



**REGULAR MEETING
FREDERICK COUNTY BOARD OF SUPERVISORS
WEDNESDAY, MAY 27, 2020 AT 7:00 P.M.
BOARD ROOM, COUNTY ADMINISTRATION BUILDING
107 NORTH KENT STREET, WINCHESTER, VIRGINIA**

Planning Commission Business – Public Hearing

1. **Conditional Use Permit #01-20 for J K Lee Services**, submitted for the expansion of an existing assisted living facility adding six (6) beds for a total of forty (40) beds. The property is located at 549 Valley Mill Road, Winchester, Virginia and is identified with Property Identification Number 55-A-56 in the Red Bud Magisterial District. **(Mr. Cheran)**

Planning Commission Business – Other Planning Business

1. **Master Development Plan #02-20 Heritage Commons** submitted Pennoni Associates, to develop 141.75-acres +/- of land zoned R4 (Residential Planned Community) District Property for a mixed-use community with up to 645 multi-family residential housing units and a minimum of 107,500 square feet of commercial development. The subject properties are located generally west of Route 522 and east of Interstate 81 and north and south of (future) Crossover Boulevard and are identified by Property Identification Numbers 63-A-15, 64-A-10 and 64-A-12. Please note this item is presented for informational purposed only. **(Mr. Klein)**
2. **Development Review fees for Commercial Telecommunication Facilities CUPs.** **(Mr. Klein)**
3. **Zoning Enforcement, Violations, and Penalties.** **(Mr. Klein)**

“Only Planning related items are identified above. The full Board of Supervisors Agenda is located on the Board of Supervisors homepage under Meeting Agenda on the Frederick County Webpage”

Planning Commission Business
Public Hearings



CONDITIONAL USE PERMIT #01-20

J K Lee Services

Staff Report for the Board of Supervisors

Prepared: May 15, 2020

Staff Contact: Mark R. Cheran, Zoning Administrator

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

	<u>Reviewed</u>	<u>Action</u>
Planning Commission:	05/06/20	Recommended Approval
Board of Supervisors:	05/27/20	Pending

EXECUTIVE SUMMARY:

This is a request for a Conditional Use Permit (CUP) for an expansion of an existing assisted living facility use located at 549 Valley Mill Road. This facility is currently operating under CUP #22-04 which allowed for 34 beds. This CUP, 01-20, requests the addition of six (6) additional resident rooms. The expansion would bring the total number of beds in the facility to 40.

The Planning Commission held a public hearing for this item at their May 5, 2020 meeting. The Commission commended the facility and use as being a valuable asset to the community and recommended approval of the permit.

Should the Board of Supervisors find this application to be appropriate, the Planning Commission recommends that the following conditions be attached to the CUP:

1. All review agency comments and requirements shall be complied with at all times.
2. Applicant must comply with all requirements of the State and County codes pertaining to adult care facilities at all times.
3. Any expansion or modification of this use shall require approval of a new site plan and a Conditional Use Permit.

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

LOCATION: The subject property is located at 549 Valley Mill Road.

MAGISTERIAL DISTRICT: Red Bud

PROPERTY ID NUMBER: 55-A-56

PROPERTY ZONING & PRESENT USE: Zoned: RP (Residential Performance)
Land Use: Assisted Living Care Facility

ADJOINING PROPERTY ZONING & PRESENT USE:

North: RP (Residential Performance)	Use: Residential
South: RP (Residential Performance)	Use: Residential
East: RP (Residential Performance)	Use: Residential
West: RP (Residential Performance)	Use: Residential

PROPOSED USE: The Applicant proposes expansion of an assisted living care facility.

REVIEW EVALUATIONS:

Virginia Department of Transportation: The entrances are adequate for the proposed expansion.

Frederick County Fire Marshal: Approved.

Winchester-Frederick County Health Department: The subject property is served by municipal water and sewer. No objections to the proposed addition.

Frederick Water: No comments at this time.

Frederick County Inspections Department: Building shall comply with The 2015 Virginia Uniform Statewide Building Code and Section 308 – I-Institutional Use Group. Other Code that applies is 2015 Virginia Existing Building, ICC/ANSI A117.1-09 Accessible and Usable Buildings and Facilities, 2015 Virginia Energy Code, 2015 Virginia Mechanical Code, 2015 Virginia Plumbing Code, and 2015 Virginia Fire Code. Plans submitted for permits shall be sealed by a Virginia Licensed Design Professional.

Existing I-1 & I-2 Institutional Use Group. Additional area cannot create noncompliance as it relates to new construction in the Virginia Uniform Statewide Building Code. Existing buildings

height and area shall comply with T506 with allowable increases for proposed use. Institutional Use Group require a full NFPA 13 Suppression system.

Sleeping rooms and restrooms shall meet ANSI A117.1-2009 for type of sleeping room. An accessible route shall be provided to the main entrance. Van accessible parking and unloading provided. Max slope for parking and unloading area is 2%. Maximum slope for walkway to main entrance is 5%. Maximum threshold at door is ½. Van accessible signage shall be provided per USBC Section 1106.8.

All required exists shall be accessible. Exterior exit doors shall lead directly to the exit discharge or the public way.

Winchester Regional Airport: None

City of Winchester: No comments.

Planning and Zoning: This application is for an expansion of an existing adult care facility. An adult care facility is an allowed use in the RP (Residential Performance) Zoning District with an approved Conditional Use Permit (CUP).

This facility was first approved under CUP #02-96 for a 26-bed facility. This facility was constructed in 1996, utilizing a Community Development Block Grant.

Subsequently, this facility is operating under and subject to the conditions of CUP #22-04. This CUP allowed for a 5600 square foot addition to the facility. This addition included a new physical therapy room and eight (8) additional resident rooms to the facility, for a total of thirty-four (34) beds. The conditions associated with CUP #22-04 are below:

1. All review agency comments and requirements shall be complied with at all times.
2. A site plan must be submitted and approved prior to issuance of any building permits.
3. Applicant must comply with all requirements of the state and county codes pertaining to adult care facilities at all times.
4. Any expansion or modification of this use shall require approval of a new site plan and a Conditional Use Permit.

All of the conditions of the CUP #22-04 have been met. This CUP 01-20 will add six (6) additional resident rooms, enabling the facility to expand to a total of forty (40) beds.

STAFF CONCLUSIONS FOR THE 05/06/20 PLANNING COMMISSION MEETING:

This is a request for a Conditional Use Permit (CUP) for the expansion of the existing assisted living facility use. CUP #22-04 was approved in 2004 which allowed for 34 beds. This CUP, 01-20, requests the addition of six (6) additional resident rooms. The expansion would bring the total number of beds in the facility to 40.

Should the Planning Commission find this application to be appropriate, Staff recommends that the following conditions be attached to the CUP:

1. All review agency comments and requirements shall be complied with at all times.
2. Applicant must comply with all requirements of the State and County codes pertaining to adult care facilities at all times.
3. Any expansion or modification of this use shall require approval of a new site plan and a Conditional Use Permit .

PLANNING COMMISSION SUMMARY AND ACTION FOR THE 05/06/20 MEETING:

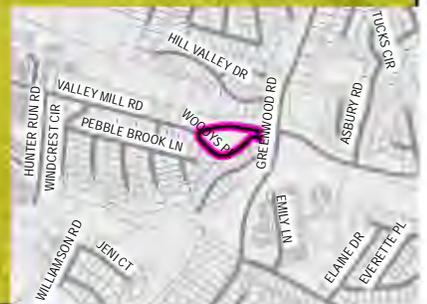
Staff provided an overview of the site history of the facility and the revisions to the conditional use permit being proposed to the Planning Commission. Following staff's overview, the Commission commended the facility and use as being a valuable asset to the community. There were no public comments and following the public hearing, the Planning Commission recommended approval of the conditional use permit.

CUP # 01 - 20: J K Lee Services

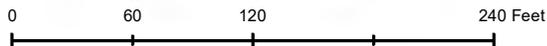
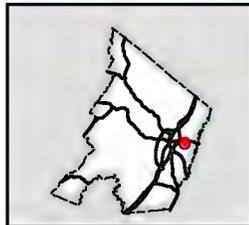
PIN: 55 - A - 56

Assisted Living Facility

Zoning Map



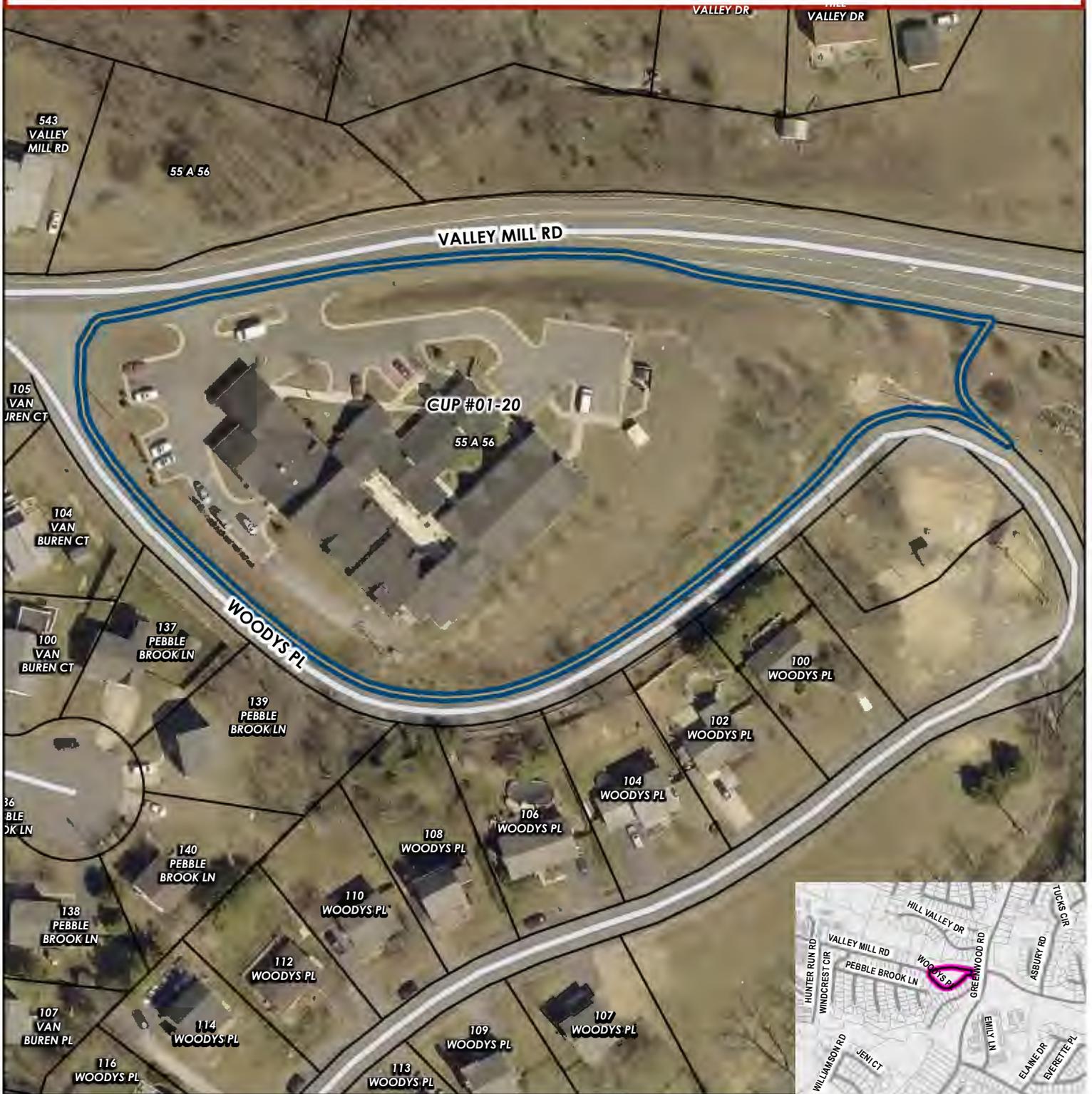
-  Application
-  Parcels
-  Sewer and Water Service Area
-  RP (Residential Performance District)



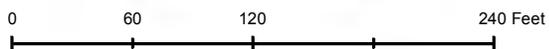
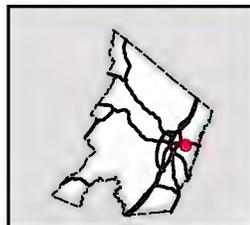
CUP # 01 - 20: J K Lee Services

PIN: 55 - A - 56

Assisted Living Facility
Location Map



-  Application
-  Parcels
-  Sewer and Water Service Area





Submittal Deadline	2/01/2020
P/C Meeting	3/18/2020
BOS Meeting	4/18/2020

**APPLICATION FOR CONDITIONAL USE PERMIT
FREDERICK COUNTY, VIRGINIA**

1. Applicant (check one): Property Owner Other

NAME: JK Kee Services

ADDRESS: 549 Valley Mill Rd Winchester, VA 22602

TELEPHONE: 703 732-4016

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

JK Kee Services

Green Valley Commons

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

549 Valley Mill Road Winchester, VA 22602

4. The property has a road frontage of 640 feet and a depth of 300 feet and consists of 3.892 acres. (Please be exact)

5. The property is owned by JK Kee Services as evidenced by deed from _____ (previous owner) recorded in deed book no. 872 on page 109, as recorded in the records of the Clerk of the Circuit Court, County of Frederick.

6. Property Identification Number (P.I.N.) 55-A-56
Magisterial District Red Bud
Current Zoning RP

7. Adjoining Property:

	USE	ZONING
North	Res	RP
East	Res	RP
South	Res	RP
West	Res	RP

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

Assisted living

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

Adding to existing structure
6 Beds

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

Name and Property Identification Number	Address
Name JK Lee Services	549 Valley Mill Rd Winchester, VA 22602
Property # 55A56 / 8015754	
Name 543 Valley Mill LLC	543 Valley Mill Rd Winchester, VA 22602
Property # 55A55 / 8015750	
Name Baires, ERI A.	105 Van Buren CT Winchester, VA 22602
Property # 55C-7-5-17 / 8032644	
Name Clemens, Robert A.	104 Van Buren CT Winchester, VA 22602
Property # 55C-7-5-18 / 8032645	
Name Ware, Brandon K.	137 Pebble Brook Lane Winchester, VA 22602
Property # 55C-7-5-25 / 8032650	
Name Navarro, Brian	139 Pebble Brook Lane Winchester VA 22602
Property # 55C-7-5-26 / 8032651	
Name Newcomb, Raymond Albert	108 Woods Place Winchester, VA 22602
Property # 55C-3-1-15 / 8029538	

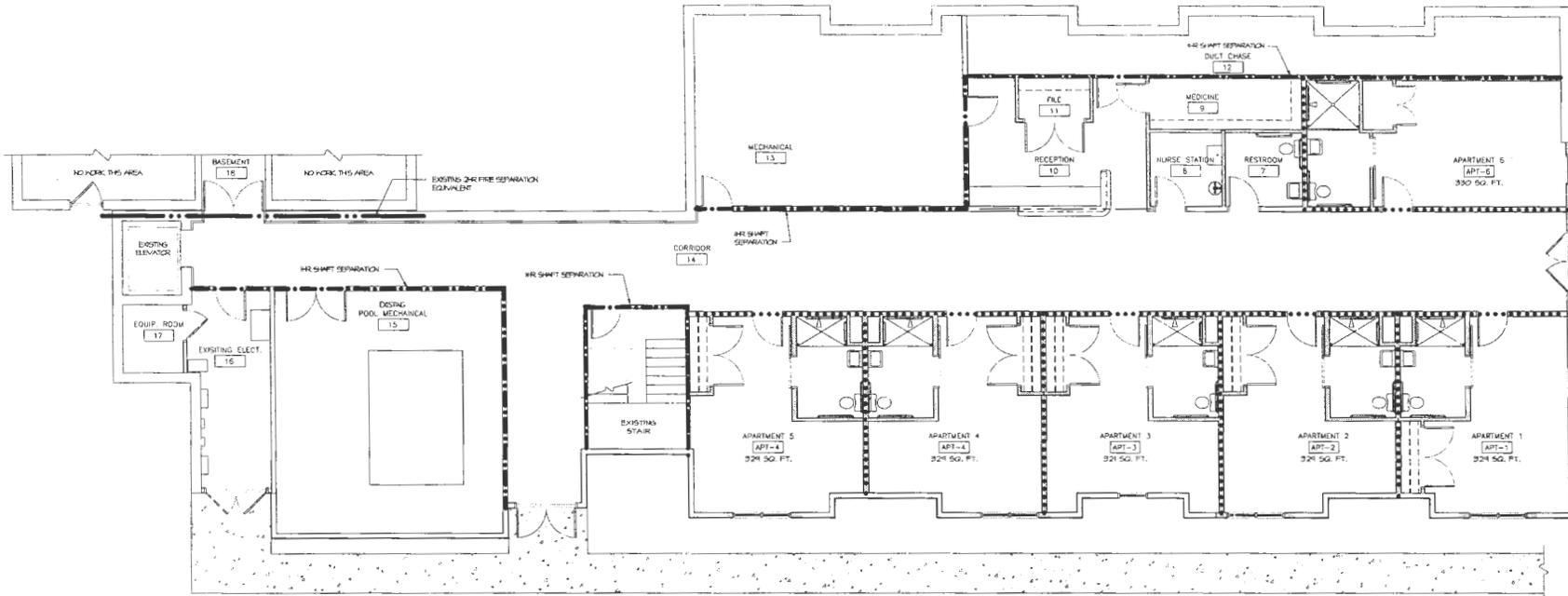
Name and Property Identification Number	Address
Name TODD, Mark. E.	100 Woods Place
Property # SSC-3-1-4 / 8029537	Winchester, VA 22602.
Name TWIGG, Shawn / Humphreys Michael	104 Woods Place
Property # SSC-3-1-3 / 8029536	Winchester, VA 22602
Name Combs, CRISTEL	102 Woods Place
Property # SSC-3-1-2 / 8029535	Winchester, VA 22602.
Name McCarthy, Kevin	100 Woods Place
Property # SSC-3-1-1 / 8029533	Winchester, VA 22602.
Name CARLISLE Estates	Property Address not on File
Property # SSC-31-1-A / 8029534	911 Address not on File.
Name Frederick - Winchester	Property Address not on File
Property # SS-A-182C / 8028604	911 Address not on File
Name	
Property #	
Name	
Property #	
Name	
Property #	
Name	
Property #	
Name	
Property #	
Name	
Property #	
Name	
Property #	

11. Please use this page for your sketch of the property. Show proposed and/or existing structures on the property, including measurements to all property lines.

