA 2001-00008.

1. **Community Development Authority Participation:** To mitigate impacts from this development, the Owner shall, upon request by the County (such request to be made by the County within 90 days of ZMA approval), petition for and consent to any lot or unit (as the case may be) designated on the Application Plan for non-residential uses to participate in a Community Development Authority ("CDA") established pursuant to Section 15.2-5152, et seq. of the Code of Virginia ("Code").

The CDA, if created, will be created for the purpose of implementing transportation improvements located along Route 250 East between the Property and the Interstate 64 interchange to the west. In the event that a lot or building, as designated in the final and approved Application Plan, contains both residential and non-residential units, only the non-residential units shall participate in the CDA.

2. **Cash Proffer for Capital Improvements:** In order to mitigate impacts from this development, the Owner shall contribute cash for each market rate residential unit constructed within the Property to Albemarle County for the stated purpose of either funding traffic improvement projects within or immediately adjacent to the Village of Rivanna as identified in the County's Capital Improvements Program or school projects at Stone-Robinson Elementary School, Burley Middle School, and Monticello High School as identified in the County School's Capital Improvements Program.

The cash contributions shall be at the following rates: Three Thousand, Five Hundred Dollars ($3,500.00) for each single family detached unit, Three Thousand Dollars ($3,000.00) for each townhouse unit or other single family attached unit, and Two Thousand, Five Hundred Dollars ($2,500.00) for each multifamily unit. Residential units paying cash in lieu of an affordable dwelling unit as provided in paragraph 9, and other affordable dwelling units shall be exempt from this paragraph 2. The cash contribution shall be paid after completion of the final inspection and prior to issuance of the certificate of occupancy for such applicable residential dwelling unit.

If the cash contribution has not been exhausted by the County for the stated purposes within ten (10) years from the date of the issuance of the last residential building permit within Rivanna Village, all unexpended funds shall be applied to any public project or program serving the Village of Rivanna.

Annual Adjustment of Cash Proffers.

Beginning January 1, 2014, the amount of each cash contribution required herein shall be adjusted annually until paid, to reflect any increase or decrease for the preceding calendar year in the Marshall and Swift Building Cost Index ("MSI"). In no event shall any cash contribution amount be adjusted to a sum less than the amount initially established by these proffers. The annual adjustment shall be made by multiplying the proffered cash contribution amount for the preceding year by a fraction, the numerator of which shall be the MSI as of December 1 in the

preceding calendar year and the denominator of which shall be the MSI as of December 1 in the year preceding the calendar year most recently ended. For each cash contribution that is being paid in increments, the unpaid incremental payments shall be correspondingly adjusted each year.

3. **Route 250 and Eastern Entrance Improvements:** To mitigate traffic impacts, the Owner shall either construct left and right turn lanes on Route 250 at the eastern entrance to the Property or bond these improvements prior to approval of the first site plan or subdivision plat for the development.

The Owner shall install the traffic signalization required by the Virginia Department of Transportation ("VDOT") at the intersection of Route 250 for the eastern entrance to the Property at such point in time that VDOT traffic signalization warrants are met and VDOT requests the installation of such signal, provided that such request from VDOT is made prior to the completion of Rivanna Village, which for the purposes of this paragraph shall be deemed to be the later of (i) the date of approval and recordation of the subdivision plat creating individual residential lots in the final block permitting residential lots or (ii) the date of final site plan approval for the final undeveloped block within the Property.

4. **INTENTIONALLY OMITTED.**

5. **Construction of Steamer Drive Improvements:** The Owner's obligation to construct the improvements on TMP 093A1-00-00-00200, including the sidewalk and pedestrian pathway shown within such parcel on the Application Plan, shall be deemed satisfied when construction is complete or if the owners of TMP 093A1-00-00-00200 do not grant the required easements or other interests in the land so as to permit the construction and maintenance of such improvements prior to County approval of the final site plan or subdivision plat for the lands immediately adjacent to these improvements. Failure of the owners of TMP 093A1-00-00-00200 to grant the required easements shall not relieve the Owner of the obligation to provide stormwater management for Blocks A and H and, if the required easements are not provided, alternative stormwater management (to be consistent with the stormwater requirements for the overall project) will be provided which does not compromise the design of Blocks A and H.

6. **Construction and Dedication of Parks and Recreation Improvements:** To mitigate impacts on existing public facilities, the Owner, at its expense, shall, at the request of the County, engineer, construct, and dedicate in fee simple to the County a park comprised of approximately 18.4 acres located in Block J and park improvements to be located in Block J (the "Community Park"). The improvements to be constructed in Block J are set forth in the Code of Development (the "Park Improvements"). The Park Improvements shall be built or bonded prior to the issuance of the Certificate of Occupancy for the 137th residential unit within the Property.

The Owner shall dedicate the Community Park to the County upon completion of the Park Improvements or earlier upon request of the County. If dedicated prior to completion of the required Park Improvements, the responsibility for implementation of this proffer shall run with the residue of the Property. The Owner and the County acknowledge that the County may assume responsibility for maintenance for completed portions of the Community Park prior to

dedication. The Owner and the County further acknowledge that the Owner proffers the Community Park subject to the County passing a resolution concurrent with ZMA approval, whereby proffer number 2 of ZMA-79-016 is deemed satisfied.

To further mitigate impacts on existing public facilities, the Owner, at its expense, shall, at the request of the County, engineer, construct and dedicate in fee simple to the County additional open space areas containing approximately 13.26 acres in the aggregate as shown on the Application Plan (the "Linear Park Areas"). The Owner shall dedicate individual portions of the Linear Park areas upon the completion of such areas as they are constructed as part of the improvements within the block within which the areas are located, or later as may be required by the County.

If the land to be dedicated to the County for either the Community Park or the Linear Park Areas is not dedicated as part of a site plan or subdivision plat, the Owner shall pay the costs of surveying the land and preparing the deeds of dedication. The Owner shall construct the trails through the Linear Park Areas within twelve (12) months after the approval by the County of the first subdivision plat or site plan applicable to any portion of a block within with the trails are located.

7. **Route 250 Landscape Buffer and Right of Way Dedication:** To establish a landscaped buffer along the Route 250 entrance corridor and accommodate potential future improvements to Route 250, the Owner shall establish a minimum seventy (70) foot reservation zone (the "Reservation Zone" and thirty (30) foot landscape buffer along Route 250 (the "Landscape Buffer") as shown on the Application Plan, the use and maintenance of which is described in the Code of Development. The Reservation Zone and Landscape Buffer shall be reserved for public use and dedicated upon the request of the County, subject to the terms of the Code of Development. Prior to dedication of the Reservation Zone and the Landscape Buffer, the Owner shall maintain the existing vegetation within the Reservation Zone and Landscape Buffer subject to the following conditions: (a) the Owner retains the right to remove trees and undergrowth where necessary to maintain a groomed edge in the Reservation Zone; (b) the terms of the Code of Development of this Proffer Statement; (c) any requirements of the County Architectural Review Board; and (d) any disturbance required as part of any improvements being made to Route 250 or construction of the entrance to the Project from Route 250. Utilities allowed in the Reservation Zone and Landscape Buffer are limited to those approved by the Director of Community Development (or designee) that do not preclude or conflict with entrance corridor landscaping requirements. Standards for landscaping within the Reservation Zone may be established by the ARB during the Certificate of Appropriateness process where development is subject to ARB review. Landscaping within the Landscape Buffer shall be subject to ARB review, and shall be installed in conjunction with the widening of Route 250 (or sooner, if desired by the Owner). Nothing herein shall preclude the Owner or designee from adding landscaping to the Landscape Buffer prior to the widening of Route 250 to screen and/or buffer new homes within the Project from Route 250 as needed in the Owner's discretion. Once planted, the Landscape Buffer and all landscaping therein shall be maintained by the Homeowners' Association of Rivanna Village.

