



REGULAR PLANNING COMMISSION MEETING

Wednesday, December 21, 2022 @ 7:00pm

Warren County Government Center

1. CALL TO ORDER

2. ROLL CALL – DETERMINATION OF QUORUM

3. ADDITION/DELETION OF ITEMS FROM THE AGENDA

[Items added will be placed as the last item under Business Items. Unanimous vote is required to add/delete]

4. APPROVAL OF MINUTES

- November 16, 2022 – Regular Meeting
- November 30, 2022 – Special Meeting

5. CITIZEN COMMENTS

6. CONSENT AGENDA (*Consent to Advertise*)

I move that the Planning Commission approve the Consent Agenda as presented. [Items removed for further discussion will be placed as the first item under Business Items. Unanimous vote is not required to move]

- A. 2200494** – Barbara Samuels – A request for a Special Use Permit for a ground floor dwelling unit at 437 S. Royal Avenue identified by tax map 20A7-3-10. The property is zoned C-1, Community Business District.

7. PUBLIC HEARINGS

- A. 2200444 – Yaohua Gu** – A request for a Special Use Permit to allow a Short-Term Rental located at 309 E Prospect Street and identified by Tax Map 20A813-5A. The property is zoned R-3, Residential District and is located in the Historic District Area.

- B. 2200454 – Tabatha Luskey, Luskey Properties, LLC** – A request for a Special Use Permit to allow a Short-Term Rental located at 302 Blue Ridge Avenue and identified by Tax Map 20A8-14-1-18. The property is zoned R-3, Residential District and is located in the Historic District Area.

- C. Comprehensive Plan** - Certification and recommendation of the new Comprehensive Plan document which shall update and supersede the Front Royal Comprehensive Plan, adopted March 23, 1998. Chapter 22, Article 3: §15.2-2223 through §15.2-2232 of the Code of Virginia outlines the legal authority and

requirement that all localities prepare, recommend, and adopt a Comprehensive Plan.

- D. 2200422 – Joseph F. Silek, JR on behalf of Heptad, LLC** - A request to amend the previously approved proffers for the subdivision entitled ANNA SWAN EST identified on Tax Parcels #20-A21-2-1 and Tax Parcel # 20A20-2-11. The proposed changes include modifications of the monetary proffers.

8. OLD BUSINESS

- A. The public hearing was closed at the November 16, 2022, Planning Commission meeting. This is a continuation of the discussion for 2200349 – Aaron Hike** – A request for a Special Use Permit to allow a Short-Term Rental located at 1116 N. Royal Avenue and identified by Tax Map 20A2-443-2, 3, 4, 5 & 6. The property is zoned C-1, Community Business District and is located in the Entrance Corridor Overlay District.
- B. The public hearing was closed at the November 30, 2022, Planning Commission meeting. This is a continuation of the discussion for Rezoning Application #2200468** – Submitted by Chris Holloway Construction, LLC on behalf of Randolph Macon Academy requesting an amendment of the Zoning Map of the Town of Front Royal to reclassify a portion of Tax Map #20A5-14-4 from Residential District R-1 to Residential District R-3. The identified property is an undeveloped 6.239-acre portion of the parcel located adjacent to W. Main Street and north of Shenandoah Avenue, Garrison Street and Viscose Avenue. The Ordinance identifies the R-1 District as a low-density residential area with the R-3 District as being a medium-to-high density residential area.

9. NEW BUSINESS

- None.

10. COMMISSION MEMBER COMMENTS

11. PLANNING DIRECTOR REPORT

- November Monthly Report

12. ADJOURNMENT

The following minutes are a summary of items on the agenda. This meeting may be viewed in its entirety by accessing the video of the same date online via the Town's website at www.frontroyalva.com.

The Planning Commission meeting of the Town of Front Royal, Virginia was held on November 16, 2022, at 7:00 PM at Town Hall.

CALL TO ORDER

Chairman Merchant called the meeting of the Planning Commission to order at 7:00 pm.

ROLL CALL

Present: Darryl Merchant, Chairman
Connie Marshner, Commissioner
Joshua Ingram, Commissioner
Daniel Wells, Commissioner

Absent: N/A

Staff Present: John Ware, Deputy Zoning Administrator
George Sonnett, Assistant Town Attorney
Connie L. Potter, Executive Assistant, Clerk of the Planning Commission

ELECTION OF OFFICERS

- Vice Chairman

Commissioner Ingram moved, seconded by Commissioner Wells to appoint Connie Marshner to Vice Chairman.

VOTE: Yes – Ingram, Merchant, Wells
No – N/A
Abstain – Marshner
Absent – N/A

VOICE VOTE

ADDITION/DELETION OF ITEMS FROM THE AGENDA

There were no additions or deletions to the agenda.

MINUTES

- October 19, 2022 – Regular Meeting

Commissioner Ingram moved, seconded by Vice Chairman Marshner to approve the meeting minutes of the October 19, 2022, Planning Commission regular meeting.

VOTE: Yes – Ingram, Marshner, Wells
No – N/A
Abstain – Merchant
Absent – N/A

ROLL CALL

CITIZEN COMMENTS

There were no citizen comments.

CONSENT AGENDA

The following applications are on the consent agenda to advertise for public hearing at the December 21, 2022, regular meeting.

- **2200444 – Yaohua Gu** – A request for a Special Use Permit to allow a Short-Term Rental located at 309 E Prospect Street and identified by Tax Map 20A813-5A. The property is zoned R-3, Residential District and is located in the Historic Overlay District.
- **2200454 – Tabatha Luskey** – A request for a Special Use Permit to allow a Short-Term Rental located at 302 Blue Ridge Avenue and identified by Tax Map 20A9-14-1-18. The property is zoned R-3, Residential District and is located in the Historic Overlay District.
- **2200385 – Rezoning NVR Ryan Homes-** This application was submitted by NVR Inc., for the conditional rezoning of approximately 43.9 acres from the R-E District to the R1-A District. Proffers and a concept plan have been submitted for the site showing the potential development of 142 single family dwellings.
- **2200442 – HEPTAD Amended proffers** - This application was submitted by HEPTAD LLC., to amend the previously approved proffers for the subdivision entitled ANNA SWAN EST Tax Map 20A212 1.
- **2200461 – Philip Vaught** – A request for a Special Use Permit to allow a Lodging House located at 140 Chester Street and identified by Tax Map 20A8-4-4. The property is zoned C-2, Downtown Business District and is located in the Historic Overlay District.

- **Comprehensive Plan** – Certification and recommendation of the new Comprehensive Plan document which shall update and supersede the Front Royal Comprehensive Plan, adopted March 23, 1998. Chapter 22, Article 3: §15.2-2223 through §15.2-2232 of the Code of Virginia outlines the legal authority and requirement that all localities prepare, recommend, and adopt a Comprehensive Plan.

These items will be reviewed at the December 7, 2022, Planning Commission work session.

Chairman Merchant requested to pull the Comprehensive Plan to be discussed under other business.

Vice Chairman Marshner moved, seconded by Commissioner Wells to approve the consent agenda less the Comprehensive Plan.

Yes – Marshner, Merchant, Well, Ingram

No – N/A

Abstain – N/A

Absent – N/A

ROLL CALL

PUBLIC HEARINGS

- **2200349 – Aaron Hike** – A request for a Special Use Permit to allow a short-term rental located at 1116 N. Royal Avenue and identified by Tax Map 20A2-443-2, 3, 4, 5 & 6. The property is zoned C-1 and is located in the Entrance Corridor Overlay District.

Mr. Ware gave a brief review of the application stating this was for a Short-Term Rental at 1116 N. Royal Avenue. The application was amended after the previous Planning Commission work session requesting that it be for a whole house rental for five (5) bedrooms and a maximum of ten (10) people. There is ample parking onsite. The inspection was conducted on August 29, 2022, for the one room which passed inspection, however the other four (4) rooms have not been completed, and an inspection has not been completed on those rooms.

Chairman Merchant explained the rules of speaking at the public hearing.

The applicant, Mr. Hike located at 1516 N. Royal Avenue stated he was the owner of Hike Properties and is the owner of the property located at 1116 N. Royal Avenue. He would like to get the one (1) unit approved and in use while they are under construction of the remaining units which would bring in income while they finished construction on the remaining rooms.

Chairman Merchant opened the public hearing.

Dr. Jeremy Busch, 1100 N. Royal Avenue, owner of Performance Sport and Spine directly adjacent to Mr. Hike's property expressed concern that since the construction began in March there has been a lot of debris left at the property. Since May, there has been campers, trailers, vans, commercial vehicles, front loaders, ladders, trash, and debris ranging anywhere from touching his

building to 4 inches from his building. Dr. Busch is very concerned that all the trash and debris and commercial vehicles are affecting his patient base because they think his business is closed. If Mr. Hike is not keeping this site clean as a construction site he is concerned of how it will be maintained with short-term renters at the property.

There were no additional speakers. Chairman Merchant closed the public hearing.

The number of actual rooms to be used was discussed. The bedroom has five (5) bedrooms which allows a maximum of ten (10) people. There is a 1st floor and 2nd floor and this would be a whole house rental. Only the efficiency has passed inspection as the other rooms are under construction. Mr. Ware reiterated that the applicant is requesting approval to rent out the efficiency on the contingency he completes construction of the other four (4) rooms. Mr. Hike expects completion of the additional four (4) rooms in 4-6 months.

Commission members held additional discussion regarding parking. Mr. Hike explained there are entrances to the parking area from Royal Avenue and on to the 2-way alley.

Mr. Ware explained that code enforcement has been in touch with Mr. Hike and given him a deadline to clean up the property. If not cleaned up by the deadline, then the notice will go with a violation letter.

There was some additional discussion regarding parking. Mr. Ware clarified that it is a gravel parking area that had not yet been striped. Chairman Merchant stated that parking is supposed to be paved unless waived by the Planning Direction. He noted that he would prefer that traffic come off of the alleyway vs. Royal Avenue. As shown on the current plat the parking area is on a separate lot from where the house is located.

Mr. Sonnett explained that under Chapter 148-1870 parking can be designated within 300' of the property. A condition of the Special Use Permit would need to include where the designated parking is located and that would go with the Special Use Permit.

Mr. Ware explained the Planning Commission could require the applicant to do a lot consolidation so the parking and house would be on one lot and the parking would be satisfactory with the dwelling.

Commission members agreed they did not want to forward a recommendation to Town Council because they felt the application was incomplete and did not want to approve something that is not built and inspected by staff, and that the property needed to be cleaned up and in compliance before moving the application forward.

Commissioner Ingram moved, seconded by Commissioner Wells to postpone any action on this particular application until their next regular meeting on December 21, 2022.

VOTE: Yes – Marshner, Ingram, Merchant, Wells

No – N/A

Abstain – N/A

Absent – N/A

ROLL CALL

OLD BUSINESS

There were no items for old business.

NEW BUSINESS

- Capital Improvement Plan (CIP)

Assistant Town Manager, Kathleen Leidick gave a summary update of the Capital Improvement Plan.

ADDITIONAL BUSINESS DISCUSSION

- **Comprehensive Plan** – Certification and recommendation of the new Comprehensive Plan document which shall update and supersede the Front Royal Comprehensive Plan, adopted March 23, 1998. Chapter 22, Article 3: §15.2-2223 through §15.2-2232 of the Code of Virginia outlines the legal authority and requirement that all localities prepare, recommend, and adopt a Comprehensive Plan.

Chairman Merchant expressed he had two issues with the Comprehensive Plan before they move it forward. 1) It is a huge document and evolving all the time. Vice Chairman Marshner had made comments at the public input session and Summit said they would make those changes to the document; and 2) he has issues with the maps and wanted to see north arrows, street names or some local identifier on all maps. Chairman Merchant did not want to go to public hearing without a finalized document or final draft document. The original preliminary draft of the Future Land Use Map showed the Marshall Planning Area 15 designated as mixed use like the Voluntary Settlement Agreement we have with the owner of the property, County and Town. Leaving it a blank mixed use can give the Town and the property owner the flexibility to have both a small amount of commercial as well as various stages of residential. Under the current Future Land Use Map, it appears to be designated as R-1, low density residential.

Vice Chairman Marshner mentioned that she trusted Summit to make the changes but would like to verify those changes.

Commissioners agreed they would like the Marshall Planning Area 15 to be designated as a full mixed-use area. They would like to hold the public hearing and depending on comments by the public make those changes before moving it forward to Town Council.

Vice Chairman Marshner moved, seconded by Commissioner Wells to authorize the Front Royal Comprehensive Plan for advertisement for public hearing by the Planning Commission.

VOTE: Yes – Merchant, Marshner, Wells, Ingram

No – N/A

Abstain – N/A

Absent – N/A

ROLL CALL

Commissioners would like Summit to provide a list of the changes made to the document before their work session on December 7, 2022.

COMMISSION MEMBER REPORTS

There were no additional comments.

PLANNING DIRECTOR REPORT

Chairman Merchant stated the October Monthly Report was contained in the meeting packet.

There was a work session following the regular meeting for discussion on rezoning application 2200648.

ADJOURNMENT

Commissioner Ingram moved, seconded by Vice Chairman Marshner to adjourn the meeting.

VOTE: Yes – Well, Merchant, Marshner, Ingram

No – N/A

Abstain – N/A

Absent – N/A

VOICE VOTE

The meeting adjourned at 7:58 p.m.

Approved by Planning Commission

Date: _____

The following minutes are a summary of items on the agenda. This meeting may be viewed in its entirety by accessing the video of the same date online via the Town's website at www.frontroyalva.com.

The Planning Commission Special meeting of the Town of Front Royal, Virginia was held on November 30, 2022, at 7:00 PM at Town Hall.

CALL TO ORDER

Chairman Merchant called the special meeting of the Planning Commission to order at 7:00 pm.

ROLL CALL

Present: Darryl Merchant, Chairman
Joshua Ingram, Commissioner
Daniel Wells, Commissioner

Absent: Connie Marshner, Vice Chairman

Staff Present: Lauren Kopishke, Planning Director/Zoning Administrator
John Ware, Deputy Zoning Administrator
George Sonnett, Assistant Town Attorney
Connie L. Potter, Executive Assistant, Clerk of the Planning Commission

PUBLIC HEARINGS

Chairman Merchant explained the process for speaking at the public hearing.

- **Rezoning Application #2200468** – Submitted by Chris Holloway Construction, LLC on behalf of Randolph Macon Academy requesting an amendment of the Zoning Map of the Town of Front Royal to reclassify a portion of Tax Map #20A5-14-4 from Residential District R-1 to Residential District R-3. The identified property is an undeveloped 6.239-acre portion of the parcel located adjacent to W. Main Street and north of Shenandoah Avenue, Garrison Street and Viscose Avenue. The Ordinance identifies the R-1 District as a low-density residential area with the R-3 District as being a medium-to-high density residential area.

Mr. Ware gave a brief overview of the rezoning application noting that the application is complete and was properly advertised. The stated purpose of the request is to allow for faculty and student housing. No proffers were made by the applicant.

Chairman Merchant gave an opportunity for the applicant's representative to speak.

Joe Brogan, Brogan Land Surveying prepared the plan on behalf of the Trustees of Randolph Macon Academy (RMA). Brogan Land Surveying was asked to prepare a plat for rezoning of a portion of the property in order to construct faculty and student housing. For clarification, they are not going to be applying for a “Townhouse” by the definition in the Town Ordinance. It is only the type of structure where each unit is separated by a party wall and will have its own ingress and egress from the outside. “Townhouse” is only the style of the unit. RMA would like to access the six-unit housing through the existing campus and are not proposing any new access from Main Street or any other entrance. It will be accessed from Academy Drive and Kendrick Lane.

Chairman Merchant confirmed with Mr. Brogan that this would be for faculty and student housing, and it would not be rented to the public. Mr. Brogan stated that was correct and confirmed that it will be an auxiliary use by the school.

Chairman Merchant opened the public hearing.

Tammy Shell, 414 W. Main Street. Ms. Shell noted that some of her questions had already been answered by previous comments. She said she had worked at RMA over 16 hours and expressed some concern of students living at the proposed structures. Ms. Shell expressed concern of how construction workers would access the property and time of day work would begin. She also has concerns of the construction work because she has a terminally ill grandson who will be visiting her often who cannot be around or anywhere near construction.

Chairman Merchant recommended she meet with Lauren Kopishke regarding her concerns for the construction and timeframe of construction.

There were no additional speakers. Chairman Merchant closed the public hearing.

Chairman Merchant asked if faculty housing was permitted in the R-3 District.

Ms. Kopishke explained it would be permitted as an accessory use to the school. This is a separate lot, and you cannot have a accessory use without the primary use. Unless they consolidate all the boundaries there is no way to permit the use other than the rezoning process.

Chairman Merchant expressed that if they do a boundary line adjustment the use could be done with a Special Use Permit vs. a rezoning. He expressed concern there was no R-3 Zoning Districts adjacent to the parcel in question and in his opinion this was very similar to spot zoning. If this is rezoned to R-3 they will have to look at required curb and gutter and street requirements in Chapter 175-112.

After further discussion, Mr. Brogan agreed with postponing a decision from the Planning Commission so that he can speak with RMA about doing a lot consolidation vs. the rezoning. The goal of RMA is to take the path of least resistance which may just be a lot consolidation.

Commissioner Wells moved, seconded by Commissioner Ingram that the Planning Commission postpone action until the December 21, 2022, regular meeting.

VOTE: Yes – Ingram, Wells, Merchant

No – N/A

Abstain – N/A

Absent – Marshner

ROLL CALL

Commissioner Ingram stated that December 21, 2022, will be his last regular meeting as a Planning Commissioner. He will be serving until December 31, 2022, until taking office on Town Council.

ADJOURNMENT

VOTE: Yes – Merchant, Ingram, Wells

No – N/A

Abstain – N/A

Absent – Marshner

VOICE VOTE

The meeting adjourned at 7:41 p.m.

Approved by Planning Commission

Date: _____

AGENDA ITEM – 6A



TOWN OF FRONT ROYAL

DEPARTMENT OF PLANNING & COMMUNITY DEVELOPMENT
102 EAST MAIN STREET
P.O. BOX 1560
FRONT ROYAL, VA 2263

Main: 540.635.4236
Fax: 540.631.2727
www.frontroyalva.com

SPECIAL USE PERMIT REQUEST

FRSPU 2200494

APPLICANT:

NAME Barbara Samuels PHONE (540) 551-2592

ADDRESS 400 E. Jackson St.

E-MAIL bsamuelsrealtor@yahoo.com

PROPERTY OWNER:

NAME Set 6 Cardinal Park LLC PHONE _____

ADDRESS 400 E. Jackson St, Front Royal, VA 22630

E-MAIL _____

PROPERTY DESCRIPTION

PROPERTY ADDRESS 437 S. Royal Ave.

TAX MAP 20A13 SECTION 10 BLOCK 15/9 LOT 10

SUBDIVISION NAME _____ ACREAGE 0.53

REQUEST

ZONING DISTRICT C-1 Fork Town

PROPOSED USE OF PROPERTY 1 first floor dwelling unit

SPECIFIC SPECIAL USE PERMIT REQUEST _____

due to a leg injury I need a first floor dwelling unit.

ATTACHMENTS --The following must be submitted with the application. Additional information may be required depending on the nature of the request.

1. Survey/Plat of property showing all **existing** improvements.
(10 copies if larger than 11" X 17")
2. Site Plan Application
3. Application Fee of \$400.00 Receipt # 140814 Date Paid 11-15-2022
4. Additional information as required by the Dept. of Planning & Community Development.

CERTIFICATION

I certify that the information provided with this application is correct to the best of my knowledge and should the special use permit be granted, the project will comply with the conditions imposed upon it and will be implemented only as approved by Town Council.

Signature B. Samuels Date Nov. 15, 2022

By submitting this application, the applicant grants permission to Town officials and employees to enter upon the property, which is the subject of this application, during reasonable hours and for purposes related to the application process.

Revised 4-21-2021

12-21-22 - PC Consent to Advertise
1-4-23 - PC Work Session
1-18-23 - PC Public Hearing
2-13-23 - TC Work Session
2-27-23 - TC Public Hearing



I am requesting special usage at 437 S. Royal Ave. for a first-floor dwelling unit. The reason for this request is that I have an injured leg and have extreme difficulty walking upstairs. Unfortunately, this injury is permanent. Currently, I use a cane and have a handicap sticker for parking.

Attached are the required details.

A handwritten signature in blue ink that reads "Barbara Samuels". The script is cursive and fluid.

Barbara Samuels

(540) 551-2592

Interior changes

1. Currently there are two small bathrooms I would convert them into one large bathroom
2. Install a kitchen
3. New flooring and paint

Exterior

There is an existing handicapped parking space and signage

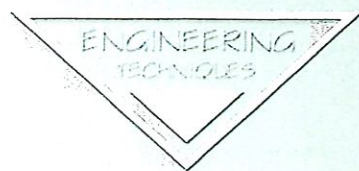
A handicapped ramp is existing at the end of the building

Note:

This dwelling unit would be at the far end of the building away from the street, and will not affect the commercial spaces closest to the street.



Engineering Techniques



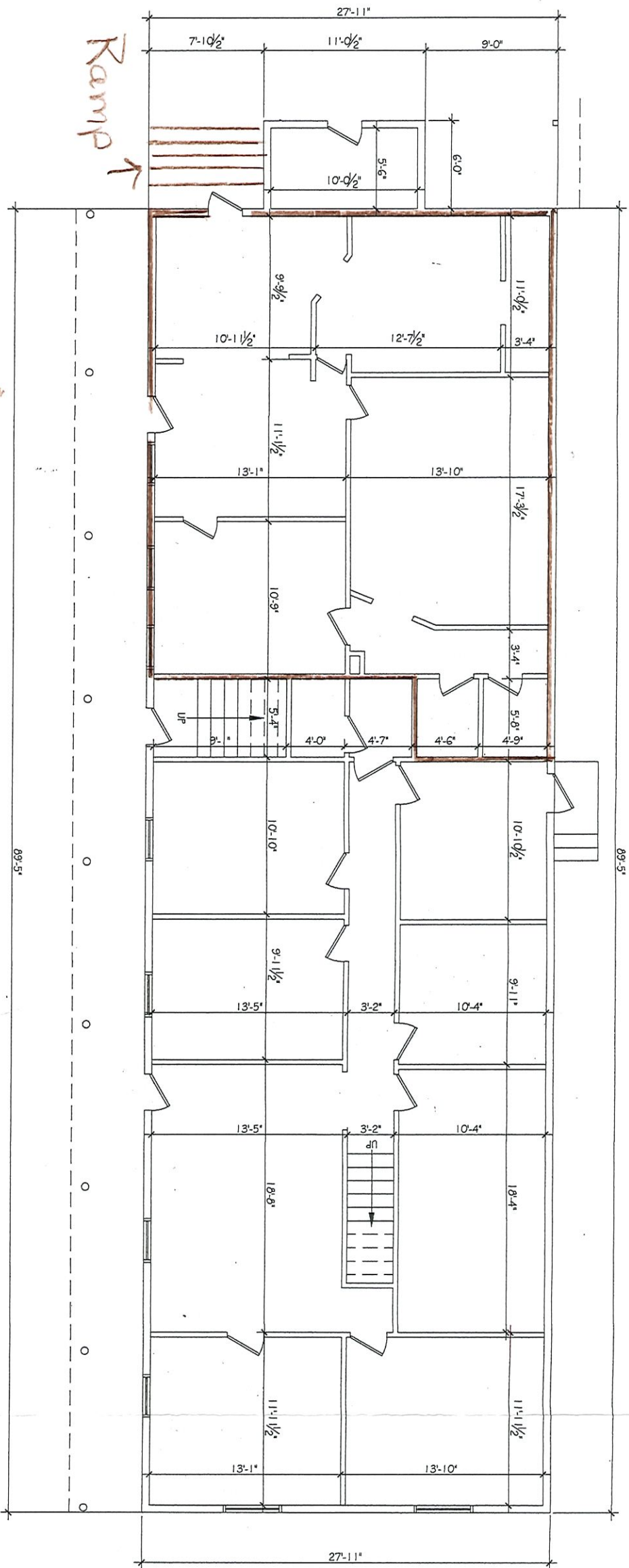
Barbara Samuels
437 S. Royal AVE.
Front Royal, VA

1 FIRST FLOOR EXISTING AND DEMO PLAN

Scale: 1/4" = 1'-0"

Parking

Ramp



...making the most of the moment!

Dan J. Hotek, P.E.
President/Structural Engineer

300 SKY MEADOW LANE
Front Royal, VA 22630
Ph: (540) 635-1521
Fax: (540) 635-2321

danhotek@engtechniques.com

REVISIONS		
NO.	DATE	DESCRIPTION

PROJECT NO.	ET15-129
DATE	JUN 04
DESIGNED BY	DAVID B. HOTOK
CHECKED BY	DAVID B. HOTOK
SCALE	AS SHOWN
CD TO	ET15-129 CD0

BARBARA SAMUELS
COMMERCIAL AS BUILT

437 S ROYAL AVE.
FRONT ROYAL, VA

PROJECT:	
ADDRESS:	

SHEET TITLE:

FIRST FLOOR
EXISTING / DEMO PLAN

A2

2 of 11

PLAT
SHOWING SURVEY
OF THE LAND OF
MUNSON & SNEAD, INC.

TOWN OF FRONT ROYAL -
WARREN COUNTY, VIRGINIA
SCALE: 1"=30' APRIL 9, 1996

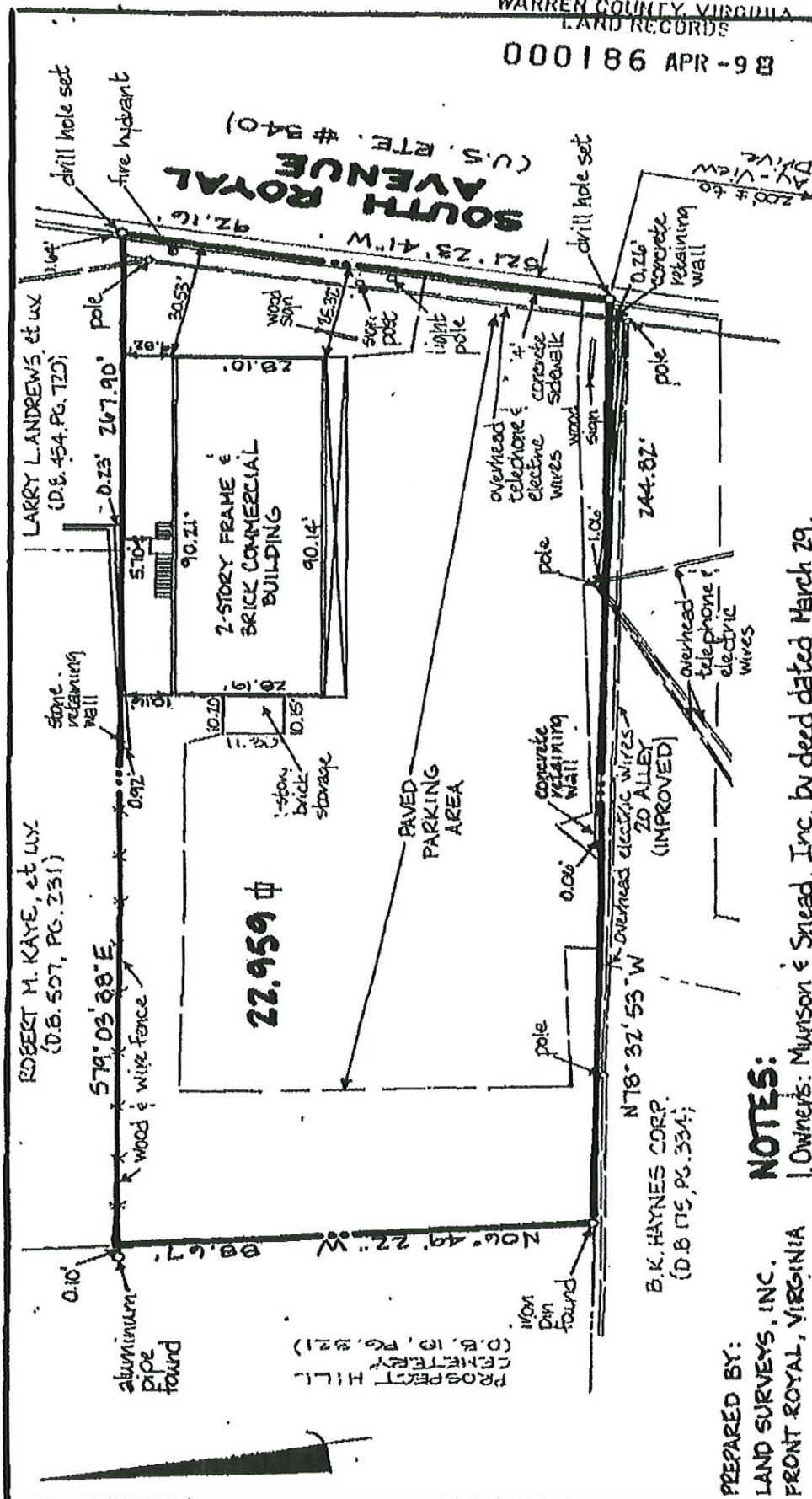
30' 45' 60' 90'

NOTES

1. Owners: Munson & Sneed, Inc. by deed dated March 29, 1996 and recorded as Instrument #9601367.
2. This land is shown on Tax Map 20A 7 (3) as Parcel 10.
3. No title report nor title search data was available for this survey.
4. Plat showing "Boundary Survey of the land of William J. Wilkinzon, et ux" by Wayne E. Niskanen, C.L.S. dated December 29, 1987 recorded in Deed Book 374 at Page 122.
5. The subject premises are located in FEMA flood zone X taken from FIRM Community Panel #510167 000 ZB.