See
attached
Drawing

GREEN VALLEY COMMONS
ASSISTED LIVING

549 Valley Mill Road, Winchester, VA 22602



1 BASEMENT FLOOR PLAN
 APT SCALE: 3/16" = 1'-0"

JOB # 1924

NOVEMBER 25, 2020

Progress Drawings

These Documents, Schematic Drawings, Preliminary Drawings, or Working Drawings, and Specifications are the Property of Architecture Design Concepts, P.C. and may not be used, reproduced, or utilized without the express written consent of Architecture Design Concepts, P.C.

REVISION

GRAPHIC LEGEND

- NEW HALL
- EXISTING HALL, OR EXISTING FINISHING TO REMAIN
- 1/2 HR. SLEEPING UNIT SEPARATION
- 1 HR. SHAFT SEPARATION
- 2 HR SEPARATION
- NEW DOOR 3'-0" (TYP) UND.
- EXISTING DOOR TO REMAIN
- ELEMENT ABOVE
- ACCESSIBLE CLEAR FLOOR AREA
- BEAM ABOVE



12. Additional comments, if any: _____

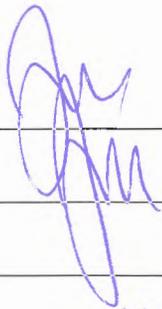
I (we), the undersigned, do hereby respectfully make application and petition the governing body of Frederick County, Virginia to allow the use described in this application. I understand that the sign issued to me when this application is submitted must be placed at the front property line at least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

Signature of Applicant _____

Signature of Owner _____

Owners' Mailing Address _____

Owners' Telephone No. _____



549 Valley Mill Rd Winchester VA

73 732-4616

22652

TO BE COMPLETED BY THE ZONING ADMINISTRATOR:

USE CODE: _____

RENEWAL DATE: _____



**Special Limited Power of Attorney
County of Frederick, Virginia
Frederick Planning Website: www.fcva.us**

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

Know All Men By These Presents That:

JK Lee Services / Jerry K Lee
Name of Property Owner/Applicant

Please note: If the property owner/applicant is an entity, the name of the entity should appear above.

If multiple persons own the property or are applicants, an executed power of attorney from each owner will be needed.
549 Valley Mill Road, Winchester, VA 22602 703 732-4666
Mailing Address of Property Owner/Applicant Telephone Number

as owner of, or applicant with respect to, the tract(s) or parcel(s) of land in Frederick County, Virginia, identified by following property identification numbers:

55-A 56

do hereby make, constitute, and appoint:

Angela Hey
Name of Attorney-In-Fact

549 Valley Mill Rd 703 732-4666
Mailing Address of Attorney-In-Fact Telephone Number
Winchester VA 22602

to act as my true and lawful attorney-in-fact for and in my name, place, and stead, with the same full power and authority I would have if acting personally, to file and act on my behalf with respect to application with Frederick County, Virginia for the following, for the above identified property:

- | | | | |
|-------------------------------------|--|--------------------------|---------------------------|
| <input checked="" type="checkbox"/> | Rezoning | <input type="checkbox"/> | Subdivision |
| <input type="checkbox"/> | Conditional Use Permit | <input type="checkbox"/> | Site Plan |
| <input type="checkbox"/> | Master Development Plan (prelim. or final) | <input type="checkbox"/> | Variance or Zoning Appeal |

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

This appointment shall expire one year from the day that it is signed, or at such sooner time as I otherwise rescind or modify it.

Signature [Signature]
Title (if signing on behalf of an entity) owner

State of Virginia, (County) City of Frederick, To wit:

I, Kathryn G Smith, a Notary Public in and for the jurisdiction aforesaid, certify that the person who signed the foregoing instrument personally appeared before me and has acknowledged the same before me in the jurisdiction aforesaid this 20th day of February, 2020

[Signature]
Notary Public

My Commission Expires September 30, 2022
REGISTRATION # 7660563
COMMONWEALTH OF VIRGINIA
MY COMMISSION EXPIRES
SEPTEMBER 30, 2022

DEBRA M. SMITH
 PIN#: 55C-7-5-17
 INST.#: -00-11613
 ZONED: RP
 USE: SINGLE-FAMILY
 RESIDENTIAL
 0.27 ACRES

ROBERT E. ROSE
 MEMORIAL FOUNDATION
 PIN#: 55-A-56
 DB: 872 PG: 109
 ZONED: RP
 USE: EDUCATIONAL
 0.45 ACRES

CURVE TABLE

CURVE	ARC	DELTA	RADIUS	TANGENT	CHORD BEARING	CHORD
C1	258.32'	82°17'42"	179.85'	157.15'	N87°15'41"W	236.68'
C2	63.02'	20°05'37"	179.70'	31.84'	N35°59'43"W	62.70'

ROBERT & CAROLYN CLEMENS
 PIN#: 55C-7-5-18
 INST.#: -03-22457
 ZONED: RP
 USE: SINGLE-FAMILY
 RESIDENTIAL
 0.20 ACRES

ROBYN M. McDONALD
 PIN#: 55C-7-5-25
 INST.#: -04-21917
 ZONED: RP
 USE: SINGLE-FAMILY
 RESIDENTIAL
 0.22 ACRES

JOSE & GLORIA AYALA
 PIN#: 55C-7-5-26
 INST.#: -04-21344
 ZONED: RP
 USE: SINGLE-FAMILY
 RESIDENTIAL
 0.27 ACRES

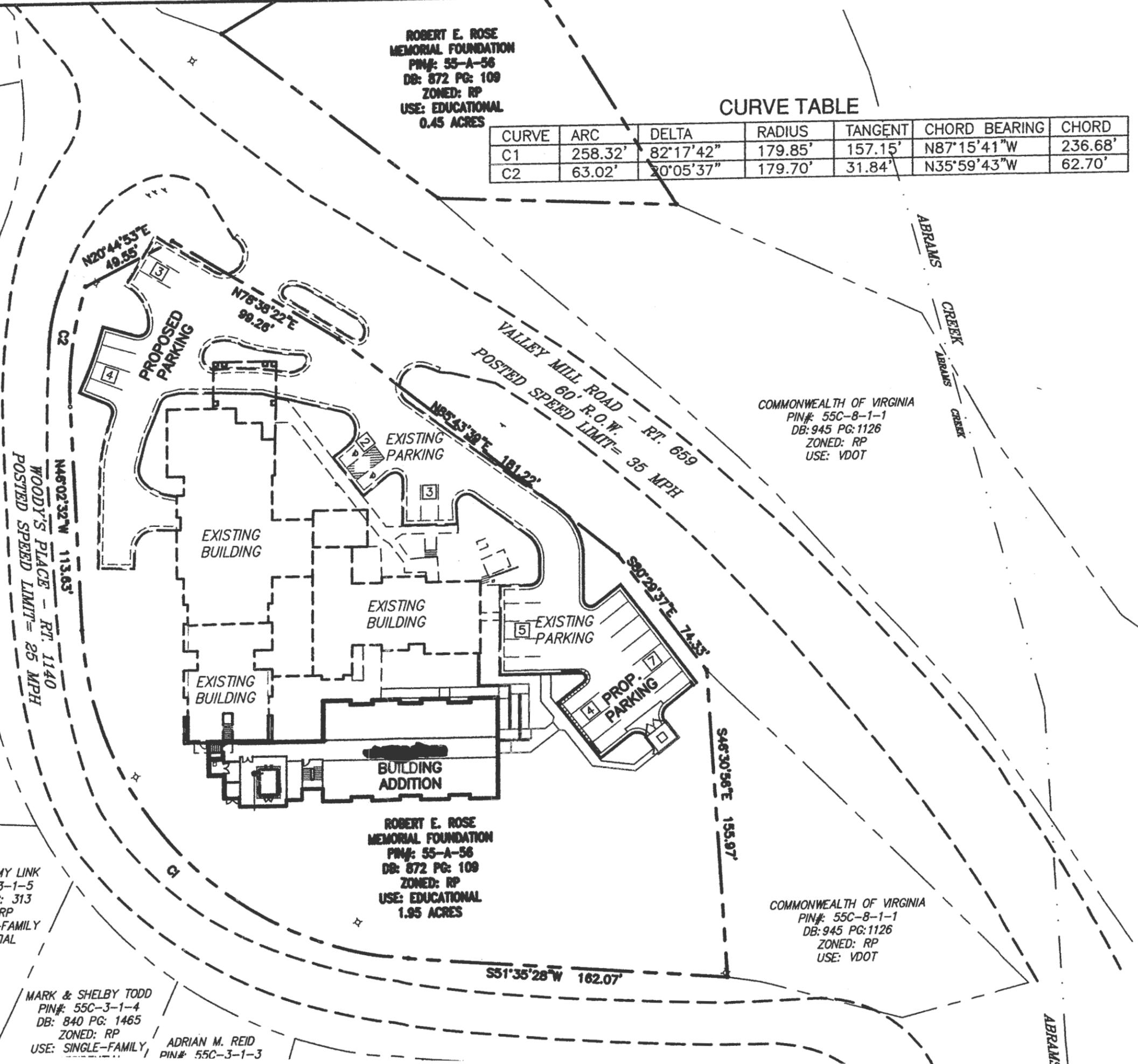
JOHN & TAMMY LINK
 PIN#: 55C-3-1-5
 DB: 937 PG: 313
 ZONED: RP
 USE: SINGLE-FAMILY
 RESIDENTIAL

MARK & SHELBY TODD
 PIN#: 55C-3-1-4
 DB: 840 PG: 1465
 ZONED: RP
 USE: SINGLE-FAMILY

ADRIAN M. REID
 PIN#: 55C-3-1-3

COMMONWEALTH OF VIRGINIA
 PIN#: 55C-8-1-1
 DB: 945 PG: 1126
 ZONED: RP
 USE: VDOT

COMMONWEALTH OF VIRGINIA
 PIN#: 55C-8-1-1
 DB: 945 PG: 1126
 ZONED: RP
 USE: VDOT





ORDINANCE

Action:

PLANNING COMMISSION: May 6, 2020 Recommended Approval
BOARD OF SUPERVISORS: May 27, 2020 Pending

ORDINANCE

CONDITIONAL USE PERMIT #01-20 J K LEE SERVICES EXPANSION OF EXISTING ASSISTED LIVING FACILITY

WHEREAS, Conditional Use Permit #01-20 for J K Lee Services, submitted for an expansion to an existing assisted living structure (currently approved with CUP #22-04) to add six (6) additional resident rooms, bringing the total rooms to 40, was considered. The property is located at 549 Valley Mill Road, Winchester, Virginia and is identified with Property Identification Number 55-A-56 in the Red Bud Magisterial District; and

WHEREAS, the Frederick County Planning Commission held a public hearing on the Conditional Use Permit on May 6, 2020 and recommended approval of the Conditional Use Permit with conditions; and,

WHEREAS, the Frederick County Board of Supervisors held a public hearing on this Conditional Use Permit during their regular meeting on May 27, 2020; and,

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

NOW, THEREFORE, BE IT ORDAINED by the Frederick County Board of Supervisors that Chapter 165 of the Frederick County Code, Zoning, is amended to revise the zoning map to reflect that Conditional Use Permit Application #01-20 for the addition of six (6) resident rooms, bringing the total permitted residential rooms for this facility to 40 on the parcel identified by Property Identification Number 55-A-56 with the following conditions:

1. All review agency comments and requirements shall be complied with at all times.
2. Applicant must comply with all requirements of the State and County codes pertaining to adult care facilities at all times.
3. Any expansion or modification of this use shall require approval of a new site plan and a Conditional Use Permit .

Passed this 27th day of May 2020 by the following recorded vote:

Charles S. DeHaven, Jr., Chairman

Shawn L. Graber

J. Douglas McCarthy

Robert W. Wells

Gene E. Fisher

Judith McCann-Slaughter

Blaine P. Dunn

A COPY ATTEST

Kris C. Tierney
Frederick County Administrator

Other Planning Items



MASTER DEVELOPMENT PLAN #02-20
Heritage Commons
Staff Report for the Board of Supervisors
Prepared: May 15, 2020

Staff Contact: M. Tyler Klein, AICP, Senior Planner

This report is prepared by the Frederick County Planning Staff to provide information to the Planning Commission and the Board of Supervisors to assist in the review of this application. It may also be useful to others interested in this zoning matter.

	<u>Reviewed</u>	<u>Action</u>
Planning Commission:	05/06/20	Reviewed
Board of Supervisors:	05/27/20	Pending

PROPOSAL: The Applicant seeks to develop 141.75-acres +/- of land zoned R4 (Residential Planned Community) Zoning District property for a mixed-use community with up to 645 multi-family residential housing units and a minimum of 107,500 square feet (SF) of commercial development. The development also includes 4.28-acres +/- of right-of-way for future Warrior Drive north extended, 11.94-acres +/- of preserved environmental features (Buffalo Lick Run) to-be-used for recreation, and future inter-parcel connectivity with the Madison Village residential community. The property is bisected by Crossover Boulevard, a new major collector roadway connecting the City of Winchester and Route 522, providing access to planned land bays.

MAGISTERIAL DISTRICT: Shawnee

PROPERTY ID NUMBERS: 63-A-150, 64-A-10, & 64-A-12

LOCATION: The properties are located generally west of Route 522 and east of Interstate 81 and north and south of (future) Crossover Boulevard.

PROPERTY ZONING & PRESENT USE:

Zoned: R4 (Residential Planned Community) Use: Undeveloped/Vacant

ZONING & PRESENT USE OF ADJOINING PROPERTIES:

North:	RP (Residential Performance) District	Use: Vacant/Residential
	B2 (General Business) District	Use: Vacant
South:	RP (Residential Performance) District	Use: Residential (Madison Village)
	RA (Rural Areas) District	Use: Vacant/Agricultural
East:	RP (Residential Performance) District	Use: Residential
	Route 522	Use: Route 522
West:	Interstate 81	Use: Interstate 81

REVIEW EVALUATIONS:

Virginia Department of Transportation: . The County Approved Generalized Development Plan (GDP) included an inter-parcel connection between landbay two and landbay three. This connection has not been included in the MDP. Other than this change, we have no objection to the MDP. Please revise and submit back to this office for final review.

See comment letter (email) dated February 25, 2020.

Frederick County Fire Marshal: Approved.

See approval letter dated February 4, 2020.

Frederick County Public Works: Through the development of Crossover Boulevard road project, Frederick County, the owner of property (MMA/ Hunt) and VDOT have a written agreement regarding stormwater management. We are constructing stormwater management facilities that will handle the water quantity for the entire development. The owner has a cost share agreement with the County and they are paying for a large portion of the costs to develop ponds as we construct the road. Once the road project is complete, the owners have full ownership of the ponds and will have to maintain the ponds into the future. In regard to meeting the water quality portion of the regulations, the owners will have to provide water quality compliance with the regulations as they obtain permit coverage. This is outlined in the agreement between Frederick County and owners.

See approval letter dated February 28, 2020.