After dedication and until the subject regional transportation improvements are funded for construction, the Owner shall, at the request of the County, maintain the Reservation Zone and Landscape Buffer until requested by the County to no longer do so; provided, however, during the period of Owner maintenance, the Owner shall enjoy the right of exclusive use of the Reservation Zone and Landscape Buffer for purposes of landscaped open space, signage, utilities and/or other purposes described in the Code of Development. Upon being requested by the County to forego maintenance of the Reservation Zone and Landscape Buffer, the Owner shall cease all use of the Reservation Zone and Landscape Buffer and remove, to the extent requested by the County, all improvements constructed or installed by the Owner within the Reservation Zone and Landscape Buffer.

8. **Landscape Buffer Along Glenmore Way:** To mitigate impacts to Glenmore Way, the Owner shall provide a minimum seventy (70) foot landscape buffer along Glenmore Way as shown on the Application Plan and regulated by the Code of Development.

9. **Affordable Housing:** The Owner shall provide affordable housing equal to fifteen percent (15%) of the total residential units constructed on the Property, in the form of for-sale and/or for-rent units, subject always to the terms and conditions contained herein (the "Affordable Housing Requirement"). A site plan or subdivision plat shall designate the units, as applicable, that will, subject to the terms and conditions of this paragraph 9, incorporate affordable units as described herein. The Owner shall convey the responsibility of constructing the affordable units to the subsequent owner of the lots or Blocks where the affordable units will be located. The subsequent owner/builder shall create units affordable to households with incomes less than eighty percent (80%) of the area median income such that housing costs consisting of principal, interest, real estate taxes, and homeowners insurance ("PITI") do not exceed thirty percent (30%) of the gross household income.

A. **For-Sale Affordable Units.** All purchasers of the for-sale affordable units shall be approved by the Albemarle County Housing Office or its designee. The subsequent owner/builder shall provide the County or its designee a period of ninety (90) days to identify and prequalify an eligible purchaser for the affordable units. The ninety (90)-day period shall commence upon written notice from the then-current owner/builder that the unit(s) will be available for sale. This notice shall not be given more than sixty (60) days prior to receipt of the Certificate of Occupancy for the applicable unit. If the County or its designee does not provide a qualified purchaser during the ninety (90)-day period, the then-current owner/builder shall have the right to sell the unit(s) without any restriction on sales price or income of the purchaser(s). This paragraph shall apply only to the first sale of each of the for-sale affordable units.

B. **For-Rent Affordable Units.**

(1) **Rental Rates.** The initial net rent for each for-rent affordable unit shall not exceed the then-current and applicable maximum net rent rate approved by the County Housing Office. In each subsequent calendar year, the monthly net rent for each for-rent affordable unit may be increased up to three percent (3%). For purpose of this proffer statement, the term "net rent" means that the rent does not include tenant-paid utilities. The requirement

that the rents for such for-rent affordable units may not exceed the maximum rents established in this paragraph 9B shall apply for a period of five (5) years following the date the certificate of occupancy is issued by the County for each for-rent affordable unit, or until the units are sold as low or moderate cost units qualifying as such under either the Virginia Housing Development Authority, Farmers Home Administration, or Housing and Urban Development, Section 8, whichever comes first (the "Affordable Term").

(2) **Conveyance of Interest**. All deeds conveying any interest in the for-rent affordable units during the Affordable Term shall contain language reciting that such unit is subject to the terms of this paragraph 9B. In addition, all contracts pertaining to a conveyance of any for-rent affordable unit, or any part thereof, during the Affordable Term shall contain a complete and full disclosure of the restrictions and controls established by this paragraph 9B. At least thirty (30) days prior to the conveyance of any interest in any for-rent affordable unit during the Affordable Term, the then-current owner shall notify the County in writing of the conveyance and provide the name, address and telephone number of the potential grantee, and state that the requirements of this paragraph 9B have been satisfied.

(3) **Reporting Rental Rates**. During the Affordable Term, within thirty (30) days of each rental or lease term for each for-rent affordable unit, then then-current owner shall provide to the Albemarle County Housing Office a copy of the rental or lease agreement for each such unit rented that shows the rental rate for such unit and the term of the rental or lease agreement. In addition, during the Affordable Term, the then-current owner shall provide the County, if requested, any reports, copies of rental or lease agreements, or other data pertaining to rental rates as the County may reasonably require.

C. **Cash In-Lieu of Affordable Units**. Nothing herein shall be construed to prohibit the Owner from providing cash to the County for affordable housing initiatives in lieu of constructing all or some of the affordable housing units within the Project that would be required to achieve the Affordable Housing Requirement. In the event that the Owner elects in its discretion to provide cash to the County as an alternative to constructing one or more of the affordable dwelling units that would be required to achieve the Affordable Housing Requirement, the Owner shall contribute cash to the County in the amount of Twenty-One Thousand, One Hundred Fifty Dollars ($21,150) instead of constructing each such required affordable dwelling unit. Such payment shall be made after completion of the final inspection and prior to issuance of the certificate of occupancy for any such unit for which payment in lieu of constructing affordable housing is made. Any unit for which such contribution is made to the County shall count as an affordable dwelling unit for purposes of this paragraph 9 and also for purposes of paragraph 2.

10. Construction Traffic Management Plan. Prior to, or in conjunction with, submitting the first initial site plan, erosion and sediment control plan, grading plan, preliminary subdivision plat or, if a preliminary subdivision plat is not submitted, the first final subdivision plat, the Owner shall submit a Construction Traffic Management Plan (the "CTM Plan"). The purpose of the CTM Plan shall be to minimize conflicts between construction vehicles related to developing the Property and pedestrians, cyclists, equestrian riders, and motor vehicles on Glenmore Way and at the intersection of Glenmore Way and the construction entrance to be established at Main

Street, as depicted on the Application Plan, while the Property is being developed. The CTM Plan shall include the following elements:

A. Establish a shared use path along Glenmore Way from Route 250 to Main Street. The location, width and design of the shared use path shall be subject to the approval of the County's Director of Community Development (the "Director"). If the Director determines, based on the volume and nature of the existing use of Glenmore Way between Route 250 and Main Street by pedestrians, cyclists, and equestrian riders, that the path depicted on the Application Plan within the 70-foot wide buffer may serve as the shared use path, but that path is later determined (prior to the end of the term of the CTM Plan, as established therein) to be inadequate to serve all users, the Owner shall establish a second shared use path subject to approval of the Director as provided herein.

B. In addition to any temporary traffic control signage required by the Virginia Department of Transportation ("VDOT"), install such signage as determined to be necessary by the Director.

C. Establish an asphalt-paved construction entrance to the Property at the Glenmore Way and Main Street intersection. The length and width of the paved portion of the Main Street construction entrance shall be sufficient to allow construction vehicles to safely enter and exit the Property, to reduce dust, soil, sand, mud, gravel, and other substances being deposited on Glenmore Way, and to accommodate a construction vehicle wash-down area. The length and width of the paved portion of the Main Street construction entrance shall be subject to approval by the Director.

D. Establish a construction vehicle wash-down area within the paved Main Street construction entrance. The wash-down area shall have equipment that shall be used to remove any soil, sand, mud, gravel or other substances from any construction vehicle, passenger car, or motorcycle before it enters onto Glenmore Way from the Property. The wash-down area and its equipment shall be subject to approval by the Director.

E. Have a flagman present at the intersection of Glenmore Way and the Main Street construction entrance at all times when construction vehicles are entering and exiting the Property to assist them in safely entering and exiting the Property and to ensure smooth traffic flow for commuter and any other vehicles using Glenmore Way.

F. Clean the intersection of Glenmore Way and the Main Street construction entrance every evening of each day during which construction activity occurs on the Property, if necessary, to remove any soil, sand, mud, gravel or other substances from the road.

G. Provide the Glenmore Community Association with written weekly updates of anticipated construction activity for the upcoming week.

The Owner shall obtain approval of the CTM Plan by the Director before the County approves any grading permit for the Property, and shall satisfy and thereafter continue to satisfy any applicable requirement of the CTM Plan before the first construction vehicle enters the Property,

except as necessary to satisfy a requirement of the CTM Plan itself, such as establishing the Main Street construction entrance, until an ending date or event as provided in the CTM Plan. Any approval of the Director required by this proffer shall be made only after consultation with the Owner, the County Engineer and VDOT. The term "construction vehicle" includes, but is not limited to, any tractor truck, tractor truck/semitrailer combination, tractor truck/trailer combination, dump truck, concrete mixer truck, land mover, bulldozer, front-end loader, grader, packer, power shovel, or crane, but does not include any passenger car, passenger truck (such as a pick-up truck), or motorcycle.

