~~January 20, 2004 CPC~~
~~March 16, 2004 CPC~~
~~April 20, 2004 CPC~~
May 26, 2004 BS

STAFF'S
REQUEST ANALYSIS
AND
RECOMMENDATION

04SN0157
(AMENDED)

Douglas R. and Susan S. Sowers

Matoaca Magisterial District
Grange Hall Elementary, Bailey Bridge Middle and
Manchester High School Attendance Zones
Northeast quadrant of Beach and Baldwin Creek Roads

REQUEST: Rezoning from Agricultural (A) to Residential (R-12) of 80.8 acres with Conditional Use Planned Development to permit exceptions to Ordinance requirements.

PROPOSED LAND USE:

A mixture of residential uses, to include single family, condominiums and cluster homes, along with supporting recreational uses is planned. The applicant has agreed to limit development to a density of between 2.0 and 2.2 dwelling units per acre, yielding approximately 174 dwelling units.

PLANNING COMMISSION RECOMMENDATION

RECOMMEND APPROVAL SUBJECT TO THE CONDITIONS AND ACCEPTANCE OF THE PROFFERED CONDITIONS ON PAGES 2 THROUGH 6.

STAFF RECOMMENDATION

Recommend approval for the following reasons:

A. The proposed residential zoning and land use complies with the Upper Swift Creek Plan which suggests that the portion of the property which drains to the Swift Creek Reservoir is appropriate for residential the development of 2.0 units per acre or less and that the portion of the property which does not drain to the Reservoir is appropriate for residential development of 2.2 units per acre or less.

B. The proffered conditions address the impacts of this development on necessary capital facilities, as outlined in the Zoning Ordinance and Comprehensive Plan. Specifically, the needs for roads, schools, parks, libraries and fire stations is identified in the Public Facilities Plan, the Thoroughfare Plan and the Capital Improvement Program, and the impact of this development is discussed herein. The proffered conditions adequately mitigate the impact on capital facilities, thereby insuring adequate service levels are maintained and protecting the health, safety and welfare of County citizens.

(NOTE: CONDITIONS MAY BE IMPOSED OR THE PROPERTY OWNER MAY PROFFER CONDITIONS. THE CONDITIONS NOTED WITH "STAFF/CPC" WERE AGREED UPON BY BOTH STAFF AND THE COMMISSION. CONDITIONS WITH ONLY A "STAFF" ARE RECOMMENDED SOLELY BY STAFF. CONDITIONS WITH ONLY A "CPC" ARE ADDITIONAL CONDITIONS RECOMMENDED BY THE PLANNING COMMISSION.)

CONDITIONS

(STAFF/CPC) 1. The Textual Statement, dated March 5, 2004, shall be considered the master plan. (P)

(STAFF/CPC) 2. In conjunction with the initial tentative subdivision plan review, an overall plat shall be submitted for the residential portion of this request depicting the acreages for that property which does and does not drain to the Swift Creek Reservoir for the purpose of confirming overall project densities. (P)

PROFFERED CONDITIONS

The Owners-Applicants in this zoning case, pursuant to Section 15.2-2298 of the Code of Virginia (1950 as amended) and the Zoning Ordinance of Chesterfield County, for themselves and their successors or assigns, proffer that the development of the properties known as Chesterfield County Tax IDs 709-662-5658-00000 and 707-660-8583-00000 (the "Property") under consideration will be developed according to the attached Textual Statement and the following conditions if, and only if, the rezoning requests for R-12 as set forth in the above heading and the application filed herein is granted. In the event the request is denied or approved with conditions not agreed to by the Owners-Applicants, these proffers and conditions shall be immediately null and void and of no further force or effect.

(STAFF/CPC) 1. (a) Timbering. Except for the timbering approved by the Virginia State Department of Forestry for the purpose of removing dead or diseased trees, there shall be no timbering on the Property until a land disturbance permit has been obtained from the Environmental Engineering Department and the approved devices have been installed.

(b) Drainage. In order to ensure that the drainage on the property is adequately handled, the Applicant proffers to: (i) replace all culvert pipes under Beach Road and/or Baldwin Creek Road to ensure adequate size to handle the ultimate upstream drainage area, or (ii) retain water onsite so that the existing pipes remain adequate, or (iii) a combination of (i) and (ii) above. (EE)

(STAFF/CPC) 2. Utilities.

(a) Public water shall be used.

(b) Public wastewater gravity sewer shall be used.

(c) Prior to the issuance of the first building permit for each tentative subdivision plat or prior to the issuance of a building permit for each site plan approved for the Property, the developer shall make payment to Chesterfield County in the amount of $200.00 per acre for that particular plat or plan as a contribution towards the expansion of the Dry Creek Wastewater Pump Station. The total contribution shall be based on the total acreage served by the public wastewater system. (U)

(STAFF/CPC) 3. Transportation.

(a) In conjunction with recordation of the initial subdivision plat or prior to any site plan approval, whichever occurs first, forty-five (45) feet of right-of-way along the north side of Beach Road (State Route No. 655), measured from the centerline of that part of Beach Road immediately adjacent to the property, shall be dedicated, free and unrestricted, to and for the benefit of Chesterfield County.

(b) A revised centerline for the realignment of Baldwin Creek Road at its intersection with Beach Road shall be submitted to and approved by this Transportation Department. In conjunction with recordation of the initial subdivision plat or prior to any site plan approval, whichever occurs first, forty-five (45) feet of right-of-way along the east side of Baldwin Creek Road (State Route No. 730), measured from the approved revised centerline of that part of Baldwin Road immediately adjacent to the entire property, shall be dedicated, free and unrestricted, to and for the benefit of Chesterfield County.

(c) No direct access shall be provided from the property to Baldwin Creek Road.

(d) Direct access from the property to Beach Road shall be limited to no more than three (3) public roads. The westernmost access to Beach Road shall be located approximately 750 feet from the approved revised alignment of the Baldwin Creek Road intersection as described in Proffered Condition 3(b). The exact location of these accesses shall be approved by the Transportation Department.

(e) To provide an adequate roadway system, the developer shall be responsible for the following improvements:

(i) Construction of additional pavement along Beach Road at each approved access to provide left and right turn lanes, if warranted, based on Transportation Department standards.

(ii) Widening/improving the north side of Beach Road and the east side of Baldwin Creek Road to an eleven (11) foot wide travel lane, measured from the centerline of the roads, with an additional one (1) foot wide paved shoulder plus a seven (7) foot wide unpaved shoulder, with modifications approved by the Transportation Department, for the entire property frontage.

(iii) Dedication to and for the benefit of Chesterfield County, free and unrestricted, of any additional right-of-way (or easements) required for the improvements identified above. In the event the Developer is unable to acquire the right of way necessary for the road improvements as described above, the Developer may request in writing, the County to acquire such right of way as a public road improvement. All costs associated with the acquisition of the right-of-way shall be borne by the Developer. In the event the County chooses not to assist the Developer in acquisition of the "off-site" right of way, the developer shall be relieved of the obligation to acquire the "off-site" right of way and shall be required only to provided the road improvements that can be accommodated within available rights of way as determined by the Transportation Department.

(f) Prior to any construction plan or site plan approval, whichever occurs first, a phasing plan for the required road improvements, as identified in Proffered Condition 3(e), shall be submitted to and approved by the Transportation Department. (T)

(STAFF/CPC) 4. Age Restriction. Lots for Age-Restricted Dwelling Units shall be grouped together on a particular portion of the Property and shall not be scattered among other residential units. At the time of recordation of a subdivision plat or the approval of any site plan, the lots shall be noted age-restricted. Any Site Plan for Age Restricted Dwelling Units shall also note the restriction. (P)

(STAFF/CPC) 5. Cash Proffer. The applicant, subdivider, or assignee(s) shall pay the following to the County of Chesterfield prior to the issuance of each building permit for infrastructure improvements within the service district for the property:

(a) The amount approved by the Board of Supervisors not to exceed $9,000.00 per dwelling unit adjusted upward by any increase in the Marshall Swift building cost index between July 1, 2003, and July 1 of the fiscal year in which the payment is made if paid after June 30, 2004.

(b) Provided, however, that if any building permits issued on the property are for senior housing, the units of which meet the occupancy requirements for "age 55 or over" housing as set forth in Section 3607 of the Fair Housing Act, 42 USC Section 3601 et seq., as amended by the Fair Housing Amendments Act of 1988, and of 24 CFR Section 100.304 in effect as of the date of the Rezoning, and which are subject to the occupancy requirements that no person under 19 shall reside in such unit, the amount approved by the Board of Supervisors, but not to exceed $4,815 per dwelling unit as adjusted upward by any increase in the Marshall and Swift Building Cost Index between July 1, 2003 and July 1 of the fiscal year in which the payment is made if paid after June 30, 2004. At the time of payment, the $4,815 will be allocated pro-rata among the facility costs as follows: $598 for parks and recreation, $324 for library facilities, $3,547 for roads, and $346 for fire stations. Payments in excess of $4,815 shall be prorated as set forth above.

(c) If any of Cash proffers are not expended for the purpose designated by the Capital Improvements Program within fifteen (15) years from the date of payment, they shall be

returned in full to the payor. Should Chesterfield County impose impact fees at any time during the life of the development that are applicable to the Property, the amount paid in cash proffers shall be in lieu of or credited toward, but not be in addition to, any impact fees, in a manner determined by the County. (B & M)

(STAFF/CPC) 6. Density.

(a) The total number of residential units on that portion of the property requested to be rezoned R-12 which drains to the Swift Creek Reservoir shall not exceed two (2) units per acre. (Note: The Applicant has determined that 17 acres, more or less, of said request parcel does drain to the reservoir).