Frederick County Inspections: Master Development Plan for future subdivision. Alternations adjacent to FEMA Floodplain shall be approved. Buildings or structures located in or adjacent to floodplain shall be required as per the 2015 Virginia Residential Code. No additional comments at this time.

See comment letter dated February 3, 2020.

Frederick Water: Frederick Water has reviewed and approves the MDP submission, signed and sealed by David Frank on April 15, 2020. Please note that a detailed review will be conducted with the site plan submission.

See comment letter dated April 15, 2020.

Frederick County Public Schools: Frederick County Public Schools has reviewed the Heritage Commons Master Development Plan submitted to us on February 4, 2020. We offer the following comment:

1. It is noted that some streets will be private. As our buses don't travel down private lanes, students who live on these streets will need to walk to a public street to meet the bus at a location to be designated by our Transportation Department.
2. We would like to work with you so that buses have a place to turn around at every phase of development. Ideally, the location of turnarounds would be convenient to residential areas.

See comment letter dated February 25, 2020.

Frederick County Parks and Recreation: Parks and Recreation recommends modifying the Buffalo Lick Run trail aligning to connect to Warrior Drive. More specifically to the plan shared-use path along the Warrior Drive alignment.

See comment letter dated February 18, 2020.

Winchester Regional Airport:

See comment letter dated March 9, 2020 and supporting documentation.

Planning & Zoning:

A) Master Development Plan Requirement

A Master Development Plan (MDP) is required prior to development of this property. Before a MDP can be approved, it must be reviewed by the Planning Commission, Board of Supervisors and all relevant review agencies. Approval may only be granted if the MDP conforms to all requirements of the Frederick County Zoning and Subdivision Ordinances. The purpose of the MDP is to promote orderly and planned development of the property within Frederick County that suits the characteristics of the land, is harmonious with adjoining property and is in the best interest of the general public.

B) Site History

The properties subject to the MDP were part of Rezoning (REZ) application #10-15, approved December 9, 2015 with proffers. The approved proffer statement allows up to 645 multi-family residential units and require 107,500 square feet (SF) of commercial development. Additionally, the approved proffers included a “Design Modification Document” that revised certain Zoning Ordinance requirements for building setbacks, building height, buffers & landscaping, and open space to allow for the creation of a higher density mixed-use community.

The MDP is generally in conformance with the approved proffer statement, including the “Design Modification Document,” and Generalized Development Plan (GDP) approved with the rezoning.

C) Site Suitability & Project Scope

Comprehensive Plan:

The 2035 Comprehensive Policy Plan is an official public document that serves as the Community's guide for making decisions regarding development, preservation, public facilities and other key components of community life. The primary goal of this Plan is to protect and improve the living environment within Frederick County. It is in essence a composition of policies used to plan for the future physical development of Frederick County.

Land Use Compatibility:

The parcels comprising this MDP, Heritage Commons, are located within the County’s Urban Development Area (UDA) and Sewer and Water Service Area (SWSA). The UDA defines the general area in which more intensive forms of residential development will occur. In addition, the Heritage Commons property is located within the Senseny/Eastern Frederick Urban Area Plan.

This land use plan calls for the area north of Buffalo Lick Run and between I-81 and the future Warrior Drive to be developed with Employment (commercial) land uses and the area south of Buffalo Lick Run for High-Density Residential.

Site Access and Transportation:

Access, as shown on the MDP, will be provided to the site via Crossover Boulevard (under construction) from the City of Winchester and from Route 522 (Northwestern Pike). Right-of-way for future Warrior Drive north extended is also provided. Internal streets will provide circulation throughout the development. Sidewalks will also be provided on either side of internal streets for pedestrian connectivity within the development. The Applicant will also provide a 10' trail along Buffalo Lick Run for recreation.

Zoning Ordinance:

The site is in conformance with the applicable Zoning Ordinance standards for the R4 (Residential Planned Community) Zoning District. The MDP also addresses the required buffers, screening, and landscaping elements required by Code. Site Plans for individual lots within the development will need to be submitted and reviewed by Frederick County prior to the establishment of particular uses.

STAFF CONCLUSIONS FOR THE 05/06/20 PLANNING COMMISSION MEETING:

The Master Development Plan (MDP) for Heritage Commons appears to be consistent with the approved Rezoning (REZ) application #10-15 (proffers) and with the requirements of Article VIII, Master Development Plan, of the Frederick County Zoning Ordinance, and this MDP is in a form that is administratively approvable. All of the issues brought forth by the Planning Commission should be appropriately addressed by the Applicant.

PLANNING COMMISSION SUMMARY FOR 05/06/20 MEETING:

Staff provided a general overview of the proposed Master Development Plan (MDP), noting it was for information purposes only. Staff explained it was in general conformance with the requirements of the Frederick County Zoning Ordinance and the approved rezoning application. Staff highlighted proffered improvements including a maximum of 645 multi-family residential units, a minimum of 107,500 square feet (SF) of commercial development, future right-of-way (ROW) reservation for Warrior Drive, and preservation of Buffalo Lick Run/environmental features to be used for recreation.

There was no discussion or comments from the Planning Commission.

STAFF CONCLUSIONS FOR THE 05/27/20 BOARD OF SUPERVISORS MEETING:

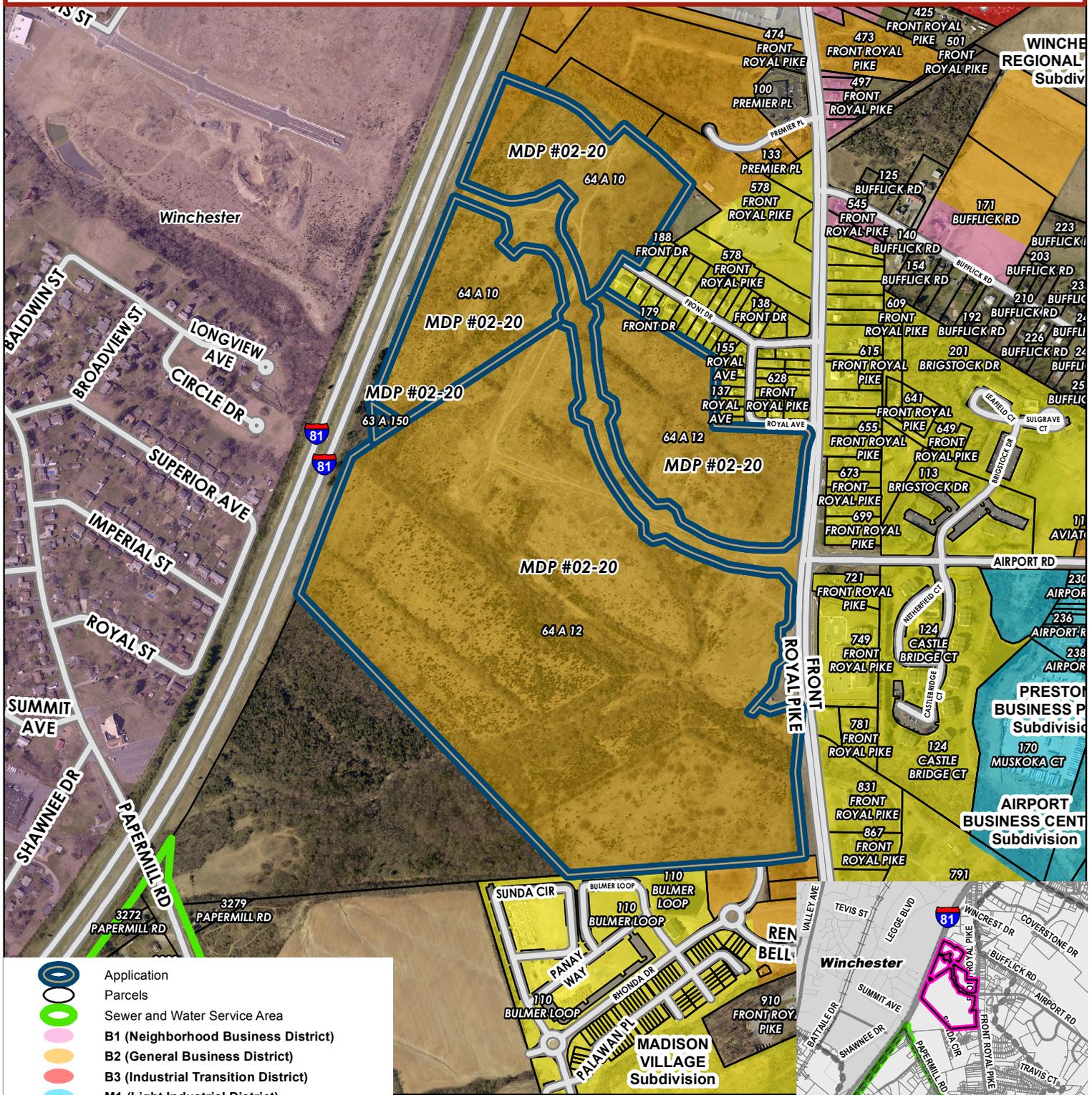
The Master Development Plan (MDP) for Heritage Commons appears to be consistent with the approved Rezoning (REZ) application #10-15 (proffers) and with the requirements of Article VIII, Master Development Plan, of the Frederick County Zoning Ordinance, and this MDP is in a form that is administratively approvable. All of the issues brought forth by the Board of Supervisors should be appropriately addressed by the Applicant.

It appears that the application meets all requirements. Following presentation of the application to the Planning Commission and the Board of Supervisors, and the incorporation of your comments, Staff is prepared to proceed to approval of the application.

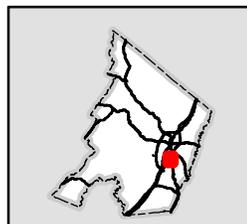
MDP # 02 - 20: Heritage Commons

PINs: 63 - A - 150, 64 - A - 10, 64 - A - 12

141.75 Acre Mixed-Use Development
Zoning Map



-  Application
-  Parcels
-  Sewer and Water Service Area
-  B1 (Neighborhood Business District)
-  B2 (General Business District)
-  B3 (Industrial Transition District)
-  M1 (Light Industrial District)
-  M2 (Industrial General District)
-  R4 (Residential Planned Community District)
-  RP (Residential Performance District)

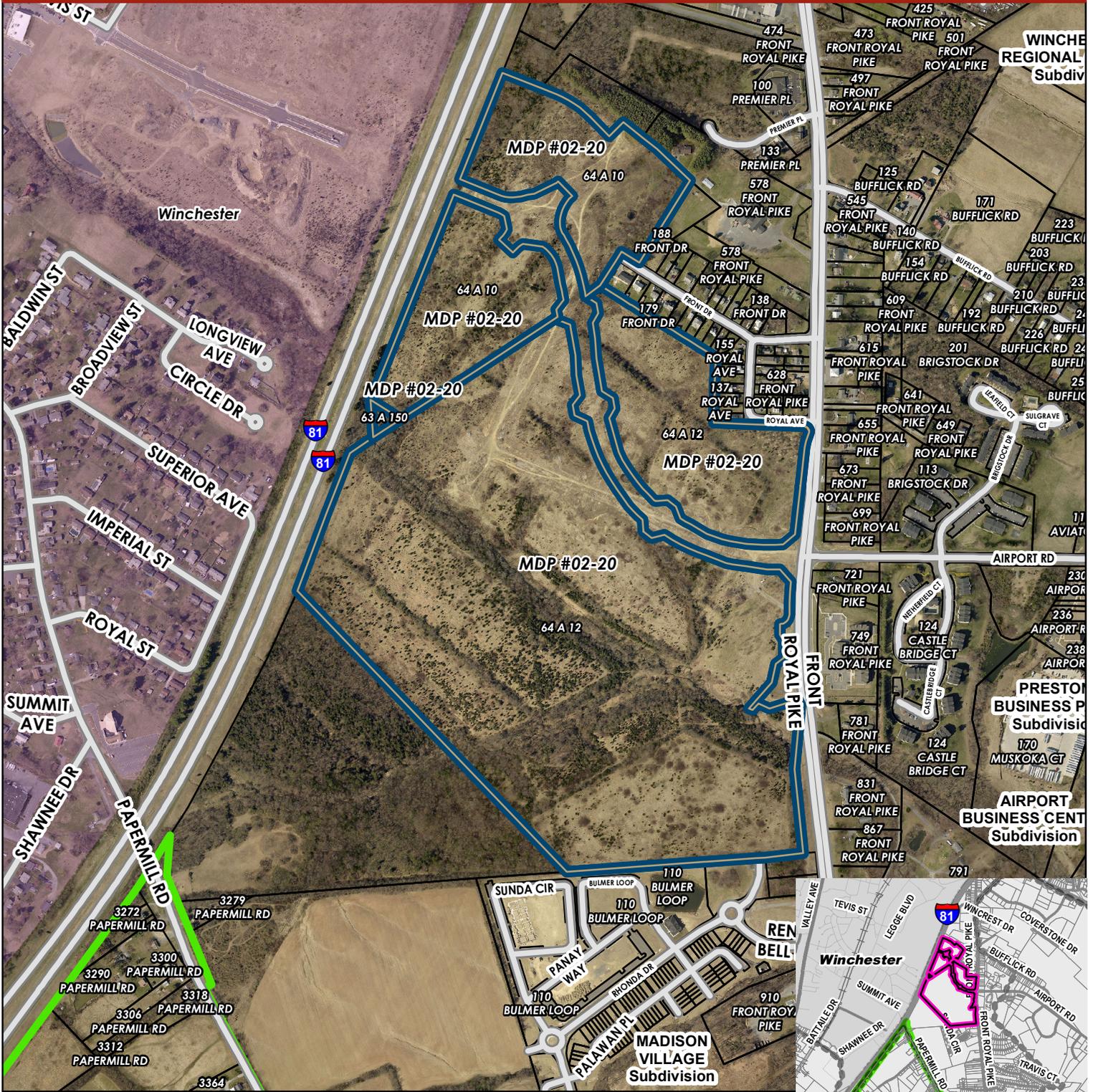


0 440 880 1,760 Feet

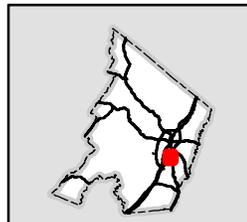
MDP # 02 - 20: Heritage Commons

PINs: 63 - A - 150, 64 - A - 10, 64 - A - 12

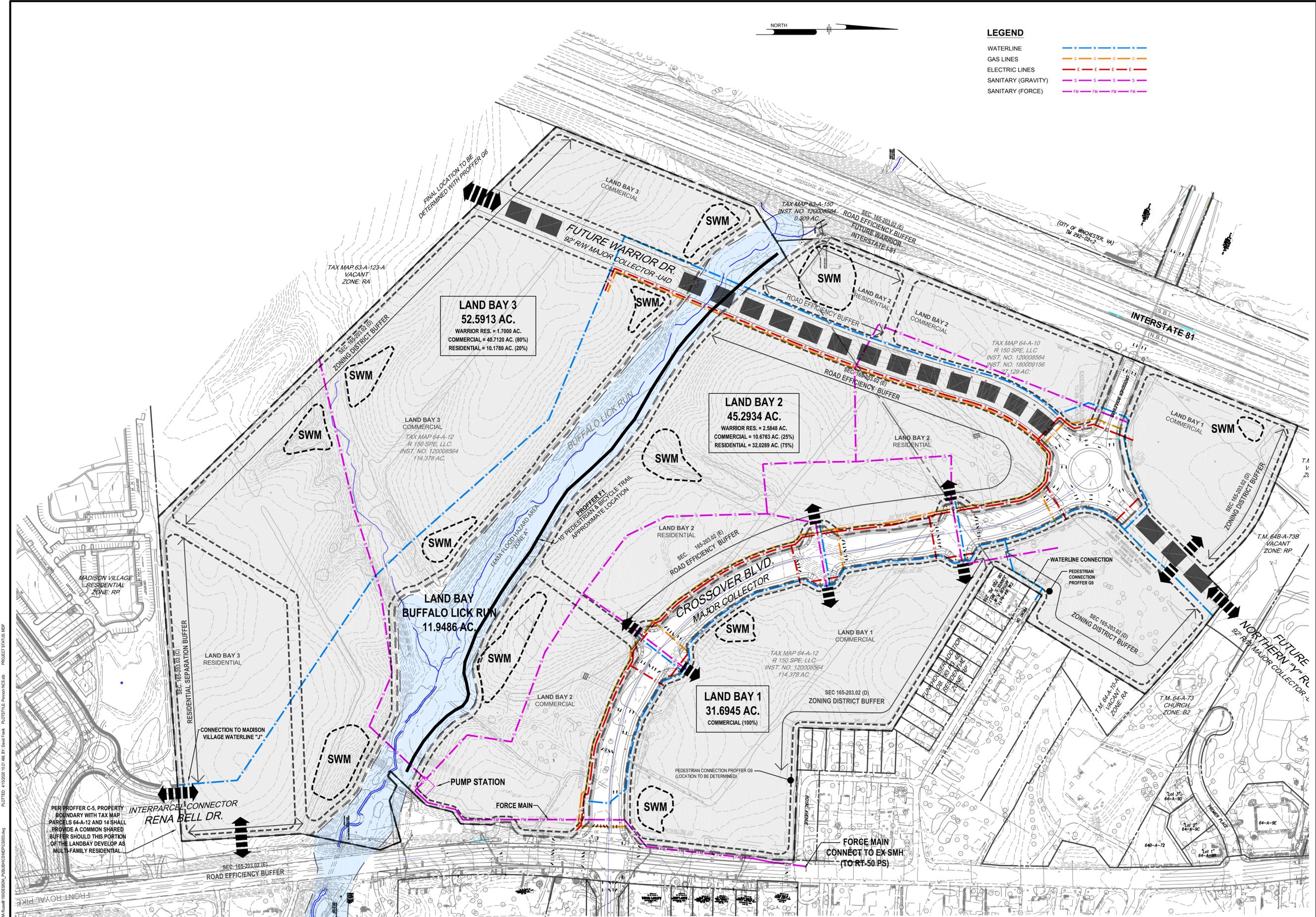
141.75 Acre Mixed-Use Development
Location Map