PREPARED BY:

LAND SURVEYS, INC.
FRONT ROYAL, VIRGINIA



Map Details:

- Streets:** Lee St, S Royal Ave, South St, Carter St, Tourist St, Ay-view Dr, Pow-morr Dr, Lillard Dr, Elsie Dr.
- Highlighted Property:** 6 Cardinal Park LLC, 437 S Royal Ave (shaded in red).
- Other Properties and Owners:**
 - 20AT-3-7A, 401 S ROYAL AVE (SACKETT CHARLES A & HOLLY M)
 - 20AT-3-8, 413 S ROYAL AVE (KAYE ROBERT M ET UX)
 - 20AT-3-10, 437 S ROYAL AVE (6 CARDINAL PARK LLC)
 - 20AT-6-24, 20 SOUTH ST (BIANTON LESTER MOWERY)
 - 20AT-6-36A, 116 SOUTH ST (20AT-6-36A 116 SOUTH ST LLC)
 - 20AT-10-2, 113 SOUTH ST (FRONT ROYAL FEDERAL CRI)
 - 20AT-10-1, 111 SOUTH ST (MAGNAN LILIC)
 - 20AT-3-4, 341 S ROYAL AVE (RCH ACQUISITIONS LLC)
 - 20AT-3-5, 341 S ROYAL AVE (RCH ACQUISITIONS LLC)
 - 20AT-3-6, 341 S ROYAL AVE (RCH ACQUISITIONS LLC)
 - 20AT-3-7, 341 S ROYAL AVE (RCH ACQUISITIONS LLC)
 - 20AT-3-8, 341 S ROYAL AVE (RCH ACQUISITIONS LLC)
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 - 20AT-3-57, 341 S ROYAL AVE (RCH ACQUISITIONS LLC)
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 - 20AT-3-62, 341 S ROYAL AVE (RCH ACQUISITIONS LLC)
 - 20AT-3-63, 341 S ROYAL AVE (RCH ACQUISITIONS LLC)
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 - 20AT-3-80, 341 S ROYAL AVE (RCH ACQUISITIONS LLC)
 - 20AT-3-81, 341 S ROYAL AVE (RCH ACQUISITIONS LLC)
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 - 20AT-3-88, 341 S ROYAL AVE (RCH ACQUISITIONS LLC)
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 - 20AT-3-90, 341 S ROYAL AVE (RCH ACQUISITIONS LLC)
 - 20AT-3-91, 341 S ROYAL AVE (RCH ACQUISITIONS LLC)
 - 20AT-3-92, 341 S ROYAL AVE (RCH ACQUISITIONS LLC)
 - 20AT-3-93, 341 S ROYAL AVE (RCH ACQUISITIONS LLC)
 - 20AT-3-94, 341 S ROYAL AVE (RCH ACQUISITIONS LLC)
 - 20AT-3-95, 341 S ROYAL AVE (RCH ACQUISITIONS LLC)
 - 20AT-3-96, 341 S ROYAL AVE (RCH ACQUISITIONS LLC)
 - 20AT-3-97, 341 S ROYAL AVE (RCH ACQUISITIONS LLC)
 - 20AT-3-98, 341 S ROYAL AVE (RCH ACQUISITIONS LLC)
 - 20AT-3-99, 341 S ROYAL AVE (RCH ACQUISITIONS LLC)
 - 20AT-3-100, 341 S ROYAL AVE (RCH ACQUISITIONS LLC)

Renfo Property Information Form

Property Information

Area	WARR	Dist	Fork Town	Rec #	11,756.01	Map Id	20A7 3 10
Description	L 10 STEELE WILKINSON MUNSON & SNEAD INC SURVEY LR03-3822						
Address	437 S ROYAL AVE					Acres	0.53
Land Value	229,600	Zoning	Elec / Gas Y / N				
Bldg Value	291,400	Esmt / ROW	PAVE / PUBL	Water / Sewer	PUBL / PUBL		
Total Value	521,000	Character	RLNG	Deed Ref Bk / Pg	15/9		
LU Value		Land Use	COMM	Sale Price / Parcels	530,000		
Tax Amount	4,089.85	Occupancy	COMM	Sale Date	1/5/2015		

Owner Information

Name	6 CARDINAL PARK LLC		
Address	163 SOUTH HUGHES ST		
	HAMILTON, VA 20158		

Building Information

Bldg Sq Ft	5,040	Stories	2	Units	Year Built	1988
Bsmt Sq Ft		Air Cond	Y	Garage / #	Condition	GOOD
Bsmt Fin SF		Fireplace		Carport / #	Rooms	7
Basement	SLAB	Flue		Heat	HPMP	Bedrooms
Foundation	BLOK	Roof Type	GABL	Fuel	ELEC	Fullbaths
Walls Ex / In	VINL / DRWL	Roof Matl	SHGL	Floor	CARP	Halfbaths 3

The information contained herein is deemed reliable but NOT GUARANTEED. The official city or county records must be checked to verify the accuracy of this information.

AGENDA ITEM – 7A

Town of Front Royal, Virginia

Planning Commission Monthly Meeting Agenda

☐ Consent Action ☐ Administrative Action ☒ Public Hearing ☐ Discussion

Agenda Item: Special Use Permit – Short-term Rental 2200444

MEETING DATE: December 21, 2022

SUMMARY: Yaohua Gu – A request for a Special Use Permit to allow a Short-Term Rental located at 309 E. Prospect Street, identified by Tax Map 20A813-5A. The property is zoned R-3, Residential District and is located in the Historic District.

STAFF RECOMMENDATION: Staff recommends approval and does not have any recommended conditions.

DRAFT MOTION: "I move that the Planning Commission forward a recommendation of approval to the Front Royal Town Council for Special Use Permit #2200444 for a Short-Term Rental located at 309 E. Prospect Street."

NOTE: This is only a draft motion. Alternative motions are also welcome.

PLANNING COMMISSION ACTION:

Moved _____ Seconded _____

Ingram _____ Wells _____ Marshner _____ Merchant _____

☐ Approved ☐ Approved w/ Conditions ☐ Denied ☐ Other



**TOWN OF FRONT ROYAL
DEPARTMENT OF PLANNING & ZONING**

**Planning Commission Regular Meeting
December 21, 2022**

APPLICATION #:

2200444

APPLICANT:

Yaohua Gu

APPLICATION SUMMARY:

A Special Use Permit Application has been submitted for a Short-Term Rental located 309 E Prospect Street. The applicant intends to rent the entire home. The Inspection was completed on November 30, 2022. The site is in full compliance with Town Code 175.151. The property is limited to three (3) cars in the driveway.

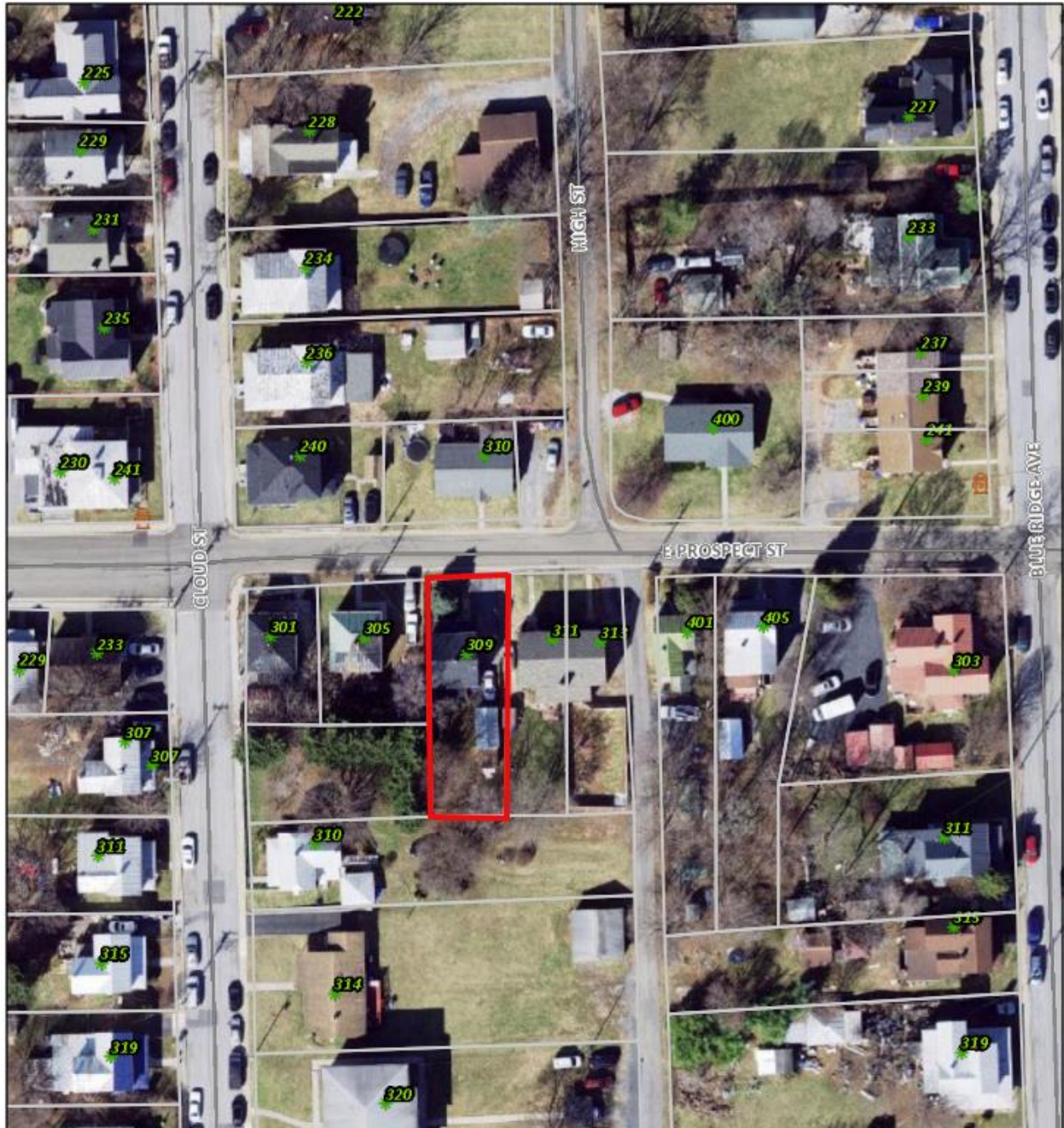
GENERAL INFORMATION:

Site Addresses	309 East Prospect Street
Owner(s)	Yaohua Gu
Zoning District	R-3. Residential District
Historic District	Yes
Tax Identification	Tax Map #20A813-5A
Request/ Recommendation	The Applicant is requesting to rent the entire home totaling three (3) rooms to no more than six (6) occupants as a Short-Term Rental. Staff recommends approval and does not have any recommended conditions.

View of Front Elevation – 309 East Prospect Street



Aerial Map



Attachment: Application
 Special Use Permit Check List for Short Term Rental



Town of Front Royal
Department of Planning and Zoning
102 East Main Street
PO Box 1560
Front Royal, VA 22630

Main: 540-635-4236
Fax: 540-631-2727
www.frontroyalva.com
planning@frontroyalva.com

SPECIAL USE PERMIT REQUEST FOR SHORT TERM RENTAL

APPLICANT:

NAME: Yaohua Gu PHONE: 703-328-4344
ADDRESS 4201 Lee Hwy #805 Arlington VA 22207
E-MAIL mdathena@yahoo.com

PROPERTY OWNER:

NAME: Yaohua Gu PHONE: 703-328-4344
ADDRESS 4201 Lee Hwy #805 Arlington VA 22207
E-MAIL mdathena@yahoo.com

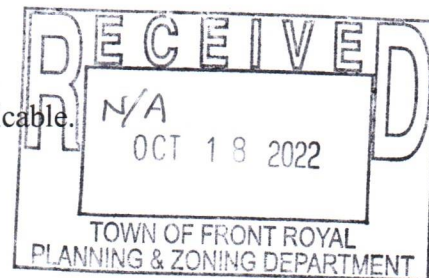
PROPERTY DESCRIPTION:

PROPERTY ADDRESS 309 E Prospect St Front Royal, VA 22630
TAX MAP #20A8135A SECTION _____ BLOCK _____ LOT _____
SUBDIVISION NAME _____
ZONING DISTRICT R-3 ACREAGE .112
SPECIFIC SPECIAL USE PERMIT REQUEST Airbnb, VRBO, etc.

- ☒ Whole house rental ☐ Partial rental, # of rooms rented _____
☐ Primary Residence ☐ Secondary Residence

ATTACHMENTS: The following must be submitted with the application. Additional information may be required depending on the nature of the request.

- ☒ Survey plat or sketch to scale of property showing all **existing** improvements, parking and refuse area and property boundaries.
☒ Provide a map of area attractions
☐ Provide proof that notification to operate was sent to the HOA, if applicable.
☒ Complete management plan.
☒ Written consent given to the Town to inspect for compliance.
☒ Emergency dwelling evacuation diagram (posted in each bedroom)
☒ Application fee of \$400.00 Receipt # 093892 Date Paid 10-18-22



IN CASE OF AN EMERGENCY

If there is an emergency, or there are questions in regard to the property, please contact (owner) Athena Yashua Gu
at (phone number) 703-328-4344 or (property manager) _____
at (phone number) _____.

If the emergency requires immediate assistance, please call the following or 911.

Front Royal Police Department: 540-635-2111 or 911, 900 Monroe Ave, Front Royal, VA 22630

Front Royal Volunteer Fire & Rescue: 540-635-2540 or 911, 221 N Commerce Ave, Front Royal, VA 22630

Warren Memorial Hospital: 540-636-0300 or 911, 351 Valley Health Way, Front Royal, VA 22630

Electrical Outage: 540-635-3027, 1101 Manassas Avenue, Front Royal, VA 22630. Outages may be reported online at <https://www.frontroyalva.com/FormCenter/Energy-Services-6/Report-Electric-Problem-46>.

Emergency/afterhours 540-635-2111

OCCUPANCY

The Special Use Permit limits the occupancy for this short-term rental at 6 People and 3 Bedrooms.

NOISE

It shall be a violation of Chapter 106 of the Front Royal Town Code for any person, without compelling reason, to make noise that by reason of its volume, pitch, duration, or repetition, considering the time of day, is likely to disturb the rest of any person of ordinary sensibilities or interfere with such person's lawful and peaceful enjoyment of property owned or rented by him.

PARKING

Parking is limited to 3 cars in the driveway.

TRASH AND RECYCLING

All trash and recycling shall be placed in containers provided by the owner.

- Trash receptacles are located (Clarify location of trash bags and receptacles)

Trash cans are outside by the house. Trash bags are under the sink.

- Trash is collected (State the day of the week trash is picked up by the Town and where the container is to be placed on trash day)

Friday. Trash can will be on Prospect St. next to drive way in front of the house.

CHECK-IN & CHECK-OUT

Provide details

Guests will use lock box to obtain key at check in (After 3pm)
They will return the key to lock box at check out (before 4pm)

WIFI/PHONE/ETC

Provide details for special amenities if available

WIFI will be provided with WIFI Password posted inside the house

SPECIFIC PROPERTY DETAILS

Provide details regarding acreage, landscape, property boundaries (no trespassing notice), unique characteristic, warnings, kitchen use, house amenities, HVAC, etc.

Single two story house with 1/2 basement located in the town of Front Royal.
Huge bruce tree in front yard. Partially fenced backyard. House will be available for short term and long term rental. Basement has washer/dryer but renters need to respect owner properties stored in basement.

AREA ATTRACTIONS

Provide a map of area attractions

- Attractions: i.e., Shenandoah National Park, Shenandoah River State Park, Skyline Caverns, Golf Courses, Canoe Companies
- Groceries & Convenience: i.e., Walmart, Target, Martins, CVS
- Restaurants
- Wineries & Breweries

SPECIFIC PROPERTY REGULATIONS

May be dictated by approved conditions or owner preference, examples below

- No shooting of firearms
- No outdoor fire burning
- No fireworks

No illegal drug use on premise
No events allowed
No one under 13 allowed

As per 175-3

Short-term rental- means the provision of a room or space that is suitable for, intended for occupancy for dwelling, sleeping, or lodging purposes, for a period of fewer than 30 consecutive days, in exchange for a charge for the occupancy. Any residential use that falls within the definition of short-term rental as defined in § 15.2-983, as amended, of Virginia State Code.

Short-term rental facility – A building or accessory structure, other than a hotel, motel, or bed-and-breakfast home, where lodging is provided for compensation on a short-term basis, and open to the public or transient guests. The maximum number of occupants shall not exceed ten (10) unless determined appropriate by Town Council.

Short-term rental:

§ 175.151 Short-term rentals.

Short-term rentals shall be permitted in all Zoning Districts by Special Use Permit and shall at a minimum meet the following requirements:

- A. The short-term rental owner of a dwelling unit to be used for a short-term rental shall apply for a Special Use Permit through the Department of Planning and Zoning and receive approval from Town Council prior to utilizing the dwelling unit as a short-term rental. Town Council may impose conditions necessary to mitigate adverse effects of the use on neighboring properties.
- B. The one-time application fee shall be \$400.00.
- C. Staff will conduct an inspection prior to the issuance of the Special Use Permit approval. Additional inspections will be conducted on a complaint basis to ensure compliance with the performance standards listed in this section, along with any additional conditions imposed by Town Council, if applicable.
- D. The maximum number of occupants in the dwelling unit shall be determined by the number of bedrooms; there shall be no more than two (2) adults per bedroom. However, the maximum number of occupants shall not exceed 10 people unless approved by Council.
- E. Parking for the use shall be located in driveways or other designated and approved parking areas.
- F. There shall be no visible evidence of the conduct of such short-term rentals on the outside appearance of the property.
- G. A fire extinguisher shall be provided and visible in all kitchen and cooking areas; smoke detectors shall be installed in all locations as identified in the 2015 or 2018 Uniform Statewide Building Code (2018 Version required usage beginning July 1, 2022); and a carbon monoxide detector must be installed on each floor in every dwelling.
- H. The owner of the dwelling used for short-term rentals shall give the Town written consent to inspect any dwelling used for short-term rental to ascertain compliance with all the above performance standards upon a twenty-four-hour notice.
- I. A property management plan demonstrating how the short-term rental will be managed and how the impact on neighboring properties will be minimized shall be submitted for review and approval as part of the permitting process to the Planning Department. The plan shall include local points of contact available to respond immediately to complaints, clean up garbage, manage unruly tenants and utility issues, etc. It shall also be posted in a visible location in the short-term rental. The contact numbers

shall be provided to Town staff, public safety officials and, if applicable, the HOA of the subdivision. The plan must be provided as part of the rental contract.

- J. If the property is located within a subdivision governed by a homeowners' association, the Planning Department must receive proof that a notification to operate the short-term rental was sent to the HOA.
- K. The owners of the rental shall provide an emergency evacuation plan for the dwelling and the neighborhood.
- L. A copy of Chapter 106 of the Town of Front Royal Code relative to noise must be provided at the short-term dwelling.
- M. All outdoor burning shall be in compliance with Chapter 78 of the Town of Front Royal Code.
- N. Failure to comply with the approved conditions and/or supplemental regulations will subject the permit to revocation by the Zoning Administrator at any time.

Property Owner's Signature: Yairon Gu

CERTIFICATION:

I certify that the information provided with this application is correct to the best of my knowledge and should the special use permit be granted, the project will comply with the conditions imposed upon it and will be implemented only as approved by Town Council.

Signature Yairon Gu Date 10/18/2022

By submitting this application, the applicant grants permission to Town officials and employees to enter upon the property, which is the subject of this application, during reasonable hours and for purposes related to the application process.

309 E Prospect St Short Term Rental Management Plan

Summary

The purpose of the plan is to ensure smooth daily operations and reduce conflicts, manage and protect the rights of enjoyment for both the guests and the owner.

Property Listing

Property will be listed on Airbnb and VRBO. The listing will acknowledge the age and condition of the house and .

Guest Acceptance

Before accepting bookings, guests must acknowledge all guests are responsible adults 13 years of age or older and that they agree to all the house rules.

Cleaning and Maintenance

Property will be cleaned by the owner or services hired by the owner after each guest stay. Maintenance will be provided as needed by the owner or services hired by the owner upon inspection or complaints.

Property Surveillance

Due to property being vacant when not in use, Indoor cloud cameras will be installed to provide security monitoring. The cameras will be removed and stored prior to guest arrival to ensure guest privacy.

Appendix

- House Rules
- Check-Out Checklist

Version

Version	Date	
1.0	10/15/2022	Initial Version

House Rules

- Guests and visitors should comply with the parking regulations and requirements and must show consideration to other vehicles in the neighborhood.
- No firearms or illegal drugs inside the home.
- No smoking inside Airbnb. Cigarette butts must be disposed of in the ashtray provided in the backyard of the property.
- No parties or events.
- No unregistered guests or visitors allowed. The maximum property capacity is 8 people.
- Quiet time after 11 p.m.
- No eating or drinking in bedrooms. Please enjoy your meal in the dining room.

If any of the above house rules are broken, you could be asked to leave without refunds

Check-Out Checklist

- Dispose of the garbage in the trash bin.
- Make sure to turn off the lights, air conditioning, and any electronics when you leave the house. Don't forget to close the windows and lock the door.
- Report any damages and/or breakages in a reasonably timely manner. Damages exceeding the security deposit amount must be paid by guests and will be reported to Airbnb.
- Wash the dishes, and throw out the garbage before checkout.

Owner Consent for Town Compliance Inspection

I, Yaohua Gu, owner of 309 E Prospect St. Front Royal, VA 22630, give consent to the Town of Front Royal to inspect any dwelling used for short-term rental to ascertain compliance with all the performance standards upon a twenty four-hour notice.

Signature

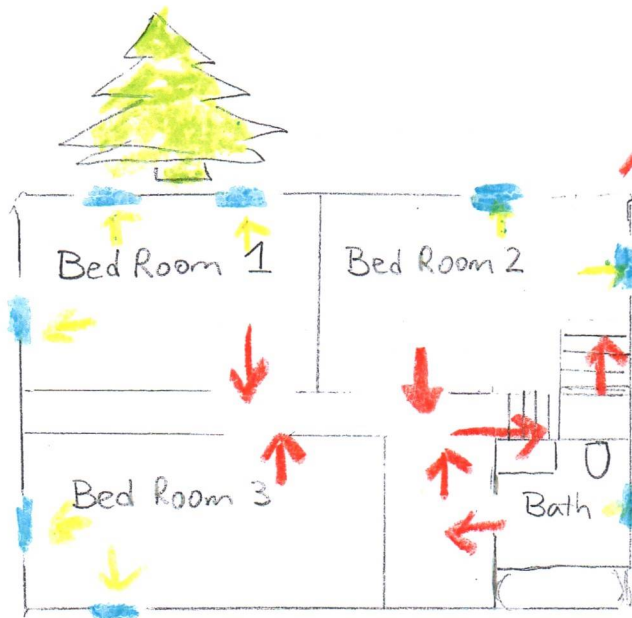
Yaohua Gu

Date

10/15/2022

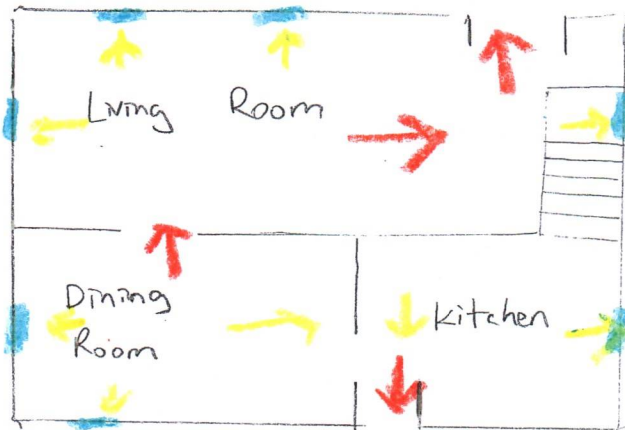
Evacuation Diagram

Second Floor

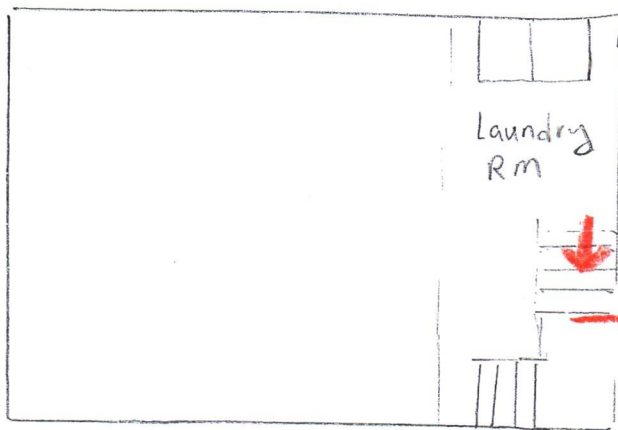


Meet here

First Floor



Basement



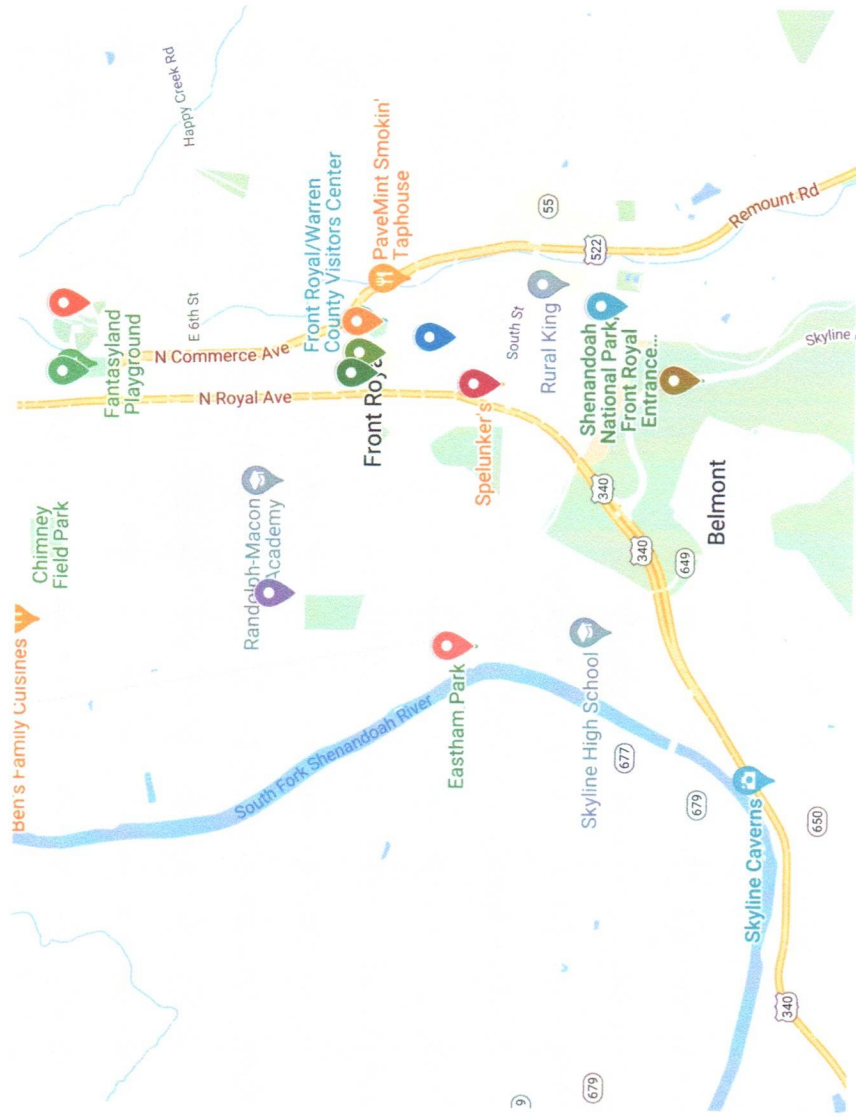
Window
Primary Escape Path
Secondary Escape Path



Area Attractions by the Prospect House

Try These Places!