If VDOT issues an entrance permit for an entrance on Route 250 at Butterfield Lane as shown on the Application Plan, or any other location, for construction vehicle use, then all construction traffic for the Project shall thereafter use that entrance for entering and exiting the Property instead of Glenmore Way, and the CTM Plan shall automatically terminate. Notwithstanding the foregoing sentence to the contrary, if Block A as shown on the Application Plan has not yet been completed at the time that VDOT issues such an entrance permit for construction vehicle use, then construction traffic related to the development of Block A may nevertheless continue to use Glenmore Way, and the applicable provisions of the CTM Plan shall remain in effect with regard to such construction vehicle use until the completion of Block A.

The undersigned Owner hereby proffers that the use and development of the Property shall be in conformance with the proffers and conditions herein above, and these proffers shall supersede all other proffers and conditions made prior hereto.

WITNESS the following signature:

RIVANNA VILLAGE, LLC

By: _____
Andrew Boninti, Manager

21439587 8

approved

PROFFER STATEMENT

RIVANNA VILLAGE

Amendment #: [ ]

Date:	6/13/07
ZMA #:	2001-08
Tax Map Parcel #:	79-25A, 80-46, 80-46A, 80-46C, 80-46D, 80-46E, 80-50, ~~80-51~~, 80-55A, 93-A1-1 (two portions thereof), 93-A1-2, 93-A1-3, and 93-A1-4
Existing Zoning:	PRD, Planned Residential Development and RA, Rural Areas
Proposed Zoning:	NMD, Neighborhood Model District in accordance with the Code of Development (titled Rivanna Village at Glenmore, prepared by The Cox Company, dated February 5, 2007) and the General Plan of Development (Exhibits D- O of the Code of Development).
Total Land Area:	94.47 acres

Pursuant to Section 33.3 of the Albemarle County Zoning Ordinance, the Owner hereby voluntarily proffers the conditions listed herein below which shall be applied to Rivanna Village (herein after the "Property") if the Zoning Map Amendment (hereinafter "ZMA") is approved by the County of Albemarle (the "County"). These conditions are proffered as a part of the requested ZMA and it is agreed that: (1) the ZMA itself gives rise to the need for the conditions, and (2) such conditions have a reasonable relation to the rezoning requested.

The term "Owner" as referenced herein shall mean the owner of record and successors in interest of parcels 79-25A, 80-46, 80-46A, 80-46C, 80-46D, 80-46E, 80-50, ~~80-51,~~ 80-55A, 93-A1-1 (two portions thereof), 93-A1-3, and 93-A1-4. Parcel 93-A1-2 is not subject to the terms, conditions and obligations imposed by these proffers.

The headings of the proffers and conditions set forth below have been prepared for convenience or reference only and shall not control or affect the meaning or be taken as an interpretation of any provisions of the proffers.

1. **Community Development Authority Participation:** In order to mitigate impacts from this development, the Owner shall, upon request by the County (such request to be made by the County within 90 days of ZMA approval), petition for and consent to any lot or unit (as the case may be) designated in the General Plan of Development for non-residential uses to participate in a Community Development Authority ("CDA") established pursuant to Section 15.2-5152, et seq. of the Code of Virginia ("Code").

The CDA, if created, will be created for the purpose of implementing transportation improvements located along Route 250 East between the Property and the Interstate 64 interchange to the west. In the event that a lot or building, as designated in the final and approved General Plan of Development, contains both residential and non-residential units, only the non-residential units shall participate in the CDA.

2. **Cash Proffer for Capital Improvements:** In order to mitigate impacts from this development, the Owner shall contribute cash for each market rate residential unit constructed within the Property to Albemarle County for the stated purpose of either funding traffic improvement projects within or immediately adjacent to the Village of Rivanna as identified in the County's Capital Improvements Program or school projects at Stone-Robinson Elementary School, Burley Middle School, and Monticello High School as identified in the County School's Capital Improvements Program.

The cash contributions shall be at the following rates: $3,500 for each single family detached unit, $3,000 for each townhouse unit and $2,500 for each multifamily unit. Single family detached units paying cash in lieu of an affordable unit as provided in Proffer 9, Carriage Houses and other affordable dwellings as defined in the Code of Development shall be exempted from this proffer. The cash contribution shall be paid at the time of the issuance of the building permit for such residential dwelling unit.

If the cash contribution has not been exhausted by the County for the stated purposes within ten (10) years from the date of the issuance of the last residential building permit within Rivanna Village, all unexpended funds shall be applied to fund for any public project or program serving the Village of Rivanna.

Annual Adjustment of Cash Proffers.

Beginning January 1, 2009, the amount of each cash contribution required herein shall be adjusted annually until paid, to reflect any increase or decrease for the preceding calendar year in the Marshall and Swift Building Cost Index ("MSI"). In no event shall any cash contribution amount be adjusted to a sum less than the amount initially established by these proffers. The annual adjustment shall be made by multiplying the proffered cash contribution amount for the preceding year by a fraction, the numerator of which shall be the MSI as of December 1 in the year preceding the calendar year most recently ended, and the denominator of which shall be the MSI as of December 1 in the preceding calendar year. For each cash contribution that is being paid in increments, the unpaid incremental payments shall be correspondingly adjusted each year.

3. **Route 250 and Eastern Entrance Improvements:** In order to mitigate traffic impacts, the Owner shall either construct left and right turn lanes on Route 250 at the eastern entrance to the Property or bond these improvements prior to approval of the first site plan or subdivision plat for the development.

The Owner shall install the traffic signalization required by the Virginia Department of Transportation ("VDOT") at the intersection of Route 250 for the eastern entrance to the Property at such point in time that VDOT traffic signalization warrants are met and VDOT requests the installation of such signal, provided that such request from VDOT is made prior to the completion of Rivanna Village, which for the purposes of this paragraph shall be deemed to be the later of (i) the date of approval and recordation of the subdivision plat creating individual residential lots in the final block permitting residential lots or (ii) the date of final site plan approval for the final undeveloped block within the Property.

4. **Route 250 and Glenmore Way Improvements:** In order to mitigate traffic impacts, the Owner shall install any traffic signalization required by VDOT at the existing intersection of Route 250 and Glenmore Way at such point in time that VDOT traffic signalization warrants are met and VDOT requests the installation of such signal provided that such request from VDOT is

made prior to the completion of Rivanna Village, which for the purposes of this paragraph shall be deemed to be the later of (i) the date of approval and recordation of the subdivision plat creating individual residential lots in the final blocks permitting residential lots or (ii) the date of final site plan approval for the final undeveloped block within the Property.

5. **Construction of Steamer Drive Improvements:** The Owner's obligation to construct the improvements on TMP 93-A1-2 (Block F), including the sidewalk and pedestrian pathway, shall be deemed satisfied when construction is complete or if the owners of TMP 93-A1-2 do not grant the required easements or other interests in the land so as to permit the construction and maintenance of such improvements prior to County approval of the final site plan or subdivision plat for the lands immediately adjacent to these improvements. Failure of the owners of TMP 93-A1-2 to grant the required easements shall not relieve the Owner of the obligation to provide stormwater management for Blocks C & G and, if the required easements are not provided, alternative stormwater management (to be consistent with the stormwater requirements for the overall project) will be provided which does not compromise the design of Blocks C & G.

6. **Construction and Dedication of Parks and Recreation Improvements:** In order to mitigate impacts on existing public facilities, the Owner, at its expense, shall, at the request of the County, engineer, construct, and dedicate in fee simple to the County a park comprised of the land and improvements in Block I. Requirements for Block I and the improvements to be constructed in Block I are set forth in the Code of Development.

Provisions for the park shall be included with the first phase of the development. For the purposes of this proffer, "provisions" shall mean that the Block I parcel shall be platted with the initial plat for Rivanna Village. The park improvements described in the Code of Development shall be built or bonded prior to the issuance of the Certificate of Occupancy for the 174th residential unit within the Property.