-  Application
-  Parcels
-  Sewer and Water Service Area



0 440 880 1,760 Feet



LEGEND

WATERLINE: ————

GAS LINES: ————

ELECTRIC LINES: ————

SANITARY (GRAVITY): ————

SANITARY (FORCE): ————

PLOTTED: 4/15/2020 10:27 AM BY: David Frank PROJECT STATUS: MDP
 K:\Projects\MMCM1601\Drawings\02\CS003_PUB\CS003_PUB.dwg

NOTES:

- DEVELOPMENT ADJACENT ADJOINING EXISTING RESIDENTIAL LAND USE SHALL COMPLY WITH THE BUFFERS AND SCREENING REQUIREMENTS PER SECTIONS 165-203.02(C), 165-203.02(D) AND 165-203.02(E) OF THE FREDERICK COUNTY ZONING ORDINANCE.
- THE LOCATIONS OF COMMERCIAL AND RESIDENTIAL LAND USES AND THE REQUIRED SETBACKS FOR SPECIFIC LAND USES WITHIN EACH LAND BAY SHALL BE GOVERNED PER THE APPROVED PROFFERS AND DESIGN MODIFICATIONS OF RZ#10-15, WHERE NOT MODIFIED, THE FREDERICK COUNTY ZONING ORDINANCE. THE APPROVED PROFFERS SPECIFICALLY ALLOW ANY AREAS WITHIN LAND BAYS 2 AND 3 TO BE EITHER RESIDENTIAL OR COMMERCIAL PROVIDED THE TOTAL OF EACH TYPE OF LAND USE REMAINS WITHIN ITS PROFFERED MINIMUM OR MAXIMUM LAND AREA FOR EACH LAND BAY.
- INTER PARCEL VEHICULAR CONNECTIONS ARE REQUIRED WITHIN EACH LAND BAY TO PROVIDE SHARED ACCESS POINTS WITHIN EACH LAND BAY TO ADJACENT COLLECTOR AND ARTERIAL ROADS.



Pennoni

PENNONI ASSOCIATES INC.
 117 East Piccadilly Street
 Winchester, VA 22601
 T 540.667.2139 F 540.666.0493

ALL DIMENSIONS MUST BE VERIFIED BY CONTRACTOR AND OWNER MUST BE NOTIFIED OF ANY DISCREPANCIES BEFORE PROCEEDING WITH WORK

DAVID L. FRANK
 Lic. No. 1061
 4-15-2020
 LANDSCAPE ARCHITECT

HERITAGE COMMONS
MASTER DEVELOPMENT PLAN
 FRONT ROYAL PIKE | WINCHESTER, VA
 SHAWNEE MAGISTERIAL DISTRICT | ZONING: R4

OVERALL PLAN

R-150 SPE, LLC
 3600 O'DONNELL ST. | SUITE 600
 BALTIMORE, MD. 21224

NO.	DATE	REVISIONS	BY
1	03-16-2020	ADDRESS AGENCY COMMENTS	DLF
2	03-31-2020	ADDRESS AGENCY COMMENTS (PLANNING)	DLF

ALL DOCUMENTS PREPARED BY PENNONI ASSOCIATES ARE INSTRUMENTS OF SERVICE IN RESPECT OF THE PROJECT. THEY ARE NOT INTENDED OR REPRESENTED TO BE SUITABLE FOR REUSE BY OWNER OR OTHERS ON THE EXTENSIONS OF THE PROJECT OR ON ANY OTHER PROJECT. ANY REUSE WITHOUT WRITTEN VERIFICATION OR ADAPTATION BY PENNONI ASSOCIATES FOR THE SPECIFIC PURPOSE INTENDED WILL BE AT OWNERS SOLE RISK AND WITHOUT LIABILITY OR LEGAL EXPOSURE TO PENNONI ASSOCIATES AND OWNERS SHALL INDEMNIFY AND HOLD HARMLESS PENNONI ASSOCIATES FROM ALL CLAIMS, DAMAGES, LOSSES AND EXPENSES ARISING OUT OF OR RESULTING THEREFROM.

PROJECT	MMCM1601
DATE	2019-11-25
DRAWING SCALE	AS NOTED
DRAWN BY	CJM
APPROVED BY	RAM

CS003

SHEET 4 OF 5

NOT FOR CONSTRUCTION OR BIDDING

From: [Timothy Rhodes](#)
To: dfrank@pennoni.com
Cc: [John Bishop](#); [Tyler Klein](#); [Rhonda Funkhouser](#); [Matthew Smith](#); [Bradley Riggelman](#)
Subject: Heritage Commons MDP
Date: Tuesday, February 25, 2020 1:38:46 PM

David,

We have completed our review of the Heritage Commons Master Development Plan (MDP) signature dated January 28, 2020. The County Approved Generalized Development Plan (GDP) included an inter-parcel connection between landbay two and landbay three. This connection has not been included in the MDP. Other than this change, we have no objection to the MDP. Please revise and submit back to this office for final review.

Should you have any questions, please feel free to contact me.

Thanks,

Timothy Rhodes
VDOT ~ Land Development Engineer
Clarke, Frederick, Shenandoah & Warren Counties
14031 Old Valley Pike
Edinburg, VA. 22824
(540)-984-5630

REQUEST FOR MASTER DEVELOPMENT PLAN COMMENTS



Frederick County Fire Marshal Comment

Mail to:

Frederick County Fire Marshal
Attn: Fire Marshal
1080 Coverstone Drive
Winchester, Virginia 22602

Hand deliver to:

Public Safety Building
1080 Coverstone Drive
Winchester, Virginia 22602
Phone: (540) 665-6350

Applicant: It is your responsibility to complete this form as accurately as possible in order to assist the agency with their review. Please attach two (2) copies of the Master Development Plan with this sheet.

Applicant's Name: Pennoni Associates, Inc. Telephone: 540-667-2139

Mailing Address: 117 E. Piccadilly Street, Suite 200
Winchester, VA 22601

Name of development and/or description of the request:
Heritage Commons

Location of Property:
Along the west side of State Route 522 Front Royal Pike Road at the intersection of Airport Road

Fire Marshal Comments:
APPROVED

-FREDERICK COUNTY FIRE MARSHAL USE ONLY-

Date Received _____ Review Number 1 2 3 4 5 (circle one)

Date Reviewed 2-4-20

Revision Required _____

Date Approved 2-4-2020

Signature & Date: [Signature]

2-4-2020

**** Please Return Form to Applicant****

RECEIVED

JAN 31 2020



Frederick County Fire and Rescue Department

Office of the Fire Marshal

1080 Coverstone Drive

Winchester, VA 22602

Phone: 540-665-6350 Fax: 540-678-4739

fmo@fcva.us

Plan Review

Master Development

Status: Approved

Business Name

Heritage Commons

Heritage Commons

Front Royal Pike

Winchester, Virginia 22602

Engineering Firm :

Pennoni Associates, Inc.

Printed Date: 02/04/2020

General Information

Received Date: 01/31/2020

Review Begin Date: 02/04/2020

Review End Date: 02/04/2020

Hours: 1.0000

Occupancy Type:

Property Use:

Activity Number: I01BJ061

Review Cause: New Construction

Comments:

Approved

A handwritten signature in black ink that reads "Adam Hounshell".

Adam Hounshell

Lieutenant/Assistant Fire Marshal

From: [Tyler Klein](#)
To: [Pam Deeter](#)
Subject: FW: Heritage Commons Master Development Plan Comments
Date: Thursday, April 23, 2020 11:03:00 AM

From: Joe Wilder <jwilder@fcva.us>
Sent: Monday, March 02, 2020 1:32 PM
To: Tyler Klein <tklein@fcva.us>
Cc: Joseph Johnson <joseph.johnson@fcva.us>; Karen Orndorff <korndorf@fcva.us>; Mike Ruddy <mruddy@fcva.us>; John Bishop <jbishop@fcva.us>
Subject: RE: Heritage Commons Master Development Plan Comments

Through the development of Crossover Boulevard road project, Frederick County, the owner of property (MMA/ Hunt) and VDOT have a written agreement regarding stormwater management. We are constructing stormwater management facilities that will handle the water quantity for the entire development. The owner has a cost share agreement with the County and they are paying for a large portion of the costs to develop ponds as we construct the road. Once the road project is complete, the owners have full ownership of the ponds and will have to maintain the ponds into the future. In regard to meeting the water quality portion of the regulations, the owners will have to provide water quality compliance with the regulations as they obtain permit coverage. This is outlined in the agreement between Frederick County and owners. Mr. Bishop can provide you copies of that agreement if you need to see the exact language or answer any questions about the agreement and cost share.

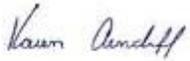
Hope this helps,

Joe C. Wilder
Director of Public Works
Frederick County, Virginia
107 N. Kent Street
Winchester, Virginia 22601
Phone: 540-722-8215
Email: jwilder@fcva.us

From: Karen Orndorff <korndorf@fcva.us>
Sent: Monday, March 02, 2020 9:27 AM
To: David Frank <DFrank@Pennoni.com>
Cc: Candice Perkins <cperkins@fcva.us>; Mark Cheran <mcheran@fcva.us>; Tyler Klein <tklein@fcva.us>
Subject: Heritage Commons Master Development Plan Comments

Good Morning,

I have attached a copy of public works' comments for the subject project. Do not hesitate to contact this office if you have any questions.



Karen Orndorff
Administrative Assistant
Department of Public Works
540-722-8221
540-678-0682 (fax)

****Please visit the Frederick County Public Works website for updated Land Disturbance/VSMP forms effective July 1, 2019****

RECEIVED

JAN 30 2020

Handwritten initials

REQUEST FOR MASTER DEVELOPMENT PLAN COMMENTS

Frederick County
Public Works & Inspections



**Frederick County
Inspections Department Comment**

Mail to:

Frederick County Inspections Department
Attn: Building Official
107 North Kent Street
Winchester, Virginia 22601

Hand deliver to:

Frederick County Inspections Dept.
107 North Kent Street, 2nd Floor
Winchester, Virginia 22601
Phone: (540) 665-5650

Applicant: It is your responsibility to complete this form as accurately as possible in order to assist the agency with their review. Please attach two (2) copies of the Master Development Plan with this sheet.

Applicant's Name: Pennoni Associates, Inc. Telephone: 540-667-2139

Mailing Address: 117 E. Piccadilly Street, Suite 200
Winchester, VA 22601

Name of development and/or description of the request:
Heritage Commons

Location of Property:
Along the west side of State Route 522 Front Royal Pike Road at the intersection of Airport Road

Inspections Comments:
Comments are on the back of this form

-FREDERICK COUNTY INSPECTIONS DEPARTMENT USE ONLY-

Date Received Jan 30, 2020

Review Number 1 2 3 4 5 (circle one)

Date Reviewed Feb 3, 2020

Revision Required No

Date Approved Feb 3, 2020

Signature & Date: Mark Heet A Feb 3, 2020

**** Please Return Form to Applicant****

Master Development plan for future subdivision. Alterations adjacent to Fema Flood Plain shall be approved. Building and structures located in or adjacent to flood plain shall be as required per the 2015 Virginia Residential Code.

No additional comments at this time

REQUEST FOR MASTER DEVELOPMENT PLAN COMMENTS



Frederick Water Comment

Mail to:

Frederick Water
Attn: Engineer
P.O. Box 1877
Winchester, Virginia 22604

Hand deliver to:

Frederick Water
315 Tasker Road
Stephens City, Virginia 22655
Phone: (540) 868-1061

Applicant: It is your responsibility to complete this form as accurately as possible in order to assist the agency with their review. Please attach two (2) copies of the Master Development Plan with this sheet.

Applicant's Name: Pennoni Associates, Inc. Telephone: 540-667-2139

Mailing Address: 117 E. Piccadilly Street, Suite 200
Winchester, VA 22601

Name of development and/or description of the request:
Heritage Commons

Location of Property:
Along the west side of State Route 522 Front Royal Pike Road at the intersection of Airport Road

Frederick Water Comments:

-FREDERICK WATER USE ONLY-

Date Received 4/15/2020 Review Number 1 2 3 **4** 5 (circle one)
Date Reviewed 4/15/2020
Revision Required No Date Approved 4/15/2020

Signature & Date: *Michael S Newlin*

**** Please Return Form to Applicant****



Frederick County Public Schools

Planning Office

Wayne Lee, Coordinator of Planning and Development
leew@fcpsk12.net

February 25, 2020

Mr. David Frank
Pennoni Associates, Inc.
117 E. Piccadilly St., Suite 200
Winchester, VA 22601

Re: Heritage Commons – Master Development Plan

Dear David:

Frederick County Public Schools has reviewed the Heritage Commons Master Development Plan submitted to us on February 4, 2020. We offer the following comment:

1. It is noted that some streets will be private. As our buses don't travel down private lanes, students who live on these streets will need to walk to a public street to meet the bus at a location to be designated by our Transportation Department.
2. We would like to work with you so that buses have a place to turn around at every phase of development. Ideally, the location of the turnarounds would be convenient to residential areas.

Please feel free to contact me at leew@fcpsk12.net or 540-662-3888 x88249 if you have any questions or comments.

Sincerely,

K. Wayne Lee, Jr., ALEP, LEED AP
Coordinator of Planning and Development

Cc: Dr. David Sovine, Superintendent of Schools
Dr. Al Orndorff, Assistant Superintendent for Administration
Mr. John Grubbs, Transportation Director
Mrs. Beth Brown, Supervisor of Driver Operations

REQUEST FOR MASTER DEVELOPMENT PLAN COMMENTS



Frederick County Parks and Recreation Comment

Mail to:

Frederick County
Department of Parks & Recreation
107 North Kent Street
Winchester, Virginia 22601

Hand deliver to:

107 North Kent Street
Second Floor
Winchester, Virginia 22601
Phone: (540) 665-5678

Applicant: It is your responsibility to complete this form as accurately as possible in order to assist the agency with their review. Please attach one (1) copy of the Master Development Plan with this sheet.

Applicant's Name: Pennoni Associates, Inc. Telephone: 540-667-2139

Mailing Address: 117 E. Piccadilly Street, Suite 200
Winchester, VA 22601

Name of development and/or description of the request:
Heritage Commons

Location of Property:
Along the west side of State Route 522 Front Royal Pike Road at the intersection of Airport Road

Parks and Recreation Comments:
Parks and Recreation recommends modifying the Buffalo lick trail alignment to connect to Warrior Drive, more specifically to the planned shared-use path along the Warrior Drive alignment.

-FREDERICK COUNTY PARKS AND RECREATION USE ONLY-

Date Received _____ Review Number 1 2 3 4 5 (circle one)
Date Reviewed _____
Revision Required _____ Date Approved _____
Signature & Date: [Signature] 2.18.20

**** Please Return Form to Applicant****

REQUEST FOR MASTER DEVELOPMENT PLAN COMMENTS



Winchester Regional Airport Comment

Mail to:

Winchester Regional Airport
Attn: Executive Director
491 Airport Road
Winchester, Virginia 22602

Hand deliver to:

491 Airport Road
(Rt. 645 off of Rt. 522 South)
Winchester, Virginia 22602
Phone: (540) 662-5786

Applicant: It is your responsibility to complete this form as accurately as possible in order to assist the agency with their review. Please attach one (1) copy of the Master Development Plan with this sheet.