(b) The total number of residential units on that portion of the property requested to be rezoned R-12 which does not drain to Swift Creek Reservoir shall not exceed 2.2 single family residential units per acre. (Note: The Applicant has determined that 63.684 Acres, more or less, does not drain to the reservoir) (P)

(STAFF/CPC) 7. Phasing. No residential building permits shall be issued until January 1, 2007. Thereafter, a maximum of 82 residential building permits shall be issued prior to January 1, 2008, a cumulative maximum of 164 residential building permits shall be issued prior to January 1, 2009, with the remaining building permits issued after said January 1, 2009. (P)

(STAFF/CPC) 8. Temporary sediment basins shall remain in place and/or new BMPs constructed to achieve the .22 phosphorus standard until the downstream regional BMP into which the development will drain has been constructed. (EE)

GENERAL INFORMATION

Location:

Northeast quadrant of the intersection of Baldwin Creek and Beach Roads. Tax IDs 707-660-8583 and 709-662-5658 (Sheet 23).

Existing Zoning:

A

Size:

80.8 acres

Existing Land Use:

Vacant

Adjacent Zoning and Land Use:

North, South and West - A; Single family residential or vacant
East - R-12 with Conditional Use Planned Development and A; Vacant

UTILITIES

Public Water System:

There is an existing sixteen (16) inch water line extending along a portion of Otterdale Road and terminating adjacent to Hampton Glenn Lane, in Hampton Park Subdivision, approximately 7,300 feet northeast of this site. This site is adjacent to the western boundary of the property recently rezoned under case 02SN0209 (Southern Land Company, L.L.C.). Southern Land Company has proffered to incorporate into their on-site water distribution system a water line along the proposed east/west collector road to extend between the easternmost and westernmost boundaries of their development. The applicant is advised to work with the developer of the Southern Land Company site to insure adequate water line size and placement to serve the request site.

Use of the public water system is intended and has been proffered by the applicant. (Proffered Condition 2(a))

Public Wastewater System:

There is an existing twelve (12) inch wastewater trunk line extending along the western branch of Dry Creek that terminates adjacent to Hampton Valley Drive, in Hampton Park Subdivision, approximately 2,400 feet northeast of this site. Due to topography, portions of the request site may not be served by the public wastewater gravity system. The applicant has proffered that a public wastewater gravity sewer shall be used (Proffered Condition 2(b)). The applicant is advised to work with the developer of the adjacent Southern Land Company site to insure that reasonable depth, size and placement of the off-site wastewater lines is designed to provide gravity wastewater service to the maximum portion of the request site.

Proffered Condition 2(b) would allow consideration for the possibility of a private wastewater pump station to be constructed for a commercial site in that area that cannot be served by a gravity wastewater line, provided that the Utilities Department approves such a request. Evaluation of a request for a private wastewater pump station will not occur until

more specific details are available for review. The Utilities Department interprets Proffered Condition 2(b) as allowing the County the ability to accept other private methods to access the gravity wastewater system. However, a publicly maintained wastewater pump station will not be considered.

The applicant has proffered to pay the County $200.00 per acre (based on total acreage served by the public wastewater system) as a contribution towards expansion of the Dry Creek Wastewater Pump Station. Payments will be made over time as the property develops, with payment for each section or site to be made prior to issuance of the first building permit for that section or site. (Proffered Condition 2(c))

ENVIRONMENTAL

Drainage and Erosion:

The property drains in two (2) directions. A large portion drains south under Beach Road and then via tributaries to Winterpock Creek. The northern portion drains north via tributaries to Dry Creek and then via Dry Creek to Swift Creek Reservoir. The property is wooded and should not be timbered without first obtaining a land disturbance permit from the Environmental Engineering Department (Proffered Condition 1(a)). This will insure that adequate erosion control measures are in place prior to any land disturbance.

Currently, the culverts under Beach Road are inadequate to meet VDOT criteria. To ensure that the pipes under Beach and/or Baldwin Creek Roads are adequate to receive drainage from this project, the developer has proffered to replace all pipes of an adequate size to handle the ultimate upstream drainage area or to retain water onsite so that the existing pipes remain adequate, or a combination of these two (2) methods. (Proffered Condition 1(b))

Water Quality:

That portion of the property draining to Dry Creek must participate in the Upper Swift Creek Regional Best Management Practice (BMP) Plan.

To address concerns of the Planning Commission and area citizens, the applicant has agreed to maintain sediment basins or construct new BMPs, or combination thereof, until downstream regional BMPs have been constructed. (Proffered Condition 8)

PUBLIC FACILITIES

The need for fire, school, library, park and transportation facilities is identified in the Public Facilities Plan, the Thoroughfare Plan and the Capital Improvement Program. This development will have an impact on these facilities.

Fire Service:

The Public Facilities Plan indicates that Emergency Services calls are expected to increase forty-five (45) percent by 2015. Eight (8) new fire/rescue stations are recommended for construction by 2015 in the Plan. Based on 174 dwelling units, this request will generate approximately twenty-six (26) calls for fire and rescue services each year. The applicant has addressed the impact on fire and emergency medical services. (Proffered Condition 5)

The Winterpock Fire/Rescue Station, Company Number 19, currently provide fire protection and emergency medical service. When the property is developed, the number of hydrants, quantity of water needed for fire protection and access requirements will be evaluated during the plans review process.

Schools:

Approximately ninety-three (93) students will be generated by this development.

Currently this site lies in the Grange Hall Elementary School attendance zone: capacity - 828, enrollment - 613; Bailey Bridge Middle School zone: capacity - 1,621, enrollment - 1,618; and Manchester High School zone: capacity - 1,962, enrollment - 2,413.

This request will have an impact on the high school involved. It will also have an impact on the middle school because Bailey Bridge is close to capacity. There are currently twenty (20) trailers at Bailey Bridge Middle and seventeen (17) trailers at Manchester High.

One (1) new high school is proposed that will provide relief for Clover Hill High and Manchester High Schools.

This development will have impact on area schools. The applicant has agreed to participate in the cost of providing for area school needs. (Proffered Condition 5)

Libraries:

Consistent with Board of Supervisors' Policy, the impact of development on library services is assessed County-wide. Based on projected population growth, the Public Facilities Plan identified a need for additional library space throughout the County. Even if the facility improvements that have been made since the Plan was published are taken into account, there is still an unmet need for additional library space throughout the County.

Development of this property would most likely impact the Clover Hill Library or a proposed new library in the west Beach Road area. The Public Facilities Plan identifies a need for additional library space in this area of the County. The applicant has addressed the impact of this proposed development on library facilities. (Proffered Condition 5)

Parks and Recreation:

The Public Facilities Plan identifies the need for four (4) new regional parks. In addition, there is currently a shortage of community park acreage in the County. The Plan identifies a need for 625 acres of regional park space and 116 acres of community park space by 2015. The Plan also identifies the need for neighborhood parks and special purpose parks and makes suggestions for their locations.

The applicant has offered measures to assist in addressing the impact of this proposed development on these Parks and Recreation facilities. (Proffered Condition 5)

Transportation:

The property (80.8 acres) is currently zoned Agricultural (A), and the applicant is requesting rezoning to Residential (R-12). The applicant has proffered a maximum density of 2.0 to 2.2 units per acre dependent on how the property drains to Swift Creek Reservoir, which could result in approximately 174 units (Proffered Condition 6). Based on single family trip rates, development could generate approximately 1,670 average daily trips. These vehicles will be distributed along Beach Road which had a 2003 traffic count of 985 vehicles per day and Baldwin Creek Road which had a 2003 traffic count of 951 vehicles per day.

The Thoroughfare Plan identifies Beach and Baldwin Creek Roads as major arterials with recommended right of way widths of ninety (90) feet. The applicant has proffered to dedicate forty-five (45) feet of right of way, measured from the centerline of those roads, in accordance with that Plan (Proffered Conditions 3(a) and (b)). Baldwin Creek Road intersects Beach Road at a skewed angle. Proffered Condition 3(b) would require the dedication of right of way along Baldwin Creek Road based on a revised centerline for that roadway.

Access to major arterials, such as Baldwin Creek and Beach Roads, should be controlled. The applicant has proffered that no direct access will be provided from the property to Baldwin Creek Road (Proffered Condition 3(c)). The applicant has also proffered that direct access from the property to Beach Road will be limited to three (3) public roads (Proffered Condition 3(c)). The proffer requires the westernmost access to Beach Road to be located approximately 750 feet from a realigned Beach Road/Baldwin Creek Road intersection.

The traffic impact of this development must be addressed. The applicant has proffered to: 1) construct left and right turn lanes along Beach Road at each approved access, based on Transportation Department standards; and 2) widen both the north side of Beach Road and the east side of Baldwin Creek Road to a total travel way width of eleven (11) feet measured from the centerline with an additional one (1) foot wide paved shoulder plus a seven (7) foot wide unpaved shoulder for the entire property frontage (Proffered Condition 3(e)). Based on Transportation Department standards, left and right turn lanes along Beach Road are anticipated to be warranted at each public road intersection.

Constructing these road improvements along Beach Road may require the developer to acquire some "off-site" right of way. According to Proffered Condition 3(e), if the developer is unable to acquire the off-site right of way for any road improvement, the developer may request the County to acquire the right of way as a public road improvement. All costs associated with the acquisition will be borne by the developer. If the County chooses not to assist with the right of way acquisition, the developer will not be obligated to acquire the "off-site" right of way and will only be obligated to construct road improvements within available right of way.