1. Spelunker's
10. Daily Grind CAFÉ
2. Visitors Center
3. Skate Park
4. Eastham Park
5. National Park Entrance
6. Royal Cinemas
7. Samuels Public Library
8. Community Pool
9. Lions Park
- YOU ARE HERE



161-A

APPROVED BY THE TOWN OF FRONT ROYAL
PLANNING COMMISSION: TOWN COUNCIL:

Kirkley P. Foye 11/18/91 Pat G. Smith 12/14/91
Secretary Mayor
TOWN TREASURER: ALL REAL ESTATE TAXES HAVE BEEN PAID AND RELEASED. James M. Schellinger 12/14/91
Clerk

John F. Smith 11-18-91
Finance Director

OWNER'S DEDICATION:
THE RESUBDIVISION OF THE LAND SHOWN HEREON IS WITH THE FREE CONSENT AND IS IN ACCORDANCE WITH THE DESIRE OF THE UNDERSIGNED OWNER.

Eva C. Gray
ACKNOWLEDGED BEFORE ME THIS 7th DAY OF January 1991
MY COMMISSION EXPIRES: 7-31-94

Caroline Holt
Notary Public

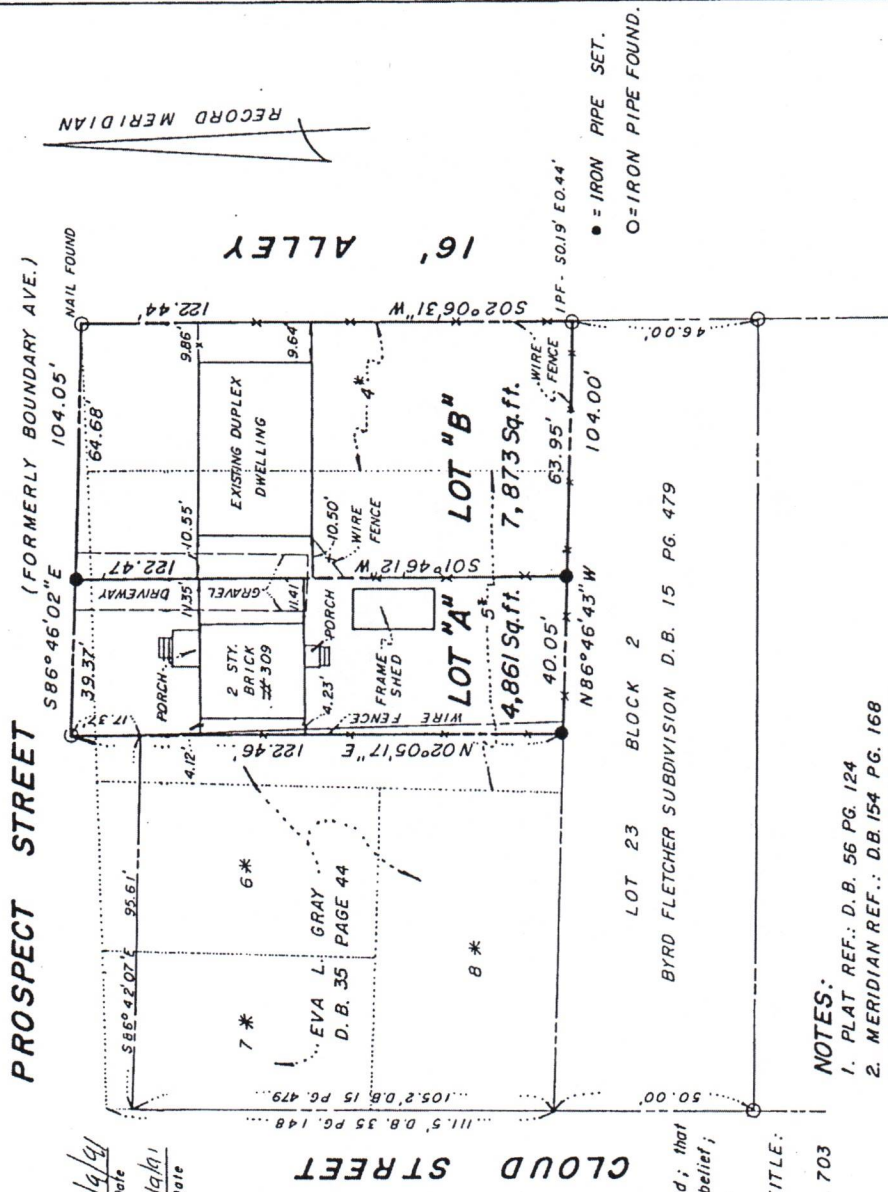
SURVEYOR'S CERTIFICATE
I hereby certify that I have surveyed this property on the ground; that this plat is correct to the best of my knowledge, information and belief; and that property corners are monumented as shown.



Darryl G. Merchant
Licensed Land Surveyor
P.O. BOX 1508
FRONT ROYAL, VA. 22630
703-636-4949

DERIVATION OF TITLE:
EVA C. GRAY
WILL BOOK 17 PG. 703

- NOTES:
1. PLAT REF.: D.B. 56 PG. 124
 2. MERIDIAN REF.: D.B. 154 PG. 168
 3. TAX MAP REF.: 20.48 ((13)) 4, 5, 5A
 4. PROPERTY IS ZONED R-3.
 5. * - PLAT A, A.F. CORRON PROPERTY D.B. 35 PG. 138.



SUBDIVISION PLAT
OF THE LAND OF
EVA C. GRAY
TOWN OF FRONT ROYAL - WARREN COUNTY, VIRGINIA
DATE: 3 OCTOBER 1991 SCALE: 1"= 30'





Town of Front Royal Planning and Zoning

102 E. Main St.
PO Box 1560
Front Royal, VA 22630

Main :540-635-4236
Fax: 540-631-2727
planning@frontroyalva.com

SPECIAL USE PERMIT CHECK LIST FOR SHORT TERM RENTAL

Applicant Name: YAOHUA GU
Property Owner: YAOHUA GU
Site Address: 309 E. PROSPECT STREET

- ☒ Y ☐ N 1. Driveway or designated and approved parking area
- ☒ Y ☐ N 2. Refuse area
- ☒ Y ☐ N 3. Property Management Plan available on site
- ☒ Y ☐ N 4. Smoke detectors
- ☒ Y ☐ N 5. Carbon monoxide detector
- ☒ Y ☐ N 6. Fire extinguisher visible in all kitchen/cooking areas.
- ☒ Y ☐ N 7. Emergency evacuation plan available on site
- ☒ Y ☐ N 8. Chapter 106 Noise ordinance available on site

NOTES: SITE IS IN FULL COMPLIANCE WITH
TOWN CODE 175.151

☒ APPROVED ☐ DENIED

Inspected By: [Signature] Date: 11/30/22

AGENDA ITEM – 7B

Town of Front Royal, Virginia

Planning Commission Monthly Meeting Agenda

☐ Consent Action ☐ Administrative Action ☒ Public Hearing ☐ Discussion

Agenda Item: Special Use Permit – Short-term Rental 2200454

MEETING DATE: December 21, 2022

SUMMARY: Tabatha Luskey – A request for a Special Use Permit to allow a Short-Term Rental located at 302 Blue Ridge Avenue, identified by Tax Map 20A8-14-1-18. The property is zoned R-3, Residential District and is located in the Historic District.

STAFF RECOMMENDATION: Staff recommends approval and does not have any recommended conditions.

DRAFT MOTION: "I move that the Planning Commission forward a recommendation of approval to the Front Royal Town Council for Special Use Permit #2200454 for a Short-Term Rental located at 302 Blue Ridge Avenue."

NOTE: This is only a draft motion. Alternative motions are also welcome.

PLANNING COMMISSION ACTION:

Moved _____ Seconded _____

Ingram _____ Wells _____ Marshner _____ Merchant _____

☐ Approved ☐ Approved w/ Conditions ☐ Denied ☐ Other



**TOWN OF FRONT ROYAL
DEPARTMENT OF PLANNING & ZONING**

**Planning Commission Regular Meeting
December 21, 2022**

APPLICATION #:

2200454

APPLICANT:

Tabatha Luskey

APPLICATION SUMMARY:

A Special Use Permit Application has been submitted for a Short-Term Rental located 302 Blue Ridge Avenue. The applicant intends to rent the entire home. The Inspection was completed on November 30, 2022. The site is in full compliance with Town Code 175.151. The property is limited to three (3) cars in the driveway.

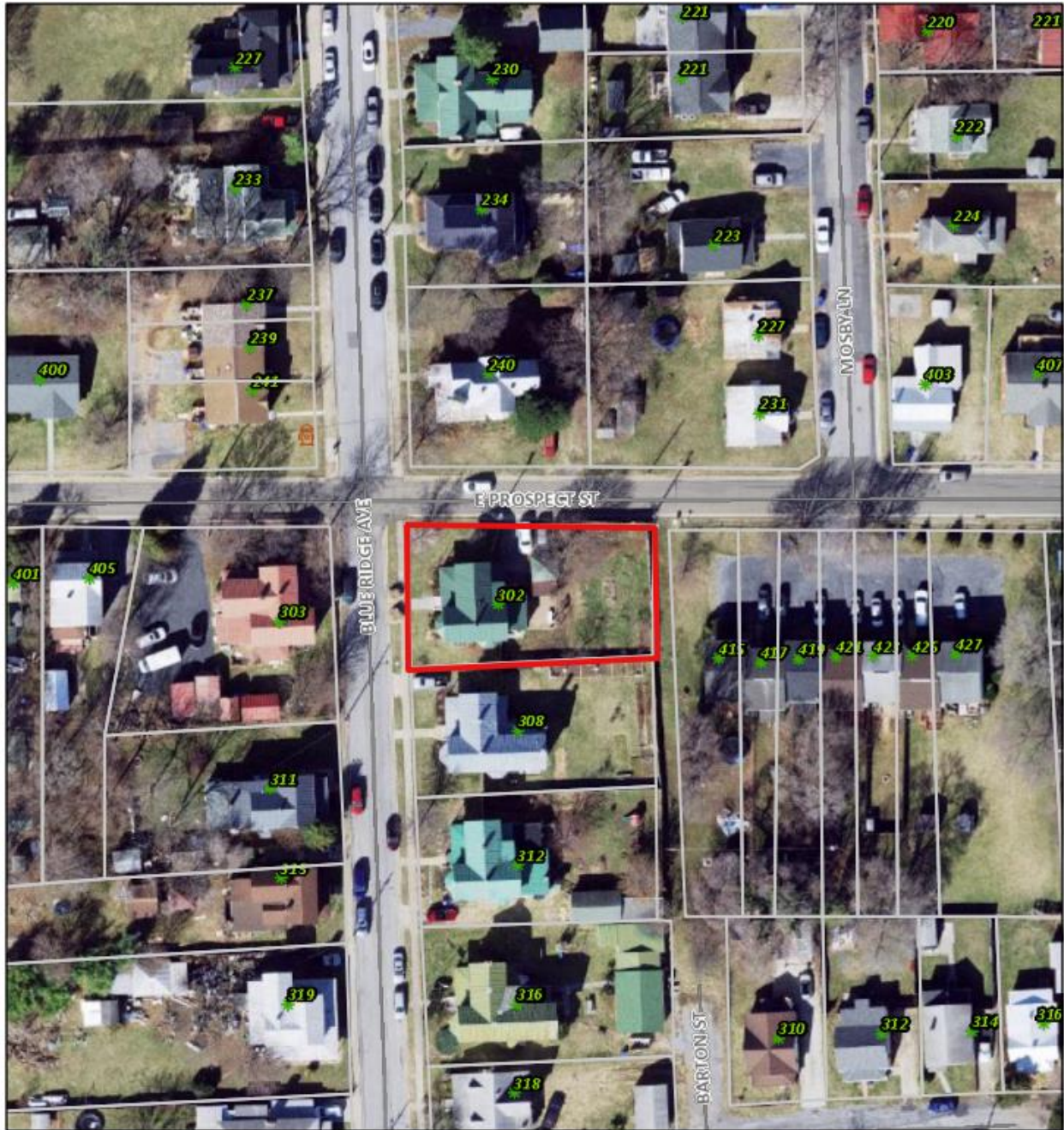
GENERAL INFORMATION:

Site Addresses	302 Blue Ridge Avenue
Owner(s)	Tabatha Luskey, Luskey Properties, LLC
Zoning District	R-3. Residential District
Historic District	Yes
Tax Identification	Tax Map #20A8-14-1-18
Request/ Recommendation	The Applicant is requesting to rent the entire home totaling three (3) rooms to no more than six (6) occupants as a Short-Term Rental. Staff recommends approval and does not have any recommended conditions.

View of Front Right Elevation – 302 Blue Ridge Avenue



Aerial Map



Attachment: Application
 Special Use Permit Check List for Short Term Rental

2200454



Town of Front Royal
Department of Planning and Zoning
102 East Main Street
PO Box 1560
Front Royal, VA 22630

Main: 540-635-4236
Fax: 540-631-2727
www.frontroyalva.com
planning@frontroyalva.com

SPECIAL USE PERMIT REQUEST FOR SHORT TERM RENTAL

APPLICANT:

NAME: Talitha Luskey PHONE: 703-283-2490
ADDRESS: 16728 Mockingbird Woods Ct., Lorton, VA 22079
E-MAIL: tluskey@gmail.com

PROPERTY OWNER:

NAME: Luskey Properties LLC PHONE: 703-283-2490
ADDRESS: 16728 Mockingbird Woods Ct., Lorton, VA 22079
E-MAIL: Luskeyproperties@gmail.com

PROPERTY DESCRIPTION:

PROPERTY ADDRESS: 302 Blue Ridge Ave, Front Royal, VA 22630
TAX MAP: 20A8 SECTION: 14 BLOCK: 1 LOT: 18
SUBDIVISION NAME: Fletcher
ZONING DISTRICT: South River Magisterial District R-3 ACREAGE: 8,250 sqft

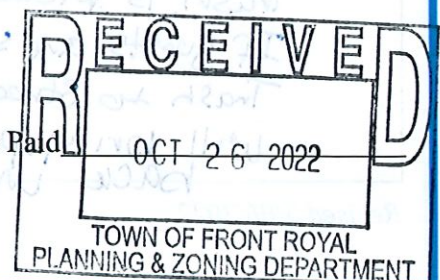
SPECIFIC SPECIAL USE PERMIT REQUEST: To provide travelers a unique experience to stay in a historic home to explore the wonderful town of Front Royal, Shenandoah National Park and Shenandoah Valley, for short term rentals

- ☒ Whole house rental ☐ Partial rental, # of rooms rented _____
☐ Primary Residence ☐ Secondary Residence

ATTACHMENTS: The following must be submitted with the application. Additional information may be required depending on the nature of the request.

- ☒ Survey plat or sketch to scale of property showing all **existing** improvements, parking and refuse area and property boundaries.
☒ Provide a map of area attractions
☐ Provide proof that notification to operate was sent to the HOA, if applicable.
☒ Complete management plan.
☒ Written consent given to the Town to inspect for compliance.
☒ Emergency dwelling evacuation diagram (posted in each bedroom)
☐ Application fee of \$400.00 Receipt # _____ Date Paid: _____

Revised 5/06/2022



IN CASE OF AN EMERGENCY

If there is an emergency, or there are questions in regard to the property, please contact (owner) Tobetha Luska
at (phone number) 703-283-2490 or (property manager) Evolve / Ashley Fincher
at (phone number) 540-660-1187.

If the emergency requires immediate assistance, please call the following or 911.

Front Royal Police Department: 540-635-2111 or 911, 900 Monroe Ave, Front Royal, VA 22630

Front Royal Volunteer Fire & Rescue: 540-635-2540 or 911, 221 N Commerce Ave, Front Royal, VA 22630

Warren Memorial Hospital: 540-636-0300 or 911, 351 Valley Health Way, Front Royal, VA 22630

Electrical Outage: 540-635-3027, 1101 Manassas Avenue, Front Royal, VA 22630. Outages may be reported online at <https://www.frontroyalva.com/FormCenter/Energy-Services-6/Report-Electric-Problem-46>.

Emergency/afterhours 540-635-2111

OCCUPANCY

The Special Use Permit limits the occupancy for this short-term rental at 8/10 People and 3 Bedrooms.

NOISE

It shall be a violation of Chapter 106 of the Front Royal Town Code for any person, without compelling reason, to make noise that by reason of its volume, pitch, duration, or repetition, considering the time of day, is likely to disturb the rest of any person of ordinary sensibilities or interfere with such person's lawful and peaceful enjoyment of property owned or rented by him.

PARKING

Parking is limited to 73 cars in the driveway.

TRASH AND RECYCLING

All trash and recycling shall be placed in containers provided by the owner.

- Trash receptacles are located (Clarify location of trash bags and receptacles)

Trash can receptacles are located in the backyard under the portico. Trash bags are under the kitchen sink.

- Trash is collected (State the day of the week trash is picked up by the Town and where the container is to be placed on trash day)

Trash is picked up on Friday mornings before 7:00 am. If guests are staying on Thursday night, they may bring trash to street by the Shed. If not, property manager will bring/put by the street and bring back receptacles back under portico.

CHECK-IN & CHECK-OUT

Provide details

Check-in is at 4:00pm of the day of booking.
Check-out is at 10:00am of the day booking ends.
Check-out rules provided in house manual.

WIFI/PHONE/ETC

Provide details for special amenities if available

Xfinity Cable and Wifi
Landline phone

SPECIFIC PROPERTY DETAILS

Provide details regarding acreage, landscape, property boundaries (no trespassing notice), unique characteristic, warnings, kitchen use, house amenities, HVAC, etc.

over 8,000 sqft with multiple fruit trees and flowers
full kitchen use w/ gas oven
Jacuzzi tub
washer and dryer

AREA ATTRACTIONS

Provide a map of area attractions

- Attractions: i.e., Shenandoah National Park, Shenandoah River State Park, Skyline Caverns, Golf Courses, Canoe Companies
- Groceries & Convenience: i.e., Walmart, Target, Martins, CVS
- Restaurants
- Wineries & Breweries

SPECIFIC PROPERTY REGULATIONS

May be dictated by approved conditions or owner preference, examples below

- No shooting of firearms
- No outdoor fire burning
- No fireworks

No shooting of firearms
No illegal substance
No smoking
No ATV's

Revised 5/06/2022

As per 175-3

Short-term rental- means the provision of a room or space that is suitable for, intended for occupancy for dwelling, sleeping, or lodging purposes, for a period of fewer than 30 consecutive days, in exchange for a charge for the occupancy. Any residential use that falls within the definition of short-term rental as defined in § 15.2-983, as amended, of Virginia State Code.

Short-term rental facility – A building or accessory structure, other than a hotel, motel, or bed-and-breakfast home, where lodging is provided for compensation on a short-term basis, and open to the public or transient guests. The maximum number of occupants shall not exceed ten (10) unless determined appropriate by Town Council.

Short-term rental:

§ 175.151 Short-term rentals.

Short-term rentals shall be permitted in all Zoning Districts by Special Use Permit and shall at a minimum meet the following requirements:

- A. The short-term rental owner of a dwelling unit to be used for a short-term rental shall apply for a Special Use Permit through the Department of Planning and Zoning and receive approval from Town Council prior to utilizing the dwelling unit as a short-term rental. Town Council may impose conditions necessary to mitigate adverse effects of the use on neighboring properties.
- B. The one-time application fee shall be \$400.00.
- C. Staff will conduct an inspection prior to the issuance of the Special Use Permit approval. Additional inspections will be conducted on a complaint basis to ensure compliance with the performance standards listed in this section, along with any additional conditions imposed by Town Council, if applicable.
- D. The maximum number of occupants in the dwelling unit shall be determined by the number of bedrooms; there shall be no more than two (2) adults per bedroom. However, the maximum number of occupants shall not exceed 10 people unless approved by Council.
- E. Parking for the use shall be located in driveways or other designated and approved parking areas.
- F. There shall be no visible evidence of the conduct of such short-term rentals on the outside appearance of the property.
- G. A fire extinguisher shall be provided and visible in all kitchen and cooking areas; smoke detectors shall be installed in all locations as identified in the 2015 or 2018 Uniform Statewide Building Code (2018 Version required usage beginning July 1, 2022); and a carbon monoxide detector must be installed on each floor in every dwelling.
- H. The owner of the dwelling used for short-term rentals shall give the Town written consent to inspect any dwelling used for short-term rental to ascertain compliance with all the above performance standards upon a twenty-four-hour notice.
- I. A property management plan demonstrating how the short-term rental will be managed and how the impact on neighboring properties will be minimized shall be submitted for review and approval as part of the permitting process to the Planning Department. The plan shall include local points of contact available to respond immediately to complaints, clean up garbage, manage unruly tenants and utility issues, etc. It shall also be posted in a visible location in the short-term rental. The contact numbers

shall be provided to Town staff, public safety officials and, if applicable, the HOA of the subdivision. The plan must be provided as part of the rental contract.

- J. If the property is located within a subdivision governed by a homeowners' association, the Planning Department must receive proof that a notification to operate the short-term rental was sent to the HOA.
- K. The owners of the rental shall provide an emergency evacuation plan for the dwelling and the neighborhood.
- L. A copy of Chapter 106 of the Town of Front Royal Code relative to noise must be provided at the short-term dwelling.
- M. All outdoor burning shall be in compliance with Chapter 78 of the Town of Front Royal Code.
- N. Failure to comply with the approved conditions and/or supplemental regulations will subject the permit to revocation by the Zoning Administrator at any time.

Property Owner's Signature: _____

CERTIFICATION:

I certify that the information provided with this application is correct to the best of my knowledge and should the special use permit be granted, the project will comply with the conditions imposed upon it and will be implemented only as approved by Town Council.

Signature _____

Date _____

10/26/2022

By submitting this application, the applicant grants permission to Town officials and employees to enter upon the property, which is the subject of this application, during reasonable hours and for purposes related to the application process.

Pd \$400.00 by c/c 10/26/22

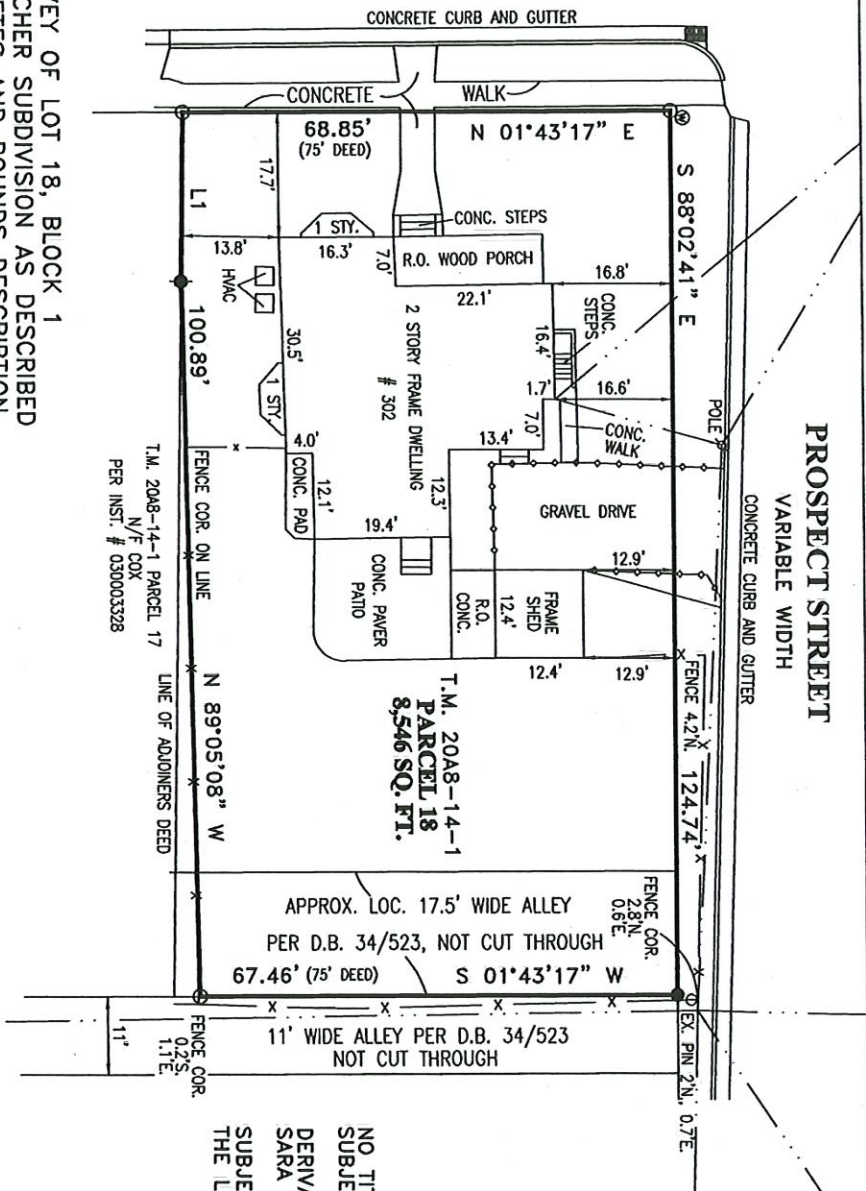
SURVEY OF LOT 18, BLOCK 1
FLETCHER SUBDIVISION AS DESCRIBED
IN METES AND BOUNDS DESCRIPTION
RECORDED IN DEED BOOK 376 PAGE 555
SOUTH RIVER MAGISTERIAL DISTRICT
TOWN OF FRONT ROYAL
WARREN COUNTY, VA.