Applicant's Name: Pennoni Associates, Inc. Telephone: 540-667-2139

Mailing Address: 117 E. Piccadilly Street, Suite 200
Winchester, VA 22601

Name of development and/or description of the request:
Heritage Commons

Location of Property:
Along the west side of State Route 522 Front Royal Pike Road at the intersection of Airport Road

Airport Comments:
See attached.

-WINCHESTER REGIONAL AIRPORT USE ONLY-

Date Received _____ Review Number 1 2 3 4 5 (circle one)

Date Reviewed _____

Revision Required _____ Date Approved 3/9/20

Signature & Date: [Signature]

**** Please Return Form to Applicant****



WINCHESTER REGIONAL AIRPORT

491 AIRPORT ROAD
WINCHESTER, VIRGINIA 22602
(540) 662-5786

March 9, 2020

Pennoni Associates, Inc.
117 E. Piccadilly Street, Suite 200
Winchester, VA 22601

Re: Heritage Commons Master Plan Comments

Dear Mr. Frank,

On behalf of the Winchester Regional Airport Authority (WRAA), I submit the following comments regarding the above referenced master plan.

1. We concur with the comment on sheet 2, paragraph H (1); it should also be included on each individual site plan within the proposed development.
2. The following comments should be included on the proposed development's site plans:
 - a. The property is subject to an aviation easement between R 150 SPE, LLC and the Winchester Regional Airport Authority, which has been recorded and is available to view at the Frederick County Circuit Court.
 - b. In accordance with the Code of Federal Regulations Title 14 Part 77.9, the development meets Federal Aviation Administration (FAA) criteria to file an Obstruction Evaluation/Airport Airspace Analysis (OE/AAA). OE/AAA filings are also subject to review by the Virginia Department of Aviation (DOAV).
 - i. Electronic filing may be accomplished at the following web address:
<https://oeaaa.faa.gov/oeaaa/external/portal.jsp>.
 - ii. The height of any proposed structures must account for the maximum height of any and all appurtenances.
 - iii. Cranes and/or temporary construction equipment require a separate OE/AAA filing.
 - iv. OE/AAA submissions should be made a minimum of 45 days prior to the expected start date of construction.
3. Copies of any FAA determination letters should be provided to the airport.

The WRAA requests compliance with these comments as a condition of approval of the master plan. Thank you for your cooperation in ensuring the safety of the Winchester Regional Airport. If you have any questions or need additional information, please contact my office at 540-662-5786.

Sincerely,

A handwritten signature in black ink, appearing to read "Nick Sabo", with a long horizontal flourish extending to the right.

Nick Sabo, A.A.E.
Executive Director

Enclosure: Avigation Easement dated 8/19/16

Cc: Gene Fisher, Chairman
Michael Bryan, Counsel
Adam Switzer, Delta Airport Consultants



OFFICIAL RECEIPT
FREDERICK CIRCUIT COURT
DEED RECEIPT

DATE: 08/25/16 TIME: 09:00:43 ACCOUNT: 069CLR160008196 RECEIPT: 16000016403
CASHIER: MLS REG: WE17 TYPE: DE PAYMENT: FULL PAYMENT
INSTRUMENT : 160008196 BOOK: PAGE: RECORDED: 08/25/16 AT 09:00
GRANTOR: R 150 SPE LLC EX: N LOC: CO
GRANTEE: WINCHESTER REGIONAL AIRPORT AUTHORITY EX: N PCT: 100%

AND ADDRESS :
RECEIVED OF : MICHAEL BRYAN DATE OF DEED: 08/19/16
CHECK: \$22.00

DESCRIPTION 1: SH DIST PAGES: 7 OP: 0
2: PARCELS OF LAND NAMES: 0

CONSIDERATION: .00 A/VAL: .00 MAP: MISC
PIN:

301 DEEDS	14.50	145	VSLF	1.50
106 TECHNOLOGY TRST FND	5.00	035	VOF FEE	1.00

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

CLERK OF COURT: REBECCA P. HOGAN

PAYOR'S COPY
RECEIPT COPY 1 OF 2

THIS DEED OF AVIGATION EASEMENT is made this 19th day of August, 2016, by and between **R 150 SPE, LLC**, a Virginia limited liability company (the "**Grantor**") and the **WINCHESTER REGIONAL AIRPORT AUTHORITY**, a political subdivision of the Commonwealth of Virginia (the "**Grantee**").

RECITALS:

A. The Grantee is the owner of the Winchester Regional Airport ("**Airport**"), located within Frederick County, Virginia.

B. The Grantor is the owner of certain real property described on "Legal Description", attached hereto and by this reference made a part hereof as if set out in full (the "**Property**").

C. The Property is subject to certain height limitations as established under the provisions of Title 14, Aeronautics and Space, Code of Federal Regulations, Part 77 ("**FAR Part 77**") and as set forth in Chapter 165, Part 701 of the Code of the County of Frederick, Virginia ("**Frederick County Code**").

D. The Grantor has agreed to create and impress an avigation easement upon the Property (the "**Avigation Easement**"), as more fully set forth hereinafter.

WITNESSETH:

THAT for and in consideration of the mutual benefits to the parties hereto, the Grantor does hereby grant unto the Grantee an Avigation Easement, subject to the terms and conditions set forth herein below, and in accordance with FAR Part 77 and the Frederick County Code, to-wit:

1. That the Grantor, for itself, its heirs, successors and assigns, hereby grants unto Grantee for the benefit of the public in the use and operation of the Airport, a right of the public and specifically, without limitation, a right of owners, operators and occupants of aircraft to use the navigable airspace over the Property and for all said persons and entities to cause in the navigable airspace above the Property such light, sound, noise, smoke and vibration as maybe inherent in or related to the operation of aircraft using said airspace for landing at, taking off from, flying over or otherwise operating at or about the Airport.

2. That Grantor, for itself, its heirs, successors and assigns, and for the benefit of the public in the use and operation of the Airport and the navigable airspace above the Property, covenants and agrees that in the development and ownership of the Property for land uses and infrastructure permitted by the Frederick County Code, it will not use the

Property, or permit any object, structure or use of the Property, in a manner that would constitute an obstruction to the passage of aircraft using the navigable airspace above the Property for landing at, taking off from or otherwise operating at or about the Airport, and that they will not use the Property, or permit any object, structure or use of the Property, in a manner, including casting of light into the navigable airspace above the Property, which would present a hazard to any aircraft using the navigable airspace above the Property for the purpose of landing at, taking off from, or otherwise operating at or about the Airport.

- A. For the purpose of this Avigation Easement, "object" including any mobile object, shall mean any natural growth; any terrain; any permanent or temporary construction or alteration of any structure, including equipment or materials used therein; any apparatus of a permanent or temporary character; and alteration of any permanent or temporary character; and alteration of any permanent or temporary existing structure by a change in its height (including appurtenances) or lateral dimensions, including equipment or materials used therein, that would constitute an obstruction to the navigable airspace above the Property.
- B. For the purpose of this Avigation Easement, "structure" shall mean any object, including a mobile object, now existing or hereafter constructed or erected by man, including but not limited to: buildings, towers, communications towers, radio and television antennae, cranes, smokestacks, earth formations, overhead transmission lines, flag poles and ship masts, that would constitute an obstruction to the navigable airspace above the Property.
- C. For the purpose of this Avigation Easement, "obstruction of the navigable airspace above the Property" shall mean any existing object or structure, any proposed object or structure, including an existing or proposed mobile object or structure, if such object or structure is of greater height than any of the heights or surfaces established as standards for determining obstructions by FAR Part 77 (14 C.F.R. Part 77, Section 77.1, et seq.), or any applicable successor regulations, as such standards may apply to the Property at the time of development or construction of the object or structure.

3. That Grantor for itself, its heirs, successors and assigns, covenants and agrees with the Grantee that for the benefit of the public in the use and operation of the Airport, they will not hereafter establish, construct, erect or grow, or permit the establishment, construction, erection or growth of, any structure or vegetation, whether natural or man-made, which would penetrate into or through the heights or surfaces described in FAR Part

77 or any Airport clear zone, runway protection zone, approach zone, imaginary surface, obstruction clearance surface, obstruction clearance zone, or other surface or zone (as such zones or surfaces may currently or hereafter be defined by applicable regulations of the Virginia Department of Aviation and/or the Federal Aviation Administration, and as such zones or surfaces are shown on the documents of the Grantee). Grantor and Grantee agree on behalf of themselves, their successors and assigns that a structure erected in such zone or surface pursuant to, and in accordance with, a permit issued by the Virginia Board of Aviation pursuant to Section 5.1-25.1 of the Virginia Code, 1950, as amended or any applicable successor statute, shall not violate this restriction.

4. The Grantor does hereby grant unto the Grantee the right to cut and fell all trees which are located within the limits of the Avigation Easement as of the execution date of this Deed of Easement or at any later time. The Grantee shall have the additional right to cut any trees to a height of 10' below the minimum elevation of the Avigation Easement so as to keep the trees below the prescribed minimum elevation of the Avigation Easement.

5. The Grantor does hereby agree to preclude and prevent the construction or development of facilities upon the Property that will create electronic interference with the Winchester Regional Airport or aircraft navigational aids, and preclude and prevent construction or development of facilities that will result in directed lighting or glare from the Property upon the Airport.

6. The Grantor agrees to submit all site plans for all or any portion of the Property to the Federal Aviation Administration and the Airport for review and approval prior to commencement of construction of any improvements upon the Property or any portion thereof.

THE GRANTEE TO HAVE AND TO HOLD such Avigation Easement and all rights appertaining thereto under the Grantee, its successors and assigns, with the understanding and agreement that the covenants, restrictions and agreements set forth herein shall be binding upon the heirs, administrators, executors, successors in interest and assigns of the Grantee and Grantor, and that these covenants and agreements shall run with the land, unless and until the Airport is abandoned or ceases to be used as an airport. In the event the Airport is abandoned or ceases to be used as an airport this easement shall automatically terminate without the need of any further action by the parties or their successors.

THIS DEED IS EXEMPT from the state recordation taxes imposed by Virginia Code §58.1-801, pursuant to Virginia Code §58.1-811(A)(3).

WITNESS the following signatures and seals:

GRANTOR:

R 150 SPE, LLC

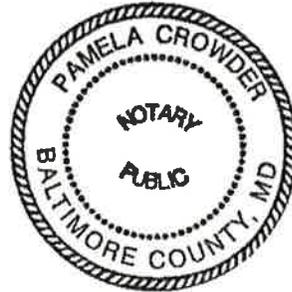
By: M. Sophocles (SEAL)

State of Maryland
City/County of BALTIMORE, to-wit:

Before me, a Notary Public on this 19th day of AUGUST, 2016, appeared MEGAN T. SOPHOCLIS as SVP of R 150 SPE, LLC, who acknowledged his signature to the foregoing easement, dated AUGUST 19, 2016.

My Commission expires: 04/03/2017

Pamela Crowder
Notary Public



GRANTEE:

WINCHESTER REGIONAL AIRPORT
AUTHORITY

By: Serena B. Manuel (SEAL)
SERENA MANUEL, Executive Director

Commonwealth of Virginia
County of Frederick, to-wit:

Before me, a Notary Public on this 13rd day of August, 2016, appeared Serena
Manuel as Executive Director of the Winchester Regional Airport Authority, who
acknowledged her signature to the foregoing easement, dated August 19, 2016.

My Commission expires: November 30, 2019

Angela D Lamm
Notary Public



PG00006

Legal Description

All of that certain tract or parcel of land containing 150.35 acres, and more particularly described below, to-wit:

TRACT 1: All that certain tract or parcel of land, lying and being situate in Shawnee Magisterial District, Frederick County, Virginia, containing 29.657 acres as shown on the plat of survey drawn by Michael M. Artz, L.S., dated February 13, 1998, of record in the Clerk's Office of the Circuit Court of Frederick County, Virginia in Deed Book 900, at Page 115, et seq., and by this reference made a part hereof as if set out in full.

TAX MAP NO. 64-A-10

TRACT 2: All that certain tract or parcel of land, lying and being situate in Shawnee Magisterial District, Frederick County, Virginia, containing 0.309 acres as shown on the plat of survey drawn by Michael M. Artz, L.S., dated February 13, 1998, of record in the aforesaid Clerk's Office in Deed Book 900, at Page 115, et seq., and by this reference made a part hereof as if set out in full.

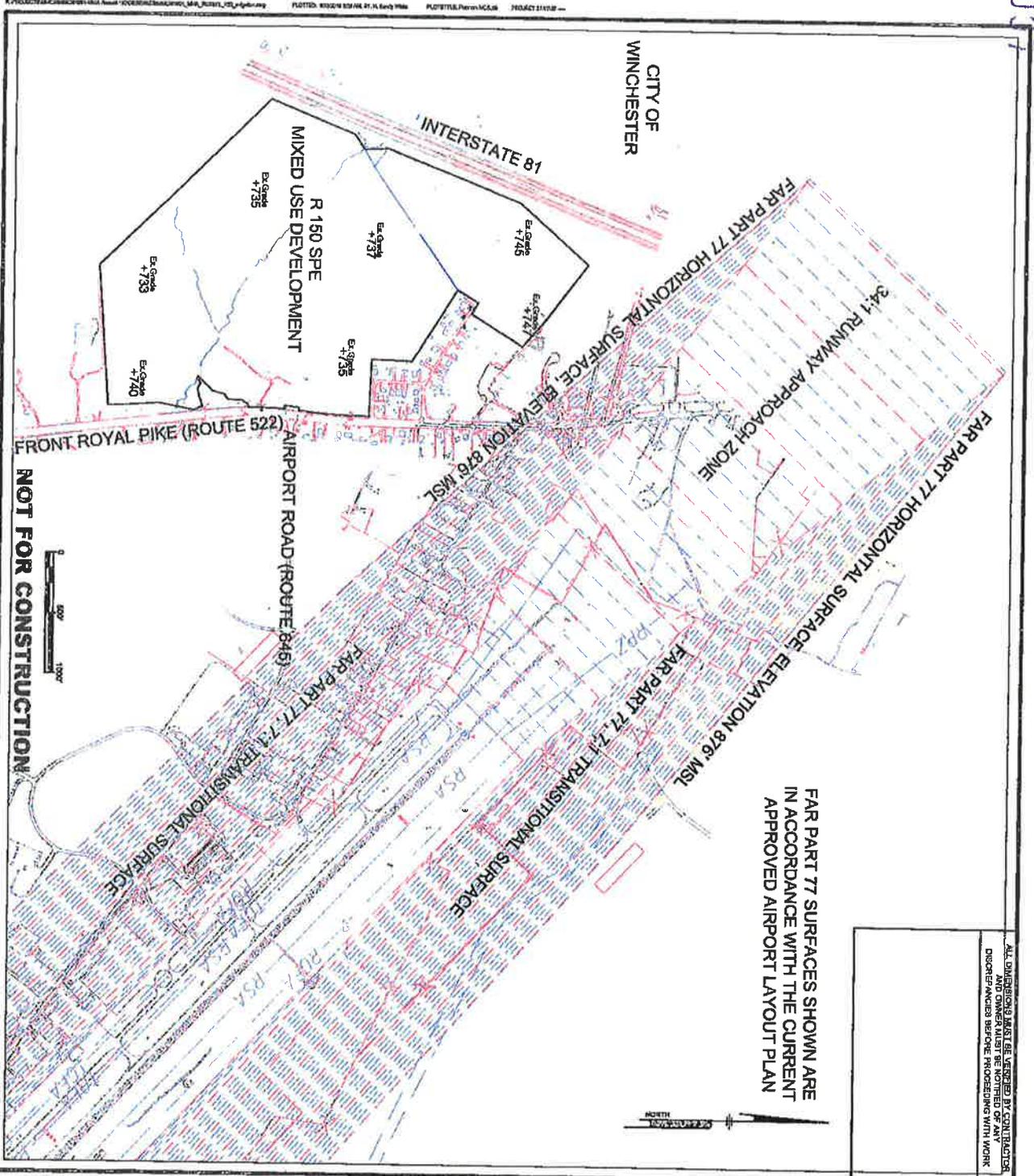
TAX MAP NO. 63-A-150

TRACT 3: All that certain tract or parcel of land, lying and being situate in Shawnee Magisterial District, Frederick County, Virginia, containing 120.384 acres as shown on the plat of survey drawn by Michael M. Artz, L.S., dated February 13, 1998, of record in the aforesaid Clerk's Office in Deed Book 900, at Page 115, et seq., and by this reference made a part hereof as if set out in full.

TAX MAP NO. 64-A-12

Reference is made to the aforesaid instruments for a more particular description of the property herein conveyed.