The Thoroughfare Plan identifies the need to improve existing roads, as well as construct new roads to accommodate growth. Area roads need to be improved to address safety and accommodate the increase in traffic generated by this development. Baldwin Creek and Beach Roads will be directly impacted by this development. Sections of Beach Road have eighteen (18) foot wide pavement with no shoulders. The capacity of this road is acceptable (Level of Service B) for the volume of traffic it currently carries. Sections of Baldwin Creek Road have twenty (20) foot wide pavement with no shoulders. The capacity of this road is acceptable (Level of Service B) for the volume of traffic it currently carries. The standard typical section for these roadways should be twenty-four (24) foot wide pavement with minimum eight (8) foot wide shoulders.

The applicant has proffered to contribute cash, in an amount consistent with the Board of Supervisors' Policy, towards mitigating the traffic impact of this development (Proffered Condition 11). As development continues in this part of the County, traffic volumes on area roads will substantially increase. Cash proffers alone will not cover the cost of the improvements needed to accommodate the traffic increases. No road improvement projects in this part of the County are included in the Secondary Road Six-Year Improvement Plan.

At time of tentative subdivision review, specific recommendations will be provided regarding access and the internal street network.

Financial Impact on Capital Facilities:

		PER UNIT
Potential Number of New Dwelling Units	174*	1.00
Population Increase	473.28	2.72
Number of New Students		
Elementary	41.76	0.24
Middle	22.62	0.13
High	29.58	0.17
TOTAL	93.96	0.54
Net Cost for Schools	843,378	4,847
Net Cost for Parks	120,582	693
Net Cost for Libraries	65,250	375
Net Cost for Fire Stations	69,774	401
Average Net Cost for Roads	714,966	4,109
TOTAL NET COST	1,813,950	10,425

*Based on proffered condition (Proffered Condition 6). The actual number of units developed and corresponding impact may vary.

As noted, this proposed development will have an impact on capital facilities. Staff has calculated the fiscal impact of every new dwelling unit on schools, roads, parks, libraries and fire stations at $10,425 per unit. The applicant has been advised that a maximum proffer of $9,000 per unit would defray the cost of the capital facilities necessitated by this proposed development. The applicant has been further advised that a maximum proffer of $4,815 per unit would defray the cost of capital facilities necessitated by development of the age-restricted portion of the proposed development, as it will not have an increased impact on school facilities. Consistent with the Board of Supervisors' Policy, and proffers accepted from other applicants, the applicant has offered cash to assist in defraying the cost of this proposed zoning on such capital facilities. (Proffered Condition 5)

Note that circumstances relevant to this case, as presented by the applicant, have been reviewed and it has been determined that it is appropriate to accept the maximum cash proffer in this case.

LAND USE

Comprehensive Plan:

Lies within the boundaries of the Upper Swift Creek Plan which suggests that property which drains to the Swift Creek Reservoir is appropriate for residential development of 2.0 units per acre or less and that property which does not drain to the Reservoir is appropriate for residential development of 2.2 units per acre or less. The Plan also suggests that various types of housing, to include condominiums and clustered attached or detached single family dwellings may also be appropriate if included within a large coordinated planned development.

Area Development Trends:

Surrounding properties are zoned Agricultural (A) and are occupied by single family dwellings or are vacant. It is anticipated that residential development at densities of 2.0 to 2.2 units per acre or less will continue north of Beach Road and east of Baldwin Creek Road, consistent with the suggestions of the Upper Swift Creek Plan, while properties south of Beach Road and west of Baldwin Creek Road will be limited to primarily agricultural and forestal uses and residential development on parcels five (5) acres or larger in size until public water and sewer, road improvements and other public facilities are in place, consistent with the suggestions of the Southern and Western Area Plan.

Site Design:

The 80.8 acre tract proposed for R-12 zoning may be developed for condominiums, cluster homes and/or single family residential uses, all of which are discussed in further detail herein. If the property is developed for two (2) or more dwelling types, the Textual Statement requires submission of a conceptual plan to either the Planning Commission or Planning Department for approval. At the time of review of a conceptual plan, conditions may be imposed to insure land use compatibility and transition. (Textual Statement Item A.1.)

Density:

A maximum of 2.0 dwelling units per acre has been proffered for that portion of the property which drains to the Swift Creek Reservoir. The applicant estimates this acreage to be approximately seventeen (17) acres (Proffered Condition 6(a)). Further, a maximum of 2.2 dwelling units has been proffered for that portion of the property which does not drain to the Swift Creek Reservoir. The applicant estimates this acreage to be approximately 63.684 acres (Proffered Condition 6(b)). This would yield an overall maximum project density of 174 dwelling units. In conjunction with the initial tentative subdivision plan review, an overall plat depicting these exact acreages shall be submitted to the Planning Department for review and approval. (Condition 2)

Dwelling Types:

As previously noted, several dwelling types are proposed. Where common areas are to be provided within the development, the Textual Statement requires that the ownership and maintenance responsibilities be established. (Textual Statement Item A.2.)

Condominiums:

For any condominium development, density would be limited to six (6) units per acre and would be regulated by the Virginia Condominium Act. (Textual Statement Item B.1.b) and c))

Other restrictions address units per building, building height, architectural treatment and setbacks as well as provisions for sidewalks, buffers, recreational facilities, focal point, street trees, landscaping and garage orientation. (Textual Statement Item B.1.)

The requirements offered for condominium projects are consistent with those typically required by the Commission and Board on similar projects recently approved.

Cluster Homes:

Cluster homes are proposed to be developed on individual lots having a minimum of 6,000 square feet. The density for any cluster development would be limited to six (6) units per acre. Other restrictions include architectural treatment, setbacks, provision of sidewalks, buffers, recreational facilities, provision of a focal point, landscaping, street trees, paved driveways and garage orientation. (Textual Statement Item B.2.)

The requirements offered for cluster projects are consistent with those typically required by the Commission and Board on similar projects recently approved.

Single Family Residential:

Single family residential uses would be required to be developed in accordance with Ordinance requirements for Residential (R-12) Districts. The minimum lot size would be 12,000 square feet. (Textual Statement Item B.3.)

Any dwelling units, other than condominiums and cluster homes, would be required to have minimum gross floor areas of 1,700 square feet for one (1) story and 2,000 square feet for more than one (1) story. (Textual Statement Item B.3.a.)

The Textual Statement would require the recordation of restrictive covenants for any residential development, other than cluster and condominium uses. It should be noted that the County will only insure the recordation of the covenants and will not be responsible for their enforcement. Once the covenants are recorded, they can be changed. (Textual Statement Item B.3.b.)

Recreation Areas and Open Space:

The applicant has agreed to provide a minimum of 1.5 acres of open space within or conveniently accessible to each condominium development. Within each of the condominium and cluster home developments, a minimum of .75 acres of open space will be located and positioned to provide a "focal point" as one (1) enters these projects. Benches and other amenities are to be provided in a portion of this area to facilitate outdoor gatherings. (Textual Statement Item B.1.o. and B.2.j.)

The applicant may also provide active and passive recreation areas within the development. The Textual Statement provides for setbacks, buffers and other restrictions to minimize the impact of such recreational uses on surrounding residential uses. (Textual Statement Item B.3.b.)

Within the cluster home developments, where lots areas are reduced below the minimum 12,000 square feet, the Ordinance will require that comparable amount of square footage be placed in open space. The Ordinance defines open space as any area "not occupied by a building, structure, drive or parking area". The Subdivision Ordinance will require creation of a Homeowners' Association to maintain any common open space.

Within any condominium development, children's play facilities such as playground equipment or other facilities primarily associated with children's play would be prohibited. (Textual Statement Item B.1.p.)

Age Restriction:

Should any housing units be designed for occupancy by seniors, proffered conditions require that such units be grouped together and identified on site and subdivision plans in an effort to accurately track the impacts on capital facilities. (Proffered Condition 4)

Phasing:

In response to concerns of the Matoaca District Commissioner relative to the impact of the development on area roads and schools, a proffered condition was submitted for the phasing of the development. Ultimate build out will not occur until 2009 or later. (Proffered Condition 7)

CONCLUSIONS

The proposed residential zoning and land use complies with the Upper Swift Creek Plan which suggests that property which drains to the Swift Creek Reservoir is appropriate for residential development of 2.0 units per acre or less and that property which does not drain to the Reservoir is appropriate for residential development of 2.2 units per acre or less. Further, proffered conditions address the impacts of this development on necessary capital facilities, as outlined in the Zoning Ordinance and Comprehensive Plan.

Given these considerations, staff recommends approval of this request.

CASE HISTORY

Applicants (1/20/04):

Revised Proffered Condition 5 was submitted clarifying how the cash proffer would be allocated among the various public facilities.

Planning Commission Meeting (1/20/04):

At the request of the applicants, the Commission deferred this case to their March 16, 2004, public hearing.

Staff (1/21/04):

The applicants were advised in writing that any significant new or revised information should be submitted no later than January 26, 2004, for consideration at the Commission's March public hearing. Also, the applicants were advised that a $250.00 deferral fee must be paid prior to the Commission's public hearing.

Applicants (1/30/04):

The deferral fee was paid.

Staff (2/23/04):

To date, no new information has been submitted.

Applicants (2/25/04):

The application was amended to change the Convenience Business (C-1) portion of the request to Residential (R-12).

Applicants (3/4/04 and 3/5/04):

The Textual Statement was amended to delete references to C-1 development and exceptions to access requirements. Proffered Conditions 6 and 7 (Density and Phasing) were amended.

Planning Commission Meeting (3/16/04):

On their own motion, the Commission deferred this case to their April 20, 2004, public hearing.

Staff (3/17/04):

The applicant was advised in writing that any significant new or revised information should be submitted no later than March 22, 2004, for consideration at the Commission's April public hearing.

Applicants (3/19/04 and 3/22/04):

Proffered Conditions 3 and 5 (Transportation and Cash Proffer) were amended.

Planning Commission Meeting (4/20/04):

The applicants accepted the recommendation. There was opposition present. Concern was expressed relative to deferring action on the case pending consideration of the Upper Swift Creek Plan amendment and the incorporation of a condition to address phosphorus runoff.