PREPARED BY:
BROGAN LAND SURVEYING, PLC
P.O. BOX 1578
FRONT ROYAL, VA. 22630-0034
TEL. & FAX (540) 635-5657
SEPTEMBER 15, 2022



BLUE RIDGE AVENUE

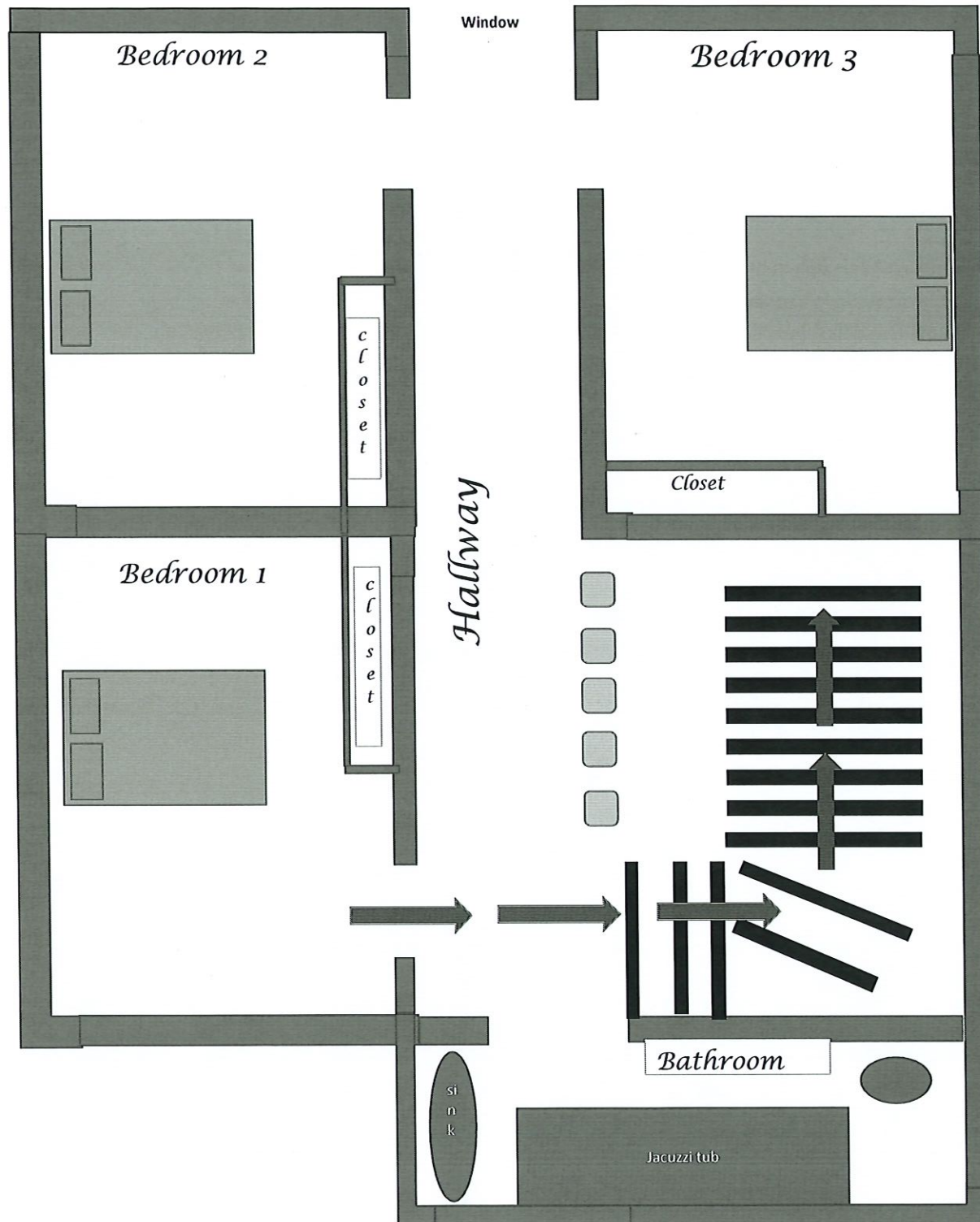
VARIABLE WIDTH



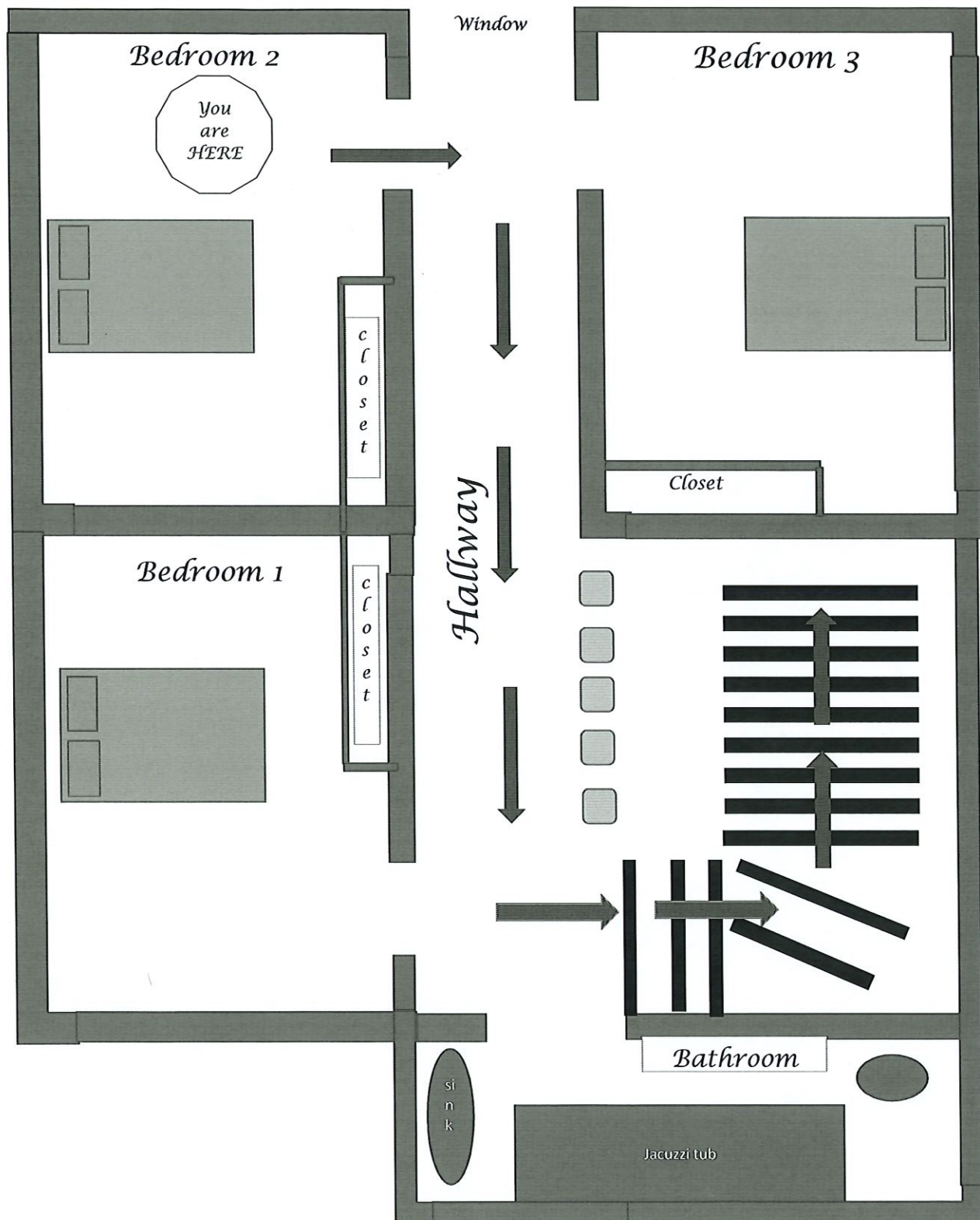
NO TITLE REPORT WAS FURNISHED TO THIS OFFICE.
SUBJECT TO ANY AND ALL EASEMENTS OF RECORD.
DERIVATION OF TITLE TO: JOSEPH E. AND
SARA A. MCFADDEN PER INST. # 140000148.
SUBJECT PARCEL SITUATED OUTSIDE
THE LIMITS OF THE FEMA FLOOD ZONE.

LINE	BEARING	DISTANCE
L1	N 86°58'59" W	23.87

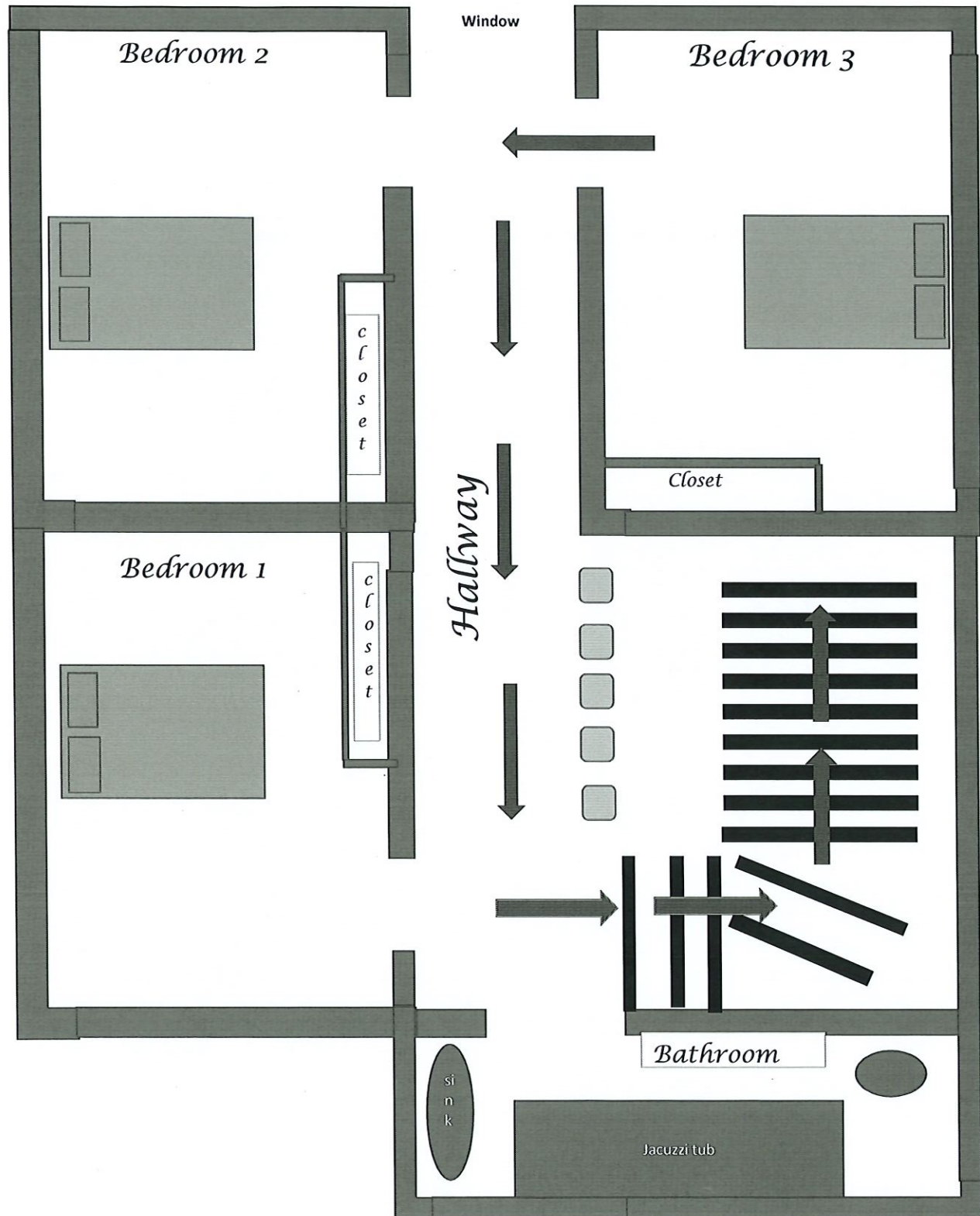
Bedroom 1 Emergency Evacuation Diagram



Bedroom 2 Emergency Evacuation Diagram



Bedroom 3 Emergency Evacuation Diagram



**CONSENT TO INSPECT
PRIVATE PROPERTY**

The undersigned herein consents to the Town of Front Royal, Department of Planning and Zoning Division Officer(s) right of entry to inspect all yard areas, building exterior(s), and/or interior(s) as needed to determine whether said property complies with local and state codes related to said property.

The undersigned herein states that he/she is in lawful possession or control of the property designated below or has the authority to act in the owner(s), tenant(s), and/or occupant(s) behalf and in their absence.

Property Address: 302 Blue Ridge Ave, Front Royal, VA 22630

CONSENTING PARTY

Name: Tabatha Lusk Signature: [Signature] Date: 10/26/2022

☒ Owner ☐ Tenant ☐ Manager ☐ Owner(s) Agent ☐ Employee

☒ Common Areas ☒ Rear/Side Yards ☒ Interior ☒ Accessory Building(s)

☒ Garage(s)/Carports

Name: Ashley Fincher Signature: [Signature] Date: 10/26/2022

☐ Owner ☐ Tenant ☐ Manager ☐ Owner(s) Agent ☒ Employee

☒ Common Areas ☒ Rear/Side Yards ☒ Interior ☒ Accessory Building(s)

☒ Garage(s)/Carports

Welcome to Big Bird Interactive Welcome Guide



- Open Camera app
- Hold device so QR code appears
- Tap notification to open link



Welcome Note

ADDRESS:

[302 Blue Ridge Ave](#)
[Front Royal, VA 22630](#)

Land Line Phone:

Dear Guest,

Welcome to [Big Bird Farmhouse](#). We're beyond excited to have you!

This place is very special to us. Believe it or not, we had our first date in 1967 at the [Front Royal Cinema](#), two blocks from here!

It a great spot to [Discover Front Royal](#) and [Shenandoah National Park](#). And isn't the neighborhood just lovely? What about this amazing Historic 1903 home? We have so many great memories attached to it, and we're convinced that you will, too.

In this manual, you'll find lots of useful information that we've compiled over the years to help our guests make the most of their stay. From instructions on how to use the appliances to recommendations for nearby restaurants and shopping areas, we've got it all covered.

We hope that you enjoy the place as much as we do. We strive to offer a 5-Star Experience. If you have any issues during your stay, please let us know so we can help you.
Have a great stay!

Sincerely,
Jim and Bea

Contact
Information

If you need assistance with
anything, please contact:

Name: Ashley Fincham
Phone Number: (540) 660-1187
Email: admin@hikeconstruction.com

Important information

IN CASE OF EMERGENCY:



In case of emergency, dial 911

Nearest Medical Center:

[Warren Memorial Hospital](#)

Phone number: 540-636-0300 or 911

Address: 351 Valley Health Way
Front Royal, VA 22630

540-636-0300

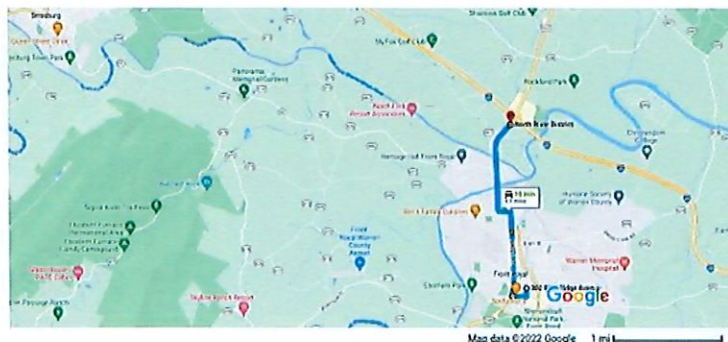
You are in Front Royal in the Historic Fletcher neighborhood

Address: 302 Blue Ridge Avenue, Front Royal, VA 22630

Landline Phone #

Evacuation Map to nearest Interstate

Google Maps 302 Blue Ridge Ave, Front Royal, VA 22630 to North
River District, Virginia Drive 4.1 miles, 10 min
Evacuation Route to Interstate 66



302 Blue Ridge Ave
Front Royal, VA 22630

- ↑ 1. Head south on Blue Ridge Ave toward Cable Pl 0.2 mi
- ↘ 2. Turn right onto South St 0.3 mi
- ↘ 3. Turn right onto S Royal Ave 1.6 mi
- ↑ 4. Continue onto W 14th St 0.2 mi
- ↘ 5. Turn right onto US-340 N/US-522 N/N Shenandoah Ave
- ➡ Continue to follow US-340 N/US-522 N

Important Information

EMERGENCY INFO



Front Royal Police Department: [540-635-2111](tel:540-635-2111) or 911,

900 Monroe Ave, Front Royal, VA 22630



Front Royal Volunteer Fire & Rescue: 540-635-2540 or 911,

221 N Commerce Ave, Front Royal, VA 22630



Warren Memorial Hospital: 540-636-0300 or 911,

351 Valley Health Way, Front Royal, VA 22630

Electrical Outage: 540-635-3027, 540-635-2111(after hours)



1101 Manassas Avenue, Front Royal, VA 22630

Outages may be reported on line at:

<https://www.frontroyalva.com/FormCenter/Energy-Services-6/Report-Electric-Problem-46>

The fire extinguisher is in the Kitchen, under the sink.



CHECKING OUT

Check out Procedures

I hope you enjoyed your stay here!

As a reminder, check-out is at 10:00 am on the day that your booking ends.

Before you leave, I request that you:

- Double Check. Check for left behind belongings.
- Please DON'T remake beds
- Please place all used towels on the bathroom floor.
- Take all trash to the trashcan outside, next to the shed. Trash is picked up on Friday mornings. If you here Thursday night, please take trashcan to the road if we didn't.
- Load dishes in the dishwasher. We will start it when we arrive to clean.
- Put key back in Lock Box

I also request that you leave a 5-star review to let me know how your stay was. I love to hear from guests!

Please travel safely and come visit again any time you're in Virginia!



How To...

ACCESS THE PROPERTY

Access to the front door deadbolt: Please use the lock box located on the side table to access key. The door knobs are over 100 years old, jiggle. Code is the last four digits of the phone number you provided.

USE THE WIRELESS INTERNET

Wifi Network: BigBird
Wifi Password: WelcomeToFR

USE THE THERMOSTAT

Dual Zone AC Unit
Both Thermostats are in the hall on each floor near the bathrooms.

USE THE JACUZZI TUB

Close drain by turning the knob.
Fill with water above the jets.
Push button to turn on jets.
Push same button to turn off jets.

USE THE WASHER AND DRYER

*Leave Washer door open when not in use.

USE THE TV

Xfinity Cable, Remote next to TV
Push the "Power" button on Remote to turn TV on and off

BACKYARD FUNYARD

Corn Hole and Bad-mitten set is located under backyard port.
Firepit- Firewood can be purchased at [Rural King](#)
Pick your own Garden - Coming Soon, Seasonally

OUTDOOR FIRE REGULATIONS:

Appendix 1: Town of Front Royal Municipal Code Chapter 78
Fire Prevention

OUTDOOR NOISE REGULATIONS:

Appendix 2: Town of Front Royal Municipal Code Chapter 106
Noise



Where To GO

NEAR BY GROCERY STORES

Name: [Martins](#)
Address: 409 South St
Distance: 0.3 miles Drive (crosses busy street)



Name: Manor Line Market
Address: 401 E Main St
Distance: 0.71 miles (7 minute Walk)

Name: [Walmart](#)
Address: 10 Riverton Commons Dr (Drive)
Distance: 5.3 miles

OUR FAVORITE RESTAURANTS

Name: [Main Street Mill](#)
Address: 500 E Main St
Distance: 2 block on Main Street 0.23 miles (6 min walk)
Why: Great homemade Vegetable Soup and homemade pies



Name: [Le Dees Pancake House](#)
Address: 522 E Main St
Distance: 2 block on Main Street(7 minute Walk)
Why: Great Sausage Gravy and biscuits



Name: [Daily Grind](#)
Address: 215 E Main St
Distance: 2 blocks on Main Street (9 minute Walk)
Why: Coffee, hot chocolate, breakfast sandwiches and pastries



Name: [Melting Pot](#)
Address: 138 W 14th St
Distance: 2.4 miles (7 minute Drive)
Why: Pizza



OUR FAVORITE RESTAURANTS

Name: [Spelunkers](#)
Address: 116 South St
Distance: 0.4 miles (1 minute drive)
Why: Awesome burgers, fries and shakes. Fast and on your way to Shenandoah National Park.



Name: [Element](#)
Address: 317 E. Main St
Distance: 2 blocks on Main Street (9 minute Walk)
Why: Seafood and Steak



Where to Go

SHOP

Name: [The White Picket Fence](#)
Address: 405 E Main Street
Distance: 2 blocks
Why: 1805 goat milk soaps and lotions
candles and eclectic mixture



Name: [Mountain Trails](#)
Address: 120 E Main St
Distance: 2 blocks
Why: Outdoor clothing and Equipment



TOP ADVENTURES

Name: [Shenandoah National Park](#)
Address: 21073 Skyline Drive, Front Royal Entrance
Distance: 1.1 miles (3 minute Drive)
Price: [\\$35 day pass](#)
Tips: [Ticket Required to Hike Old Rag](#)



Name: [Shenandoah State Park](#)
Address: 350 Daughter of Stars Dr, Bentonville, VA
Distance: 8 miles (12 minute Drive)



Name: [Front Royal Outdoors](#)
Address: 8567 Stonewall Jackson Hwy
Distance: 3.7 miles (6 min Drive)
Tips: [River Conditions](#)



TOP ATTRACTIONS

Name: [Virginia Beer Museum](#)
Address: 16 Chester Street
Distance: 0.4 Mile (10 minute Walk)
Tips:



Name: [Shenandoah Valley Axe Throwing Co](#)
Address: 20 South St
Distance: 0.4 miles (1 minute Drive)
Tips: \$20 per person per hour



Name: [Skyline Caverns](#)
Address: 10344 Stonewall Jackson Hwy
Distance: 1.9 miles (4 minute Drive)
Tips: [Coupon](#)
Hours: 9:00a.m. till 4:00 p.m.



Where to go

GETTING AROUND

Name: Front Royal Trolley - [Trolley Schedule and Line Map](#)
Address: [Visitor Center](#) - 414 East Main Street
0.23 miles (6 minute Walk)



The FRONT ROYAL TROLLEY bus (North Loop) is a circular line with 11 stops departing from Visitors Center.

FRONT ROYAL TROLLEY bus time schedule overview for the upcoming week: Starts operating at 9:00 AM and ends at 4:30 PM.

WINE/BREW/TEA

Name: [CHESTER GAP CELLARS](#)
Address: 4615 REMOUNT ROAD
Distance: 3.5 MILES (7 MINUTE DRIVE)



Name:
Address: [GLEN MANOR VINEYARDS](#)
Distance: 2244 BROWNTOWN RD
6.6 MILES (16 MINUTE DRIVE)



Name:
Address: [SAGA MEADERY](#)
Distance: 7 SOUTH ST
0.44 MILES (11 MIN WALK)



Name: [HONEY & HOPS BREW WORKS](#)
Address: 212 E Main St
Distance: 0.3 Miles (8 MINUTE WALK)



Name: [The Vine & Leaf](#)
Address: 477 E&F South St
Distance: 0.4 miles (1 min Drive)
Why: Great Tea's and sandwiches, try Shenandoah Blue Tea; wine too



Name: [Vibrissa Beer](#)
Address: 122 E. Main St
Distance: 0.3 Miles 2 blocks
Why: American Brew Pub



House Rules

We kindly ask you to read our house rules carefully and keep them in mind during your stay. We appreciate your respect of this 1903 historic home.

1. No shoes in the house. Non-slip socks provided
2. No parties or events allowed.
3. No smoking allowed.
4. No pets allowed.
5. No unregistered guests allowed.
6. Please respect the noise curfew 10pm - 7am.
7. Please respect check-in and check-out times. 4:00pm - 10:00am
8. Please don't rearrange the furniture.
9. Please put dishes in dishwasher.
10. Please take the trash out before you leave.
11. No illegal substances allowed on the premises.
12. Alert us immediately if anything breaks. We may not be able to fix it for the next guest if you don't tell us right away.
13. Clean up spills and crumbs. They attract critters quickly and 1903 Original Pine floors.



RATINGS

RATINGS

Short Term stays are not rated like hotels at all! If a host is under a 4.7-star average, their account can be deactivated and all future stays canceled. Your review really matters and seriously impacts your hosts and their future guests! We strive to provide an amazing stay for your amazing memories and experience. Please contact us with any issues.



We enjoyed our stay.

Several issues, none addressed.

Major issues, not addressed.

Shut it down.

Burn it.



APPENDIX

APPENDIX 1

TOWN OF FRONT ROYAL MUNICIPAL CODE Chapter 106
106-1
Chapter 106
NOISE

APPENDIX 2

TOWN OF FRONT ROYAL MUNICIPAL CODE Chapter 78
78-1
Chapter 78
FIRE PREVENTION

APPENDIX 3

Parking Map

APPENDIX 4

Evacuation Map to the nearby Interstate



APPENDIX 1
Town of Front Royal
Municipal Code
Chapter 106
Noise

Chapter 106**NOISE****Sections:**

- 106-1 THROUGH 106-4 (RESERVED)**
- 106-5 DECLARATION OF FINDINGS AND POLICY**
- 106-6 DEFINITIONS**
- 106-7 ADMINISTRATION AND ENFORCEMENT**
- 106-8 PROHIBITED NOISE**
- 106-9 MAXIMUM PERMISSIBLE SOUND LEVELS FROM NOISE SOURCES**
- 106-10 OPERATOR OF SOUND-PRODUCING DEVICES IN PLACE OF PUBLIC ENTERTAINMENT OR ASSEMBLY**
- 106-11 USE OF LOUDSPEAKERS FOR ADVERTISING PURPOSES**
- 106-12 PROHIBITED NOISE FROM MOTOR VEHICLE SOUND SYSTEM**
- 106-13 RESPONSIBILITY OF THE PROPERTY OWNER**
- 106-14 EXCEPTIONS FROM CHAPTER**
- 106-15 BUILDING, UTILITY, ROAD CONSTRUCTION AND EXCAVATION OPERATIONS**
- 106-16 TESTING OF METERING DEVICES**
- 106-17 PENALTIES**
- 106-18 SEPARABILITY**

Adopted by the Town Council of the Town of Front Royal 3-11-85. 106-1 through 106-4 were repealed by Ordinance No. 12-04 on 10-11-04. Amendments noted where applicable.

106-1 THROUGH 106-4 (RESERVED)

(Ord. No. 12-04 Repealed 10-11-04-Effective Upon Passage)

106-5 DECLARATION OF FINDINGS AND POLICY

The Town Council hereby finds and declares that excessive sound is a serious hazard to the public health, welfare, peace, safety, and the quality of life; that a substantial body of science and technology exists by which excessive sound may be substantially abated; that the people have a right to and should be ensured an environment free from excessive sound that may jeopardize the public health, welfare, peace, and safety or degrade the quality of life; and that it is the policy of the Town of Front Royal to prevent such excessive sound.