MLB/pmn/smb
c:\Deeds\Airport Avigation Easement2
6/21/16



FAR PART 77 SURFACES SHOWN ARE IN ACCORDANCE WITH THE CURRENT APPROVED AIRPORT LAYOUT PLAN

ALL DIMENSIONS MUST BE VERIFIED BY CONTRACTOR AND OWNER MUST BE NOTIFIED OF ANY DISCREPANCIES BEFORE PROCEEDING WITH WORK

<p>R 150 SPE WINCHESTER REGIONAL AIRPORT WINCHESTER, VIRGINIA</p> <p>AVIGATION EASEMENT</p> <p>SHANNEE MAGISTERIAL DISTRICT FREDERICK COUNTY, VIRGINIA</p>	 <p>PENNONI ASSOCIATES INC. 117 East Pleasedilly Street Winchester, VA 22601 T 540.867.2139 F 540.865.0483</p>																				
<p>PROJECT: MAMCM1501</p> <p>DATE: 20TH-08-22</p> <p>DRAWING SCALE: 1"=500'</p> <p>DRAWN BY: HSW</p> <p>APPROVED BY: JMT</p> <p>THE INFORMATION CONTAINED ON THIS DRAWING IS THE PROPERTY OF PENNONI ASSOCIATES, INC. AND IS TO BE USED ONLY FOR THE PROJECT AND SITE SPECIFICALLY IDENTIFIED HEREON. ANY REUSE OR MODIFICATION OF THIS DRAWING WITHOUT THE WRITTEN CONSENT OF PENNONI ASSOCIATES, INC. IS STRICTLY PROHIBITED.</p>	<table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th>DATE</th> <th>NO.</th> <th>REVISIONS</th> <th>BY</th> </tr> </thead> <tbody> <tr><td> </td><td> </td><td> </td><td> </td></tr> </tbody> </table>	DATE	NO.	REVISIONS	BY																
DATE	NO.	REVISIONS	BY																		
<p>SHEET 1 OF 1</p>																					

VIRGINIA; FREDERICK COUNTY, SCT.
This instrument of writing was produced to me on
8.25.11

MASTER DEVELOPMENT PLAN
APPLICATION FORM

- Department of Planning & Development Use Only -

Application # 02-20 Date Application Received: 1/31/2020
 PC Meeting Date 5/6/20 BOS Meeting Date 5/27/20
 Fee Amount Paid \$ 17,175 Initials: [Signature] Receipt # 483247

1. Project Title: Heritage Commons

2. Applicant:

Name: Pennoni Associates, Inc Telephone: 540-667-2139

Address: 117 E. Piccadilly Street, Suite 200
Winchester, VA 22601

3. Property Owner (if different than above):

Name: R-150 SPE, LLC Telephone: 443-263-2971

Address: 3600 O'Donnell St. Suite 600
Baltimore, MD 21224

4. Design Company:

Name: Pennoni Associate, Inc. Telephone: 540-667-2139

Address: 117 E. Piccadilly Street, Suite 200 Winchester, VA 22601

Email: dfrank@pennoni.com

5. Please list names of all owners, principals, and/or majority stockholders:

R-150 SPE, LLC, J. Brooks Martin

6. Magisterial District: Shawnee

7. **Property Location:** The property is located along the west side of State Route 522 Front Royal Pike Road
at the intersection of Airport Road
 (Give State Route # and name, distance and direction from intersection)

8. **Is this an original or amended Master Development Plan?**

Original Amended , Previous MDP# _____

9. **Property Information:**

a) Property Identification Number (PIN): 64-A-12,64-A-10, 63-A-150
 b) Total Acreage: 141.75 AC
 c) Current Zoning: R-4
 d) Present Use: Vacant
 e) Proposed Uses: Mixed-Use

10. **If residential uses are proposed, provide the following:**

a) Density: 4.6 units per acre
 b) Number of Units: 645 max
 c) Housing Types: Multi-family attached apartments

11. **Adjoining Property use and zoning:**

	<u>USE</u>	<u>ZONING</u>
North	<u>Commercial, Residential</u>	<u>B2, RP, RA</u>
East	<u>Road, Residential</u>	<u>VDOT right-of-way, RP</u>
South	<u>Vacant, Residential</u>	<u>RA, RP</u>
West	<u>Vacant</u>	<u>VDOT right-of-way</u>

I have read the material included in this package and understand what is required by the Frederick County Department of Planning and Development. I also understand that the master development plan shall include all contiguous land under single or common ownership. All required material will be complete prior to the submission of my master development plan application.

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

Applicant(s):  Date: 01/30/2020

Date: _____

Owner(s): _____ Date: _____

Date: _____



Special Limited Power of Attorney
County of Frederick, Virginia
Frederick Planning Website: www.fcva.us

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

Know All Men By These Presents That:
R-150 SPE, LLC

Name of Property Owner/Applicant

Please note: If the property owner/applicant is an entity, the name of the entity should appear above.
 If multiple persons own the property or are applicants, an executed power of attorney from each owner will be needed.

3600 O'Donnell St. Suite 600, Baltimore, MD 21224 443-263-2971
 Mailing Address of Property Owner/Applicant Telephone Number

as owner of, or applicant with respect to, the tract(s) or parcel(s) of land in Frederick County, Virginia, identified by following property identification numbers:
64-A-12, 64-A-10, 63-A-150

do hereby make, constitute, and appoint:
Pennoni Associate, Inc.

Name of Attorney-In-Fact

117 E. Piccadilly Street, Suite 200, Winchester, VA 22601 540-667-2139
 Mailing Address of Attorney-In-Fact Telephone Number

to act as my true and lawful attorney-in-fact for and in my name, place, and stead, with the same full power and authority I would have if acting personally, to file and act on my behalf with respect to application with Frederick County, Virginia for the following, for the above identified property:

- | | | | |
|-------------------------------------|--|--------------------------|---------------------------|
| <input type="checkbox"/> | Rezoning | <input type="checkbox"/> | Subdivision |
| <input type="checkbox"/> | Conditional Use Permit | <input type="checkbox"/> | Site Plan |
| <input checked="" type="checkbox"/> | Master Development Plan (prelim. or final) | <input type="checkbox"/> | Variance or Zoning Appeal |

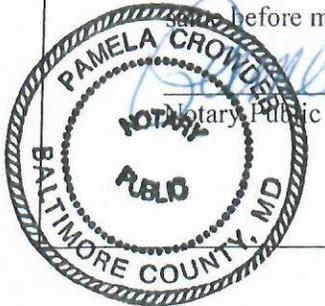
and, further, my attorney-in-fact shall have the authority to offer proffered conditions and to make amendments to previously approved proffered conditions except as follows:

This appointment shall expire one year from the day that it is signed, or at such sooner time as I otherwise rescind or modify it.

Signature [Signature]
 Title (if signing on behalf of an entity) VICE PRESIDENT

State of MARYLAND, County/City of BALTIMORE, To wit:

I, PAMELA CROWDER, a Notary Public in and for the jurisdiction aforesaid, certify that the person who signed the foregoing instrument personally appeared before me and has acknowledged the same before me in the jurisdiction aforesaid this 30th day of JANUARY, 2020



[Signature]
 Notary Public

My Commission Expires: 4/3/2021
 Registration Number: 1177



MEMORANDUM

TO: Frederick County Board of Supervisors

FROM: M. Tyler Klein, AICP, Senior Planner 

SUBJECT: Ordinance Amendment – Development Review Fees for Commercial Telecommunication Facilities CUPs

DATE: May 15, 2020

During consideration of the ordinance amendment to create a two-track process for review and approval of commercial telecommunication facilities (which was subsequently approved by the Board of Supervisors on December 12, 2019), the Board discussed the fee schedule for Conditional Use Permit (CUP) applications. Fees for these types of uses were identified as a potential *barrier* to local service providers in applying for telecommunication facility permits. The current CUP application fee for telecommunication facilities is \$7,000 (adopted by the BOS in 2011) which was intended to cover Staff review, potential third-party expert and legal review, legal advertisement and adjoining property notifications for CUP applications. In January, the Board further directed Staff to re-evaluate the fees with the intention of reducing the fee.

This is a proposed amendment to *Chapter 165 – Zoning Ordinance* and to the *Development Review Fee Schedule* to reduce the fee for a Conditional Use Permit for commercial telecommunication facilities. The purpose of this reduction in fees is to encourage commercial telecommunication facilities to locate in *underserved* areas of the County, specifically those rural areas west of Interstate 81. The Board discussed this approach as a potential solution in lieu of any further changes to by-right tower height allowance at this time. This may be revisited in the future.

The Development Review and Regulations Committee (DRRC) discussed this item at their February 27th meeting. At that meeting, Staff proposed a new fee of \$750, consistent with all “other” CUP applications (less “cottage occupations” which have a \$75 fee), and as directed by the Board of Supervisors. This fee reduction would cover only those costs associated with legal advertisement and adjoining property notifications. The DRRC stated that the proposed fee, \$750, was *insufficient* given the complexity of telecommunication applications and that the fee should reflect to the type of facility (based on height) under review. The DRRC further commented that towers greater than 50’ and less than 100’ in height would likely be “personal” towers for individual property owner for broadband service or small local service providers. The DRRC noted towers in greater than 100’ in height would be mainly for large commercial telecommunication companies (such as AT&T, Shentel or Verizon), and would require more Staff time and review than smaller towers. The DRRC proposed a revised fee schedule for CUPs for commercial

telecommunication facilities as follows:

- Towers greater than 50' and less than 100' in height - \$1,500
- Towers greater than 100' in height - \$7,000 (current fee)

The DRRC generally supported the modified fees, outlined above; however, two (2) DRRC members expressed concern with maintaining the highest fee (\$7,000) for towers greater than 100' in height. Ultimately the consensus of the DRRC was to send the item forward to the Planning Commission for discussion.

Following the DRRC meeting, the Board of Supervisors at their March 25th regular meeting adopted a temporary code amendment to reduce the fee for a CUP for commercial telecommunication facilities to \$750. This temporary change will expire on May 24th.

The Planning Commission discussed this item on May 6th. During their discussion, the Planning Commission sought clarification on what the application fee covers. Staff noted that the fee is intended to cover the cost of legal advertising in the local newspaper and adjoining property owner notifications, and that the staff proposed fee of \$750 *generally* covers those cost. In response to a Planning Commissioner comment Staff noted that since the change in the ordinance to allow by-right towers up to 50' in height and the Board of Supervisors temporary code amendment to reduce the fee to \$750 only a small numbers applications have been received for new towers. Commissioner Thomas noted that the fee schedule proposed by the DRRC, \$1,500 for towers greater than 50' in height and less than 100' in height and \$7,000 for towers greater than 100' in height did not provide enough variability for smaller towers many of which may be applied for by homeowners or local service providers and serve a much smaller area. Mr. Thomas noted that the fees for taller towers, from large broadband internet service providers such as Shentel, typically require more staff time and the fee should reflect those real costs to the County. Mr. Thomas proposed, and alternative tiered fee schedule as follows:

- Towers greater than 50' and less than 75' in height - \$750
- Towers greater than 75' and less than 125' in height - \$2,500
- Towers greater than 125' in height - \$5,000

Commissioner Oates noted that tiered fees were discussed by the Development Review and Regulations Committee (DRRC) and 100' was determined by the Committee to be the *threshold* between smaller/local service provider towners (towers less than 100' in height) and commercial towers for larger companies servicing a broader area (towers greater than 100' in height). Mr. Oates stated in many cases, public hearings on CUP for telecommunication facilities are tabled for 60-days (or more) and subsequent advertising and notifications are necessary, further increasing the cost to the County. Mr. Thomas agreed with the increased cost of re-advertising. Commissioner Jewell expressed his concern with a substantially reduced fee, \$750 as proposed by the Board of Supervisors, and the CUP process being taken advantage of by a local service provider when the intent of the tower isn't to service just one property in need of internet service but to service a broader area around the tower. Commissioner Morrison did not agree with differentiating the fees between various tower heights, citing topography and vegetation variation in western areas of the County as challenging to establishing a consistent standard.

There was no additional discussion and the Planning Commission did not make any specific changes to the proposed fee schedule proposed by the DRRC and stated their comments should be provided to the Board.

In summary:

Proposed Development Review Fee (amount)	Fee Proposed By
\$750	County Staff
\$750	BOS – Temporary Code Amendment (3/2520 – 5/24/20)
\$1,500 - Towers greater than 50’ and less than 100’ in height \$7,000 - Towers greater than 100’ in height	Development Review & Regulations Committee (DRRC)
\$1,500 - Towers greater than 50’ and less than 100’ in height \$7,000 - Towers greater than 100’ in height	Planning Commission (with comments, see above)

The attached documents show the existing ordinance with the proposed changes as proposed by the DRRC (with bold italic for text added). **Staff is seeking direction from the Board of Supervisors on this Zoning Ordinance text amendment and/or if the amendment is ready to be sent forward for Public Hearing.** Staff is available to discuss any comments or questions with Board members as needed.

-
- Attachments:**
- 1. Revised ordinance with additions shown in bold underlined italics.**
 - 2. Revised development review fee schedule with additions shown in bold underlined italics.**

MTK/pd

ARTICLE II
Supplementary Use Regulations; Parking; Buffers; and Regulations for Specific Uses

Part 204
Additional Regulations for Specific Uses

§ 165-204.19. Telecommunication facilities, commercial.

A. Standard process projects.

1. Except as provided in subsection B, no wireless facility or wireless support structure shall be sited, constructed, or operated except pursuant to a conditional use permit issued through the process defined in Part 103 of Article I of this Chapter. The issuance of a conditional use permit for the siting, construction, and operation of a wireless facility is permitted within the zoning districts specified in this Chapter, provided that, pursuant to Virginia Code § 15.2-2232(A), the general location or approximate location, character, and extent of such facilities are substantially in accord with the adopted Comprehensive Plan or part thereof and that adjoining properties, surrounding residential properties, land use patterns, scenic areas, and properties of significant historic value are not negatively impacted. [based on current intro to County Code § 165-204.19]
2. Any person seeking to install a facility or structure pursuant to this subsection shall make application to the Zoning Administrator, accompanied by payment of a fee of **\$1500 for towers 51' to 100' in height or \$7,000 for towers greater than 100' in height.** [Va. Code § 15.2-2316.4:1(B)(2) (“the fee shall not exceed the actual direct costs to process the application, including permits and inspection”)] The application shall be subject to consideration as follows and include the indicated information:
 - a. The Board of Supervisors shall approve or disapprove the application within 150 days of receipt of the complete application by the Zoning Administrator or such shorter period as required by federal law, unless the applicant and the Board agree to a longer period for approval or disapproval of the application. Within 10 days after receipt of an application and a valid electronic mail address for the applicant, the Zoning Administrator shall notify the applicant by electronic mail whether the application is incomplete and specify any missing information; otherwise, the application shall be deemed complete. [Va. Code § 15.2-2316.4:1(C)]
 - b. Information to be included with application:
 - i. A map depicting the search area used in siting the proposed facility or structure [Va. Code § 15.2-2316.4:2(D); based on current 165-204.19(A)(2)];
 - ii. Identification of all service providers and commercial telecommunications facility infrastructure within the search area [Va. Code § 15.2-2316.4:2(D); based on current 165-204.19(A)(3)];
 - iii. Confirmation that attempts to co-locate on existing structures have been made and, if such attempts were unsuccessful, the reasons so [Va. Code § 15.2-2316.4:2(D); based on current 165-204.19(A)(3)];
 - iv. Documentation issued by the Federal Communications Commission indicating that the proposed facility is in compliance with the Federal Communications Commission’s established ANSI/IEEE standards for electromagnetic field levels and radio frequency radiation [based on current 165-204.19(A)(4)];