The applicants submitted Proffered Condition 8.

Mr. Bass noted his support for the request which complies with the Plan, incorporates a phasing condition for housing construction, as well as road and drainage improvements.

On motion of Mr. Bass, seconded by Mr. Litton, the Commission recommended approval subject to the conditions and acceptance of the proffered conditions on pages 2 through 6.

AYES: Unanimous

The Board of Supervisors, on Wednesday, May 26, 2004, beginning at 7:00 p.m., will take under consideration this request.

TEXTUAL STATEMENT

September 2, 2003
Date Revised to December 30, 2003 at
Further revised March 5, 2004

This is a request to rezone 75.684 acres of the Property under consideration to R-12 with a Conditional Use Planned Development (CUPD) that will permit development of a mixed use, planned community including single family residences, condominiums and cluster homes. Except as qualified herein, uses permitted in the Residential (R- 12) District and active and passive recreation uses shall be permitted throughout the property. In addition, the following uses, as more fully defined below, shall also be permitted:

A. **General Requirements Applicable to All Uses**

1. Mixing of Uses. There shall be no "mixing" of uses (e.g., if the Property is to be developed for condominiums, all of the Property shall be developed as condominiums, or if The Property is developed for Residential (R-12) uses, all of the Property shall be developed for Residential (R-12) uses). Provided, however, the mixing of uses may be permitted if a conceptual plan is submitted for review and approval and the conceptual plan addresses land use transitions and compatibility between uses within the Property itself as well as with adjacent properties. Land use compatibility and transitions may include, but not necessarily be limited to, the exact location of uses, buffers, and site design. Such conceptual plan shall be approved by either the Planning Commission or the Planning Department, at the election of the developer, and such review shall be subject to appeal in accordance with sections 19-268(d) and 19-269(e) of the County Code.

2. Common Areas. Common areas and ownership of property shall be regulated by Section 19-559 of the County Zoning Ordinance.

B. **Requirements for Specific Uses**

1. **Condominiums**

Condominiums shall meet the following requirements::

a) Number of Units Per Building. No more than ten (10) dwelling units shall be permitted in any one building;

b) Virginia Condominium Act. Dwelling units shall be condominiums as defined and regulated by the Virginia Condominium Act;

c) Density. The overall density shall not exceed six (6) dwelling units per gross acre;

d) Lot Coverage. All buildings, including accessory buildings, shall not cover more than forty (40) percent of the area devoted to the condominium development;

e) Building Height. The maximum height of all buildings and structures shall be three (3) stories or forty (40) feet, whichever is less;

f) Architectural Appearance. The architectural appearance and materials of buildings containing not more than four (4) units shall be similar to the elevations attached as Exhibits B and C, and employ the following materials: brick veneer, composition siding and 20 year asphalt shingles, or shall be of at least similar quality, as determined by the Planning Director at time of site plan review. The architectural appearance and materials of buildings containing more than four (4) units shall be similar to the elevations attached hereto as Exhibits D, E, and F, or shall be of similar quality as determined by the Planning Director at time of site plan review;

g) Building Setbacks from Roads and Driveways. All structures shall be set back a minimum of ten (10) feet from interior roads and driveways, provided that no setback shall be required from driveways that serve garages or parking spaces of individual dwelling units and do not provide general circulation within the condominium development ("Individual Driveways"). All structures shall be set back at least fifteen (15) feet from any parking space and a minimum of fifty (50) feet from the ultimate right of way of Beach Road or any collector road external to the condominium development.

h) Building Setbacks from Perimeter of Tract. , All structures shall be setback a minimum of fifty (50) feet from the perimeter of the area devoted to condominium development. All perimeter yards shall be planted per the requirements of Perimeter Landscaping C of the Zoning Ordinance.

i) Distance Between Buildings . The minimum distance between buildings shall be thirty (30) feet;

j) Driveway and Parking Setbacks. Except as provided in paragraph (s), all driveways and parking areas shall be setback a minimum of fifteen (15) feet from the right-of. way of any existing or proposed right-of-way except that the setback adjacent to Beach Road or any collector road external to the condominium development shall be fifty (50) feet;

k) Sidewalks. Sidewalks shall be provided that facilitate pedestrian access within the Development, to the recreational areas serving the Development, and to the overall project. The exact location and design of the sidewalks shall be determined by the County at the time of site plan review; provided, however, that, unless otherwise approved by the Planning Director at time of site plan approval upon a determination that an alternative system will accomplish the spirit and intent of this requirement, sidewalks shall be installed on those portions of both sides of all roads that have condominiums fronting the road, but not along Individual Driveways;

1) Curb and Gutter. Roads, driveways (with the exception of Individual Driveways), and parking areas shall have concrete curbs and. gutters unless it is determined at the time of site plan review that the curbs and gutters are not necessary to effect proper drainage or to control traffic;

m) Driveway Width. Unless otherwise approved by the Planning Director at time of site plan review upon a determination that a lesser driveway width will provide adequate access, driveways shall have a minimum pavement width of twenty four (24) feet, provided that driveways that provide the primary access directly to a public road shall have a minimum pavement width of thirty (30) feet, and Individual Driveways serving not more than four (4) dwellings shall have a minimum pavement width of seventeen (17) feet; in the discretion of the Planning Director at the time of site plan review, the primary access directly to a public road may be required to be a public road.

n) (Withdrawn)

o) Recreation Areas. A minimum of 0.75 acres included within, or conveniently accessible to, each condominium development shall be provided for suitable active and passive outdoor recreational use by the occupants. A minimum of 0.25 acres of this 0.75 acre open space/recreation area shall be located and positioned to provide a "focal point" as one enters each condominium development. Part of this area shall be "hardscaped" and have benches and other amenities that accommodate and facilitate outdoor gatherings. This area shall be developed concurrently with the development of the first phase of each condominium development, and its exact design and location approved at the time of site plan review.

p) Restriction on Children's Play Facilities. The common area recreational amenities shall not include playground equipment, play fields or other facilities primarily associated with children's play. Adult facilities including, but not limited to, swimming pools, putting greens or shuffleboard may be permitted;

q) Street Trees. Street trees shall he planted or retained along each side of roads and driveways except for Individual Driveways. The exact spacing, species and size shall be approved at the time of site plan review.

r) Landscaping. Landscaping shall be provided around the perimeter of all buildings, between buildings and driveways, within medians, and within common areas not occupied by recreational facilities or other structures. Landscaping shall comply with the requirements of the Zoning Ordinance, Sections 19-516 through 19-518(f). Landscaping shall be designed to: minimize the predominance of building mass and paved areas; define private spaces; and enhance the residential character of the development. The exact number, spacing, arrangement and species shall be approved at the time of site plan review;

s) Buffers. A fifty (50) foot buffer shall be maintained adjacent to Beach Road and any other public road which is a major arterial, and a thirty-five (35) foot buffer shall be maintained adjacent to any public road that is an internal collector road. Such buffers shall comply with the requirements of Section 19-520 through 19-522 of the Zoning Ordinance and may be inclusive of the Perimeter Landscape requirements identified in Item B. 1. h. At the time of site plan review, the width of this buffer may be modified if it is determined that adequate landscaping or other treatment to minimize the impact of

adjacent roads on residences can be accomplished in a lesser width. The exact treatment of the buffer area shall be approved at the time of site plan review. This buffer area shall be maintained as common open space.

t) Garages. All dwellings that provide a garage shall employ side or rear entry garage designs except that front entry garages may be permitted if the Planning Director determines at time of site plan review that, based on the design of individual units, front entry garages would not have an adverse effect on the streetscape.

u) All roads that accommodate general traffic circulation through the development, as determined by the Transportation Department, shall be designed and constructed to state standards and taken into the state system. This condition may be modified by the Transportation Department if it is determined that the roads or any part of such roads cannot be designated for state acceptance. For any roads which accommodate general traffic circulation through the development that are not to be a part of the state system, a plan that insures the continual maintenance of the private streets shall be submitted to, and approved by, the Transportation Department.

2. Cluster Homes.

Single family detached cluster homes shall meet the following requirements:

a) Lot Size. The minimum lot size shall be as follows: a fifty (50) foot minimum lot width; and a six thousand (6,000) square foot minimum lot area;

b) Density. The overall density shall not exceed six (6) units per gross acre;

c) Architectural Appearance. The architectural appearance and materials of cluster homes shall be similar to the elevations attached as Exhibits G and H, which depict vinyl siding and twenty year fiberglass shingles, or shall be of at least similar quality, as determined by the Planning Commission at time of Tentative Subdivision review;

d) Front, Corner Side and RearYard. For principal structures, front, corner side and rear yards shall have a minimum depth of twenty-five (25) feet. Accessory structures shall have a twenty-five (25) foot front yard setback but no rear yard setback;

e) Side Yards. Principal structures shall be located no more than **six (6)** feet from one side property line, no less than ten (10) feet from the opposite side property line, and among every group of three (3) adjacent dwellings fronting on the same street there shall be a minimum of twenty (20) feet of space between at least two (2) of them; provided, however, that, if the overall intent of providing visual separation and clustering is achieved for the cluster home development, the Planning Commission, at time of tentative subdivision review, may approve exceptions to these side yard requirements.