(Ord. No. 12-04 Added 10-11-04-Effective Upon Passage)

106-6 DEFINITIONS

For the purposes of this ordinance, the following words and phrases shall have the meanings respectively ascribed to them by this subsection.

- A. **A-WEIGHTED SOUND LEVEL.** The sound pressure level in decibels as measured on a sound level meter using the A-weighting network. The level so read is designated dB(a) or dBA.
- B. **DAYTIME** The local time of day between the hours of 7:00 A.M. and 10:00 P.M.
- C. **DECIBEL (dB).** A unit for measuring the volume of a sound equal to twenty (20) times the logarithm to the base ten (10) of the ratio of the pressure of the sound measured to the reference pressure, which is twenty (20) micropascals (twenty micronewtons per square meter).
- D. **dBA** shall mean the sound pressure level as measured on a sound meter set to slow response to the A-weighted scale to approximate the frequency response of the human auditory system.
- E. **EMERGENCY WORK** shall mean work made necessary to restore property to a safe condition following a public calamity, or work required to protect persons or property from immediate exposure to danger, including work performed by public service companies when emergency inspection, repair of facilities or restoration of services is required for the immediate health, safety or welfare of the community.
- F. **NIGHTTIME.** The local time between the hours of 10:00 P.M. and 7:00 A.M.
- G. **NOISE** shall mean any sound which may cause or tend to cause an adverse psychological or physiological effect on human beings.
- H. **NOISE SOURCE** shall mean any equipment, motor vehicle, motorcycle or facility, fixed or movable, capable of emitting sound beyond the property boundary of the property on which the equipment is used, but not including motor vehicles or motorcycles operated on public rights-of-way.
- I. **SOUND.** An oscillation in pressure, particle displacement, particle velocity or other physical parameter in a medium with internal forces that causes compression and rarefaction of that medium. The description of sound may include any characteristic of such sound including duration, intensity, and frequency.
- J. **SOUND LEVEL.** The weighted sound pressure level obtained by the use of an approved sound level meter and the A-frequency weighting network, as specified in American National Standards Institute specifications for sound level meters.
- K. **SOUND LEVEL METER** shall mean an instrument to measure sound pressure levels which shall meet or exceed performance standards for a "type two" meter as specified by the American National Standards Institute.
- L. **SOUND PRESSURE** shall mean the instantaneous difference between the actual pressure and the average or barometric pressure at a given point in space.

(Ord. No. 12-04 Added 10-11-04-Effective Upon Passage)

106-7 ADMINISTRATION AND ENFORCEMENT

The noise control program established by this section shall be enforced and administered by the Chief of Police with the assistance of other Town departments as required.

(Ord. No. 12-04 Added 10-11-04-Effective Upon Passage)

106-8 PROHIBITED NOISE

A. Generally. It shall be unlawful for any person to create any unreasonably loud, disturbing and unnecessary noise. Noise of such character, intensity and duration as to be detrimental to the life or health of any person or unreasonably to disturb or annoy the quiet, comfort or repose of any person is hereby prohibited.

B. Specific Acts as Noise Disturbances.

The following acts are declared to be noise disturbances in violation of this Chapter, provided that the acts so specified shall not be deemed to be an exclusive enumeration of those acts which may constitute a noise disturbance under Section 106-8(A):

1. Operating or causing to be operated any equipment used in construction, repair, alteration or demolition work on buildings, structures, streets, alleys, drainage or public utility systems or parts thereof, and appurtenances thereto in the outdoors between the hours of 9:00 p.m. and 7:00 a.m. the following day, except as provided in Section 106-15.
2. Repairing, rebuilding or modifying any motor vehicle or other mechanical device in residential use districts between the hours of 9:00 p.m. and 7:00 a.m. the following day.
3. The collection of trash or refuse in residential use districts between the hours of 9:00 p.m. and 7:00 a.m. the following day.
4. Loading or unloading trucks in the outdoors within one hundred (100) yards of a residence between the hours of 9:00 p.m. and 7:00 a.m. the following day; provided that this subsection shall not apply to any business that has been in operation at its current location since prior to January 1, 1980.

(Ord. No. 01-06 amended 1-23-06-Effective Upon Passage)

5. Sounding the horn or warning device of a vehicle, except when necessary as a warning during the operation of the vehicle. Sounding of such horn or other device more than once every two (2) minutes in any one town block and with a duration of more than five (5) seconds for any single emission shall be *prima facie* evidence of violation of this section.
6. Operating or permitting the use or operation of any radio receiving set, musical instrument, television, phonograph or any other device for the production of sound, between the hours of

10:00 p.m. and 8:00 a.m. the following day, in such a manner as to be plainly audible across property boundaries or through partitions common to two (2) residences within a building

7. Operating or permitting the operation of any radio, tape player, compact disc player or other device for the production of sound on a public right-of-way or in a public place in such a way that the sound is plainly audible at a distance of fifty (50) feet from such device, whether or not the device is situated within a motor vehicle.

8. Owning, keeping, possessing or harboring any animal which frequently or habitually howls, barks, meows, squawks or makes such other noise as is plainly audible across property boundaries or through partitions common to two (2) residences within a building.

9. The use of any automobile, motorcycle or vehicle so out of repair, so loaded or operated in such a manner as to create loud and unnecessary grating, grinding, rattling or other noises.

10. The discharge of the exhaust of any internal combustion engine into the open air except through a device which will effectively prohibit loud and explosive noises.

(Ord. No. 12-04 Added 10-11-04-Effective Upon Passage)

106-9 MAXIMUM PERMISSIBLE SOUND LEVELS FROM NOISE SOURCES

It shall be unlawful for any person to operate, or permit to be operated, any noise source in such a manner that the noise source emits a sound pressure level which exceeds the limits set forth below when measured on property other than that on which the noise source is located. The category of applicable sound pressure limits shall be determined by the zoning district classification of the property on which the noise is produced. Property which has been specifically determined by the Planning Commission to be within an area designated on the Comprehensive Plan for industrial use shall be deemed to fall into the industrial classification for the purposes of this ordinance, even if the property has not yet been re-zoned.

(Ord. 01-06 Amended 1-23-06-Effective Upon Passage)

Land Use Designation Where Noise is Measured.	Maximum Allowed Noise in Daytime (in dBA)	Maximum Allowed Noise in Nighttime (in dBA)
Agricultural & Residential Zones, A-1,R-1,R1-A,R-2,R-3	60	50
Commercial Zones C-1, C-2, C-3	70	65
Industrial Zones 1-1,1-2	80	80

(Ord. No. 12-04 Added 10-11-04-Effective Upon Passage)

106-10 OPERATOR OF SOUND-PRODUCING DEVICES IN PLACES OF PUBLIC ENTERTAINMENT OR ASSEMBLY.

It shall be unlawful for any person to operate, or permit to be operated, any loudspeaker or other device for the production of sound in any place of public entertainment or other place of public assembly which produces sound measure levels of ninety (90) dBA of greater at any point that is normally occupied by a person, unless conspicuous and legible signs are located outside such place, near the entrance, stating "WARNING, EXPOSURE TO SOUND ENVIRONMENT WITHIN MAY CAUSE HEARING IMPAIRMENT."

(Ord. No. 12-04 Added 10-11-04-Effective Upon Passage)

106-11 USE OF LOUDSPEAKERS FOR ADVERTISING PURPOSES

It shall be unlawful for any person to operate for commercial advertising purposes any loudspeaker or other like device or mechanism used to emit sound of any kind, which loudspeaker or other like device or mechanism is attached to or installed in any vehicle, when the vehicle is being driven, drawn, or parked along or upon the streets of the Town.

(Ord. No. 12-04 Added 10-11-04-Effective Upon Passage)

106-12 PROHIBITED NOISE FROM MOTOR VEHICLE SOUND SYSTEM

No person within the Town limits shall operate or permit the use or operation of any radio, tape player, compact disc player, or any other device which produces, reproduces, or amplifies sound in a motor vehicle, in such a manner that the sound can be heard more than fifty (50) feet from the motor vehicle.

(Ord. No. 12-04 Added 10-11-04-Effective Upon Passage)

106-13 RESPONSIBILITY OF THE PROPERTY OWNER

It shall be unlawful for a property owner knowingly to allow the creation of noise prohibited by this Chapter, within the boundaries of his or her property.

(Ord. No. 12-04 Added 10-11-04-Effective Upon Passage)

106-14 EXCEPTIONS FROM CHAPTER

The provisions of this Chapter shall not apply to the following activities:

1. The emission of sound for the purpose of alerting persons to the existence of an emergency or to the emission of sound in the performance of emergency work;
2. Noise caused by or arising out of activities related to repair, maintenance, replacement or alteration of public utility systems or parts thereof, public drainage systems or parts thereof, or streets and highways or parts thereof, and appurtenances thereto, where such activity is

reasonably necessary to further a public safety interest and/or to minimize disruption in the provision of public services, e.g., water, sewer and electric service; or

3. Parades, fireworks displays, and other organized public activities authorized by permit issued by an official of the Town.

(Ord. No. 12-04 Added 10-11-04-Effective Upon Passage)

106-15 BUILDING, UTILITY, ROAD CONSTRUCTION AND EXCAVATION OPERATIONS.

A. The erection, including excavation, demolition, alteration or repair of any building in a residential or business district, the performance of any work on a public utility, the performance of any work relating to road construction, and any excavation work on January 1st (New Year's Day), the last Monday in May (Memorial Day), July 4th (Independence Day), the first Monday in September (Labor Day), the fourth Thursday in November (Thanksgiving Day), and December 25th (Christmas Day), or other than between the hours of 7:00 a.m. and 8:00 p.m. Monday through Friday, is prohibited, except in cases of necessity in the interest, public health, safety and welfare, and then only with a permit from the Town Manager or his designee. This prohibition does not apply to Town employees or to contractors performing work in compliance with the terms and requirements of a Town contract.

B. When one of the regular holidays mentioned in Subsection (a) of this section falls on a Saturday, the preceding Friday shall be declared the holiday. When one of the regular holidays falls on a Sunday, the following Monday shall be declared the holiday.

C. Construction. Notwithstanding any other provision in this Chapter, between the hours of 7:00 a.m. and 8:00 p.m. Monday through Friday, construction, alteration or repair activities that are authorized by a valid Town permit shall be allowed if they meet at least one of the following noise limitations:

1. No individual piece of equipment shall produce a noise level exceeding 85 dB(A) at a distance of twenty-five (25) feet. If the device is housed within a structure on property, the measurement shall be made outside the structure at a distance as close to twenty-five (25) feet from the equipment as possible.

2. The noise level at any point outside of the property planes of the project shall not exceed 90 dBA.

(Ord. No. 12-04 Added 10-11-04-Effective Upon Passage)

16-16 TESTING OF METERING DEVICES

In order to implement and enforce this section effectively, the Chief of Police shall, within a reasonable time after the effective date of same, develop and promulgate standards and procedures for testing and validating sound level meters used in enforcement of this section.

(Ord. No. 12-04 Added 10-11-04-Effective Upon Passage)

106-17 PENALTIES

A. Any person who violates any provision of this Chapter shall be deemed to be guilty of a Class III misdemeanor.

B. Each violation and/or day of violation of any provision of this section shall constitute a separate offense.

C. The imposition of one (1) penalty for any violation shall not excuse the violation or permit it to continue.

(Ord. No. 12-04 Added 10-11-04-Effective Upon Passage)

106-18 SEVERABILITY

If any provision of this Chapter should be determined by a court of competent jurisdiction to be invalid, such determination shall not affect the validity of the remaining provisions of this Chapter.

(Ord. No. 12-04 Added 10-11-04-Effective Upon Passage)

APPENDIX 2
Town of Front Royal
Municipal Code
Chapter 78
Fire

Chapter 78FIRE PREVENTION

Sections:

- 78-1 OPEN BURNING**
- 78-2 BLASTING**
- 78-3 ADOPTION OF STANDARDS; CONDITIONS**
- 78-4 WHEN AND WHERE COPIES AVAILABLE**
- 78-5 MODIFICATIONS**
- 78-6 APPEALS**
- 78-7 NEW MATERIALS, PROCESSES OR OCCUPANTS**
- 78-8 VIOLATIONS AND PENALTIES**
- 78-9 RECOGNITION**

Adopted by the Town Council of the Town of Front Royal 4-23-73(*Chapter 10 of the 1965 Code*). Other Amendments noted where applicable.

78-1 OPEN BURNING

A. It shall be unlawful for any owner or lessee of land to set fire to or to procure another to set fire to any woods, brush, logs, leaves, grass, debris or other flammable material upon such land unless he previously shall have taken all reasonable care and precaution, by having cut and piled the same or carefully cleared around the same, to prevent the spread of such fire to lands other than those owned or leased by him. It shall also be unlawful for any employee of any such owner or lessee of land to set fire to or to procure another to set fire to any woods, brush, logs, leaves, grass, debris or other flammable material upon such land unless he shall have taken similar precautions to prevent the spread of such fire to any other land.

B. During the period beginning March 1 and ending May 15 of each year, even though the precautions required by the foregoing subsection shall have been taken, it shall be unlawful for any person to set fire to or to procure another to set fire to any brush, leaves, grass, debris or field containing dry grass or other flammable material capable of spreading fire, located in the Town, except between the hours of 4:00 p.m. and 12:00 midnight. The provisions of this subsection shall not apply to fires set on rights-of-way of railroad companies by their duly authorized employees.

C. Any person violating any provision of this section shall, upon conviction, be fined not less than ten dollars (\$10.) nor more than one hundred dollars (\$100.) for each separate offense.

78-2 BLASTING

It shall be unlawful for any person to permit any blast to be discharged, either by himself or his agents or employees, without having the blast so confined or protected as to prevent the escape of rock or earth.

78-3 ADOPTION OF STANDARDS; CONDITIONS

There is hereby adopted as the Fire Prevention Code of the town, for the purpose of prescribing regulations governing conditions hazardous to life and property from fire or explosion, that certain code known as the "Fire Prevention Code," recommended by the National Board of Fire Underwriters, being particularly the 1960 Edition thereof and the whole thereof, and such Fire Prevention Code is hereby adopted and incorporated as fully as if set out at length herein; and, from the date on which the Code of the Town of Front Royal, Virginia, shall take effect, the provisions thereof shall be controlling within the limits of the town, provided that:

- A. Whenever the word "municipality" is used in the Fire Prevention Code hereby adopted, it shall mean the Town of Front Royal.
- B. Wherever the term "Chief of the Fire Department" is used in the Fire Prevention Code hereby adopted, it shall mean the Building Inspector.
- C. Wherever the term "Corporate Counsel" is used in the Fire Prevention Code hereby adopted, it shall be held to mean the Town Attorney.
- D. The limits referred to in Section 12.6b of the Fire Prevention Code hereby adopted, in which storage of explosives and blasting agents is prohibited, shall be as provided by the Council.
- E. The limits referred to in Section 16.22a of the Fire Prevention Code hereby adopted, in which storage of flammable liquids in outside aboveground tanks is prohibited, are hereby established as the fire limits of the town.
- F. The limits referred to in Section 16.51 of the Fire Prevention Code hereby adopted, in which new bulk plants for flammable liquids are prohibited, shall be as provided by the council.
- G. The limits referred to in Section 21.6a of the Fire Prevention Code hereby adopted, in which bulk storage of liquid petroleum gas is restricted, shall be as provided by council.
- H. In the event of conflict between the provisions of the Fire Prevention Code hereby adopted and the provisions of any other ordinance of the town, the more stringent provisions shall prevail.

78-4 WHEN AND WHERE COPIES AVAILABLE

Copies of the Fire Prevention Code adopted by Section 78-3 may be obtained at the office of the Building Inspector in the town during regular business hours.

78-5 MODIFICATIONS

The Building Inspector shall have power to modify any of the provisions of the Fire Prevention Code adopted by Section 78-3 upon application in writing by the owner or lessee, or his duly authorized agent, when there are practical difficulties in the way of carrying out the strict letter

of such Fire Prevention Code, provided that the spirit of such Fire Prevention Code shall be observed, public safety secured and substantial justice done. The particulars of such modification, when granted or allowed, and the decision of the Building Inspector thereon, shall be entered upon the records of the Fire Department, and a signed copy shall be furnished to the applicant.

78-6 APPEALS

Whenever the Building Inspector shall disapprove an application or refuse to grant a permit applied for, or when it is claimed that the provisions of the Fire Prevention Code adopted by Section 78-3 do not apply or that the true intent and meaning of such Fire Prevention Code have been misconstrued or wrongly interpreted, the person aggrieved may appeal from the decision of the Building Inspector to the Town Council within thirty (30) days from the date of the decision from which the appeal is taken.

78-7 NEW MATERIALS, PROCESSES OR OCCUPANCIES

The Town Manager, the Chief of the Fire Department and the Building Inspector shall act as a committee to determine and specify, after giving affected persons an opportunity to be heard, any new materials, processes or occupancies which shall require permits, in addition to those now enumerated in the Fire Prevention Code, adopted by Section 78-3. The Building Inspector shall post such list in a conspicuous place in his office and distribute copies thereof to interested persons.

78-8 VIOLATIONS AND PENALTIES

A. Any person who shall violate any of the provisions of the Fire Prevention Code adopted by Section 78-3 or fail to comply therewith or who shall violate or fail to comply with any order made thereunder or who shall build in violation of any detailed statement of specifications or plans submitted and approved thereunder and from which no appeal has been taken or who shall fail to comply with such an order as affirmed or modified by the Town Council or by a court of competent jurisdiction, within the time fixed herein, shall severally for each and every such violation and noncompliance, respectively, be guilty of a misdemeanor, punishable by a fine of not more than five hundred dollars (\$500.) or by imprisonment for not more than twelve (12) months, or by both such fine and imprisonment. The imposition of one (1) penalty for any violation shall not excuse the violation or permit it to continue, and all such persons shall be required to correct or remedy such violations or defects within a reasonable time; and, when not otherwise specified, each ten (10) days that prohibited conditions are maintained shall constitute a separate offense.

B. The application of the above penalty shall not be held to prevent the enforced removal of prohibited conditions.

78-9 RECOGNITION

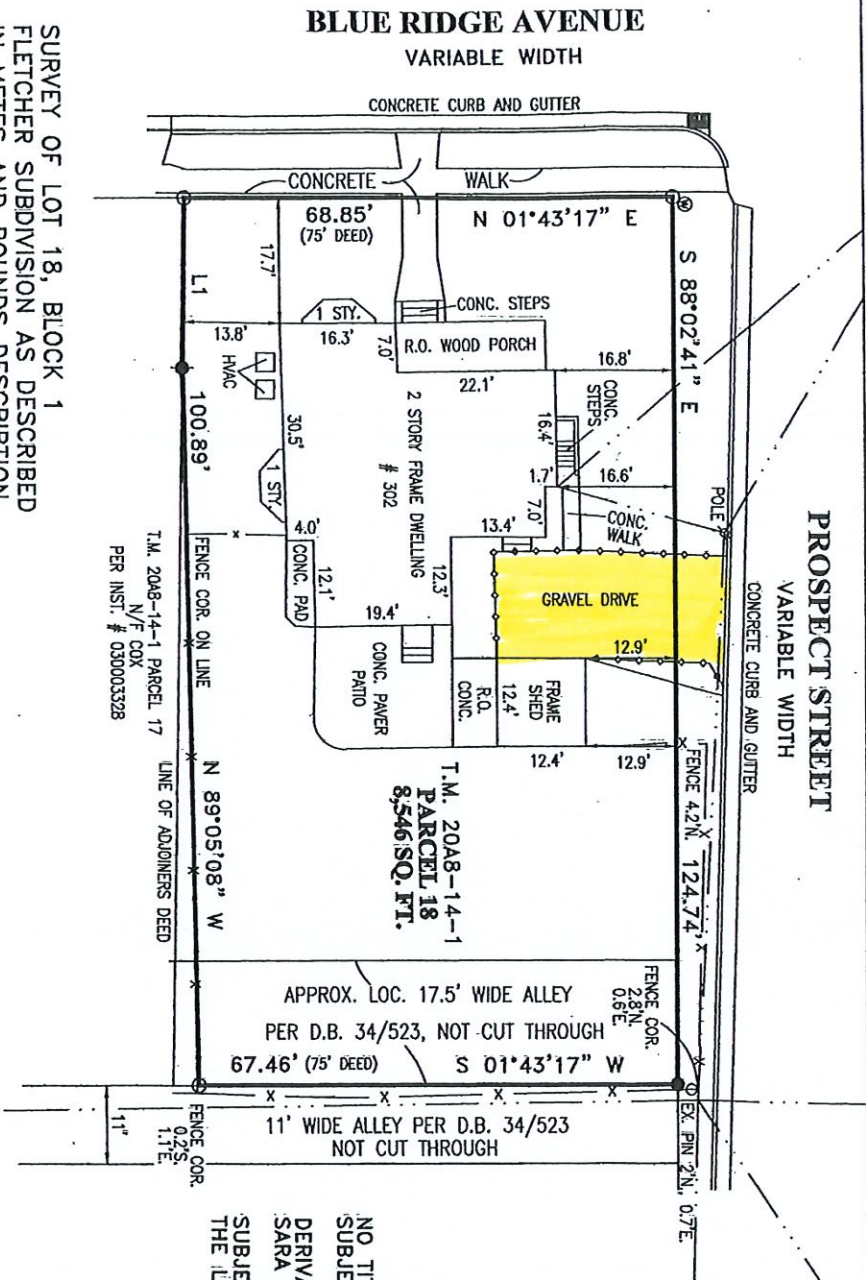
The Front Royal Volunteer Fire Department, Incorporated, and its rescue squad are hereby recognized as an integral part of the official safety program of the Town.

APPENDIX 3

Parking

**SURVEY OF LOT 18, BLOCK 1
FLETCHER SUBDIVISION AS DESCRIBED
IN METES AND BOUNDS DESCRIPTION
RECORDED IN DEED BOOK 376 PAGE 555**

**SOUTH RIVER MAGISTERIAL DISTRICT
TOWN OF FRONT ROYAL
WARREN COUNTY, VA.**



NO TITLE REPORT WAS FURNISHED TO THIS OFFICE.
SUBJECT TO ANY AND ALL EASEMENTS OF RECORD.
DERIVATION OF TITLE TO: JOSEPH E. AND
SARA A. MCFADDEN PER INST. # 140000148.
SUBJECT PARCEL SITUATED OUTSIDE
THE LIMITS OF THE FEMA FLOOD ZONE.

PREPARED BY:
BROGAN LAND SURVEYING, PLC
P.O. BOX 1578
FRONT ROYAL, VA. 22630-0034
TEL. & FAX (540) 635-5657
SEPTEMBER 15, 2022



APPENDIX 4

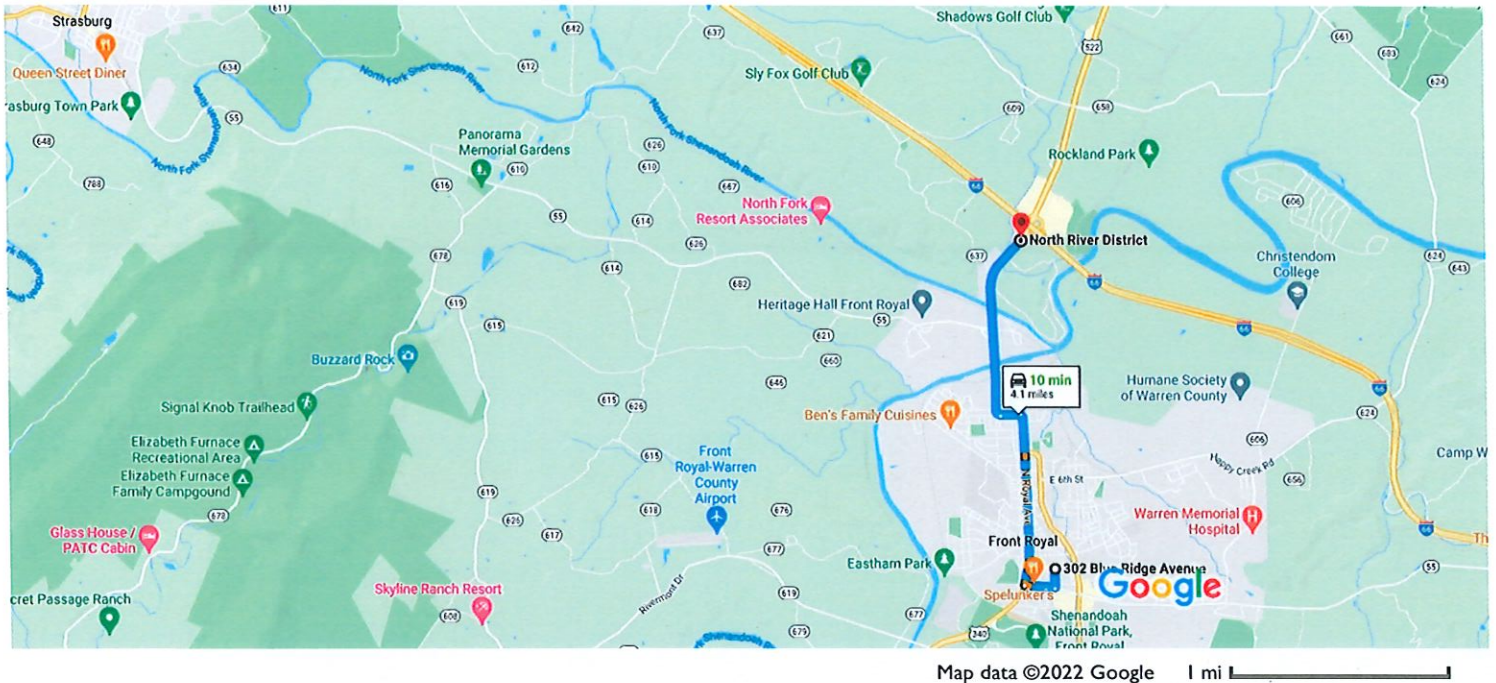
Evacuation Route to Interstate 66



302 Blue Ridge Ave, Front Royal, VA 22630 to North River District, Virginia

Drive 4.1 miles, 10 min

Evacuation Route to Interstate 66

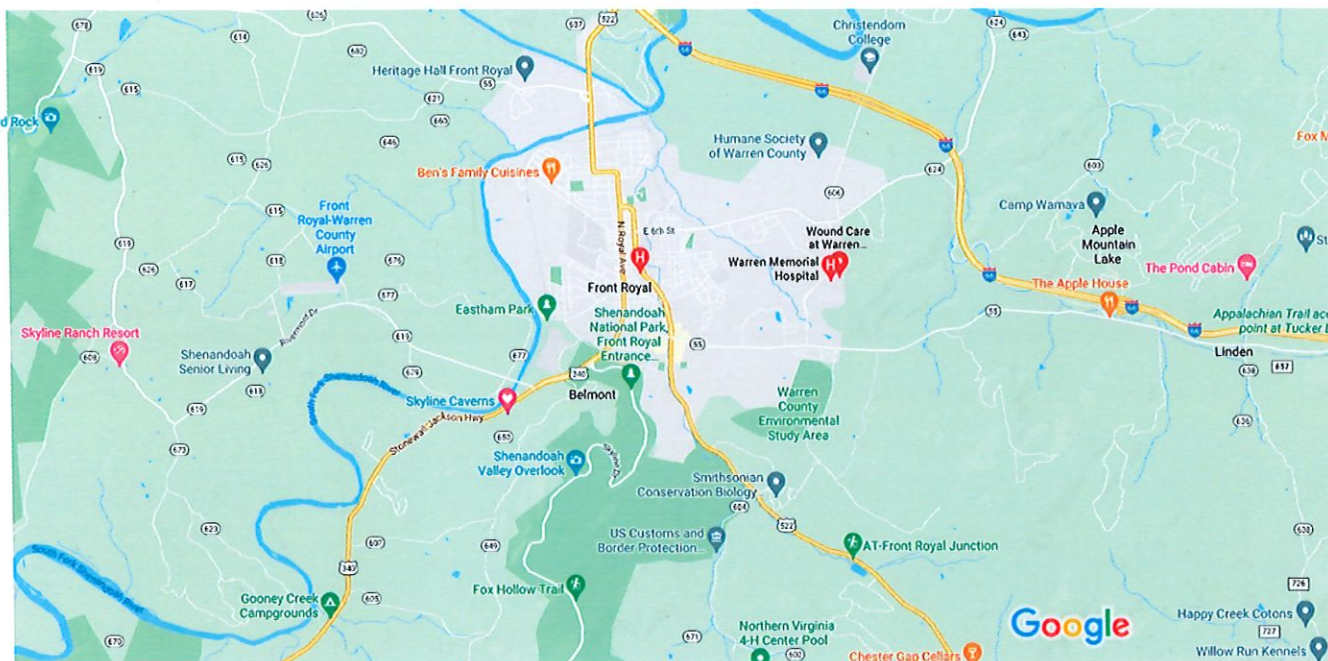


302 Blue Ridge Ave
Front Royal, VA 22630

- ↑ 1. Head south on Blue Ridge Ave toward Cable Pl
0.2 mi
 - ↘ 2. Turn right onto South St
0.3 mi
 - ↘ 3. Turn right onto S Royal Ave
1.6 mi
 - ↑ 4. Continue onto W 14th St
0.2 mi
 - ↘ 5. Turn right onto US-340 N/US-522 N/N Shenandoah Ave
1.8 mi
- i Continue to follow US-340 N/US-522 N**