The Owner shall dedicate the park to the County upon completion of the improvements or earlier upon request of the County. If dedicated prior to completion of the required improvements, the responsibility for implementation of this proffer shall run with the residue of the Property. The Owner and the County acknowledge that the County may assume responsibility for maintenance for completed portions of the park prior to dedication. The Owner and the County further acknowledge that the Owner proffers the park subject to the County passing a resolution concurrent with ZMA approval, whereby proffer number 2 of ZMA-79-016 is deemed satisfied.

7. **Route 250 Landscape Buffer and Right of Way Dedication:** In order to establish a landscaped buffer along the Route 250 entrance corridor and accommodate potential future improvements to Route 250, the Owner shall establish a minimum ninety (90) foot reservation zone and landscape strip along Route 250 as shown on the General Plan of Development, the use and maintenance of which is described in the Code of Development. The first seventy (70) feet of the reservation zone and landscape strip immediately adjacent to Route 250 shall be reserved for public use and dedicated upon the request of the County.

After dedication and until the subject regional transportation improvements are funded for construction, the Owner shall, at the request of the County, maintain the reservation zone and landscape strip until requested by the County to no longer do so; provided, however, during the period of Owner maintenance, the Owner shall enjoy the right of exclusive use of the reservation zone and landscape strip for purposes of landscaped open space, signage, utilities and/or other purposes described in the Code of Development. Upon being requested by the County to forego maintenance of the reservation zone and landscape strip, the Owner shall cease all use of the

reservation zone and landscape strip and remove, to the extent requested by the County, all improvements constructed or installed by the Owner within the reservation zone and landscape strip.

8. **Landscape Strip Along Glenmore Way:** In order to mitigate impacts to Glenmore Way, the Owner shall provide a minimum fifty (50) foot landscape strip along Glenmore Way as shown on the General Plan of Development and regulated by the Code of Development.

9. **Affordable Housing:** In order to mitigate community impacts from the rising cost of housing, the Owner shall provide a minimum of 15% of the residential units as affordable. The affordable housing may be provided by constructing "for-sale" residential units, "for-rent" residential units and carriage houses, or payment of $16,500 in lieu of a required unit. The terms and conditions regulating the timing and distribution of the affordable units within Rivanna Village are set forth in the Code of Development.

The undersigned Owner hereby proffers that the use and development of the Property shall be in conformance with the proffers and conditions herein above, and these proffers shall supersede all other proffers and conditions made prior hereto.

GLENMORE ASSOCIATES LIMITED PARTNERSHIP, A Virginia limited partnership

BY: The Frank A Kessler Declaration of Trust dated November 18, 1996, as amended, General Partner

BY: Peggy B. Kessler 6-11-07

Peggy B. Kessler, Successor Trustee Date

BY: M D Comer 6/11/2007

Michael D. Comer, Successor Trustee Date

AP2020-003

Information submitted by Stewart Wright - 11/18/2020

Dear Board of Zoning Appeals members:

My name is Stewart Wright. My wife and I live at 3540 Pritchett Lane, near the North Pointe development. I am the person appealing the Zoning Administrator's determination dated September 21,2020 that the North Pointe project is in compliance with the conditions of their Special Use permit (SP 2002-72).

I've been retired since the end of August 2107. Before that I worked for the Albemarle County Zoning department for almost 14 years. I finished my career as a Senior Permit Planner. I feel that I am well versed in the Zoning Ordinance and Zoning processes and procedures. During my tenure at the County I did keep a close eye on the North Pointe project regarding what was being proposed by the developer and what was approved by the County. I did so because I live on Pritchett Lane which boarders the east side of North Pointe and I knew the project could negatively impact my neighborhood. My Pritchett Lane neighbors and I were very concerned about the potential of construction traffic on our road and also permanent public road connections from North Pointe to Pritchett Lane. We attended all relevant Planning Commission and Board of Supervisors meetings to voice our concerns about all types of traffic impacts on our street, especially construction traffic. Our street was never designed to accomodate very large and very heavy construction vehicles. Pritchett Lane is 1.2 miles long and is a dead end road. The posted speed limit is 35 miles per hour. It is very narrow in certain places. You need to excercise caution passing another oncoming car or truck in these places to avoid slapping your side view mirrors. I would suggest that every BZA member take a drive down the full length of Pritchett Lane prior to the December 1st meeting to see exactly what the road is like. There are around 45 homes and one church on Pritchett Lane. It's a nice, quiet, dead end country lane with no sidewalks where you used to be able to safely take a walk with your family and/or your pets, or go for a bike ride or a jog. Not anymore.

North Pointe was officially rezoned (ZMA 2000-9) to be Planned Development Mixed Commercial (PDMC) on August 23rd, 2006. The developer wanted residential uses to be allowed also. That required them to apply for a special use permit to allow the residential uses. They did so and the special use permit (SP 2002-72) was also approved on August 23rd, 2006 based on 10 conditions. Please read condition 9, specifically 9 (A) regarding extensions to Pritchett Lane very carefully. This condition clearly spells out what type of extensions connecting Pritchett Lane to the North Pointe project are allowed. There is no gray area here. The approval of the special use permit was based on very specific conditions. Condition 9(A) clearly states that the only approved connections from Pritchett Lane to North Pointe property are 2 emergency access easements at this time. As you read condition 9(A) you will see that 9(A)(1) is applicable at this time, but 9(A)(2) and 9(A)(3) are not. They could be in the future if requested by the County and if an upzoning across the street occurs. So at this time the ONLY approved extensions to Pritchett Lane from North Pointe are the 2 emergency access easements as conditioned by the approval of the special use permit.

So what is an emergency access easement? Unfortunately the Zoning Ordinance does not define it for us. It does define an easement as "a right to use the land of another in a particular manner and for a

particular purpose". From my years working for Albemarle County Zoning I have always understood an emergency access easement to be a access point to a property or development for use by Fire and Rescue and the police only. This type of easement is blocked off from public use by bollards or a gate and Fire and Rescue and the police department are the only ones who have a master key to get in. It is for emergency access only, not public use. And it certainly isn't the same thing as a temporary construction easement or a construction entrance to a development. And we all know dump trucks and tractor trailers aren't emergency vehicles. **As I am writing this the developer still has not constructed the 2 emergency access easements to standards accepted by Community Development or Fire and Rescue. There are no gates, bollards or or permant barriers with a lock and key installed. So they are not in compliance with condition 9(A) of the Special Use permit regarding the construction of the emergency access easements. Zoning staff seems to have interpreted this differently from what the conditions of special use permit actually says**.

It is my understanding, based on conversations with Zoning staff, that around the end of September, 2019 the developer met with Zoning staff to discuss the possibility of using the 2 emergency access easements on Pritchett Lane as construction entrances because he was getting ready to build the stream crossing over Flat Branch creek which is located on North Pointe property. This stream crossing also required a special use permit for fill in the floodplain. Special use permit 2007-3 was approved to allow this and makes no mention of acces from Pritchett Lane being allowed. It is also my understanding, based on conversations with Zoning staff, that staff told the developer they didn't see any reason why he couldn't use the emergency access easements for construction entrnaces. When I asked staff in early February how this intensification of an approved use could be allowed when doing so would be in direct conflict with the special use permit conditions of approval they stated "there is nothing in the special use permit that says they can't do it" and "we do this all the time". "We grant construction easements all the time". I don't remember Zoning ever allowing something that is in direct conflict with a condition of a special use permit. The special use permit spells out 10 conditions of approval. It's very clear. Zoning is not permitted to allow something that is in direct conflict with a condition of a special use permit. The special use permit does not spell out everything that is prohibited. It didn't need to. The words on the page clearly show what is allowed.