Accessory structures shall have no side yard setback;

f) Sidewalks. Sidewalks shall be provided that facilitate pedestrian access within the Development, to the recreational areas serving the development, and to the overall project. The exact location and design of the sidewalks shall be determined by the County at the time of tentative subdivision review; provided, however, that, unless otherwise approved by the Planning Commission at time of subdivision review upon a determination that an alternative system will accomplish the spirit and intent of this requirement, sidewalks shall be installed on those portions of both sides of all roads that have cluster homes fronting on the road;

g) Buffers. Buffers shall comply with Section 17-70 of the Subdivision Ordinance along roads, and shall be located within recorded open space;

h) Paved Driveways. All dwelling units shall have paved driveways. The exact treatment shall be approved at the time of tentative subdivision plan review;

i) Landscaping. Landscaping shall be provided around the perimeter of all buildings, between buildings and driveways, within medians, and within common areas not occupied by recreational facilities or other structures. Landscaping shall comply with the requirements of the Zoning Ordinance, Sections 19-516 through 19-518(f). Landscaping shall be designed to: minimize the predominance of building mass and paved areas; define private spaces; and enhance the residential character of the development. The exact number, spacing, arrangement and species shall be approved by the Planning Department prior to issuance of any building permit;

j) Focal Point. A minimum of 0.75 acres of open space shall be located and positioned to provide a "focal point" as one enters each cluster home development. Part of this area shall be "landscaped" and have benches and other amenities that accommodate and facilitate outdoor gatherings. This area shall be developed concurrently with the development of the first phase of each cluster home development, and its exact design and location shall be approved at the time of tentative subdivision review.

k) Garages. All dwellings that provide a garage shall employ side or rear entry garage designs except that front entry garages may be permitted if the Planning Director determines at time of site plan review that, based on the design of individual units, front entry garages would not have an adverse effect on the streetscape.

l) Street Trees. Street trees shall be planted or retained along each side of roads and driveways except individual driveways.

3. **Residential (R-12)**

All dwellings other than Condominiums and Cluster Homes shall meet the requirements of the Residential (R-12) District as well as the following requirements:

a) Minimum Square Footage for Single Familv Dwellings. With the exception of Cluster Homes or Condominiums and for those dwellings delineated in paragraph (b) below, the minimum gross floor area for single family detached homes shall be as follows:

1 story	1,700 square feet;
More than 1 story	2,000 square feet;

b) Recreation Areas. At the election of the developer, active and passive recreation areas may be provided. Such recreation areas shall be subject to the following requirements:

(i) With the exception of playground areas which accommodate swings, jungle gyms, or similar facilities and tennis courts, all outdoor play fields, swimming pools and similar active recreational areas shall be located a minimum of one hundred (100) feet from adjacent properties zoned or designated on the County's Comprehensive Plan for residential use, a minimum of one hundred (100) feet from any existing or proposed single family residential lot line, and a minimum of fifty (50) feet from any existing or proposed road;

(ii) Within the one hundred (100) and fifty (50) foot setbacks, a fifty (50) foot buffer shall be provided along the perimeter of all active recreational facilities except where adjacent to any existing or proposed road. This buffer shall conform to the requirements of Section 19-521 (a) through (h) and 19-522(a)(2) of the Zoning Ordinance for fifty (50) foot buffers;

(iii) Any playground areas (i.e. areas accommodating swings, jungle gyms or similar such facilities) and tennis courts shall be located a minimum of forty (40) feet from all property lines. A forty (40) foot buffer shall be provided along the perimeter of these recreational facilities except where adjacent to any existing or proposed roads. This buffer shall conform to the requirements of Sections 19-521 (a) through (Ii) and 19-522(a)(2) of the Zoning

Ordinance for fifty (50) foot buffers.

(iv) Nothing within this condition shall prevent development of indoor facilities and/or parking within the one hundred (100) foot setback;

(v) There shall be no outside public address system or speakers;

(vi) Exterior lighting for recreational uses shall comply with Section 19-573 of the Zoning Ordinance, and the maximum height for light posts shall not exceed twenty (20) feet.

(vii) The location of all active recreational uses shall be identified in conjunction with the submittal of the first tentative subdivision plan;

(viii) In conjunction with the recordation of any lot adjacent to active recreational area(s), such area(s) shall be identified on the record plat along with the proposed recreational uses and required conditions;

d) Covenants. For all properties containing single family detached dwellings (except Cluster Homes and Condominiums), the following Declaration of Restrictions shall be recorded in conjunction with the recordation of any subdivision plat:

THE OWNERS do hereby declare that said property is to be held, owned, conveyed, used and occupied subject to the following restrictive covenants:

(i) An Architectural Review Committee, hereinafter called "ARC" shall be comprised of Douglas R. Sowers, his heirs, personal representatives, successors, and assigns, any of which may act. The ARC shall coordinate each residence and lot and shall establish reasonable rules and regulations relating to the procedure for architectural approvals and general guidelines for architectural plans according to the following architectural guidelines:

All plans to be approved prior to commencement of construction on each lot. House location to be approved prior to construction.

Roof

Minimum 7/12 pitch
Minimum 12" overhang
No uncolored galvanized flashing

Foundation

Brick foundations
Brick or stone on chimney chases

Dwelling

Main body of house to be a minimum of 30 feet in width
No single story homes adjacent to each other

Stoops and walks

Brick stoops or painted fir (no salt treated stoops except when approved by ARC)
Minimum 40 sq. ft.
Concrete sidewalks
Painted lattice under front porches - painted risers on steps, painted pickets and painted band on front porches

Siding

Panel shutters on front windows
Minimum 1 x 6 rake and facia boards
No T1-11 siding

Landscaping

$300 allowance for shrubs White painted mailbox and lamp post consistent throughout subdivision
Builder to leave as many trees as possible over 6 inches at the base

Base

3 color exterior paint except for 2 colors if
painted white

Satellite Dishes and swimming pool design, location and screening t be approved prior to installation.

The ARC reserves the right to modify the above restrictions or any other imposed deed restrictions in all or in part without notice. In addition, the ARC reserves the right to make special exceptions to these conditions on an individual basis; however, any special exception(s) shall not be deemed as waiver of the restriction(s) as they may apply in the future.

The ARC reserves the right to disallow construction of architecturally similar homes adjacent to each other.

The ARC shall not be liable to any Owner or to any other person on account of any claim, liability, damage, or expense suffered or incurred by or threatened against an Owner or such other person arising out of or in any way relating to the subject matter of any review, acceptances, inspections, permissions, consents, or required approvals which must be obtained from the ARC whether given, granted or withheld.

ii) No repairs, changes in color, excavations, changes in grade, major landscaping, or other work which in any way alters the exterior appearance of any Lot or improvement located thereon from its natural or improved state existing on the date such Lot was first conveyed in fee by Douglas R. Sowers to an owner (including clearance of trees and vegetation, driveways, entrance ways, fences, mailboxes, and lamp post structures), shall be made or done until the plans, specifications, working drawings, and proposals for the same showing the nature, kind, shape, type, color, materials, and location of the improvements on the Lot and a landscaping plan shall have been submitted to and approved in writing a'~ to harmony of external design and location in relations to surrounding structures, topography. and applicable governmental requirements by the ARC.

iii) All easements along road frontage and lot lines as may be shown on any subdivision plat are hereby reserved unto the developer, his personal representatives, heirs, assigns, or agents, for the purpose of drainage or furnishing light, telephone or any other utility to the property.

iv) Lots shall be occupied and used as follows:

a) Lots shall be used for private residential purposes only and no building of any kind whatsoever shall be erected or maintained thereon <u>except</u> for:

(1) One private dwelling house with each dwelling being designated for occupancy by a single family.

(2) Private garages for the sole use of the respective owners of the Lots upon which such garages are erected.

b) A single building for the storage of non-commercial vehicles, boats, equipment, and tools used in maintenance of the Lot upon which erected.

v) No building shall be located on any Lot nearer to any street or to a side line than

is permitted under the applicable local zoning ordinance in effect at the time such building is constructed.

vi) No structure of a temporary character, trailer, basement, tent) shack, garage, barn, or other outbuilding shall be used on any Lot at any time as a residence either temporarily or permanently.

vii) The construction of any structure on a Lot shall be completed within a period of nine (9) months after the beginning of construction. During construction, the Lot shall be maintained in a clean and uncluttered condition, free of unnecessary accumulation of waste and building debris.

viii) It is the responsibility of each Owner to prevent the development of any unclean, unsightly, or unkempt condition of buildings or grounds on his Lot. All improvements on each Lot shall be kept in good repair, and, where necessary, painted on a regular basis. No portion of the property shall be used or maintained as a dumping ground for rubbish. Outdoor burning of leaves, trash or other debris shall not be permitted. All trash, garbage, and other waste shall be kept in sanitary containers which shall be surrounded by wooden screening with such screening being approved by the ARC, or otherwise out of sight from the street.

ix) No nuisance or offensive activity shall be permitted or maintained upon any Lot, nor shall any poultry, hogs, rabbits, cattle or other livestock be kept thereon with the exception of dogs, cats or other normal household animals kept as pets thereon in numbers not exceeding those permitted by the law, provided they are not kept, bred or maintained for any commercial purposes, and must be kept under control of their owner when outside owner's premises, nor constitute a nuisance in the opinion of the ARC, its successors or assigns. No use shall be made of any Lot which will depreciate or adversely affect the surrounding Lots or the property.

x) Each residence constructed on a Lot shall be connected to a public sewer.

xi) No Lot shall be further subdivided without prior written consent of the ARC. However, the developer hereby expressly reserves for itself, its successors, and assigns, the right to re-subdivide any Lot or Lots shown on any recorded plan of subdivision of the property prior to the delivery of a deed to said Lot or Lots without the prior written consent of any Lot Owner.

xii) Except for emergencies, which emergencies must be proven to the satisfaction of the ARC, no trees with a diameter of six (6) inches or more, measured two (2) feet from the ground, no flowering trees, shrubs, or evergreens may be cleared from any Lot without prior written permission of the ARC. In the event a Lot Owner

violates this covenants the Lot Owner will be fined $25.00 per inch for every such tree removed and it shall be assumed that each tree had a diameter of twelve (12) inches.