North River District
Virginia

Google Maps hospital



Map data ©2022 Google

1 mi

Rating

Hours

All filters

Warren Memorial Hospital

3.6 (93)

General hospital · 351 Valley Health Way

Open 24 hours · (540) 636-0300



Website



Directions

Warren Memorial Hospital Op Center

5.0 (1)

Hospital · 120 N Commerce Ave
(540) 635-0701

Website



Directions

201 s market st Salem va

No reviews

Hospital · 15 Riverton Commons Dr



Directions

Valley Health

3.1 (11)

General hospital · 295 Front Royal Pike



Website



Directions

Fauquier Health

2.4 (145)

Hospital · 500 Hospital Dr

Open 24 hours · (540) 316-5000

[Website](#)[Directions](#)**Winchester Medical Center**

No reviews

General hospital · 190 Campus Blvd

[Directions](#)**Shenandoah Memorial Hospital**

2.8 (61)

Hospital · 759 S Main St

Open now · (540) 459-1100

[Website](#)[Directions](#)**Valley Health Systems**

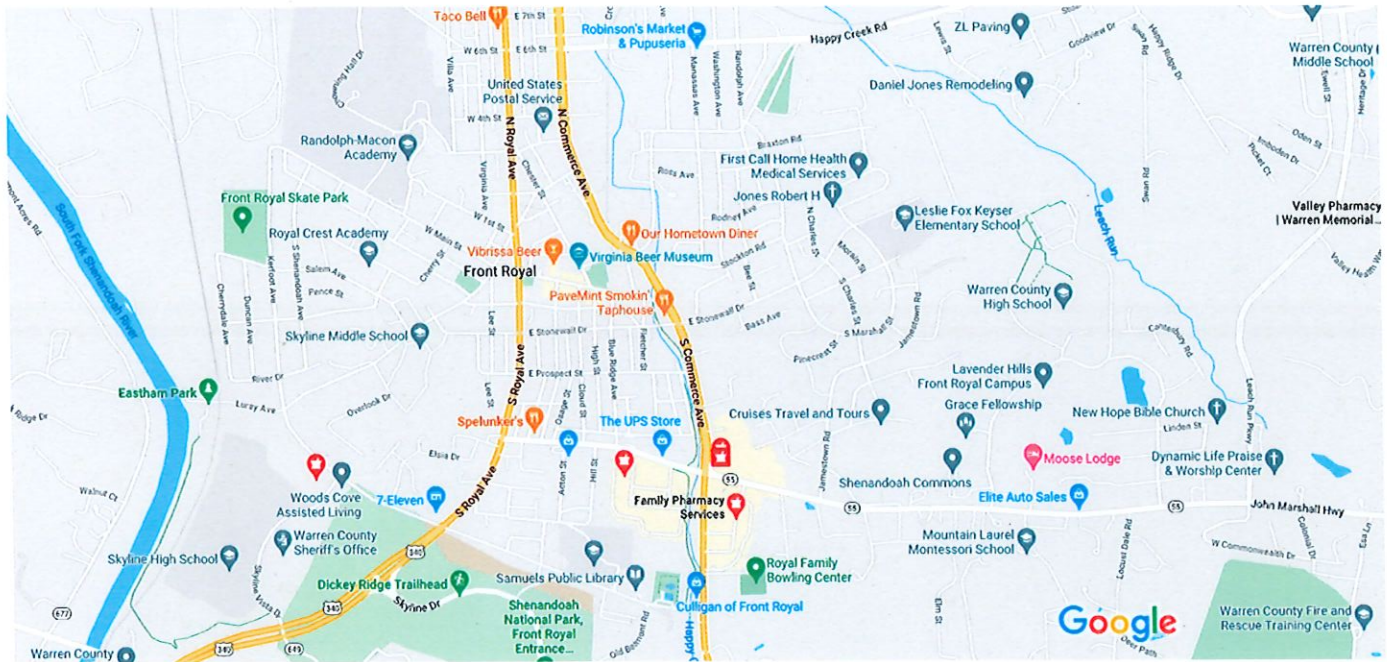
1.0 (3)

General hospital · 125 Memorial Dr

Open now · (540) 743-2282

[Website](#)[Directions](#)

Google Maps Pharmacies



Map data ©2022 1000 ft

Hours

All filters

CVS Pharmacy ▾

Ad · 2.5 (6)

Pharmacy · 800 John Marshall Hwy

Open · Closes 1:30PM · Reopens

2PM · (540) 635-1601

✓ In-store shopping · ✓ Delivery



Book



Website

CVS Pharmacy

2.5 (6)

Pharmacy · 800 John Marshall Hwy

Open · Closes 1:30PM · Reopens

2PM · (540) 635-1601

In-store shopping · Delivery



Website



Directions

Family Pharmacy Services

4.7 (25)

Pharmacy · 240 Remount Rd

Open · Closes 6PM · (540) 636-2222

In-store shopping · In-store pickup · Delivery



Website



Directions

Martin's Pharmacy

4.6 (9)

Pharmacy · 409 South St

Open · Closes 8PM · (540) 635-3175

In-store shopping · Curbside pickup

[Website](#)[Directions](#)**Genoa Healthcare**

5.0 (1)

Pharmacy · 209 W Criser Rd # 100

Open · Closes 5PM · (540) 692-1176

In-store shopping

[Website](#)[Directions](#)**Valley Pharmacy**

4.0 (4)

Pharmacy · 351 Valley Health Way
Suite 210**Open** · Closes 6PM · (540) 635-0736

In-store shopping · In-store pickup

[Website](#)[Directions](#)**Gretchen L. Johnson, PharmD**

No reviews

Pharmacy · 140 W 11th St

Open · Closes 5:30PM · (540) 636-2028[Directions](#)**Emily M. Vescovi, PharmD**

5.0 (1)

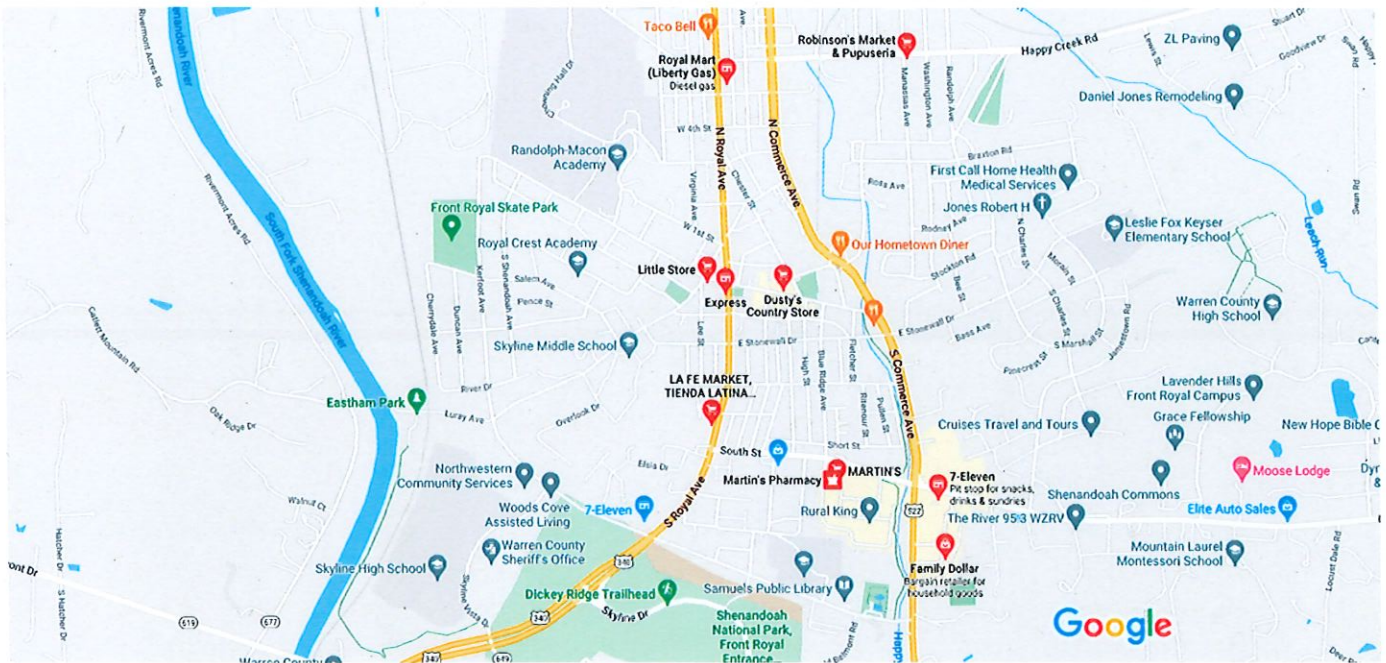
Pharmacy · 315 W 10th St

Open · Closes 5:30PM · (540) 636-6131

In-store shopping

[Directions](#)

Google Maps grocery store



Map data ©2022 1000 ft

Rating

Hours

All filters

Ad · martinsfoods.com

Shop Quality Fresh Groceries

Martin's Pharmacy

4.6 (9)

Pharmacy · 409 South St

Open · Closes 8PM · (540) 635-3175

✓ In-store shopping · ✓ Curbside pickup

**MARTIN'S**

4.2 (1,071)

Grocery store · 409 South St

Open · Closes 11PM · (540) 635-2249

In-store shopping · Curbside pickup · Delivery

**Robinson's Market & Pupuseria**

4.2 (87)

Grocery store · 603 E 6th St

Open · Closes 9PM · (540) 635-7066

In-store shopping · In-store pickup



Little Store

No reviews

Grocery store · Rt 606 Shenandoah
Shores**Open** · Closes 8:30PM · (540) 635-2028

In-store shopping

**Dusty's Country Store**

5.0 (4)

Gourmet grocery store · 216 E Main St

Open · Closes 6PM · (540) 692-9483

In-store shopping · Delivery

**LA FE MARKET, TIENDA LATINA Y PANADERÍA**

4.9 (14)

Supermarket · 413 S Royal Ave

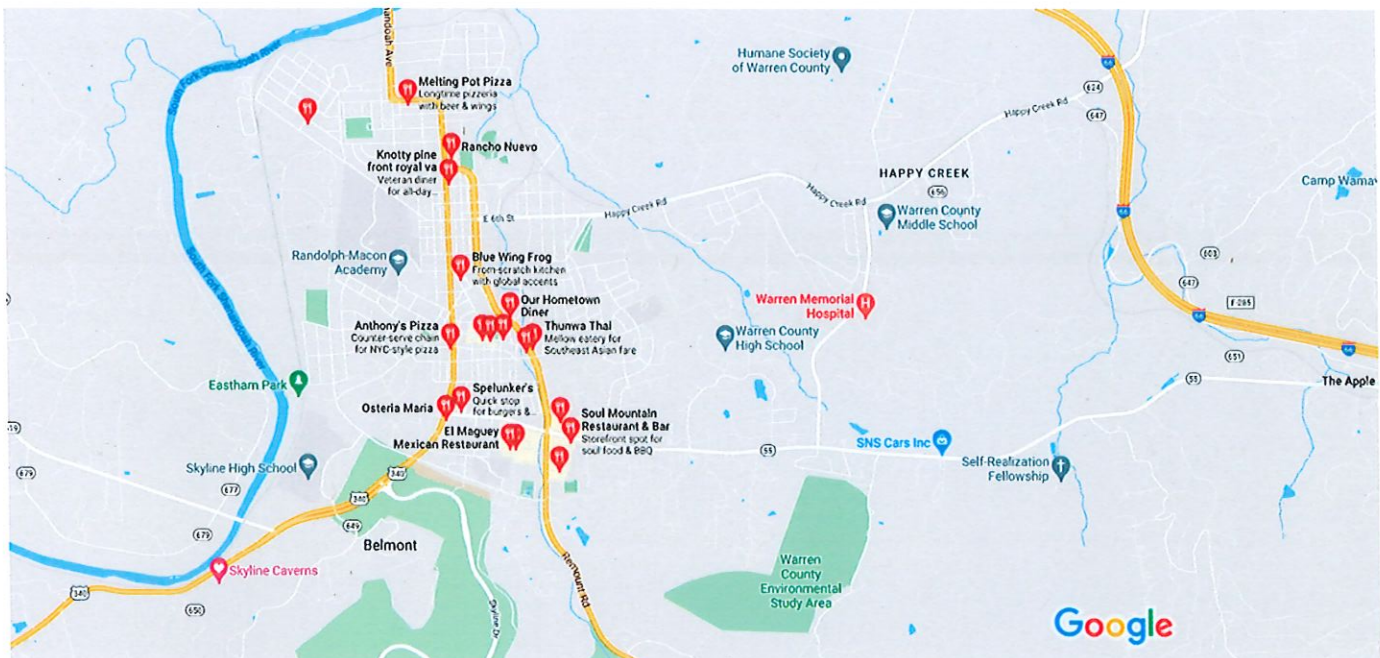
Open · Closes 8PM · (540) 749-2166

In-store shopping · Curbside pickup





Restaurants In the Area



Map data ©2022 2000 ft

Price

Rating

Cuisine

Hours



Main Street Mill Restaurant

4.2 (710) · \$\$

American · 500 E Main St

American fare in a 1922 cattle feed mill

Open · Closes 10PM

Dine-in · Takeout · No delivery



[RESERVE A TABLE](#)

Soul Mountain Restaurant & Bar

4.4 (518) · \$\$

Eclectic · 865 John Marshall Hwy

Storefront spot for soul food & BBQ

Open · Closes 9PM

Dine-in · Curbside pickup · No delivery



[RESERVE A TABLE](#)

Blue Wing Frog

4.5 (673) · \$\$

Eclectic · 219 Chester St

From-scratch kitchen with global accents

Open · Closes 9PM

Dine-in · Curbside pickup · No delivery

**Mom's Country Kitchen**

4.4 (763) · \$

American · 470 S Commerce Ave # B

Casual chain for homey American fare

Open · Closes 8PM

Dine-in · Curbside pickup · No delivery

[ORDER ONLINE](#)**Rancho Nuevo**

4.3 (778) · \$

Restaurant · 915 N Royal Ave

Open · Closes 10PM

Dine-in · Curbside pickup · Delivery

[ORDER ONLINE](#)**Our Hometown Diner**

4.6 (130) · \$

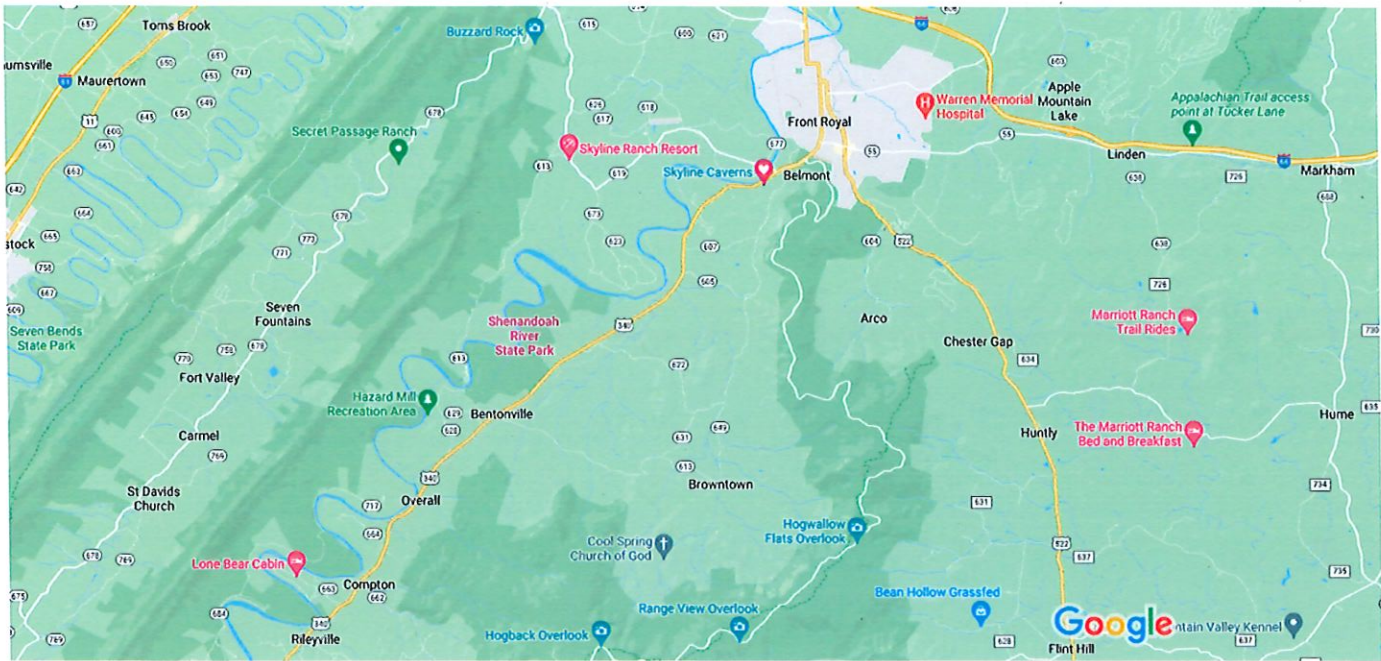
Restaurant · 107 Water St

Closed · Opens 5AM Sat

Dine-in · Takeout · No delivery



Google Maps Shenandoah National Park



Map data ©2022 Google

2 mi



Shenandoah National Park

4.8 ★★★★★ 14,134 reviews

National park



Directions



Saved



Nearby

Send to
phone

Share

Blue Ridge park encompassing 200,000 acres of forest, trails, waterfalls & Skyline Drive vistas.

Google Maps Shenandoah River State Park



Map data ©2022 200 ft



Shenandoah River State Park

4.7 ★★★★★ 1,212 reviews

Park



Directions



Saved



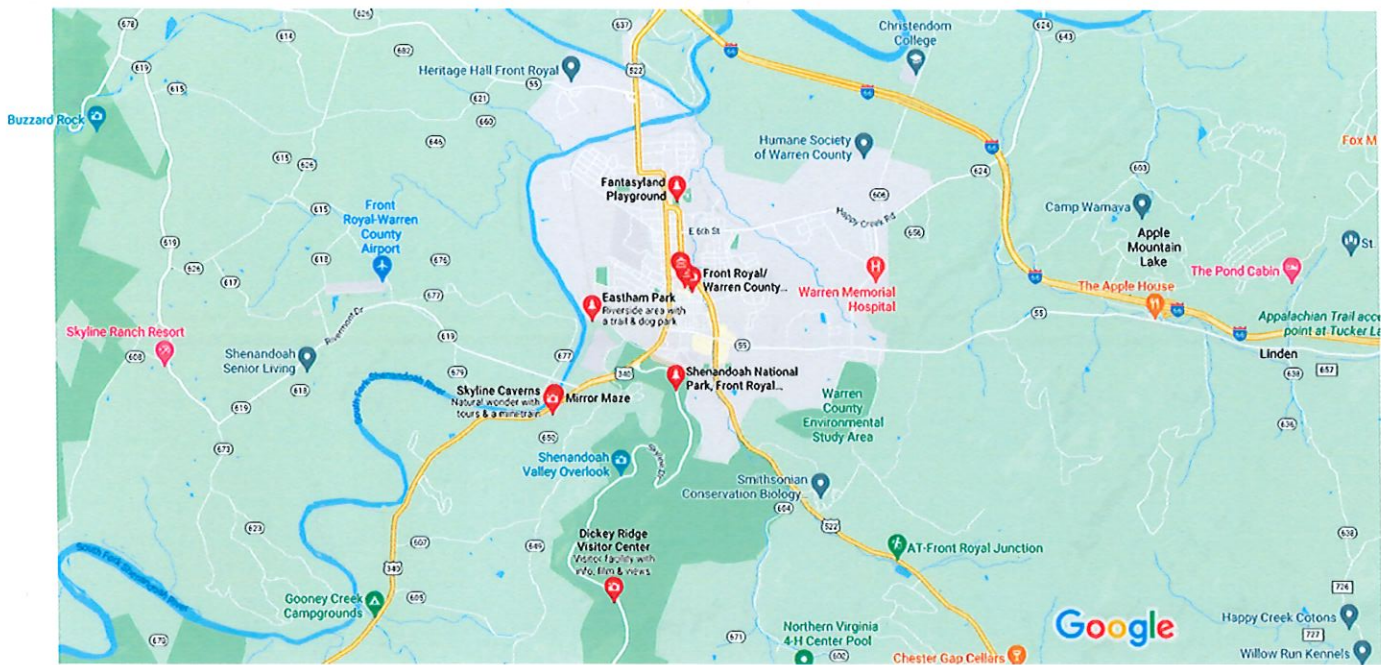
Nearby

Send to
phone

Share

Scenic park stretching along 6 miles of the Shenandoah, featuring boat launches & picnic areas.

Google Maps Things to do



Map data ©2022 Google

1 mi

Skyline Caverns

4.6 (1,773)

Tourist attraction · 10344 Stonewall

Jackson Hwy

Natural wonder with tours & a mini-train

Closed · Opens 9AM Sat

Saved in Favorites



Warren Rifles Confederate Museum

4.3 (51)

Tourist attraction · 95 Chester St

Closed · Opens 9AM Sat

"Historic place and things to see. Good place to visit"



Fantasyland Playgrounds

4.5 (385)

Tourist attraction · 903 Warren Ave.

Open · Closes 8PM

"Clean park with plenty of things for the kids to play on."



Mirror Maze

4.2 (15)

Tourist attraction · 10344 Stonewall
Jackson Hwy**Closes soon** · 5PM · Opens 9AM Sat

 "Six bucks is a little steep to get in but \$18 for the three of us was ..."

Hupp's Hill Historical Park

4.7 (52)

Tourist attraction · 33229 Old Valley Pike

Closed · Opens 10AM Sat

 "We stopped here today to make a pitt stop for me, my wife, and our ..."

Virginia Beer Museum

4.6 (300)

Tourist attraction · 16 Chester St

Open · Closes 10PM

 "Depends on what each person is used to spending."



Town of Front Royal Planning and Zoning

102 E. Main St.
PO Box 1560
Front Royal, VA 22630

Main :540-635-4236
Fax: 540-631-2727
planning@frontroyalva.com

SPECIAL USE PERMIT CHECK LIST FOR SHORT TERM RENTAL

Applicant Name: TABATHA LUSKEY
Property Owner: LUSKEY PROPERTIES LLC
Site Address: 302 BLUE RIDGE AVE.

- ☒ Y ☐ N 1. Driveway or designated and approved parking area
- ☒ Y ☐ N 2. Refuse area
- ☒ Y ☐ N 3. Property Management Plan available on site
- ☒ Y ☐ N 4. Smoke detectors
- ☒ Y ☐ N 5. Carbon monoxide detector
- ☒ Y ☐ N 6. Fire extinguisher visible in all kitchen/cooking areas.
- ☒ Y ☐ N 7. Emergency evacuation plan available on site
- ☒ Y ☐ N 8. Chapter 106 Noise ordinance available on site

NOTES: SITE IS IN FULL COMPLIANCE WITH
TOWN CODE 175.151

☒ APPROVED ☐ DENIED

Inspected By: [Signature] Date: 11/30/22

AGENDA ITEM – 7C

Town of Front Royal, Virginia

Planning Commission Special Meeting Agenda

☐ Consent Action ☐ Administrative Action ☒ Public Hearing ☐ Discussion

Agenda Item: Comprehensive Plan

MEETING DATE: December 21, 2022

SUMMARY: Certification and recommendation of the new Comprehensive Plan document which shall update and supersede the Front Royal Comprehensive Plan, adopted March 23, 1998.

Chapter 22, Article 3: § 15.2-2223 through § 15.2-2232 of the Code of Virginia outlines the legal authority and requirement that all localities prepare, recommend, and adopt a Comprehensive Plan.

STAFF RECOMMENDATION: Staff recommends certification of the Comprehensive Plan.

DRAFT MOTION:

Approved

"I move that the Planning Commission forward a recommendation of approval to Town Council and certify the Comprehensive Plan document in accordance with Chapter 22, Article 3: § 15.2-2223 through § 15.2-2232 of the Code of Virginia.

NOTE: This is only a draft motion. Alternative motions are also welcome.

PLANNING COMMISSION ACTION:

☐ Approved ☐ Approved w/ Conditions ☐ Denied ☐ Other

Connie Potter

From: Lauren Kopishke
Sent: Friday, December 16, 2022 11:46 AM
To: Connie Potter
Subject: FW: Comprehensive plan support

Connie can you add this as public comment for the Comp plan? Maybe just create a public comment folder.

-----Original Message-----

From: PaulaofOverall <paulaofoverall@embarqmail.com>
Sent: Friday, December 16, 2022 9:16 AM
To: Lauren Kopishke <lkopishke@frontroyalva.com>
Subject: Comprehensive plan support

Dear Supervisors,
Please vote YES to the comprehensive plan as it is written. It is the best plan to support well managed growth, business interests and community development.
Paula Atwood
363 Overall Rd
Bentonville VA 22610

Sent from my iPhone

AGENDA ITEM – 7D

Town of Front Royal, Virginia

Planning Commission Special Meeting Agenda

☐ Consent Action

☐ Administrative Action

☒ Public Hearing

☐ Discussion

Agenda Item: Rezoning Application # 2200422

MEETING DATE: December 21, 2022

SUMMARY: This agenda item is for a rezoning application requesting to amend the previously approved proffers for the subdivision entitled ANNA SWAN EST identified on Tax Parcels #20-A21-2-1 and Tax Parcel # 20A20-2-11 dated February 2, 2012. The proposed changes include modifications of the monetary proffers, lot sizes and number of dwelling units.