So why does the special use permit only allow 2 emergency access easements right now and a possible future permanent connection if a neighboring property is upzoned? Why doesn't it allow other types of connections also? The ZMA application plan submitted by the developer only shows 2 emergency access easements. If the developer and County staff wanted these 2 emergency access easements to begin as construction entrances or temporary construction easements and later be converted to emergency access easements they could have worded condition 9(A) that way and also have shown that on the ZMA application plan and the special use permit application. The 10 conditions were all recommended by County staff as a condition of approval to the Planning Commission and the Board of Supervisors. When the rezoning (ZMA 2000-9) and the special use permit (SP 2002-72) were still under review County Planning staff, the Planning Commission and the Board of Supervisors all heard the concerns of my neighbors and I regarding construction traffic, permanent daily public traffic and the impact to our street and neighborhood. They clearly heard our concerns. No doubt about it. The Planning

Commission sent it on to the Board of Supervisors recommending approval of condition 9(A) that the only approved connections allowed to Pritchett Lane from North Pointe were to be the 2 emergency access easements and a possible future permanent connection along with 9 other conditions. **They clearly did this to limit the impact of traffic generated by the North Pointe development on the Pritchett Lane neighborhood.** The Planning Commission heard from concerned citizens, heard from County staff, followed the guidance laid out by the Zoning Ordinance **(Sec. 33.9 and 33.40),** and sent it on to the Board of Supervisors for an action. On August 23, 2006 the Board of Supervisors approved SP 2002-72 with conditions after following the guidance of **Chapter 18 Section 33.40**. I was at that meeting too. County staff did their job very well. The Planning Commission did their job pefectly and the Board of Supervisors did their job by appproving the special use permit based on the conditions.

My neighbors and I were greatly relieved by the condition limiting the type of approved connections to only 2 emergency access easements. We felt that our concerns were safely addressed and our fears had been alleviated. After the Board action in August of 2006 I would still occassionally talk to senior Planning staff about these emergency access easements and future permanent connections. I was still worried that people in Community Development would forget about what the special use permit approval said. I was always worried about construction traffic. I was always told don't worry. "The only approval they have is for the 2 emergency access easements". They can't use Pritchett Lane for anything else. And I believed what I was told by senior staff.

So after the North Pointe rezoning was approved in August of 2006 nothing happened at all until around 2018 and then it was a small amount of clearing off Route 29. It has now been over 12 years since the rezoning and Special Use permit were approved. Much of the County staff that had worked on ZMA 2000-9 and SP 2002-72 had retired or no longer worked for the County. The institutional knowledge about this project in the Community Development department was gone. It wasn't until the end of 2019 that I started noticing real activity on the North Pointe property. They bulldozed a cut in from Pritchett Lane which I assumed was going to be one of the emergency access easements. Then they cut down most of the trees on the property and hauled the logs out using Pritchett Lane for access. That's about the time my neighbors and I started complainig to theCommunity Development department about what was going on. The impact to the property was substantial, but except for the logging trucks the traffic impact wasn't that noticable yet. In late January/early February everything changed. Construction traffic showed up in full force. At first it was a few dump trucks and large tractor trailers hauling in bulldozers and other heavy equipment. Then we started seeing a lot more dump trucks rolling in. On February 6th, 2020 I emailed the Zoning Administrator and told him about the construction traffic and that I didn't think that was allowed. I didn't feel the situation required me turning in a zoning violation yet. I just needed to speak to someone in Zoning about this. I heard back from Bart Svboda the next day by email and he said they would do some research and get back to me the following week. Bart didn't get back to me until March 9th and he said someone would be back in touch with me soon. It is now over a month since my first inquiry to Zoning. By now dump trucks are steadily rolling down Pritchett Lane at an unbelievable rate along with oversized load tractor trailers bringing in equipment and materials. Finally on March 22nd I got an email from Bart stating that they had looked into it and could find nothing in the Special Use permit that would prohibit a construction entrance on Pritchett Lane. **It took**

44 days to get an answer about how all this construction traffic was allowed when the Special Use permit makes no mention of allowable construction entrances or temporary construction easements connecting North Pointe to Pritchett Lane. The answer I got made no sense to me based on everything I had been taught in my 14 years in the Zoning department.

I felt pretty defeated at this time and pretty much gave up fighting with Zoning about it. We were all more concerned about the Covid pandemic by then. But now I'm stuck at home with way too much time on my hands. Nothing to do but yardwork and watch dump trucks roll by. So I started timing the frequency of dump trucks passing by in front of my house for weeks. Literally. Im sitting there with a watch seeing how often one comes by and how many hours a day they were rolling in. The rate was astonishing to me. **One dump truck every 45 seconds**. I am not kidding. That translates to a round trip every 1.5 minutes. I did the math and that worked out to 320 round trips per 8 hour day. And they were rolling longer than 8 hour days. I ask all of you to please put yourself in my shoes. Imagine a dump truck roaring past your house every 45 seconds during the day for weeks on end when you were under the impression that no construction traffic was allowed on your street. This amount of construction traffic was far beyond anything my neighbors and I could have imagined. This went on all summer. I told County staff what I was observing, a dump truck almost every 45 seconds, and got no response out of them at all. It seemed like they thought I was making this up. I wasn't and my neighbors will vouch for that too. I reached my breaking point on August 27th when I was rudely awaken by 10 large dump trucks roaring past my house at 6:30 a.m. as they began running dirt and gravel all day. I I turned in the zoning violaton for noncompliance with the conditions of Special Use permit 2002-72 that day.

The emergency access easements were approved and required by the special use permit. A lot of what goes into reviewing a special use permit is thinking about what the use is and what the impact is (**Chapter 18 Sec 33.40).** The emergency access easements are the approved connections. So what is the use? Emergency access. If something bad happens on North Pointe property there are 2 additional ways emergency vehicles can access North Pointe besides the 3 approved entrances for general public use off of Route 29 or the approved entrance at the end of Leake Lane off Proffit Road. Now what is the impact of these 2 emergency access easements? Emergency vehicle traffic on Pritchett Lane. So realistically how many emergency vehicle round trips can be expected on Pritchett Lane when using the emergency access easements? I would say no more than 5 times a year and even that would be a high number. North Pointe would be having a really bad year for accidents. When Zoning decided to let the developer change and intensify the use of the emergency access easements to construction entrances what is the new use? Access to the North Pointe project for construction vehicles. What is the impact? Up to 320 vehicle trips a day for most of this year from what I saw with my own 2 eyes. **Here is the very important part. When an approved use on a special use permit is intensified or changed to a more intensive use then the owner of the property must amend the special use permit. That is what the Zoning Ordinance says and what the consistent administrative practice of the Zoning department has always been. This requirement is found in the Zoning Ordinance in section 31.5.**

Sec. 31.5 - Zoning clearance.

The zoning administrator shall review requests for zoning clearances as follows:

a.When required. A zoning clearance shall be required in the following circumstances:

1.New use. Prior to establishing a new non-residential use, including those provided in subsections (a)(6) and (a)(7), or clean earth fill activity or inert waste fill activity, other than an agricultural use.

2.Change or intensification of existing use. Prior to changing or intensifying an existing non-residential use, including those provided in subsections (a)(6) and (a)(7), other than an agricultural use.

A Zoning Clearance is an official approval by Zoning of a use. It is a written determination by the Zoning Administrator that a use is allowed. A special use permit is also an official approval of a use only allowed by special use permit in a particular district per the Zoning Ordinance. Therefore it is also an official Zoning approval. If the use in question was a by right use in the district then the applicant would be required to obtain a Zoning Clearance to change or intensify the use. Because the use was only permitted by special use permit in the district the applicant must amend the special use permit to change or intensify the use.

That is what I was taught by my supervisors in Zoning and the County Attorney when I worked there. The approved use of the emergency access easement was changed and intensified to a far more intensive use. But don't believe me just yet. **Please ask the Zoning Administrator when a special use permit must be amended at the December 1st meeting**. **Please ask him.** I verified this when I called up the previous Zoning Administrator on August 28th, 2020. Since they were no longer the acting Zoning Administrator I asked her only 1 general question. My question was "if I have a use on a special use permit that generates 5 vehicle trips per year and I want to change that to a use that generates 300 vehicle trips per day do I need to amend my special use permit"? Her answer was she " could not imagine a situation where I would not have to amend that special use permit". I felt better after hearing that good honest answer. It confirmed what I remembered about when a special use permit must be amended. When the developer asked Zoning staff if he could use the emergency access easement as a construction entrance or temporary construction easement Zoning should have followed the Zoning Ordinance regulations and told him no, but he could if he amended the special use permit. Zoning has given that option to lots of people over the years. That would have been the correct thing to do here. If the County had rightly required the developer to amend the special use permit it would have required new analyzation by staff, public hearings and a legislative action. Most importantly, the residents of Pritchett Lane would have been given the opportunity to voice our concerns once again. Instead we were completely blindsided by the Zoning department and the developer.