xiii) No commercially licensed vehicles, motor vehicles, recreational vehicles, boats, disabled vehicles, vehicles without a current state license or state inspection sticker, machinery, or other equipment shall be visible from the street for a period exceeding twenty-four (24) hours. Any screening of such vehicles must be approved by the ARC. This covenant shall not apply to vehicles and equipment used in connection with construction upon Lots, while such construction is in progress, or in connection with the development of the property. It shall be the responsibility of each Owner to construct and maintain suitable and adequate parking space on his Lot and all vehicles shall be parked thereon.

xiv) The operation of unlicensed motor bikes, ATV's, and motorcycles on the lots and entrance area shall be subject to regulation by the Owners and may be prohibited entirely.

xv) No external illumination on any Lot shall be of such a character or intensity or so located as to interfere with any other Owners use or enjoyment of his Lot. No neon or flashing lights shall be permitted. All external lighting must be approved as to size and intensity by the ARC.

xvi) Except during construction, no signs of any kind shall be displayed to the public view on any lot except:

a) One sign not exceeding four (4) square feet in areas used for the purpose of advertising the Lot for sale or rent: and

b) One sign not exceeding four (4) square feet in area which identifies the resident occupying the Lot, the name of the Lot, or both.

xvii) No temporary, portable, or above-ground swimming pools may be erected on any Lot that will be visible from the street.

xviii) No outside antennas, television or otherwise, shall be permitted; provided, however, that until cable television becomes available to the property, exterior television antennas shall be permitted, provided that they do not extend more than five (5) feet past the roof line of any dwelling. No satellite dishes shall be visible from the street.

xix) No construction shall be permitted without appropriate erosion control so as to prevent the discharge of any soil or other material onto any other Lot or Common

Area. The ARC may establish reasonable rules and regulations establishing a maximum percentage of any Lot which may be covered by a building, driveway or other structure

xx) No fences or walls not constituting a part of a building shall be erected, placed or altered on any Lot nearer to any street than the minimum exterior setback line, but in no case shall it extend further forward than the rear of the house except with the approval of the ARC.

xxi) No shrubs, trees, fences or structures of any type shall he erected which may partially or fully block vehicular sight distance, as set forth in the Virginia Highway Department regulations, on any roadway.

xxii) No lot owner shall disturb or siltate shoulder, backslopes, ditches, pavement, curb and gutter, driveway culverts, or any other improvements within the public right-of-way. Each Lot Owner agrees to be responsib1e for disturbances, damages, and/or siltation caused by themselves, their employees, suppliers, contractors, or others, and shall have fourteen (14) days from the receipt of a letter from the developer and/or the ARC to correct the damage. If a Lot Owner fails to correct the damage in a workmanlike manner, then the developer or its assigns shall have the right to correct the damage and bill the Lot Owner directly on a cost-plus-fifty-percent (50%) basis. If a Lot Owner does not make payment within thirty (30) days of presentation of the bill, a two percent (2%) per month service charge shall be applied to such bill.

xxiii) Any one or more of the Covenants and Restrictions imposed in Paragraphs a through *v* hereof may be waived, modified, or rescinded, in whole or in part, as to all of the property or any Lot, by written instrument of the ARC.

xxiv) Invalidation of any of these covenants and conditions, by court adjudication or otherwise shall in no way modify, affect, or invalidate any of the other covenants and conditions contained herein which shall remain in full force and effect.

xxv) Each and every covenant and condition herein imposed may be enforced by the undersigned or the owner of any Lot by appropriate proceedings at law or in equity against any party violating or attempting or threatening to violate the same to prevent or rectify such violation and or recover damages therefore. The failure of an owner or the undersigned to bring any such proceeding shall not be considered as a waiver of any rights at law or in equity that any such party may have for past or future violation of any covenant herein contained

xxvi) These covenants and conditions are to run with the land and shall be binding upon subsequent owner or owners and all parties claiming through or under such owner

or owners for a period of thirty (30) years from the date these covenants are recorded, after which time said covenants shall be automatically extended for successive periods of ten (10) years unless an instrument signed by a majority of the owners of the Lots has been recorded, revoking said covenants, or agreeing to change said covenants in whole or in part.

_____

Douglas R. Sowers, Applicant

_____

Oliver D. Rudy, Agent

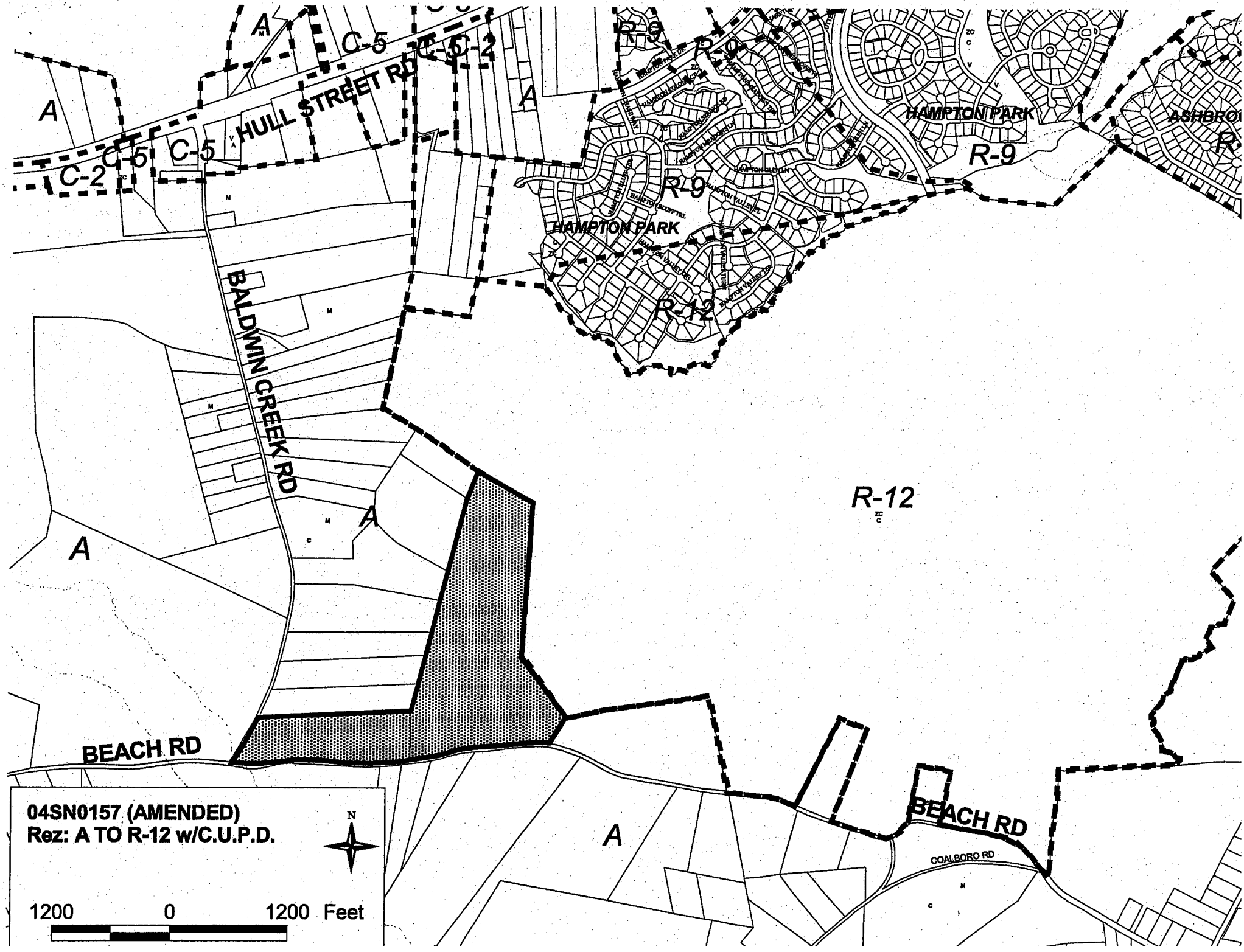

04SN0157 (AMENDED)
Rez: A TO R-12 w/C.U.P.D.
N
1200 0 1200 Feet
HULL STREET RD
BALDWIN CREEK RD
BEACH RD
BEACH RD
COALBORO RD
HAMPTON PARK
HAMPTON PARK
A
C-5
C-5-2
C-2
R-9
R-12