STAFF RECOMMENDATION: Staff recommends approval with conditions. Staff has concerns about the ability to process the volume of projected permits in a timely fashion but does not believe this to be grounds for disapproval. The recommended conditions will allow the applicant to move forward while ensuring the Town's interests are protected. There is concern that the impacts of development are not sufficiently addressed with the amount of cash proffered to the County. With that said, the applicant is proposing to develop 335 dwelling units in a clustered development designed community. This development is in line with the Town's comprehensive plan and would provide needed housing stock.

DRAFT MOTION:

Approved with Conditions

"I move that the Planning Commission forward a recommendation of approval to Town Council for Application # 2200422 to amend the existing proffers dated February 2, 2012, with the following conditions:

1. The applicant amends the language of section 3.1 to state "In the event that the Front Royal Town Council approves these Amendments, such approval will be deemed an acknowledgment by the Front Royal Town Council that (i) Leach Run Parkway ("LRP") has been completely constructed and (ii) Heptad, LLC complied with any prior approved Proffers pertaining to the dedication of right of way, with the exception of the payment of the related cash proffers".
2. The applicant is able to provide adequate residential parking per 175-104, 175-105, & 148-48 of the Town Code.
3. The applicant amends the language of 7.5.1 to remove the word "the" before Warren County.

4. The applicant will amend the proffer statement to include language addressing their responsibility to expand and install the on-site utility infrastructure in accordance with Town Code Chapter 134.
5. The applicant will amend their proffers to include language addressing their responsibility for the cost of installing stormwater facilities on site.

Denied

"I move that the Planning Commission forward a recommendation of denial to Town Council for Application # 2200422 to amend the existing proffers dated February 2, 2012, because the proposed proffer amendments do not entirely mitigate the impact of development."

NOTE: This is only a draft motion. Alternative motions are also welcome.

PLANNING COMMISSION ACTION:

☐ Approved ☐ Approved w/ Conditions ☐ Denied ☐ Other

TOWN OF FRONT ROYAL
DEPARTMENT OF PLANNING & ZONING

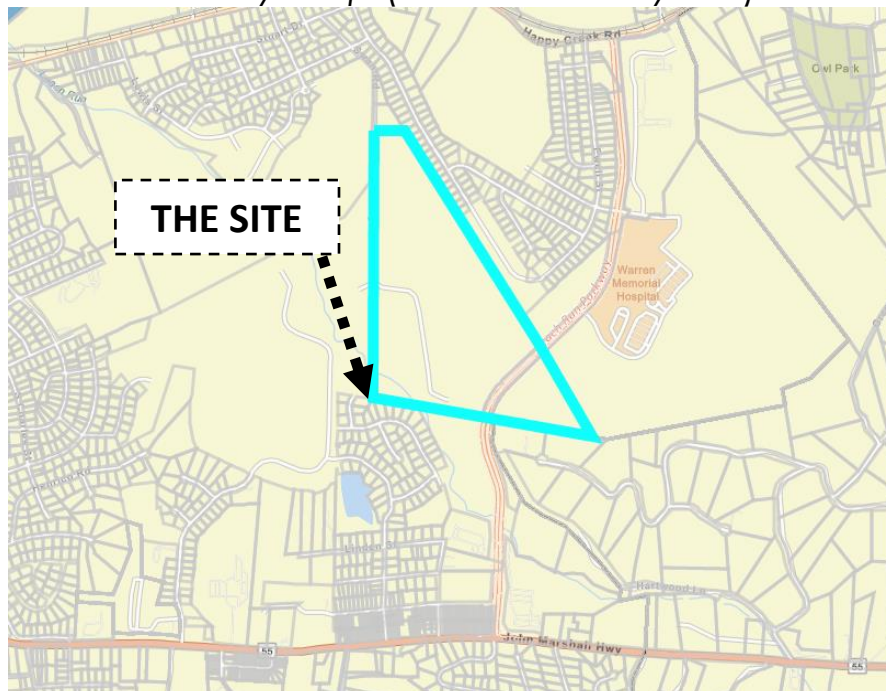


STAFF REPORT FOR THE DECEMBER 18, 2022 PLANNING COMMISSION MEETING

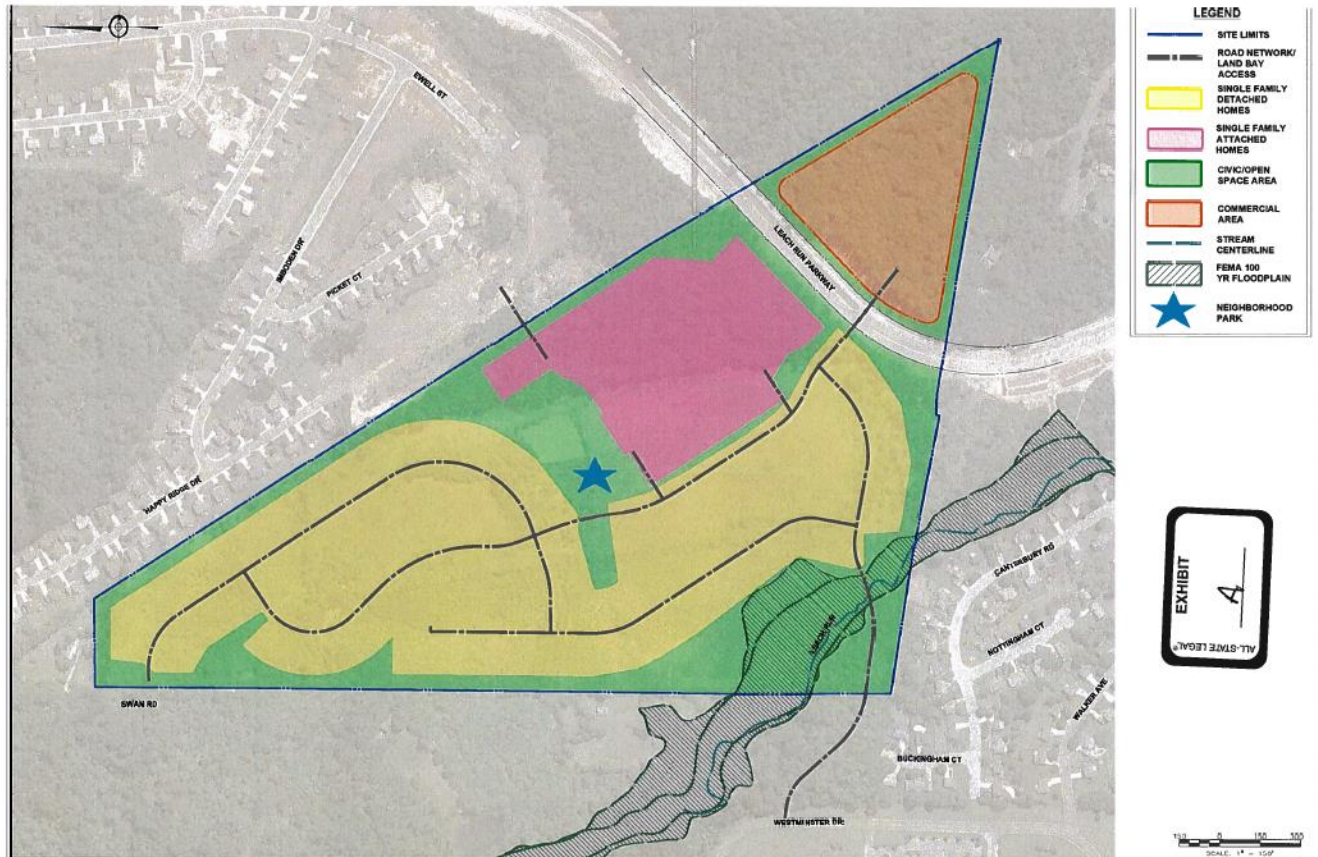
GENERAL INFORMATION:

Application #	2200422
Applicant	HEPTAD LLC
Summary of Request	A request to amend the previously approved proffers for the subdivision entitled ANNA SWAN EST identified on Tax Parcels #20-A21-2-1 and Tax Parcel # 20A20-2-11. The proposed changes include modifications of the monetary proffers, the type and number of dwelling units and proposed lot size.
Site Addresses	None (Vacant Land)
Zoning District	PND- Planned Neighborhood Development
Tax Identification	Tax Parcels #20-A21-2-1 & #20A20-2-11
Location	The property is located on the eastern side of the Town beside Williamsburg Estates subdivision to its southwest, and Happy Creek Knolls subdivision to its northeast. The Warren County school complex with the high school and elementary school is located west of the property. Leach Run traverses across the far southwest corner of the property

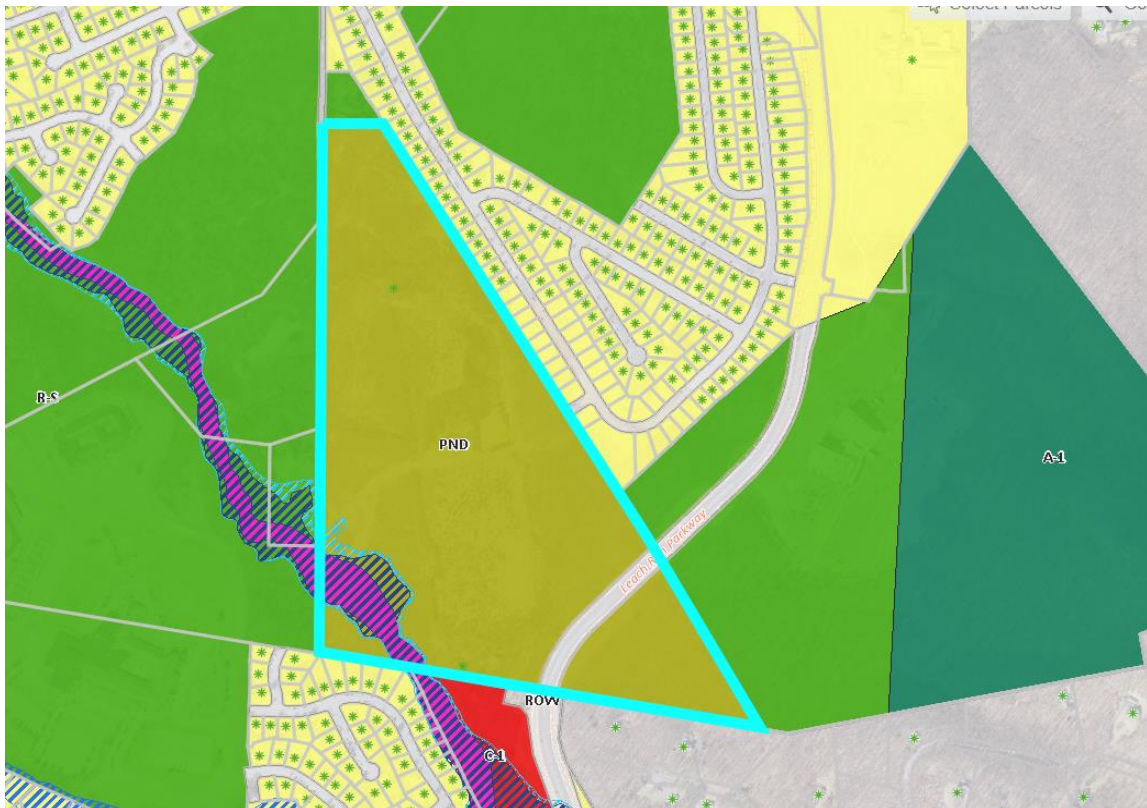
Vicinity Map (Warren County GIS)



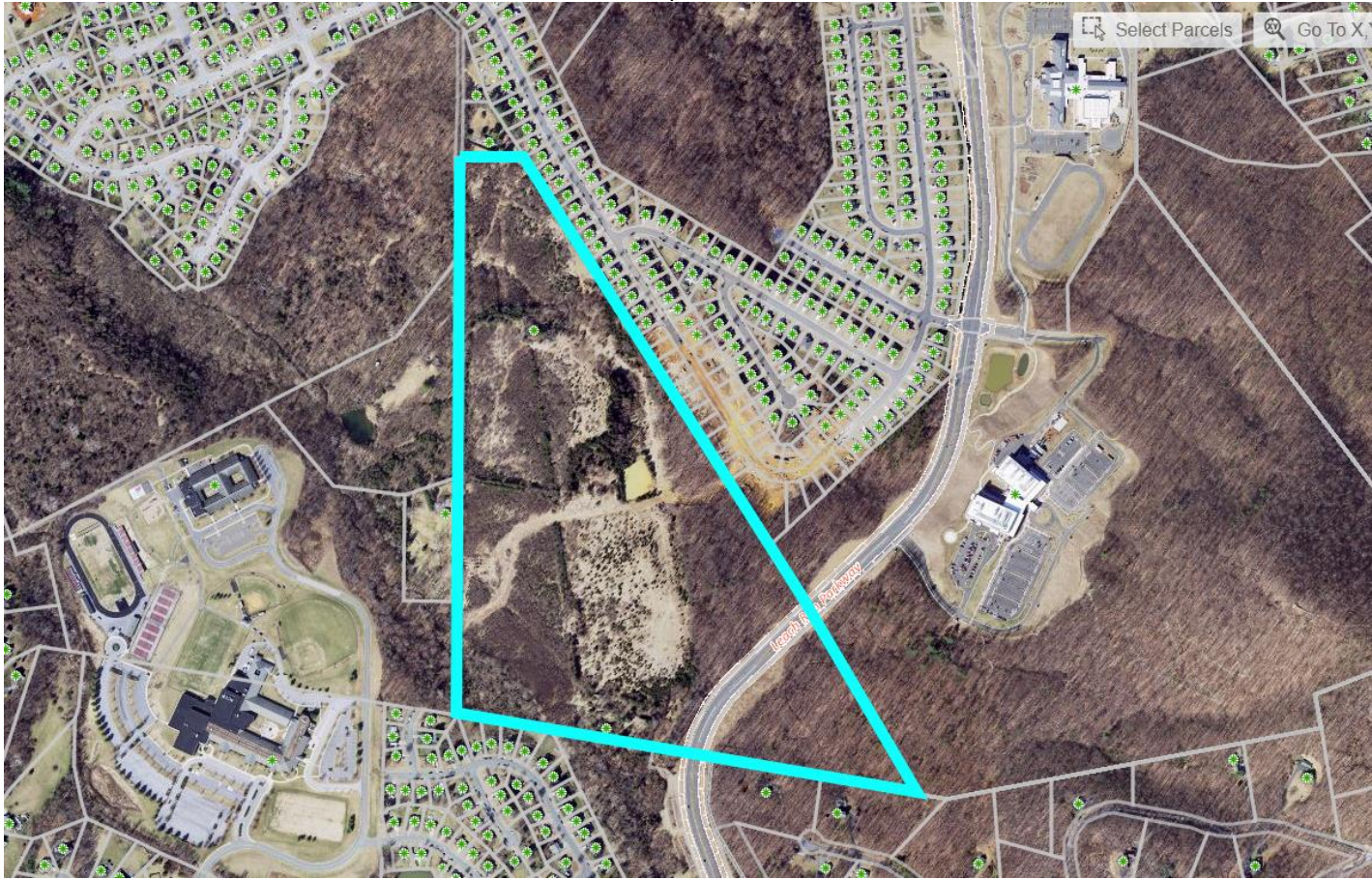
Map of HEPTAD Properties (Survey Illustration)



Town Zoning Map (Warren County GIS)



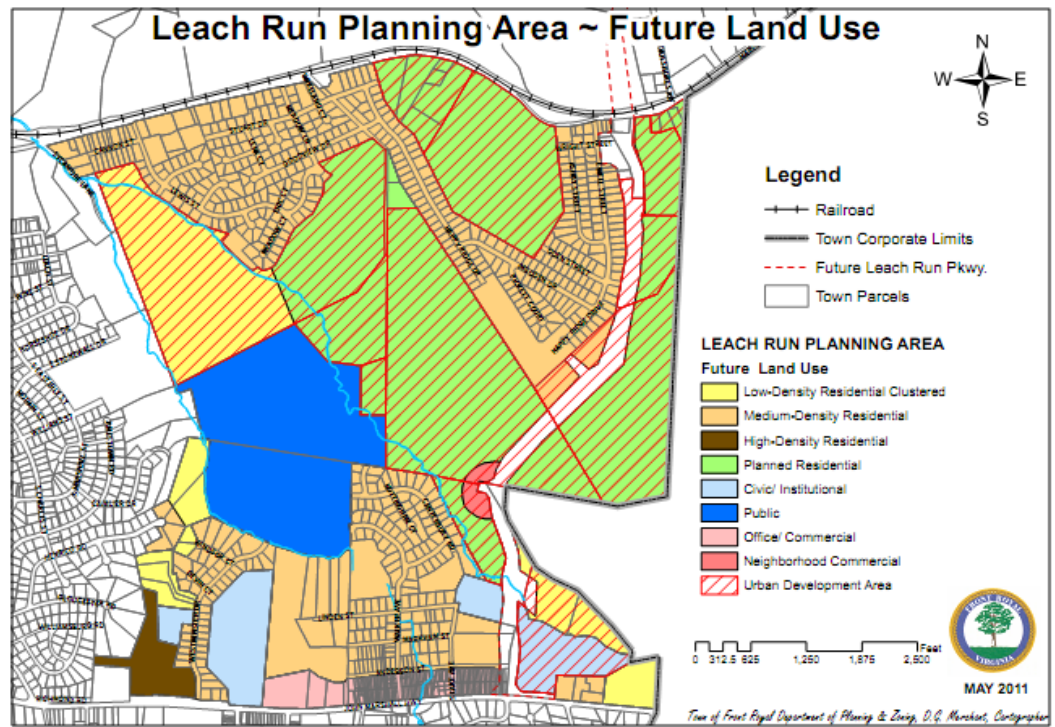
Aerial Map



SUPPLEMENTAL INFORMATION:

Summary

The property is located in the Leach Run Planning Area and consists of 98.25 acres that is currently zoned Planned Neighborhood Development (PND) District. The existing proffers propose development consisting of a residential of 450 du (dwelling units), creating a density of 4.58 du per acre. The residential dwellings are planned to consist of a mixture of single-family detached, single-family attached, and multifamily dwelling units. Town Code Section 175-37.09, permits a density of up to six (6) du per acre in the PND District, subject to approval of a density bonus by Town Council. The Future Land Use Plan recommends the future use of the property as "planned residential." The property is overlaid with the UDA designation, which means that it has been designated as a potentially suitable location for relatively higher development densities (4 du/ acre minimum). Modern planning principles generally promote higher density and clustered development in growth areas to avoid costly construction and maintenance of infrastructure to serve development in outlying areas and to preserve open space.



The original HEPTAD rezoning application was initially submitted to the Town on July 5, 2005. The property was simply referred to as the Swan Farm at that time. On February 1, 2012, Town council approved an amendment to the original proffers. The newly proposed amendments will permit up to 335 du, 165 single-family detached and 170 single-family attached. This calculates to a gross residential density of 3.4 du/acre. The proposed amendments also include changes to the currently approved lot sizes, and modifications to the cash proffers.

Review Procedure

Adoption or revision of proffers requires the same procedures as a rezoning or ordinance amendment. The submission must first be reviewed by the Planning Commission, and the Planning Commission must forward recommendations to Town Council. Town Code 175-146.D. specifies that the Planning Commission must take action within 90 days after the date of the first regular meeting of the Commission. It is important to note that when the submission changes, such as when a property owner revises the proffers during the review process, the 90-day time period resets.

Town Code 175-150

CONDITIONAL ZONING PROFFERS IN REZONING APPLICATIONS; HIGH GROWTH PERIODS

As provided in Virginia Code Section 15.2-2298, notwithstanding any contrary provisions in Front Royal Town Code Section 175-149,

the provisions of this section shall apply during periods wherein the Town and/or County of Warren has had a population growth of ten percent (10%) or more from the next-to-latest decennial census year, based on population reported by the United States Bureau of the Census, or during periods when Warren County is contiguous with at least three (3) counties which have experienced ten-percent population growth or more as described herein.

(Amended VA Code Reference and Other Amendments 9-25-00-Effective Upon Passage)

(Amended by Adding "Town and/or" 6-22-15-Effective Upon Passage)

A. Owners of land making application to the Town of Front Royal for a zoning reclassification of their land in the Town of Front Royal may voluntarily proffer in writing, as part of the rezoning petition, certain conditions, subject to the following requirements:

1. The rezoning of the land must itself give rise to the need for the conditions.
2. The conditions must have a reasonable relation to the rezoning of the land.
3. All conditions shall be in conformity with the Comprehensive Plan for the Town of Front Royal.
4. The conditions may include a cash contribution to the Town of Front Royal or contributions of personal property and services.
5. The conditions may include dedication of real property for open space, parks, schools, fire departments or their public facilities.
6. The conditions may include payment for or construction of off-site improvements.
7. All conditions shall be in writing and shall be submitted to the Town of Front Royal as part of the rezoning application prior to public hearing before the governing body.

(Amended "7" by adding "governing body" 9-25-00-Effective Upon Passage)

8. All applicable requirements of the Virginia Code shall be complied with, including, but not limited to, the requirements of §15.2-2298.

(Amended by adding "8" 6-22-15-Effective Upon Passage)

B. No proffer shall be accepted under this section unless and until

the Town has adopted a capital improvement program. In the event that the proffered conditions include a dedication of real property or payment of cash, such property shall not transfer and such payment of cash shall not be made until the facilities for which such property is dedicated or such cash is tendered are included in the capital improvement program. However, the Town may accept proffered conditions which are not normally included in the capital improvement program. Proffered conditions shall provide for the disposition of dedicated property or cash payments in the event that said property or cash payments are not used for the purposes for which they are proffered.

C. Once preferred and accepted as part of an amendment to this chapter, the conditions shall continue in full force and effect until a subsequent amendment changes zoning of the property covered by the conditions; provided, however, that such conditions shall continue if the subsequent amendment is part of a comprehensive implementation of a new or substantially revised Zoning Ordinance.

D. The Zoning Administrator shall administer and enforce the conditions attached to a rezoning or amendment to the Zoning Map, including:

1. Ordering by written notice the remedy of any noncompliance with zoning conditions.
2. Bringing legal action to ensure compliance with such conditions, including injunction, abatement or other appropriate action or proceeding.
3. Requiring a guaranty satisfactory to the governing body in an amount sufficient for and conditioned upon the construction of any physical improvements required by the zoning conditions or a contract for the construction of such improvements and the contractor's guaranty in like amount and so conditioned, which guaranty shall be reduced or released by the governing body or agent thereof upon the submission of satisfactory evidence that the construction of such improvements has been completed, in whole or in part.

E. The failure to meet all conditions shall constitute cause to deny the issuance of any required use, occupancy or building permit as may be appropriate.

F. The Zoning Map shall show by an appropriate symbol on the map the existence of conditions attached to zoning. The Zoning Administrator shall keep in his office and make available for public

	inspection a Conditional zoning index. This index shall provide ready access to the ordinance creating conditions in addition to the regulations provided for in a particular zoning district or zone. G. The Zoning Administrator shall record in the deed book records of the Office of the Clerk of the Circuit Court of Warren County a certificate with the name of the property owner and a description of the property and indicating that the property is subject to conditional zoning as shown on the Town of Front Royal Zoning Map. (Added Entire Section 8-28-89-Effective Upon Passage)
Proffer Definition	A proffer is a voluntary offer by a landowner submitted with a rezoning application to perform an act or donate money, a product, or service with the intent of justifying the appropriateness of the proposed rezoning application. The rezoning of land with proffers is referred to in the Virginia Code 15.2-2296 as conditional zoning. Virginia Code 15.2-2201, describes conditional zoning as a means to allow reasonable conditions (proffers) governing the use of property, where the conditions are in addition to the regulations provided for in a particular zoning district. <i>Jefferson Green Unit Owners Association, Inc. v. Gwinn, 262 Va. 449 (2001)</i> established that when a locality accepts proffers they become part of the zoning ordinance.
Proposed Proffer Amendments	Below is a summary of the proffer changes proposed by the Applicant: ❖ Transportation Modifications ➤ 3.1 Leach Run Parkway. In the event that the Front Royal Town Council approves these Amendments, such approval will be deemed an acknowledgment by the Front Royal Town Council that (i) Leach Run Parkway ("LRP") has been completely constructed and (ii) Heptad, LLC complied with any prior approved Proffers pertaining to the dedication of right of way for construction of LRP. Staff Comment: <i>the applicant should amend the statement to read, "... pertaining to the dedication of right of way, with the exception of the payment of the related cash proffers."</i> ➤ 3.4 Interparcel Connection. The Applicant's Revised Functional Use Plan – Land Bay Layout accommodates a future interparcel connection to the Happy Creek Knolls

subdivision. The Applicant shall provide the necessary right-of-way dedication upon request by the Town for such interparcel connection, at no cost to the Applicant.

Staff Comment: *staff supports additional interparcel connections.*

❖ **Residential**

- 4.1.1 The maximum number of dwelling units to be constructed on the Property shall not exceed three hundred thirty (335) dwelling units.

Staff Comment: *the applicant has reduced the total number of dwelling units from 450 to 335. The metric data provided by the most recent Comprehensive Plan study/rewrite shows that the Town has insufficient housing to support projected population growth. Without the rezoning to PND the property would have supported the development of 171 dwelling units. This project essentially doubles the number of proposed units.*

- 4.1.2. In general conformance with the Master Plan, as amended, the single-family detached land bays may contain a maximum of one hundred seventy (170) single family detached dwelling units one hundred sixty five (165) The Applicant reserves the right to adjust the above mix of housing unit types but in no case shall the total number of units exceed three hundred thirty five (335).

Staff Comment: *staff supports the proposed mix of housing units.*

❖ **Phasing**

- The Applicant hereby proffers that residential development shall be phased such that building permits shall not be issued for more than one hundred (100) dwelling units every twelve (12) months.

Staff Comment: *staff has concerns about the ability to process an additional 100 zoning permits due to current staffing levels. Typical zoning permit review takes two weeks, and this department processes an average of 34 new dwelling units/year. The result is that review times may exceed two weeks.*

❖ **Design Guidelines**

- Reduction in lot size from 50'x60' to 46'x60'

Staff Comment: *the loss of area is equal to 240 sf of lot size. As long as the applicant can provide adequate onsite parking, staff has no concerns over lot size.*

❖ **The proposed proffers modify the per-unit cash proffers.**

- Town Proffers

TOWN OF FRONT ROYAL PROFFERS	
SINGLE-FAMILY ATTACHED (170 UNITS)	6039.72
DEDICATION OF LEACH RUN PARKWAY	1041.33
TOTAL PER UNIT	4998.39
SINGLE-FAMILY DETACHED (165 UNITS)	7910.36
DEDICATION OF LEACH RUN PARKWAY	1041.33
TOTAL PER UNIT	6869.03

- 7.1 The Applicant shall contribute to the Town of Front Royal, Virginia, a one-time cash contribution in the amount of \$7,910.36 for each residential single family detached (SFD) dwelling unit and in the amount of \$6,039.72 for each single family attached (SFA) dwelling unit constructed on the Property, which contribution shall be used by the Town of Front Royal to defray the costs and expenses associated with the design and construction of the Leach Run Parkway Improvements. The above contribution amounts were calculated using the Proffer Analysis dated September 8, 2022, and prepared by Greenway Engineering, Inc. This per-unit contribution shall be calculated at the time of approval of the building permit for construction of each residential dwelling unit on the Property and shall be payable prior to the issuance of the occupancy permit for said dwelling unit.
- 7.2 As per the Proffer Analysis dated September 8, 2022 and prepared by Greenway Engineering, Inc., the fair

market value of the land previously dedicated by the Applicant as part of Leach Run Parkway was \$234,300.00. Therefore, notwithstanding the foregoing Proffer 7.1.1, the Applicant shall be entitled to a credit against the proffer amounts specified in Proffer 7.1.1 above equal to \$1,041.33 per residential dwelling unit (whether SFD or SFA)

➤ County Proffers

COUNTY OF WARREN PROFFERS	
AMOUNT PER DWELLING UNIT	4247.99
NEIGHBORHOOD PARK CREDIT PER UNIT	1044.78
TOTAL PER UNIT	3203.21

- 7.5.1 The Applicant shall contribute to the Warren County, Virginia, a one-time cash contribution in the amount of \$4,247.99 .00 for each residential dwelling unit (SFA or SFD) constructed on the Property, which contribution shall be used by Warren County to support capital improvements relating to the impacts of the residential development on the Warren County Public Schools. This contribution was calculated using the Proffer Analysis dated September 8, 2022 and prepared by Greenway Engineering, Inc. This per-unit contribution shall be calculated at the time of approval of the building permit for construction of each residential dwelling unit on the Property and shall be payable prior to the issuance of the occupancy permit for said dwelling unit.