The Zoning Ordinance does not define what a construction entrance is. It also does not define what a temporary construction easement is or what temporary even means. There are no supplemental regulations in the Zoning Ordinance that set a time limit for how long temporary construction easements can be used. That means that there is no way for the Community Development department to require the developer to stop using the emergency access easements as construction access. There could be construction traffic using these access points for years and years. Until someone determines that what is going on here is not in compliance with the conditions of SP 2002-72 the developer and all the construction companies will have free use of the 2 emergency access easements for as long as they

want.

I feel like I have presented 3 very valid reasons as to why the North Pointe development is not in compliance with condition 9(A) in special use permit 2002-72.

1. The condition only allows 2 emergency access easements and a possible future permanent connection after an upzoning. It does not allow other types of connections, regardless if they are temporary or permanent.

2. The 2 emergency access easements have not been constructed yet to any sort of acceptable standard normally imposed by Fire and Rescue or Community Development. Therefore they don't exist yet.

3. To change and intensify the approved use of an emergency access easement to a construction access easement or construction entrance the developer should have been required to amend the special use permit per the Zoning Ordinance and the consistent administrative practice of the Community Development Department.

I appreciate you all taking the time to read all of this. I realize it got very lengthy, but I don't think I could have told you everything in the 15 minutes I am allowed to speak on December 1st. It's a lot of information. I encourage all of you to ask me plenty of questions and seek answers to why the public health, safety and welfare of our neighborhood have been blatanty dismissed. My neighbors and I are looking forward to speaking with you.

Thank you very much !!!

Stewart Wright / Pritchett Lane neighborhood

Sec. 33.39 - Recommendation by the Planning Commission.

The Commission shall act on an application for a special use permit as follows:

A. Recommendation. The Commission shall either recommend approval of the application as proposed, approval of the application with changes to be made prior to action on the application by the Board of Supervisors, or denial of the application.

B. Factors to be considered. In making its recommendation, the Commission shall consider the same factors considered by the Board under Section 33.40.

C. Conditions. The Commission's recommendation should include its recommendations on any proposed conditions, applying the same criteria applied by the Board under section 33.40.

D. Time for recommendation. The Commission shall make its recommendation on the application within 90 days after the application is determined to be complete. The failure of the Commission to make a recommendation on the matter within the 90-day period shall be deemed to be a recommendation of approval. The 90-day period may be extended if the applicant requests a deferral pursuant to Section 33.52.

State Law reference— Va. Code § 15.2-2286 .

Sec. 33.40 - Action by the Board of Supervisors.

The Board of Supervisors shall act on an application for a special use permit as follows:

A.Action. The Board may either approve the special use permit, deny the application, or defer action to either allow changes to be made to the application or any proposed conditions prior to final action by the Board, or to refer the matter back to the Commission for further consideration and recommendation within the time for an action provided in subsection (D).

B. Factors to be considered. In acting on a special use permit, the Board shall consider the following factors, provided that the Board is not required to make specific findings in support of its action:

1. No substantial detriment. Whether the proposed special use will be a substantial detriment to adjacent parcels.

2. Character of the nearby area is unchanged. Whether the character of the adjacent parcels and the nearby area will be changed by the proposed special use.

3. Harmony. Whether 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 Section 5 as applicable, and with the public health, safety, and general welfare.

4. Consistency with the Comprehensive Plan. Whether the proposed special use will be consistent with the Comprehensive Plan.

C. Conditions. In approving a special use permit, the Board may impose reasonable conditions to address any possible impacts of the special use. Except as the Board may specify in a particular case, any condition imposed on a special use shall be deemed to be essential and nonseverable from the permit itself. Any condition determined to be unreasonable, invalid, void, or unlawful shall invalidate the special use permit. The conditions may pertain to, but are not limited to, the following:

1. Preventing or minimizing smoke, dust, noise, traffic congestion, flood, and other hazardous, deleterious or otherwise undesirable substances or conditions.

2. Providing adequate police and fire protection.

3. Providing adequate improvements pertaining to transportation, water, sewage, drainage, recreation,

landscaping, and screening or buffering.

4. Establishing special requirements relating to building setbacks, front, side, and rear yards, off-street parking, ingress and egress, hours of operation, outside storage of materials, duration and intensity of use, building heights, and other particular aspects of occupancy or use.

5. The period by which the use or the construction of any structure required for the use must begin.

6. The materials and methods of construction or specific design features; provided that any condition imposed in connection with a residential special use permit: (i) shall be consistent with the objective of providing affordable housing if the applicant proposes affordable housing; and (ii) shall consider the impact of the condition on the affordability of housing.

D. Time for action. The Board shall act on an application for a special use permit within a reasonable period not to exceed nine months after the date the Commission made its recommendation on the application. The 12-month period may be extended if the applicant requests a deferral pursuant to Section 33.52.

Sec. 31.5 - Zoning clearance.

The zoning administrator shall review requests for zoning clearances as follows:

a.When required. A zoning clearance shall be required in the following circumstances:

1.New use. Prior to establishing a new non-residential use, including those provided in subsections (a)(6) and (a)(7), or clean earth fill activity or inert waste fill activity, other than an agricultural use.

2.Change or intensification of existing use. Prior to changing or intensifying an existing non-residential use, including those provided in subsections (a)(6) and (a)(7), other than an agricultural use.

3.Change of occupant. Prior to a new occupant taking possession of an existing non-residential use, other than an agricultural use.

4.Specific buildings, structures or uses. Prior to establishing any building, structure, or use for which a zoning clearance is required under section 5

.5.Commencement of extraction activity. Prior to commencing any natural resource extraction activity within the natural resources overlay district.

6.Events and activities at farm wineries, farm breweries, farm distilleries, and agricultural operations. Prior to the first time that a specific class of event or activity is held at a farm winery, farm brewery, farm distillery, or agricultural operation, if a zoning clearance is required under sections 5.1.25(b), 5.1.57(b), 5.1.58(d), and 5.1.59(b).

7.Outdoor amplified music. Prior to the first time that outdoor amplified music is generated at an event or activity at a farm winery, farm brewery, or agricultural operation, as provided in sections 5.1.25, 5.1.57, and 5.1.58, respectively.

b.Approval. If the proposed building, structure, improvements, and site, and the proposed use thereof, comply with this chapter, the zoning administrator shall issue the zoning clearance.

c.Circumstance when zoning clearance shall not be issued. The zoning administrator shall not issue a zoning clearance if, after review of any site, the zoning administrator determines that additional improvements are necessary to protect the public health or safety, regardless of whether the improvements are shown on the site plan.

d.Notice to the owner if the applicant is not the owner. Within ten days after receipt of a request for a zoning clearance by an applicant who is not the owner of the lot and/or structure to which the zoning clearance pertains, and prior to acting on the request, the zoning administrator or the applicant, at the zoning administrator's request, shall give written notice of the request to the owner. Written notice mailed to the owner's last known address as shown on the current real estate tax assessment records shall satisfy this notice requirement. If the zoning administrator requests that the applicant provide the

written notice, the applicant shall provide satisfactory evidence to the zoning administrator that the notice has been given.

e.Commercial and industrial uses defined. For the purposes of this section 31.5, production agriculture, production silviculture, and agricultural operations are neither commercial nor industrial uses; a home occupation is a commercial use.

f.Effect of renumbering and renaming. Any other section of this chapter that refers to section 31.2.3.2 or to a zoning compliance clearance shall be deemed to be a reference to section 31.5 or a zoning clearance

Supplemental Information provided by S. Wright

11/23/2020

From: Stewart Wright <maycraft2300@gmail.com>
Sent: Monday, November 23, 2020 2:39 PM
To: Marsha Alley
Subject: December 1st appeal
Attachments: DeveloperLetter.rtf

CAUTION: This message originated outside the County of Albemarle email system. DO NOT CLICK on links or open attachments unless you are sure the content is safe.
Marsha;

Here is a letter from the developer to my neighbors, Nina and Larry Crawford, on Pritchett Lane
that we would like to submit to the BZA members prior to the December 1st meeting. We feel
that it is important relevant information.