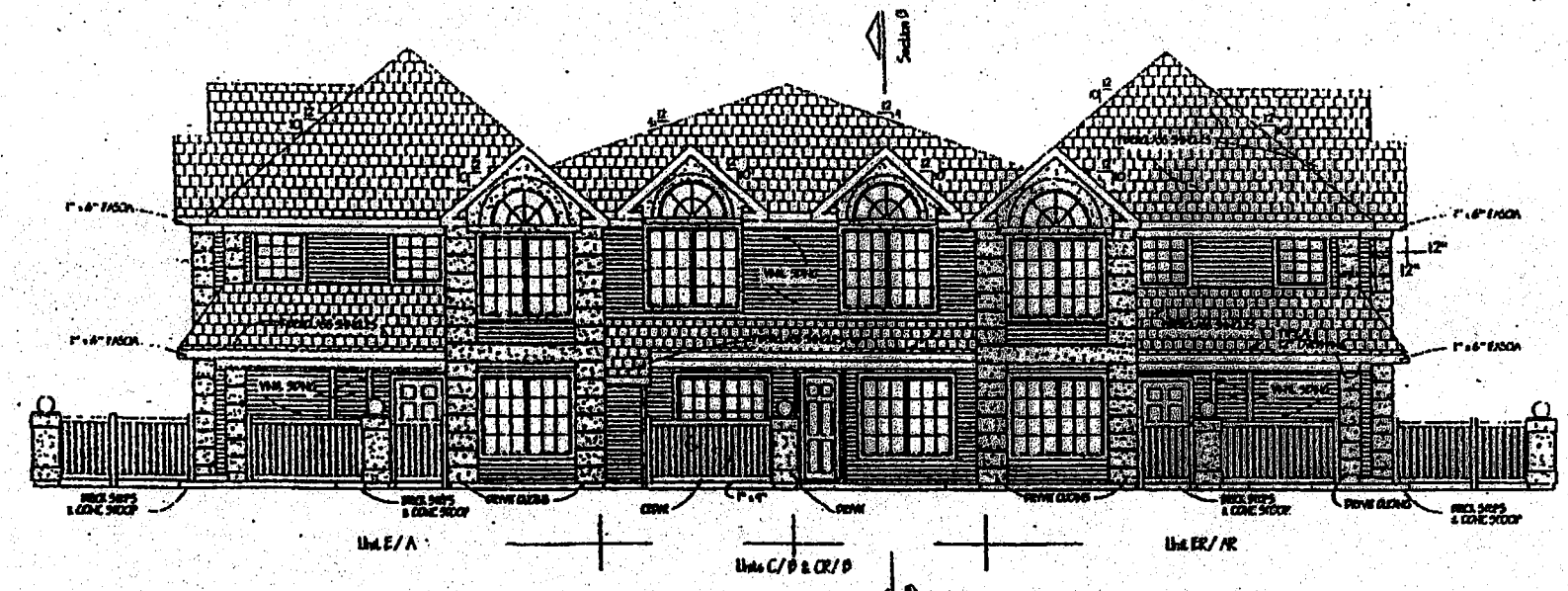
EXHIBIT "B"

[redacted]

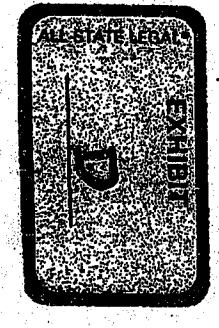
04SN0157-1

EXHIBIT "C"

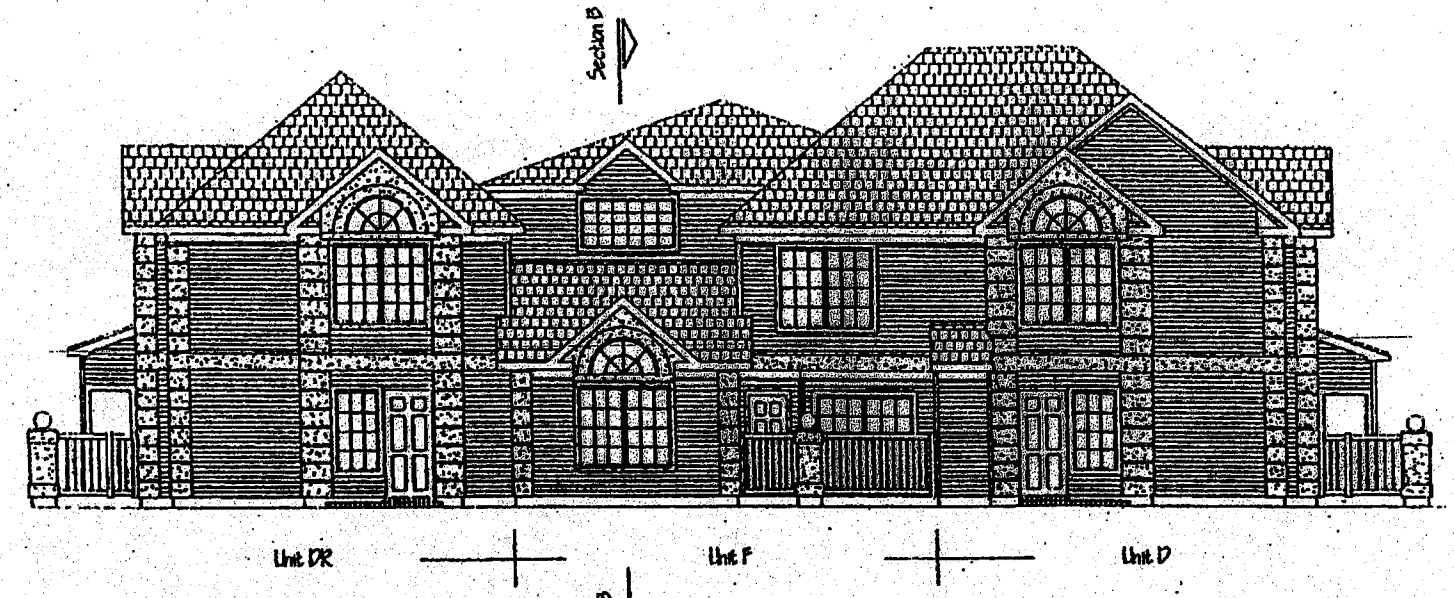
04SN0157-2



Elevation D



04SN0157-3



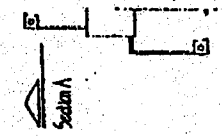
Elevation B

ALL-STATE LEGAL

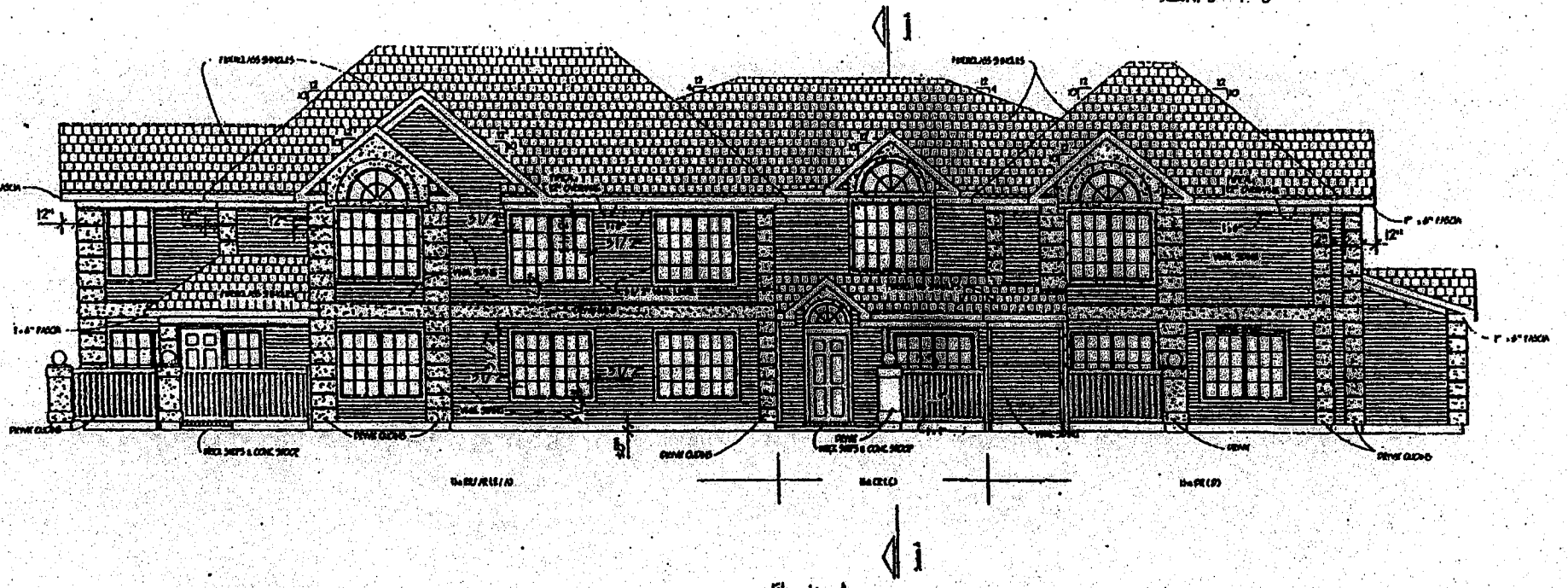
EXHIBIT E

04SN0157-4

Elev. A



Roof Plan
Scale: 1/8" = 1'-0"



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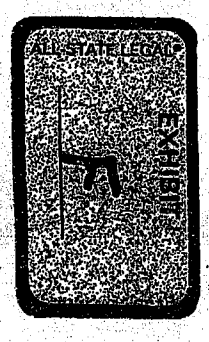