- v. An affidavit signed by the landowner and by the owner of the facility or structure stating that they are aware that either or both of them may be held responsible for the removal of the facility or structure as stated in subsection E [based on current 165-204.19(A)(5)]; and
 - vi. The applicant may voluntarily submit, and the Board may accept, conditions that address potential visual or aesthetic effects resulting from the placement of the facility or structure. [Va. Code § 15.2-2316.4:2(C)]
3. If the Board of Supervisors grants a conditional use permit under this subsection, the following standards shall then apply to any property on which a wireless facility or wireless support structure is sited, in order to promote orderly development and mitigate the negative impacts to adjoining properties, residential properties, land use patterns, scenic areas, and properties of significant historic value:
- a. The Board may reduce the required setback distance for the wireless facility or wireless support structure as required by § 165-201.03(B)(8) of this Code if it can be demonstrated that the location is of equal or lesser impact. When a reduced setback is requested for a distance less than the height of the tower, a certified Virginia engineer shall provide verification to the Board that the wireless facility or wireless support structure is designed, and will be constructed, in a manner that if the wireless facility or wireless support structure collapsed the wireless facility or wireless support structure will be contained in an area around the wireless facility or wireless support structure with a radius equal to or lesser than the setback, measured from the center line of the base of the wireless facility or wireless support structure. In no case shall the setback distance be reduced to less than 1/2 the distance of the height of the wireless facility or wireless support structure.
 - b. Monopole-type construction shall be required for any new wireless facility or wireless support structure. The Board may allow lattice-type construction when existing or planned residential areas will not be impacted and when the site is not adjacent to identified historic resources.
 - c. No more than two signs shall be permitted on any wireless facility or wireless support structure. Such signs shall be limited to 1.5 square feet in area and shall be posted no higher than 10 feet above grade.
 - d. When lighting is required for a wireless facility or wireless support structure, dual lighting shall be utilized which provides daytime white strobe lighting and nighttime red pulsating lighting unless otherwise mandated by the Federal Aviation Administration or the Federal Communications Commission. Strobe lighting shall be shielded from ground view to mitigate illumination to neighboring properties. Equipment buildings and other accessory structures operated in conjunction with the wireless facility or wireless support structure shall utilize infrared lighting and motion-detector lighting to prevent continuous illumination.
 - e. Every wireless facility and wireless support structure shall be constructed with materials of a galvanized finish or be of a non-contrasting blue or gray unless otherwise mandated by the Federal Aviation Administration or the Federal Communications Commission.
 - f. Every wireless facility and wireless support structure shall be adequately enclosed to prevent access by persons other than employees of the service provider. Appropriate landscaping and opaque screening shall be provided to ensure that equipment buildings and other accessory

structures are not visible from adjoining properties, roads, or other rights-of-way.
[the entirety of the above subsection C(3) is based on current 165-204.19(B)]

4. If the Board of Supervisors denies a conditional use permit under this subsection, the Board shall:
 - a. Provide applicant with a written statement of the reasons for the denial [Va. Code § 15.2-2316.4:1(E)(1)];
 - b. Identify any modifications of which the County is aware that would permit it to approve the conditional use permit [Va. Code § 15.2-2316.4:1(E)(2)]; and
 - c. Have supporting substantial record evidence in a written record publicly released within 30 days of denial [Va. Code § 15.2-2316.4:1(F)(2)].
- B. Maintenance of existing facilities and/or structures and replacement of existing facilities and/or structures within a 6-foot perimeter with substantially similar or same size or smaller facilities and/or structures is exempt from fees and permitting requirements under this section. [Va. Code § 15.2-2316.4:3(A)]
- C. Any facility or structure permitted by this section that is not operated or used for a continuous period of 12 months shall be considered abandoned, and the owner of such facility or structure shall remove same within 90 days of receipt of notice from the Frederick County Department of Planning and Development. If the facility or structure is not removed within the ninety-day period, the County may remove the facility and a lien may be placed to recover expenses. [Va. Code § 15.2-2316.4(B)(6); based on current County Code § 165-204.19(B)(7)]

**FREDERICK COUNTY
DEVELOPMENT REVIEW FEES**

Adopted April 23, 2008 – Effective May 1, 2008, Revised 2/24/2010, 4/28/2010, 5/2011, 1/25/2012,
1/11/2017, **2/27/2020**

COMPREHENSIVE POLICY PLAN

\$ 3,000 non-refundable

REZONING

\$ 1,000 – Proffer amendments not requiring a public hearing
 \$ 5,000 base + \$100/acre – 2 acres or less
 \$ 10,000 base + \$100/acre more than 2, less than 150
 \$ 10,000 base + \$100/acre first 150 + \$50/acre over 150 acres

SUBDIVISION

Non-Residential \$1,000 base
 Design Plan \$ 200/lot
 Plat \$ 100/lot
Residential (RP, R4, R5)
 Design Plan \$ 2,500/base \$100/lot
 Plat \$ 200/lot to 50 lots
 \$ 100/lot over 50 lots
Rural Areas (RA)
 Sketch (Design) \$ 2,500 base \$200/acre
 Plat \$ 200/lot
Rural Areas (RA)
Minor – 3 lots or less \$ 200/lot
Lot Consolidation \$ 200/lot
Boundary Line Adj. \$ 200/lot

VARIANCE \$ 400

BZA APPEAL \$ 250

ZONING CERTIFICATION LETTER \$ 250

ZONING DETERMINATION LETTER \$ 100

SUBDIVISION ORDINANCE

EXCEPTION \$ 500

MASTER DEVELOPMENT PLAN

\$ 3,000 base + \$100/acre for first 150
 +\$50/acre over 150 acres

CONDITIONAL USE PERMIT

Cottage Occupation \$ 75
Tower (greater than 50' & less than 100') **\$1,500**
~~Telecommunication~~ **Tower (100' or more)** **\$ 7,000**
 Other \$ 750

SITE PLAN

Non-residential \$ 2,500 base
 \$ 200/acre to 5 acres
 \$ 100/acre over 5 acres
Residential \$ 3,500 base
 \$ 300/unit to 20 units
 \$ 100/unit over 20 units
Minor Site Plan \$ 500 for revision that increases existing structure area by 20% or less & does not exceed 10,000sf of disturbed area.

POSTPONEMENT of any Public Hearing or Public Meeting by Applicant after Advertisement, to include Applicant requests to **TABLE** an agenda item \$ 500/occurrence.

THIRD & SUBSEQUENT PLAN REVIEWS

(including County Attorney review) for a single development application \$ 500/review.

BOND MANAGEMENT

Establishment of bond \$ 500
 Reduction/Release \$ 300
 Replacement \$ 500

TDR PROGRAM

TDR Application Review \$300
 (*Review includes TDR Letter of Intent)
 TDR Certificate \$200
 Certificate Ownership Transfer \$50
 Receiving Property Approval \$200
 Review of Sending Property
 Deed Covenant \$100
 Review of Deed of Transfer (Extinguishment Document) \$100

CHAPTER 161 FEES

Installation License \$300
 Septic Haulers Permit \$200
 Residential Pump and Haul \$50
 Commercial Pump and Haul \$500

****Planning & Development Staff recommended Telecommunication Towers application fee of \$750.****



MEMORANDUM

TO: Frederick County Board of Supervisors

FROM: M. Tyler Klein, AICP, Senior Planner 

SUBJECT: Ordinance Amendment – Zoning Enforcement, Violations & Penalties

DATE: May 15, 2020

The Board of Supervisors directed Staff and the Planning Commission to propose ordinance revisions to maximize the penalties for zoning violations. At present, the County enforces the zoning ordinance through the misdemeanor process, but state law also permits the use of civil penalties. If the County adopted civil penalties for specified violations, state law would require the County to pursue civil penalties for those violations, up to an accumulated fine limit of \$5,000, before pursuing the misdemeanor process for those violations.

The civil penalty process permits an initial fine of \$200 and a \$500 fine for each 10-day period thereafter for which the violation is not remedied. The misdemeanor process permits fines of \$1,000, \$1,500, and \$2,000 for each successive 10-day period of noncompliance with an initial court directive to remedy a violation (following an initial fine of up to \$1,000 for a violation), and a fine of \$2,000 for every 10-day period of noncompliance thereafter. The County Code does not currently reflect these subsequent misdemeanor fines, as the General Assembly updated the enabling legislation to include them on multiple occasions since the County's adoption of its current zoning ordinance in 1990.

In theory, then, adoption of civil penalties would essentially require the County to go through 10 iterations of a \$500 fine every 10 days before then proceeding to the misdemeanor process, which permits much more robust fines, culminating in the potential of a \$2,000 fine every 10 days. If the objective for revisions to the zoning ordinance is to maximize fines in such a way to create a disincentive for violations, proceeding sooner to the \$1,000, \$1,500, and then repeated \$2,000 fines for the subsequent 10-day periods a violation remains unremedied is seemingly the most effective approach.

The Development Review and Regulations Committee (DRRC) discussed this item at their February 27th meeting. The DRRC generally supported increasing the fees under the current misdemeanor process outlined in §165-101.08(A) and the item was sent forward to the Planning Commission for discussion.

The Planning Commission was presented this item for discussion on May 6th. Following a staff presentation, the Planning Commission generally supported pursuing the highest cost penalty that was easiest for the County to collect under the misdemeanor process and the item was sent forward to the Board of Supervisors.

The attached documents show the existing ordinance with the proposed changes as proposed by the County Attorney (with bold italic for text added). **Staff is seeking direction from the Board of Supervisors on this Zoning Ordinance text amendment and/or if the amendment is ready to be sent forward for Public Hearing.** Staff is available to discuss any comments or questions with Board members as needed.

-
- Attachments:**
- 1. Revised ordinance with additions shown in bold underlined italics.**
 - 2. Zoning Violation Enforcement comparison chart.**
 - 3. Code of Virginia §15.2-2209, Civil penalties for violations of zoning ordinance.**
 - 4. Code of Virginia §15.2-2286, Permitted provisions in zoning ordinances; amendments; applicant to pay delinquent taxes; penalties.**

MTK/pd

CHAPTER 165 ZONING

Article I General Provisions; Amendments; and Conditional Use Permits

§ 165-101.08 Violations and penalties; enforcement.

It shall be a violation of this chapter to make any use of land in a fashion not expressly permitted by this chapter.

- A. Misdemeanor. Any person(s), firm or corporation, whether owner, lessee, principal, agent, employee or otherwise, who violates any provision of this chapter or who uses land or constructs or alters structures in a fashion that is not in conformance with the requirements and procedures in this chapter shall be guilty of a misdemeanor. Upon conviction of such misdemeanor, such person(s), firm or corporation shall be subject to punishment by a fine of not less than \$10 nor more than \$1,000. If this violation is uncorrected at the time of conviction, the court shall order the violator to abate or remedy such violation in compliance with the zoning ordinance, within a time period established by the court. Failure to remove or abate a zoning violation within a specified time period shall constitute a separate misdemeanor offense punishable by a fine of not less than \$10 nor more than \$1,000, ~~and any such failure during any succeeding thirty-day period shall constitute a separate misdemeanor offense for each thirty-day period, punishable by a fine of not less than \$10 nor more than \$1,000; any such failure during a succeeding 10-day period shall constitute a separate misdemeanor offense punishable by a fine of not less than \$10 nor more than \$1,500; and any such failure during any succeeding 10-day period shall constitute a separate misdemeanor offense for each 10-day period punishable by a fine of not less than \$10 nor more than \$2,000.~~
- B. Complaints. Whenever a violation of this chapter occurs or is alleged to have occurred, any person may file a complaint to the Zoning Administrator, stating fully the case and basis of the complaint. The Zoning Administrator shall record such complaint immediately and investigate and take action as provided by this chapter.
- C. Notification. When the Zoning Administrator determines that a violation has occurred, a notice of the violation shall be served to the person committing or permitting the violation. The notice of the violation shall specify the nature of the violation and shall order that the violation cease within a reasonable time specified by the Zoning Administrator.
- D. Appeal. The interpretation of the Zoning Administrator that a violation has occurred may be appealed to the Board of Zoning Appeals following procedures set forth in this chapter. The order to cease the violation may be stayed until the

appeal is heard, provided that the appeal is filed on a timely basis.

- E. Enforcement. If the violation continues after the time period specified in the notice of violation expires, the Zoning Administrator may initiate injunction, mandamus or any other appropriate action to ensure compliance with this chapter. In addition, the Frederick County Attorney or other prosecuting attorney appointed by the Board of Supervisors shall proceed to prosecute the violation.
- F. Civil penalties. The Board of Supervisors may adopt an ordinance which establishes a uniform schedule of civil penalties for violations of specific provisions of this chapter according to the provisions of the Code of Virginia, as amended. Such schedule of offenses shall not include any zoning violation resulting in injury to any person or persons. ~~In such cases, the~~ **The** civil penalty shall be a fine established by the schedule. The fine shall be in lieu of criminal sanctions, and except for any violation resulting in injury to any person or persons, such designation shall preclude the prosecution of a violation as a criminal misdemeanor.
- G. Any person summoned for a ~~scheduled~~ violation **subject to a civil penalty** may provide a waiver of trial and admission of liability and pay the civil penalty to the County Treasurer. Such persons shall be informed of their right to stand trial and that an admission of liability will have the same effect as a judgment of the court. If a person charged with a scheduled violation does not elect to enter a waiver of trial and admission of liability, the violation shall be tried in the General District Court as provided for by law. An admission of liability or finding of liability shall not be a criminal conviction.
- H. The remedies provided for in this section are cumulative, not exclusive, and shall be in addition to any other remedies provided by law.

ZONING VIOLATION ENFORCEMENT – What does state law enable?

	<u>Civil Penalties</u>	<u>Misdemeanors</u>	<u>Injunctive Relief</u>
Notice of violation requirement/period?	Yes – 30 days	Yes – 30 days	Yes – 30 days
Appeal of NOV?	Yes – to BZA (see note 1 at end re BZA appeals)	Yes – to BZA (see note 1 at end re BZA appeals)	Yes – to BZA (see note 1 at end re BZA appeals)
Means of initiating, after NOV, if no compliance	Issuance of civil penalty notice; if not paid with specified period, filing of warrant in debt in General District Court	Filing of charges in General District Court	Filing of suit in Circuit Court
Maximum penalty for first citation for the violation	\$200 civil fine	\$1,000 criminal fine and order to comply	Order to comply
Maximum penalty for additional citations for the same violation	\$500 civil fine (not more frequently than every 10 days)	For each 10 days noncompliance (see note 2 at end re state code amendments): 1 st time - \$1,000 criminal fine 2 nd time - \$1,500 criminal fine 3 rd and subsequent times - \$2,000 criminal fine	Contempt of court (theoretically, jailable)
Cumulative maximum penalties for same violation	\$5,000	No limit	N/A
Remedy if violation continues thereafter	May prosecute as misdemeanor	Continued noncompliance at any point could also theoretically be jailable contempt of court	See above re maximum penalty

Does court proceeding include order to comply?	No	Yes	Yes
County's burden of proving the violation in court	Preponderance of the evidence (that is, "more likely than not that the violation occurred")	Proof beyond a reasonable doubt (this is the highest and most difficult standard to meet)	Preponderance of the evidence (that is, "more likely than not that the violation occurred")
When can the process be used?	If enacted by locality, this process is exclusive, unless violation resulted in injury to person(s) or cumulative fine amount reached.	If civil penalties enacted, only if violation resulted in injury to person(s) or the maximum civil penalties reached.	For any violation, but this process is most useful for "conduct" violations (e.g., illegal businesses). This process is also useful where we need an order for the County to enter the property to remedy the violation (e.g., extreme clean up situations).

Explanatory information:

1. BZA appeals – A property owner can, theoretically, delay all three of the enforcement processes by up to an additional 60 days by pursuing a BZA appeal (the BZA is supposed to decide the appeal in 60 days). The property owner can appeal further to the Circuit Court, but that further appeal does not stay enforcement further, unless the Circuit Court grants a request by the owner for a further stay of enforcement.

2. Subsequent violations – misdemeanor enforcement – Since the original enactment of the County's current zoning ordinance in 1990, the state code has been amended on different occasions to add provisions allowing for increasing progressive fines for unremedied violations. The County has not to date opted to add these allowances to its zoning ordinance.

3. Consideration of civil penalties raises a related issue regarding building code violations. At present, the County uses the misdemeanor process to enforce against building code violations (although state law likewise permits civil penalties for building code enforcement). The County frequently encounters building code violations concurrent with zoning violations at the same property and is typically able to prosecute both violations at the same time through the misdemeanor process.

4. Zoning violations generally take one of two forms:

- "Condition" violation – a property is kept in a condition that violates the zoning ordinance, such as when a person keeps junk cars or debris on a property
- "Conduct" violation – a property is used for an ongoing or repeated course of conduct that violates the zoning ordinance, such as use of the property for an illegal business

§ 15.2-2209. Civil penalties for violations of zoning ordinance

Notwithstanding subdivision A 5 of § 15.2-2286, any locality may adopt an ordinance which establishes a uniform schedule of civil penalties for violations of specified provisions of the zoning ordinance. The schedule of offenses shall not include any zoning violation resulting in injury to any persons, and the existence of a civil penalty shall not preclude action by the zoning administrator under subdivision A 4 of § 15.2-2286 or action by the governing body under § 15.2-2208.

This schedule of civil penalties shall be uniform for each type of specified violation, and the penalty for any one violation shall be a civil penalty of not more than \$200 for the initial summons and not more than \$500 for each additional summons. Each day during which the violation is found to have existed shall constitute a separate offense. However, specified violations arising from the same operative set of facts shall not be charged more frequently than once in any 10-day period, and a series of specified violations arising from the same operative set of facts shall not result in civil penalties which exceed a total of \$5,000. Designation of a particular zoning ordinance violation for a civil penalty pursuant to this section shall be in lieu of criminal sanctions, and except for any violation resulting in injury to persons, such designation shall preclude the prosecution of a violation as a criminal misdemeanor, provided, however, that when such civil penalties total \$5,000 or more, the violation may be prosecuted as a criminal misdemeanor.