As always, thanks for your help.
Stewart Wright

GREAT EASTERN MANAGEMENT COMPANY
DEVELOPMENT ■ CONSTRUCTION ■ FINANCE ■ MANAGEMENT

May 3, 2006

Mr. Lawrence Crawford
3715 Pritchett Lane
Charlottesville, VA 22911

Dear Mr. Crawford,

After more than six years and twenty-six work sessions, neighborhood meetings and public hearings, **the North Pointe rezoning application is scheduled for its final public hearing and a vote on Wednesday, May 10th at 6:00 pm at Burley Middle School, 901 Rose Hill Drive.** It is important that there be Pritchett Lane representation at the meeting to support us in advocating for no connections, other than for emergency access, from North Pointe to Pritchett Lane. We (and the Board of Supervisors) made this commitment to neighbors in 1993 when North Pointe (formerly Towers Land Trust Properties) was added to the Hollymead Growth Area.

This arduous journey began in 1981 when individuals and entities associated with Great Eastern began assimilating the North Pointe parcels. We recognized then that future development in the area of the Airport Road/Route 29 North intersection was going to be as important as the area from Barracks Road to Hydraulic Road had been to the City and the stretch from Rio Road to the South Fork of the Rivanna River would be to the County.

With the help of a number of local homebuilders, architectural organizations and engineering firms, and particularly with your input, the current North Pointe plan reflects an exciting 265-acre mixed-use, pedestrian-oriented community where multiple generations will live, work, play, shop, go to school, attend church, and visit the library either by walking or, if by car, without having to access Route 29 North. **North Pointe's extensive proffers and design features include:**

- Substantial road improvements to both Route 29 North and Airport/Proffit Road,
- Fully graded pad sites with utilities and road access for an elementary school and a branch library,
- An internal "spine" road connecting Proffit Road with Lewis & Clark Drive (the entrance to the University Research Park),
- Interconnectivity to a number of adjacent non-owned parcels of land,
- Considerably more open space than required by ordinance in the residential areas,
- An internal road system streetscape that includes bicycle paths, curb and gutter, sidewalks, and planting strips with street trees,
- Installation of ten bus stops and a ten year subsidy if bus service is introduced,
- Funding for a regional transportation study and synchronization of the traffic signals in the area,
- A number of parks and over 10 ½ miles of walkways and paths,
- Dedication of conservation areas to protect streams, stream valleys and critical slopes,

P.O. BOX 5526 ■ CHARLOTTESVILLE, VIRGINIA 22905-5526
■ GENERAL OFFICE (434) 296-4141 ■ PROPERTY MANAGEMENT (434) 296-4109 ■ FACSIMILE (434) 293-5197 ■

- Treatment of storm water from off-site that is currently untreated, causing severe stream bank erosion which adds sediment to the river, and
- A significant component of affordable housing together with a large cash contribution to the Albemarle Housing Initiative Fund.

In the current political climate, consensus on land use issues is difficult to achieve. **North Pointe represents a new paradigm for development where competing interests of those concerned about the environment and the very real and pressing needs of the marketplace are mediated.** We believe the plan submitted integrates the best of both views: a mixed-use community located in a designated growth area, incorporating the principles of the Neighborhood Model, proffering needed public infrastructure improvements, remediating current environmental degradation, and phasing construction to ensure fiscal success.

North Pointe is situated in the epicenter of the growing market between the City limits and Ruckersville, within one of the development areas designated by the County's Comprehensive Plan. These development areas comprise only 5% of the County's entire land mass, ensuring that County growth will not disturb the character of our rural areas, which make up the other 95% of the County. **Approval of North Pointe, with its unique mix of residential units, provides for significant new inventory of single family homes in close proximity to the University Research Park and NGIC facility that have been zoned by the County for job growth.** Although some in opposition look with disfavor on the larger stores ("big boxes") planned, these stores satisfy a real demand for competitive goods and services by moderate income families that otherwise might find it difficult to enjoy a relatively comfortable standard of living. In addition, they will provide the draws to ensure the success of the smaller retail merchants as well as support extensive public infrastructure improvement proffers. And, of course, we hope you will frequent the proposed shopping areas and planned community amenities.

Attached please find a variety of documents which detail the scope of the North Pointe application, including a summary of the proffers and enhancements, the major infrastructure improvements we have agreed to construct, and the significant environmental protections we are offering. Our website (www.northpointecharlottesville.com) also presents considerable additional information, including North Pointe's compliance with the applicable Principles of the Neighborhood Model.

Please review all of this information and feel free to call us with any questions you may have. Thanks, and we hope to see you on the 10th.

Sincerely,

Donald J. Wagner
Vice Chairman, Board of Directors

Enclosures

From: Stewart Wright <maycraft2300@gmail.com>
Sent: Monday, November 23, 2020 2:51 PM
To: Marsha Alley
Subject: North Ponte "emergency access" easement
Attachments: 1123201100a.jpg; 1123201148_Burst01.jpg; 1123201059.jpg; 1123201149.jpg

CAUTION: This message originated outside the County of Albemarle email system. DO NOT CLICK on links or open attachments unless you are sure the content is safe.
Marsha;

Please forward these photos of the "emergency access easement" connecting Pritchett Lane to the
North Pointe development. I also included some photos showing the shear size of construction
vehicles now being allowed on our street. I took these pictures at 11:30 today, November 23rd,
2020.

Thanks again
Stewart Wright
Appellant




TRAILCOBILER




OVERSIZE LOAD

Supplemental Information provided by S. Wright

11/29/2020

From: Stewart Wright <maycraft2300@gmail.com>
Sent: Sunday, November 29, 2020 4:55 PM
To: Marsha Alley
Subject: Fwd: Relevant Ordinance Sections
Attachments: Sec. 25A.4.1.rtf; Sec. 25A.1.rtf; Sec. 21.2.rtf

CAUTION: This message originated outside the County of Albemarle email system. DO NOT CLICK on links or open attachments unless you are sure the content is safe.
Marsha;

Please forward this email to the BZA members.

Thanks
Stewart Wright
---------- Forwarded message ---------
From: Stewart Wright <maycraft2300@gmail.com>
Date: Sun, Nov 29, 2020 at 4:51 PM
Subject: Relevant Ordinance Sections
To: Stewart Wright <maycraft2300@gmail.com>

Dear BZA board members;

Please keep these Zoning Ordinance code sections that are relevant to Appeal 2020-3 North
Pointe handy for the December 1st BZA meeting along with the other code sections I have
already sent. You may wish to print some of them and have them by your side at the meeting.
Sections 33.40, 21.2, 25A.4.1, 31.5 and 25A.1 especially.

Thank you for your time and consideration
Stewart Wright

Sec. 25A.4.1 - Vehicular access.

Vehicular access points shall be designed to encourage smooth traffic flow with controlled turning movements and minimum hazards to vehicular and pedestrian traffic. Pavement widths and strengths of both internal and external roads shall be adequate to accommodate projected traffic generated from the district.

Primary access shall be provided from roads of adequate available capacity to accommodate projected traffic. Vehicular access from minor streets through residential neighborhoods shall be generally discouraged, and where permitted, shall be primarily for the convenience of residential areas served directly by such roads and not for general public access. Direct access by individual uses to existing public roads shall be discouraged. Uses shall be served by an internal road system to the maximum extent possible. Intersections of the internal road system and existing public roads shall be permitted to the extent necessary to provide reasonable access and service to uses contained within the PD-MC district.

Sec. 25A.1 - Intent, where permitted.