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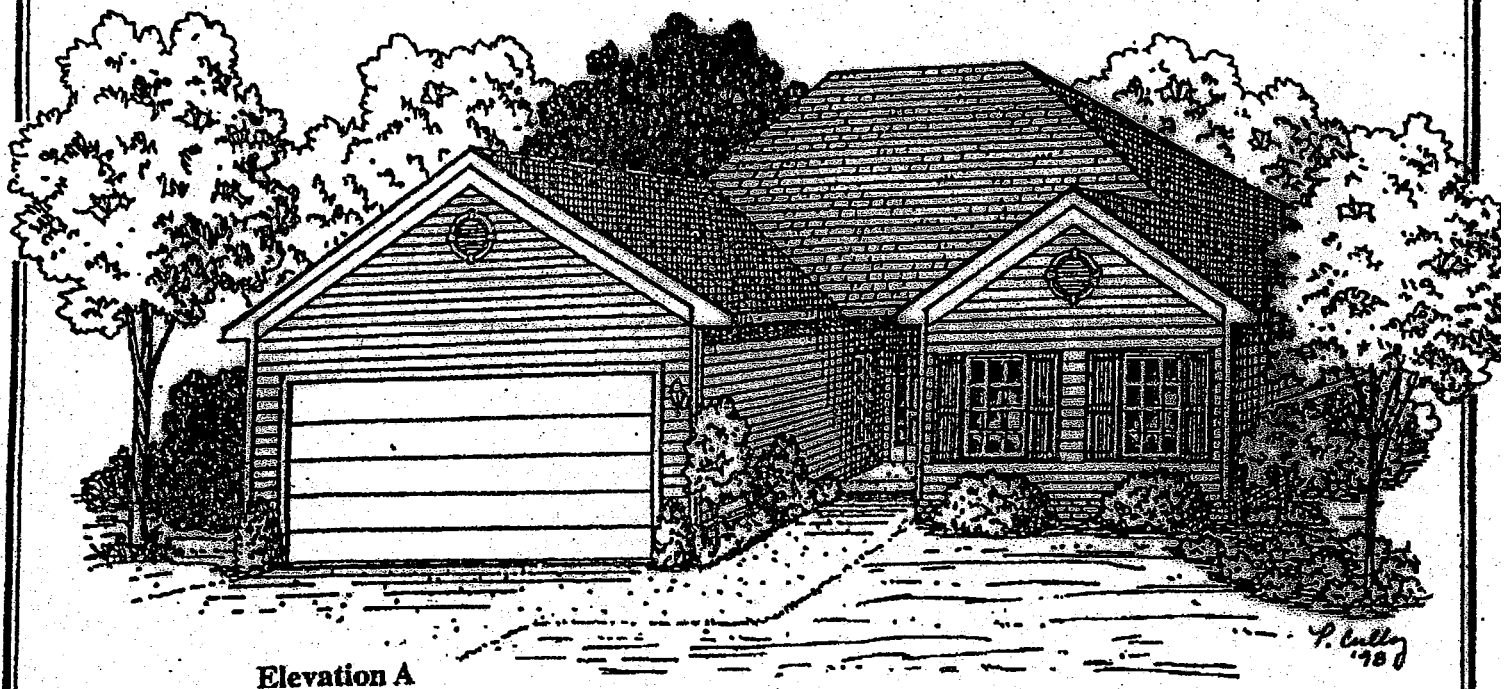
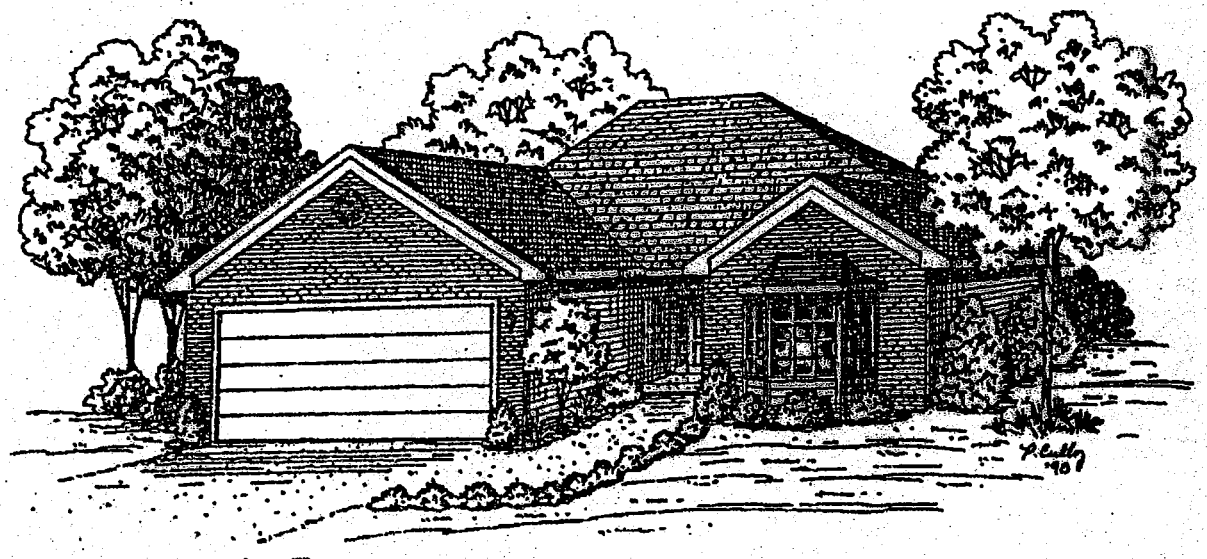


Elevation A

The Cary

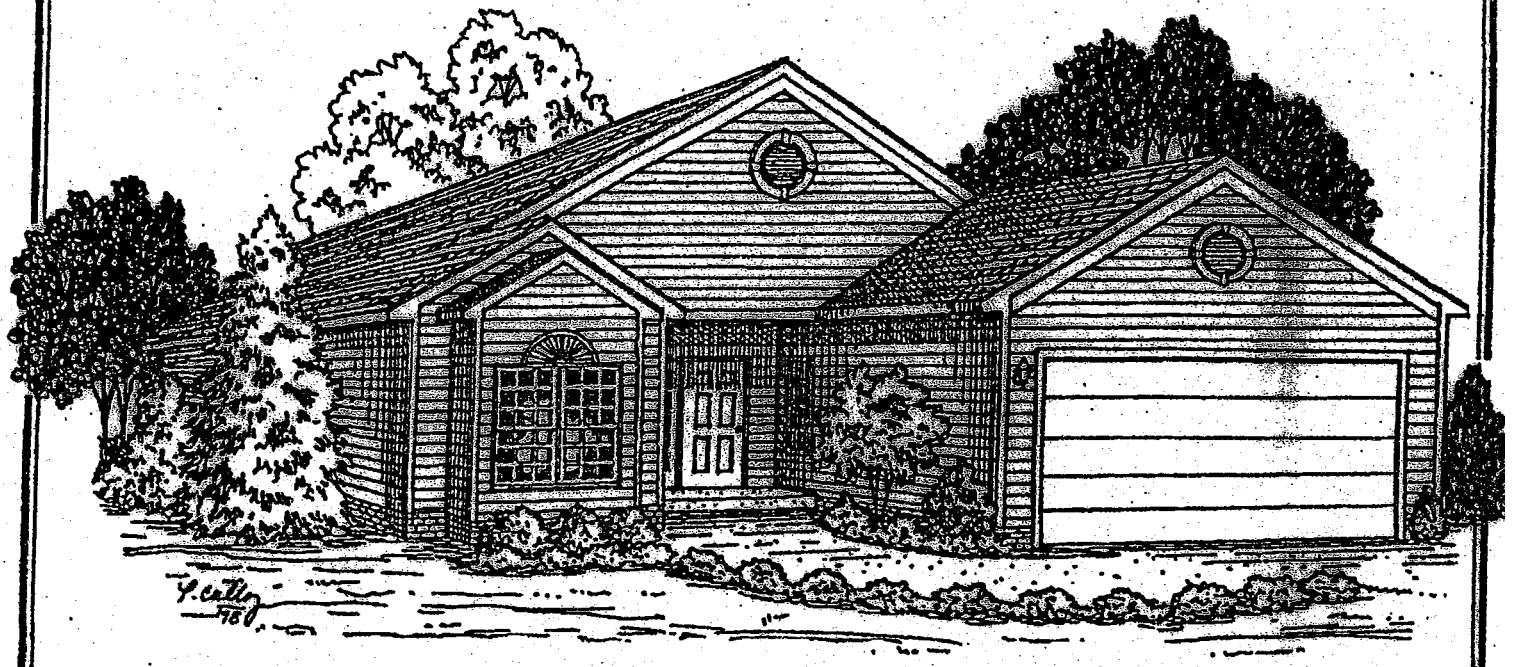


Elevation B

EXHIBIT

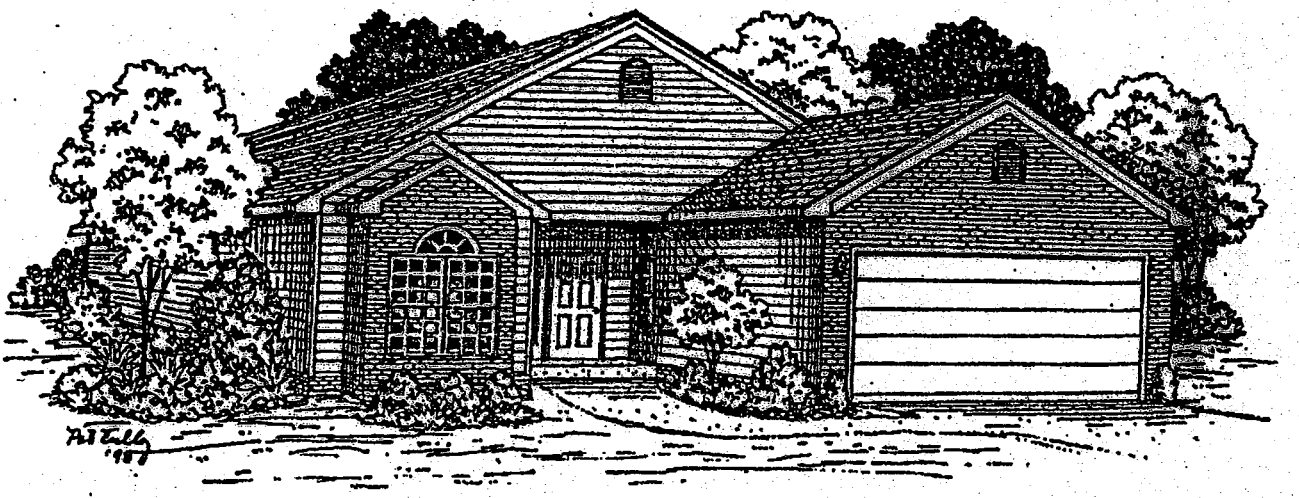
6

04SN0157-6



Elevation A

The Monument



Elevation B

EXHIBIT

H

04SN0157-7