The zoning administrator or his deputy may issue a civil summons as provided by law for a scheduled violation. Any person summoned or issued a ticket for a scheduled violation may make an appearance in person or in writing by mail to the department of finance or the treasurer of the locality prior to the date fixed for trial in court. Any person so appearing may enter a waiver of trial, admit liability, and pay the civil penalty established for the offense charged. Such persons shall be informed of their right to stand trial and that a signature to an admission of liability will have the same force and effect as a judgment of court.

If a person charged with a scheduled violation does not elect to enter a waiver of trial and admit liability, the violation shall be tried in the general district court in the same manner and with the same right of appeal as provided for by law. In any trial for a scheduled violation authorized by this section, it shall be the burden of the locality to show the liability of the violator by a preponderance of the evidence. If the violation remains uncorrected at the time of the admission of liability or finding of liability, the court may order the violator to abate or remedy the violation in order to comply with the zoning ordinance. Except as otherwise provided by the court for good cause shown, any such violator shall abate or remedy the violation within a period of time as determined by the court, but not later than six months of the date of admission of liability or finding of liability. Each day during which the violation continues after the court-ordered abatement period has ended shall constitute a separate offense. An admission of liability or finding of liability shall not be a criminal conviction for any purpose.

No provision herein shall be construed to allow the imposition of civil penalties (i) for activities related to land development or (ii) for violation of any provision of a local zoning ordinance

relating to the posting of signs on public property or public rights-of-way.

1985, c. 417, § 15.1-499.1; 1986, c. 97; 1987, cc. 78, 99; 1988, cc. 513, 813, 869, 895; 1989, c. 566; 1990, cc. 473, 495; 1992, c. 298; 1993, c. 823; 1994, c. [342](#); 1995, c. [494](#); 1996, c. [421](#); 1997, c. 587; 2003, c. [192](#); 2006, c. [248](#); 2008, c. [727](#).

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.

This section has more than one version with varying effective dates. Scroll down to see all versions.

§ 15.2-2286. (Effective until October 1, 2019) Permitted provisions in zoning ordinances; amendments; applicant to pay delinquent taxes; penalties

A. A zoning ordinance may include, among other things, reasonable regulations and provisions as to any or all of the following matters:

1. For variances or special exceptions, as defined in § [15.2-2201](#), to the general regulations in any district.
2. For the temporary application of the ordinance to any property coming into the territorial jurisdiction of the governing body by annexation or otherwise, subsequent to the adoption of the zoning ordinance, and pending the orderly amendment of the ordinance.
3. For the granting of special exceptions under suitable regulations and safeguards; notwithstanding any other provisions of this article, the governing body of any locality may reserve unto itself the right to issue such special exceptions. Conditions imposed in connection with residential special use permits, wherein the applicant proposes affordable housing, shall be consistent with the objective of providing affordable housing. When imposing conditions on residential projects specifying materials and methods of construction or specific design features, the approving body shall consider the impact of the conditions upon the affordability of housing.

The governing body or the board of zoning appeals of the City of Norfolk may impose a condition upon any special exception relating to retail alcoholic beverage control licensees which provides that such special exception will automatically expire upon a change of ownership of the property, a change in possession, a change in the operation or management of a facility or upon the passage of a specific period of time.

The governing body of the City of Richmond may impose a condition upon any special use permit issued after July 1, 2000, relating to retail alcoholic beverage licensees which provides that such special use permit shall be subject to an automatic review by the governing body upon a change in possession, a change in the owner of the business, or a transfer of majority control of the business entity. Upon review by the governing body, it may either amend or revoke the special use permit after notice and a public hearing as required by § [15.2-2206](#).

4. For the administration and enforcement of the ordinance including the appointment or designation of a zoning administrator who may also hold another office in the locality. The zoning administrator shall have all necessary authority on behalf of the governing body to administer and enforce the zoning ordinance. His authority shall include (i) ordering in writing the remedying of any condition found in violation of the ordinance; (ii) insuring compliance with the ordinance, bringing legal action, including injunction, abatement, or other appropriate action or proceeding subject to appeal pursuant to § [15.2-2311](#); and (iii) in specific cases, making findings of fact and, with concurrence of the attorney for the governing body, conclusions of law regarding determinations of rights accruing under § [15.2-2307](#) or subsection C of § [15.2-2311](#).

177; 1978, c. 543; 1979, c. 182; 1982, c. 44; 1983, c. 392; 1984, c. 238; 1987, c. 8; 1988, cc. 481, 856; 1989, cc. 359, 384; 1990, cc. 672, 868; 1992, c. 380; 1993, c. 672; 1994, c. 802; 1995, cc. 351, 475, 584, 603; 1996, c. 451; 1997, cc. 529, 543, 587; 1998, c. 385; 1999, c. 792; 2000, cc. 764, 817; 2001, c. 240; 2002, cc. 547, 703; 2005, cc. 625, 677; 2006, cc. 304, 514, 533, 903; 2007, cc. 821, 937; 2008, cc. 297, 317, 343, 581, 593, 720, 777; 2009, c. 721; 2012, cc. 304, 318; 2014, c. 354; 2017, c. 398; 2018, c. 726.

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.

§ 15.2-2286. (Effective October 1, 2019) Permitted provisions in zoning ordinances; amendments; applicant to pay delinquent taxes; penalties

A. A zoning ordinance may include, among other things, reasonable regulations and provisions as to any or all of the following matters:

1. For variances or special exceptions, as defined in § 15.2-2201, to the general regulations in any district.
2. For the temporary application of the ordinance to any property coming into the territorial jurisdiction of the governing body by annexation or otherwise, subsequent to the adoption of the zoning ordinance, and pending the orderly amendment of the ordinance.
3. For the granting of special exceptions under suitable regulations and safeguards; notwithstanding any other provisions of this article, the governing body of any locality may reserve unto itself the right to issue such special exceptions. Conditions imposed in connection with residential special use permits, wherein the applicant proposes affordable housing, shall be consistent with the objective of providing affordable housing. When imposing conditions on residential projects specifying materials and methods of construction or specific design features, the approving body shall consider the impact of the conditions upon the affordability of housing.

The governing body or the board of zoning appeals of the City of Norfolk may impose a condition upon any special exception relating to retail alcoholic beverage control licensees which provides that such special exception will automatically expire upon a change of ownership of the property, a change in possession, a change in the operation or management of a facility or upon the passage of a specific period of time.

The governing body of the City of Richmond may impose a condition upon any special use permit issued after July 1, 2000, relating to retail alcoholic beverage licensees which provides that such special use permit shall be subject to an automatic review by the governing body upon a change in possession, a change in the owner of the business, or a transfer of majority control of the business entity. Upon review by the governing body, it may either amend or revoke the special use permit after notice and a public hearing as required by § 15.2-2206.

4. For the administration and enforcement of the ordinance including the appointment or designation of a zoning administrator who may also hold another office in the locality. The zoning administrator shall have all necessary authority on behalf of the governing body to administer and enforce the zoning ordinance. His authority shall include (i) ordering in writing the remedying of any condition found in violation of the ordinance; (ii) insuring compliance with

the ordinance, bringing legal action, including injunction, abatement, or other appropriate action or proceeding subject to appeal pursuant to § 15.2-2311; and (iii) in specific cases, making findings of fact and, with concurrence of the attorney for the governing body, conclusions of law regarding determinations of rights accruing under § 15.2-2307 or subsection C of § 15.2-2311.

Whenever the zoning administrator has reasonable cause to believe that any person has engaged in or is engaging in any violation of a zoning ordinance that limits occupancy in a residential dwelling unit, which is subject to a civil penalty that may be imposed in accordance with the provisions of § 15.2-2209, and the zoning administrator, after a good faith effort to obtain the data or information necessary to determine whether a violation has occurred, has been unable to obtain such information, he may request that the attorney for the locality petition the judge of the general district court for his jurisdiction for a subpoena duces tecum against any such person refusing to produce such data or information. The judge of the court, upon good cause shown, may cause the subpoena to be issued. Any person failing to comply with such subpoena shall be subject to punishment for contempt by the court issuing the subpoena. Any person so subpoenaed may apply to the judge who issued the subpoena to quash it.

Notwithstanding the provisions of § 15.2-2311, a zoning ordinance may prescribe an appeal period of less than 30 days, but not less than 10 days, for a notice of violation involving temporary or seasonal commercial uses, parking of commercial trucks in residential zoning districts, maximum occupancy limitations of a residential dwelling unit, or similar short-term, recurring violations.

Where provided by ordinance, the zoning administrator may be authorized to grant a modification from any provision contained in the zoning ordinance with respect to physical requirements on a lot or parcel of land, including but not limited to size, height, location or features of or related to any building, structure, or improvements, if the administrator finds in writing that: (i) the strict application of the ordinance would produce undue hardship; (ii) such hardship is not shared generally by other properties in the same zoning district and the same vicinity; and (iii) the authorization of the modification will not be of substantial detriment to adjacent property and the character of the zoning district will not be changed by the granting of the modification. Prior to the granting of a modification, the zoning administrator shall give, or require the applicant to give, all adjoining property owners written notice of the request for modification, and an opportunity to respond to the request within 21 days of the date of the notice. The zoning administrator shall make a decision on the application for modification and issue a written decision with a copy provided to the applicant and any adjoining landowner who responded in writing to the notice sent pursuant to this paragraph. The decision of the zoning administrator shall constitute a decision within the purview of § 15.2-2311, and may be appealed to the board of zoning appeals as provided by that section. Decisions of the board of zoning appeals may be appealed to the circuit court as provided by § 15.2-2314.

The zoning administrator shall respond within 90 days of a request for a decision or determination on zoning matters within the scope of his authority unless the requester has agreed to a longer period.

5. For the imposition of penalties upon conviction of any violation of the zoning ordinance. Any such violation shall be a misdemeanor punishable by a fine of not more than \$1,000. If the violation is uncorrected at the time of the conviction, the court shall order the violator to abate or remedy the violation in compliance with the zoning ordinance, within a time period established by the court. Failure to remove or abate a zoning violation within the specified time

period shall constitute a separate misdemeanor offense punishable by a fine of not more than \$1,000; any such failure during a succeeding 10-day period shall constitute a separate misdemeanor offense punishable by a fine of not more than \$1,500; and any such failure during any succeeding 10-day period shall constitute a separate misdemeanor offense for each 10-day period punishable by a fine of not more than \$2,000.

However, any conviction resulting from a violation of provisions regulating the number of unrelated persons in single-family residential dwellings shall be punishable by a fine of up to \$2,000. Failure to abate the violation within the specified time period shall be punishable by a fine of up to \$5,000, and any such failure during any succeeding 10-day period shall constitute a separate misdemeanor offense for each 10-day period punishable by a fine of up to \$7,500. However, no such fine shall accrue against an owner or managing agent of a single-family residential dwelling unit during the pendency of any legal action commenced by such owner or managing agent of such dwelling unit against a tenant to eliminate an overcrowding condition in accordance with the Virginia Residential Landlord and Tenant Act (§ 55.1-1200 et seq.). A conviction resulting from a violation of provisions regulating the number of unrelated persons in single-family residential dwellings shall not be punishable by a jail term.

6. For the collection of fees to cover the cost of making inspections, issuing permits, advertising of notices and other expenses incident to the administration of a zoning ordinance or to the filing or processing of any appeal or amendment thereto.

7. For the amendment of the regulations or district maps from time to time, or for their repeal. Whenever the public necessity, convenience, general welfare, or good zoning practice requires, the governing body may by ordinance amend, supplement, or change the regulations, district boundaries, or classifications of property. Any such amendment may be initiated (i) by resolution of the governing body; (ii) by motion of the local planning commission; or (iii) by petition of the owner, contract purchaser with the owner's written consent, or the owner's agent therefor, of the property which is the subject of the proposed zoning map amendment, addressed to the governing body or the local planning commission, who shall forward such petition to the governing body; however, the ordinance may provide for the consideration of proposed amendments only at specified intervals of time, and may further provide that substantially the same petition will not be reconsidered within a specific period, not exceeding one year. Any such resolution or motion by such governing body or commission proposing the rezoning shall state the above public purposes therefor.

In any county having adopted such zoning ordinance, all motions, resolutions or petitions for amendment to the zoning ordinance, and/or map shall be acted upon and a decision made within such reasonable time as may be necessary which shall not exceed 12 months unless the applicant requests or consents to action beyond such period or unless the applicant withdraws his motion, resolution or petition for amendment to the zoning ordinance or map, or both. In the event of and upon such withdrawal, processing of the motion, resolution or petition shall cease without further action as otherwise would be required by this subdivision.

8. For the submission and approval of a plan of development prior to the issuance of building permits to assure compliance with regulations contained in such zoning ordinance.

9. For areas and districts designated for mixed use developments or planned unit developments as defined in § 15.2-2201.

10. For the administration of incentive zoning as defined in § [15.2-2201](#).

11. For provisions allowing the locality to enter into a voluntary agreement with a landowner that would result in the downzoning of the landowner's undeveloped or underdeveloped property in exchange for a tax credit equal to the amount of excess real estate taxes that the landowner has paid due to the higher zoning classification. The locality may establish reasonable guidelines for determining the amount of excess real estate tax collected and the method and duration for applying the tax credit. For purposes of this section, "downzoning" means a zoning action by a locality that results in a reduction in a formerly permitted land use intensity or density.

12. Provisions for requiring and considering Phase I environmental site assessments based on the anticipated use of the property proposed for the subdivision or development that meet generally accepted national standards for such assessments, such as those developed by the American Society for Testing and Materials, and Phase II environmental site assessments, that also meet accepted national standards, such as, but not limited to, those developed by the American Society for Testing and Materials, if the locality deems such to be reasonably necessary, based on findings in the Phase I assessment, and in accordance with regulations of the United States Environmental Protection Agency and the American Society for Testing and Materials. A reasonable fee may be charged for the review of such environmental assessments. Such fees shall not exceed an amount commensurate with the services rendered, taking into consideration the time, skill, and administrative expense involved in such review.

13. Provisions for requiring disclosure and remediation of contamination and other adverse environmental conditions of the property prior to approval of subdivision and development plans.

14. For the enforcement of provisions of the zoning ordinance that regulate the number of persons permitted to occupy a single-family residential dwelling unit, provided such enforcement is in compliance with applicable local, state and federal fair housing laws.

15. For the issuance of inspection warrants by a magistrate or court of competent jurisdiction. The zoning administrator or his agent may make an affidavit under oath before a magistrate or court of competent jurisdiction and, if such affidavit establishes probable cause that a zoning ordinance violation has occurred, request that the magistrate or court grant the zoning administrator or his agent an inspection warrant to enable the zoning administrator or his agent to enter the subject dwelling for the purpose of determining whether violations of the zoning ordinance exist. After issuing a warrant under this section, the magistrate or judge shall file the affidavit in the manner prescribed by § [19.2-54](#). After executing the warrant, the zoning administrator or his agents shall return the warrant to the clerk of the circuit court of the city or county wherein the inspection was made. The zoning administrator or his agent shall make a reasonable effort to obtain consent from the owner or tenant of the subject dwelling prior to seeking the issuance of an inspection warrant under this section.

B. Prior to the initiation of an application by the owner of the subject property, the owner's agent, or any entity in which the owner holds an ownership interest greater than 50 percent, for a special exception, special use permit, variance, rezoning or other land disturbing permit, including building permits and erosion and sediment control permits, or prior to the issuance of final approval, the authorizing body may require the applicant to produce satisfactory evidence that any delinquent real estate taxes, nuisance charges, stormwater management utility fees, and any other charges that constitute a lien on the subject property, that are owed to the locality and

have been properly assessed against the subject property, have been paid, unless otherwise authorized by the treasurer.

Code 1950, § 15-968.5; 1962, c. 407, § 15.1-491; 1964, c. 564; 1966, c. 455; 1968, cc. 543, 595; 1973, c. 286; 1974, c. 547; 1975, cc. 99, 575, 579, 582, 641; 1976, cc. 71, 409, 470, 683; 1977, c. 177; 1978, c. 543; 1979, c. 182; 1982, c. 44; 1983, c. 392; 1984, c. 238; 1987, c. 8; 1988, cc. 481, 856; 1989, cc. 359, 384; 1990, cc. 672, 868; 1992, c. 380; 1993, c. 672; 1994, c. 802; 1995, cc. 351, 475, 584, 603; 1996, c. 451; 1997, cc. 529, 543, 587; 1998, c. 385; 1999, c. 792; 2000, cc. 764, 817; 2001, c. 240; 2002, cc. 547, 703; 2005, cc. 625, 677; 2006, cc. 304, 514, 533, 903; 2007, cc. 821, 937; 2008, cc. 297, 317, 343, 581, 593, 720, 777; 2009, c. 721; 2012, cc. 304, 318; 2014, c. 354; 2017, c. 398; 2018, c. 726.

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.