PD-MC districts are hereby created and may hereafter be established by amendment of the zoning map to permit development of large-scale commercial areas with a broad range of commercial uses under a unified planned approach. It is intended that PD-MC districts be established on major highways in the urban area and communities in the comprehensive plan. In recognition that such large-scale development may substantially reduce the functional integrity and safety of public roads if permitted with unplanned access, it is intended that multiple access to existing public roads be discouraged and that development and access be oriented toward an internal road system having carefully planned intersections with existing public roads

Sec. 21.2 - Permitted accessory uses and structures.

Uses and structures which are customarily accessory and clearly incidental shall be permitted, provided establishment of the same shall not be permitted until construction has commenced on the principal building or the principal use has been established; and provided further that in no case shall a parking structure other than a parking lot or garage located entirely at and/or below grade, be deemed to be accessory to any use in any commercial district. In no case shall a drive-in window be deemed to be accessory to any use in any commercial district.

Supplemental Information provided by S. Wright

11/30/2020

Damage to Pritchett Lane

11/30/2020

From: Stewart Wright <maycraft2300@gmail.com>
Sent: Monday, November 30, 2020 10:41 AM
To: Marsha Alley
Subject: Damage to Prichett Lane
Attachments: 1126201143.jpg; 1126201141.jpg; 1126201142a.jpg; 1126201232a.jpg

CAUTION: This message originated outside the County of Albemarle email system. DO NOT CLICK on links or open attachments unless you are sure the content is safe.
Marsha;

Please forward these pictures documenting the damage caused by the heavy equipment using
Pritchett Lane for construction access. More pictures coming shortly since I can only send 4 at a
time.
Thanks
Stewart Wright






MICHELIN
MICHELIN



Road damage that already
had to be patched
at construction access point

11/30/2020

From: Stewart Wright <maycraft2300@gmail.com>

Sent: Monday, November 30, 2020 10:47 AM

To: Marsha Alley

Subject:Road damage that already had to be patch at construction access point

Attachments: 1129201211b.jpg; 1129201212.jpg; 1129201211.jpg; 1129201211a.jpg

CAUTION: This message originated outside the County of Albemarle email system. DO NOT CLICK on links or open attachments unless you are sure the content is safe.

Marsha;

Please forward these pictures to the BZA documenting the repairs the developer had to do to fix the damage cause by the heavy equipment using Pritchett Lane as a construction access point. These 4 patches are at the construction entrance.

Thanks

Stewart Wright



More road damage to Pritchett Lane
created by heavy equipment

11/30/2020

From: Stewart Wright <maycraft2300@gmail.com>

Sent: Monday, November 30, 2020 10:55 AM

To: Marsha Alley

Subject:More road damage to Pritchett Lane created by heavy equipment

Attachments: 1126201141.jpg; 1126201143a.jpg; 1126201142.jpg

CAUTION: This message originated outside the County of Albemarle email system. DO NOT CLICK on links or open attachments unless you are sure the content is safe.

Marsha;

Here are the last pictures of damage to Pritchett Lane caused by heavy equipment using the construction access point only approved by Zoning.

That's all them. Nothing left but oral arguments tomorrow

Thanks

Stewart Wright







ALBEMARLE COUNTY BOARD OF ZONING APPEALS
ELECTRONIC MEETING VIA ZOOM
TUESDAY, NOVEMBER 10 2020 – 2:00 P.M.

Board Members Present:	John Shepherd, Chairman Ed Robb, Vice Chairman Marcia Joseph, Secretary Randy Rinehart Edward (Bo) Carrington
Staff Members:	Bart Svoboda, Zoning Administrator Marsha Alley, BZA Recording Clerk
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.

Mr. Shepherd addressed the board stating that this is an electronic meeting and asked for everyone to be patient as we all become familiar with this meeting alternative and virtual process. He made the following statement:

> This meeting is being held pursuant to and in compliance with Emergency Ordinance No. 20-A(14); 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 Ed Robb, Randy Rinehart, Marcia Joseph, Bo Carrington, and John Shepherd.
>
> 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. Participation will include the opportunity to comment on those matters for which comments from the public will be received.

Mr. Shepherd noted that there are no public hearings scheduled for the meeting.

2. Establish a Quorum

Each member verbally indicated their presence for the record in order to establish a quorum with five members present. Ed Robb, John Shepherd, Randy Rinehart, Bo Carrington, and Marcia Joseph.

Mr. Shepherd introduced others in attendance: Bart Svoboda, Zoning Administrator; Francis MacCall, Deputy Zoning Administrator; Andy Herrick, Deputy County Attorney; James Bowling, BZA Attorney; staff members Marsha Alley, BZA Recording Clerk and Lisa Green.

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3. Public Hearings

Mr. Shepherd announced that there were no public hearings scheduled for this meeting.

4. Approval of Minutes

A. October 6, 2020

Mr. Shepherd requested to have the word *it* removed from the sentence on page 2, line 33. There were no other comments regarding the minutes.

MOTION: Mr. Rinehart moved to approve the minutes for October 6, 2020. Mr. Robb seconded the motion, which passed unanimously (5-0).

5. Old Business

Mr. Shepherd asked Mr. Svoboda if there was any Old Business to discuss.

Mr. Svoboda explained that Mr. Maus has submitted and recorded a boundary line adjustment which makes the structure meet the setback. He added that the application is being processed accordingly.

Mr. Shepherd asked about the status of the appeal.

Mr. Svoboda stated that the appeal is currently at a standstill until the application is processed. He added that once the application is processed, Zoning will consult with Mr. Herrick, Deputy County Attorney, to determine the court process.

6. New Business

A. Training Session

Mr. Shepherd stated that Mr. Herrick would be continuing the training from the October meeting. He added that the BZA appreciates the opportunity to attend this training at the same time together.

Mr. Herrick addressed the board and gave a brief review of topics covered at the October meeting. He continued the presentation and discussion of the remaining topics:

- Meeting Procedures and the Freedom of Information Act (FOIA)
    - A. The Eight Important Principles of FOIA
        1. Quorum
        2. Assembly without discussion business
        3. Electronic Communications
        4. Public Meetings
        5. Closed Meetings
        6. Meeting established under FOIA without a quorum
        7. Quorum required for action
        8. Quorum in the case of conflict of interest
    - B. Rules of Procedure/Procedural Issues

- Conflicts of Interest
    - A. Purpose
    - B. Definition – generally focused on financial interests
    - C. Disclosure and Disqualification

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There was discussion regarding how FOIA regulations apply to the BZA and which items, documents, and conversations are subject to FOIA. Additionally, there was discussion related to how the regulations of Conflicts of Interest apply to members of the BZA. Mr. Bowling and Mr. Herrick each suggested that members with potential conflicts seek an opinion from the Commonwealth's Attorney prior to a meeting regarding concerns as they relate to the determination of conflicts of interest.

Mr. Herrick encouraged the members to refer to the Land Use Law Handbook for various questions that may arise.

Mr. Shepherd agreed, noting that the Land Use Law Handbook is the gold standard in Virginia.

Mr. Herrick stated that his presentation was complete but that he could respond to any additional questions.

There was a discussion regarding historical cases and how to reduce the conflict and confusion for applicants as it relates to the process. Mr. Svoboda noted that often timetables come into play and actions must be taken in order to keep the process moving toward the ultimate goal of compliance.

There was a discussion regarding the relationship between a special exception and a variance. Mr. Svoboda noted that the choice is left up to the applicant after reviewing the question with staff. He noted that the variance criteria are strict, but the special exception criteria are different and not as strict, noting that staff works with the applicant to determine the better avenue to choose. However, the choice between variance and special exception is up to the applicant. Mr. Herrick noted that state law does not limit the applicant from seeking both simultaneously.

Several members offered their appreciation to Mr. Herrick for the informative training presentation. Mr. Shepherd suggested that there should be an annual presentation.

Mr. Shepherd asked if there was any additional New Business for discussion.

Mr. Svoboda stated that there is a Variance request and an Appeal scheduled for December.

7. Adjournment

MOTION: At approximately 3:25 p.m., Mr. Rinehart moved to adjourn the meeting. Mr. Robb seconded the motion, which passed unanimously (5-0).

(Recorded and compiled by Marsha Alley)

Respectfully Submitted,

_____

Marcia Joseph, Secretary Board of Zoning Appeals

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