Staff Comment: Remove "the" before Warren County.

- 7.5.4 As per the Proffer Analysis dated September 8, 2022 and prepared by Greenway Engineering, Inc., the fair market value of the land to be dedicated by the Applicant for the Neighborhood Park is \$350,000.00. Therefore, the Applicant shall be entitled to a credit against the proffer amounts specified in Proffer 7.5.1 above equal to \$1,044.78 per residential dwelling unit (whether SFD or SFA).

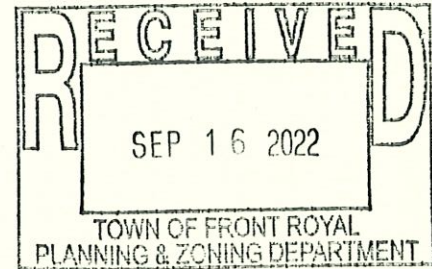
	Staff Comment: The existing 2012 proffers state: First 335 dwelling units: The applicant has voluntarily offered \$18,000 for each single family detached (SFD) dwelling unit, \$11,000 per single family attached (SFA) dwelling unit and \$9,000 for each multi-family (MDU) dwelling unit for the first three hundred and thirty-five (335) dwelling units. These are designated for the planning, design, right-of-way acquisition and/or construction of Leach Run Parkway. In addition to the above funds to the Town, the applicant has agreed to pay \$5,500 per dwelling unit to Warren County Public Schools. Final 115 dwelling units: The applicant has voluntarily offered to pay \$9,000 per SFD dwelling unit, \$5,500 per SFA dwelling unit, and \$4,500 per MDU dwelling for the final one hundred and fifteen (115) dwelling units. These funds are designated for the planning, design, right-of-way acquisition and/or construction of Leach Run Parkway. In addition to the above funds to the Town, the applicant will pay \$9,000 per SFD dwelling unit, \$5,500 for each SFA dwelling unit, and \$4,500 for each MDU to Warren County Public Schools for the final 115 dwelling units. The total proposed amount proffered the Town after credits is approximately \$1,983,116.25. The total proposed amount proffered the County is approximately \$1,073,075.35. Warren County estimates the impact of development to cost \$8770.00 per Single-family detached Unit and \$11,013.00 per Single-family attached unit. Warren County is requesting a total of \$3,319,260.00 and the applicant is offering \$1,073,075.35 creating a deficit of \$2,246,184.65 for the impact of development per Warren County. The proposed total to both entities is approximately \$3,056,191.60. However, the project is smaller by 115 dwelling units.
Attorney Comments	Water and Sewer Is the applicant proffering to connect to public water and sewer? If

	so, are they solely responsible for the cost thereof? Staff will address this comment with a recommended condition. Stormwater Infrastructure Is the applying proffering to include stormwater facilities on the site? If so, are they solely responsible for the cost thereof? Staff will address this comment with a recommended condition. The applicant is responsible for the cost and installation of stormwater mitigation on site.
Attachments	1) Applicant's Application 2) Clean Copy of Proposed Proffers 3) Redline Version of Proposed Proffers 4) Existing Proffers (2012) 5) Proffer Impact Analysis prepared by Greenway Engineering 6) Design Guidelines 7) MOU between Town and County for proffer analysis 8) Warren County Staff Comments 9) Ch 11 Land Use Law Book

RZ 05-07-56
2200 422

JOSEPH F. SILEK, JR., PC

43 CHESTER STREET
POST OFFICE BOX 602
FRONT ROYAL, VIRGINIA 22630
TELEPHONE: (540) 635-9415
FACSIMILE: (540) 635-9421
EMAIL: JSILEK@SILEKPC.COM



September 16, 2022

Lauren Kopishke
Planning Director
Town of Front Royal, Virginia
102 East Main Street
Front Royal, Virginia 22630

**Re: Heptad, LLC – Application to Amend Zoning Proffers
& Statement of Justification**

DELIVERED BY HAND DELIVERY

Dear Lauren:

As per our previous conversation, kindly treat this letter as Heptad, LLC's application to amend its Zoning Proffers which were previously approved by the Town Council a decade ago. Please find enclosed with this letter the Amended Proffers as well as the Proffer Analysis and revised Design Guidelines prepared by Greenway Engineering. Moreover, please treat this letter as Heptad's statement of justification for Heptad's request for proffer amendments. Kindly direct all communications and copies of staff reports public meeting packets regarding this application to my attention.

As noted above, the Town Council approved the rezoning for the Heptad project a decade ago. Despite its best efforts over several years, Heptad had previously been unable to consummate a sales contract with an entity to develop the Heptad project. I am pleased to state that Heptad has entered into a conditional sales contract with Van Metre Homes to bring this project to fruition.

Heptad has determined that, for essentially two (2) reasons, changes to the previously approved Rezoning Proffers are needed. First, Van Metre's vision for the Heptad project involves a reduced scope in terms of the type and total number of residential units. Van Metre's vision does not include the development of mutli-family residential dwelling units. Rather, it wishes to focus on single family detached residential units and single family attached unit (*i.e.*, townhomes). It also wishes to reduce the total number of units from the previously approved 450 to 335.

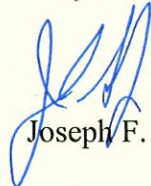
Lauren Kopishke
Planning Director
September 16, 2022
Page 2 of 2

Second, at the time that the original Rezoning Proffers were approved, both Heptad and the Town contemplated that the construction of Leach Run Parkway would not only take some time, but that Heptad would need to dedicate land for, and construct a portion of, the Parkway. However, due to the efforts of the Front Royal/Warren County EDA, Leach Run Parkway was completed considerably ahead of the timeframe envisioned by the Town and Heptad. Indeed, after Heptad satisfied its Proffer obligation and dedicated a portion of the Parkway, Heptad was not required to participate in the Parkway's construction.

The enclosed Amended Proffers address the above two developments by revising certain design guidelines and removing provisions relevant to the Parkway rendered moot by the EDA's actions. You will also notice that these developments have resulted in cash proffer amounts being reduced overall. Such reductions are in line with the enclosed Proffer Analysis performed by Greenway Engineering. Greenway's Proffer Analysis is based on the application of Virginia Code §15.2-2303.4 to the changed particulars of this project.

I am able to inform you that the Town Council's acceptance of the enclosed Amended Proffers constitutes the last condition of the parties' contract requiring a non-administrative act by the Town. Hence, this project can finally be on its way to becoming a reality. On behalf of Heptad, LLC we respectfully request that, upon complying with the statutory requirements regarding such amendments, the Town Council will approve the enclosed Proffer Amendments. I would like to thank you, the Town Planning Commission and the Town Council in advance for their thoughtful consideration of this application. If you have any questions or concerns, please do not hesitate to contact me.

Very Truly Yours,

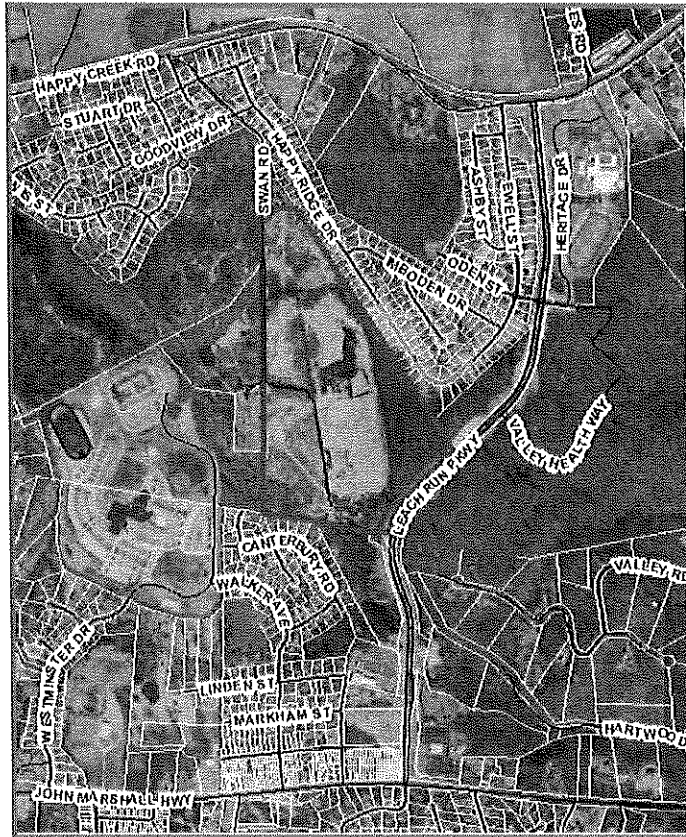


Joseph F. Silek, Jr.

cc: Client

HEPTAD, LLC – SWAN ESTATES

PROFFER ANALYSIS



September 8, 2022

**TM #20A21-2-1 and 20A20-2-11
Town of Front Royal, Virginia**

Prepared For: HEPTAD, LLC

Prepared By: Christopher Mohn, AICP
Vice President/Director of Planning
Greenway Engineering, Inc.
151 Windy Hill Lane
Winchester, VA 22602
(540) 662-4185
cmohn@greenwayeng.com

STATEMENT OF PURPOSE

The purpose of this Proffer Analysis is to satisfy the Town of Front Royal's request that HEPTAD LLC provide information to demonstrate that the monetary contributions included in the proposed amended proffer statement for the Swan Estates project (the Project) conform to the provisions of the Code of Virginia applicable to residential proffers. Specifically, the amended and reenacted Section 15.2-2303.4 of the Code of Virginia (the "Residential Proffer Legislation") effective after July 1, 2019, places certain limitations on proffers for residential rezoning cases filed after July 1, 2016, or July 1, 2019, as applicable.

As stipulated by the Residential Proffer Legislation, a local government may only request or accept a proffer if it addresses an impact that is specifically attributable to a proposed new residential development, and, if it is an offsite proffer, addresses an impact to an offsite public facility, such that (i) the new residential development creates a need, or an identifiable portion of a need, for one or more public facility improvements in excess of existing public facility capacity at the time of the rezoning, and (ii) each such new residential development applied for receives a direct and material benefit from a proffer made with respect to any such public facility improvements. For the purposes of the statute, a locality may base its assessment of public facility capacity on the projected impacts specifically attributable to the new residential development.

The Residential Proffer Legislation establishes four categories of offsite public improvements and facilities for which proffers may be accepted, as follows:

- **Public School Facility Improvements:** construction of new primary and secondary public schools or expansion of existing primary and secondary schools, to include all buildings, structures, parking, and other costs directly related thereto;
- **Public Safety Facility Improvements:** construction of new law enforcement, fire, emergency, medical, and rescue facilities or expansion of existing public facilities, to include all buildings, structures, parking and other costs directly related thereto;
- **Public Park Facility Improvements:** construction of public parks or improvements and/or expansion of existing public parks, with "public parks" including playgrounds and other recreational facilities;
- **Public Transportation Facility Improvements:** construction of new roads; improvement or expansion of existing roads and related appurtenances as required by applicable standards of the Virginia Department of Transportation, or the applicable standards of a locality, and construction, improvement, or expansion of buildings, structures, parking, and other costs directly related to transit.

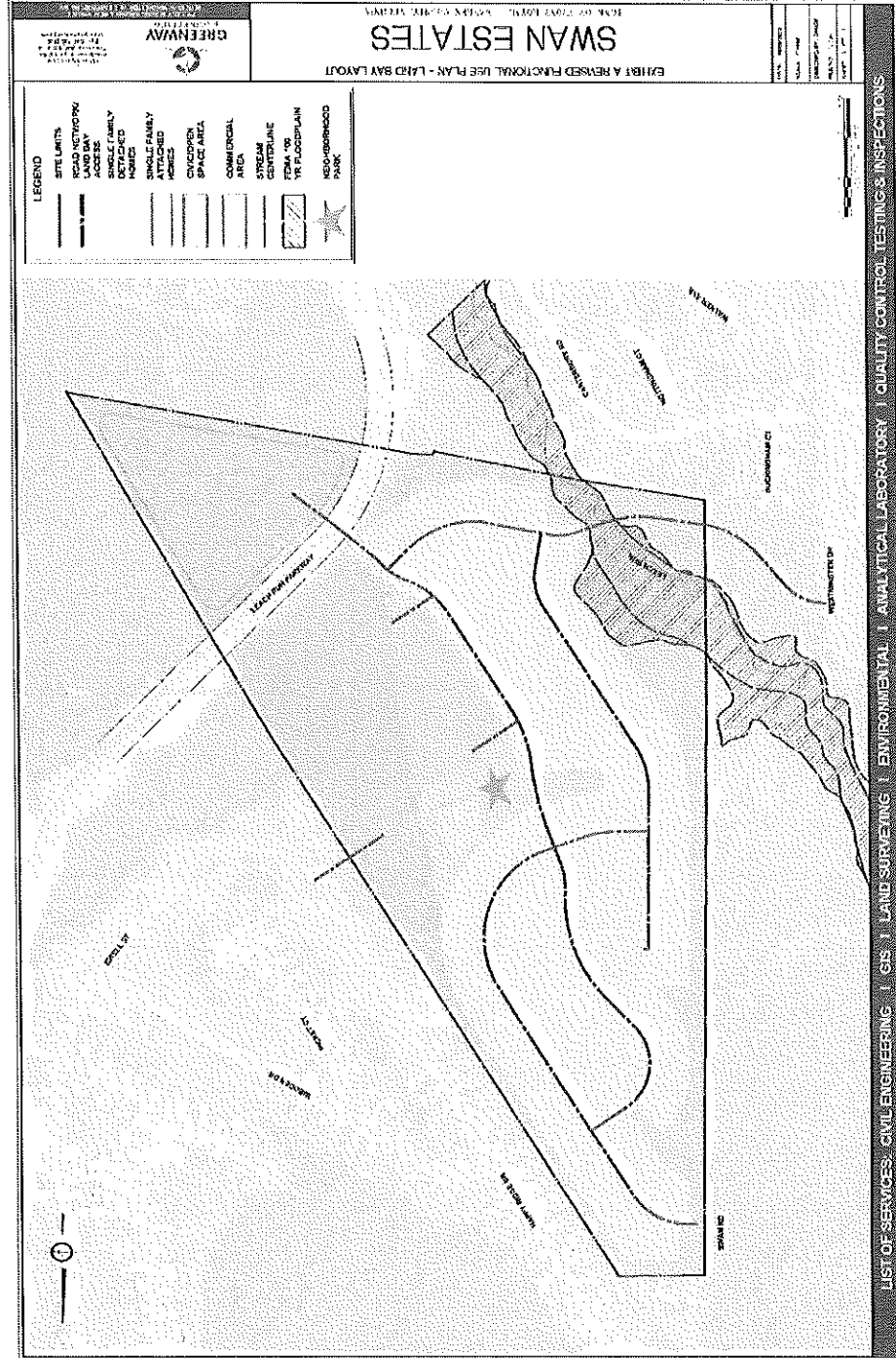
The amended HEPTAD, LLC proffer statement includes proffers designated for the **public school** and **public transportation** facility improvement categories. This document includes calculations of the projected impact of the HEPTAD, LLC development on said facilities to confirm the reasonableness of the proposed proffers.

PROJECT SUMMARY

As per HEPTAD, LLC's proposed amended proffers, the Project is a maximum 335-unit residential community that includes 170 single-family detached units and 165 single-family attached units. The Project is proposed to develop on approximately 86± acres of a 98.25-acre site within the Town of Front Royal, Virginia. The Project is intended to develop as outlined in the proposed amended proffers and the corresponding Master Land Use Plan, which is included as Exhibit A on the following page.

Prior to HEPTAD, LLC's original rezoning of the site to the PND district, the site was zoned Suburban Residential (R-S) District, which permits development of single family detached dwelling units at a gross density of roughly two dwelling units per acre. The R-S zoning applicable to the 86-acre Project site would have therefore yielded a total of 171 single family detached dwelling units "by right." This by-right yield is used as the baseline for calculating the impacts attributable to the PND zoning associated with the amended proffer statement.

EXHIBIT A: DEVELOPMENT SITE PLAN



PUBLIC SCHOOL FACILITIES

ANALYSIS

Public education for residents in the Town of Front Royal is provided by Warren County Public Schools. The Project is in the school attendance areas of Leslie Fox Keyser Elementary School, Warren County Middle School, and Warren County High School. Each facility has an “educational capacity” established by Warren County Public Schools, which is the threshold used for determining whether a given facility is over- or under-capacity. The proffer consideration for public school facilities is determined by the impact of Project-generated students on the educational capacities of these three facilities.

Current Public School Facility Capacities

Based on enrollment data for the 2022-2023 school year, both the middle school and high school are operating under-capacity with substantial surplus, whereas the elementary school is over-capacity. The following table outlines the current facility capacities for the public schools serving the Project:

Table 1: Current Public School Facility Capacities

Facility	Educational Capacity ^(a)	2022-2023 Enrollment ^(b)	Surplus Capacity
Leslie Fox Keyser Elementary School	494	502	(8)
Warren County Middle School	800	560	240
Warren County High School	1,100	850	250

^(a)Source: Virginia Department of Education School Quality Profiles and Warren County Public Schools

^(b)Source: Warren County Public Schools

Projected Student Generation

Quantifying the Project’s impact on current facility capacities requires calculation of the number of students expected to be generated by the dwelling units proposed above the site’s by-right yield under the original R-S zoning. This calculation was completed by applying Warren County’s student generation rates to the proposed unit yield by housing type then netting out the number of by-right units. Warren County’s current student generation rates are as follows:

Table 2: Current Student Generation Rates – Per Dwelling Unit^(a)

Unit Type	Elementary School	Middle School	High School	Total
Single Family Detached	0.152	0.090	0.122	0.364
Single Family Attached	0.224	0.111	0.148	0.483
Multi-Family	0.159	0.059	0.076	0.294

^(a)Source: Warren County, County Administrator’s Office

The student generation factors were then applied to the number of single family detached and single family attached units proposed per the Project’s proposed amended proffer statement. As detailed in the following table, the net number students projected to be generated by the proposed development program totals 81.

Table 3: Projected Student Generation

School Type	Units ^(a)	Unit Type	Generation Rate ^(b)	Total Projected Students ^(c)
Elementary	170	Single Family Detached	0.152	25.84
Middle	170	Single Family Detached	0.090	15.30
High	170	Single Family Detached	0.122	20.74
Total Students Generated – Single Family Detached Units:				61.88
Elementary	165	Single Family Attached	0.224	36.96
Middle	165	Single Family Attached	0.111	18.32
High	165	Single Family Attached	0.148	24.42
Total Students Generated – Single Family Attached:				79.70
Elementary	171	Single Family Detached	0.152	(25.99)
Middle	171	Single Family Detached	0.090	(15.39)
High	171	Single Family Detached	0.122	(20.86)
LESS: Total Students Generated By-Right (R-S District):				(62.24)
Net Elementary School Students Generated				37
Net Middle School Students Generated				19
Net High School Students Generated				25
Net Students Generated by Rezoning – TOTAL:				81

^(a)Source: HEPTAD, LLC Amended Proffer Statement

^(b)Source: Warren County, County Administrator's Office

^(c)Projected students net of by-right are rounded up to the next whole number.

School Capacity Impacts

Adding the net student generation values to the 2022-2023 enrollment for each school facility serving the Project indicates whether the additional students represent a capacity burden (e.g., deficit) requiring mitigation by proffer. Given that the elementary school is already over-capacity based on 2022-2023 enrollment, any number of elementary students added to its enrollment constitutes a capacity burden, to include those generated by the Project. As such, **proffers are justified to fund expansion of elementary school capacity by 37 students**, which is the net elementary student generation directly attributable to the Project (e.g., student generation above by right). The middle and high schools have sufficient capacity to absorb new students from the Project and therefore do not justify proffer mitigation. The following table outlines the capacity impacts of Project-generated students.

Table 4: School Capacity Impacts

Facility	Available Capacity (Students)^(a)	Project-Generated Students^(b)	Net Facility Capacity (Students)	Capacity Need Attributable to Project (Students)
Leslie Fox Keyser Elementary School	(8)	37	(45)	37
Warren County Middle School	240	19	221	0
Warren County High School	250	25	225	0

^(a)See Table 1^(b)See Table 3**Proffer Mitigation**

The Residential Proffer Legislation stipulates that proffers can only provide for needs exceeding existing capacity. As outlined above, the projected middle and high school students resulting from the Project do not create a need for additional facilities, and therefore proffer contributions for these facilities would be inappropriate. The elementary school students resulting from the Project exceed the existing capacity for the relevant elementary school facilities. The per student cost to add facility capacity can be derived from the budget values for new elementary school facilities in Warren County. The Capital Improvements Plan (CIP) adopted with the Warren County Public Schools 2022-2023 Budget includes construction of a new elementary school at a total cost of \$25,000,000. The new facility has a planned educational capacity of 650 students, which equates to a per student cost of \$38,461.54.

Table 5: Cost of New Facility Capacity

Facility	New School Cost^(a)	New School Capacity ^(b)	Cost Per Student (cost ÷ capacity)
New Elementary School	\$25,000,000	650	\$38,461.54

^(a)Warren County Public Schools, Capital Improvements Plan, 2022-2023 Budget^(b)Warren County Comprehensive Plan

The school facility proffer for the Project is calculated by applying the cost per student to add new facility capacity to the number of elementary students projected to be generated (37) and dividing by the maximum development yield (335 units). The calculation is shown in Table 6 below. The calculation indicates a school facility proffer satisfying the requirements of the Residential Proffer Legislation is **\$4,247.99 per unit**.

Table 6: Proffer Calculation – Public School Facility Improvements

a) Elementary School Capacity Need (students) ^(a)	37
b) Cost per Student to Add Capacity ^(b)	\$38,461.54
c) Total Cost to Add Capacity (a x b)	\$1,423,076.98
d) Total Units	335
e) Proffer Per Unit (c ÷ d)	\$4,247.99

^(a)See Table 4

^(b)See Table 5

Credit for Prior Proffer Commitment – Net Proffer Amount

The originally approved proffers included a commitment to dedicate 3.5 acres for public park or playground use. Applying a credit for the monetary value of this dedication results in a net proffer of **\$3,203.21 per unit**. The calculations of the credit and net proffer value are shown in Tables 7 and 8 below.

Table 7: Credit Calculation for Land Dedication

Dedication Area (Acres)^(a)	Estimated Land Value (Per Acre)^(b)	Total Dedication Credit	Per Unit Dedication Credit (Total Credit ÷ 335 Units)
3.50	\$100,000	\$350,000	\$1,044.78

^(a)Proffer Statement – Swan Estates, revised January 21, 2012 (recorded April 13, 2012)

^(b)Based on prevailing land values for residentially zoned acreage

Table 8: Net Proffer Calculation

Proffer Per Unit ^(a)	Per Unit Dedication Credit^(b)	Net Proffer Per Unit (Proffer Per Unit LESS Per Unit Dedication Credit)
\$4,247.99	\$1,044.78	\$3,203.21

^(a)See Table 6

^(b)See Table 7

PUBLIC TRANSPORTATION FACILITIES ANALYSIS

Primary vehicular access to Swan Estates is dependent upon existing Leach Run Parkway, a 4-lane major collector roadway (U4D) that extends across the southwest portion of the site, the construction of which was completed in 2017. Pennoni Associated, Inc. (Pennoni) prepared a Traffic Impact Analysis (TIA) in 2013 to determine the design elements required to accommodate planned development served by the roadway and future traffic growth. Per the TIA, the recommended design elements assumed a planned capacity of 17,440 average daily trips (ADT) at build-out year 2028, which expressly included the ADT projected to be generated by Swan Estates. As such, the TIA demonstrates that construction of Leach Run Parkway was necessary to provide primary vehicular access to Swan Estates, and further that the roadway's design was dictated, in part, by Swan Estates.

Proffer Mitigation

To comply with the Residential Proffer Legislation, the proffer contribution specified for construction of Leach Run Parkway must be based on the traffic impacts directly attributable to the single-family detached and attached residential units proposed to develop at Swan Estates. As noted above, the Pennoni TIA determined the planned capacity of Leach Run Parkway, and the roadway was constructed accordingly. An impact-based proffer value specific to Swan Estates can therefore be derived by dividing the total cost to construct Leach Run Parkway by the total projected ADT at build-out year 2028 (e.g., planned capacity) as established by the Pennoni TIA. This calculation will yield a "cost-per-trip" value that can be applied to the projected ADT for each unit type proposed at Swan Estates to obtain the per unit proffer value.

According to the Virginia Department of Transportation, the construction cost for Leach Run Parkway totaled \$14,629,574.00. Dividing this value by the planned roadway capacity of 17,440 ADT results in a "cost-per-trip" value of \$838.85 per ADT.

Table 1: Leach Run Parkway - Cost Per Trip

Construction Cost ^(a)	Projected 2028 ADT ^(b)	Cost Per ADT
\$14,629,574	17,440	\$838.85

^(a)Source: Virginia Department of Transportation

^(b)Source: *A Traffic Impact Analysis for Leach Run Parkway*, December 20, 2013, Pennoni Associates, Inc.

Per the Institute of Traffic Engineers (ITE) TripGen11, a single-family detached unit will generate 9.43 ADT while a single-family attached unit will generate 7.20 ADT. Multiplying the ADT values by the cost per ADT for construction of Leach Run Parkway results in a corresponding cost per unit type. The calculation is shown in Table 2 below. The calculation indicates a transportation facility proffer satisfying the requirements of the Residential Proffer Legislation is **\$7,910.36 per single family detached unit** and **\$6,039.72 per single family attached unit**.

Table 2: Proffer Calculation – Transportation Facility Improvements

Unit Type	Projected ADT ^(a)	Cost Per ADT ^(b)	Cost Per Unit
Single Family Detached	9.43	\$838.85	\$7,910.36
Single Family Attached	7.20	\$838.85	\$6,039.72

^(a)Source: Institute of Traffic Engineers (ITE) TripGen11

^(b)See Table 1

Credit for Prior Proffer Commitment – Net Proffer Amount

The originally approved proffers included a commitment to dedicate right of way for Leach Run Parkway. This right of way dedication totaled 2.343 acres. Applying a credit for the monetary value of this dedication results in a net proffer of **\$6,869.02 per single family detached unit** and **\$4,998.39 per single family attached unit**. The calculations of the credit and net proffer value are shown in Tables 3 and 4 below.

Table 3: Credit Calculation for Right of Way Dedication

Dedication Area (Acres) ^{(a)(b)}	Estimated Land Value (Per Acre) ^(c)	Total Dedication Credit	Per Unit Dedication Credit (Total Credit ÷ 335 Units)
2.343	\$100,000	\$234,300	\$1,041.33

^(a)Proffer Statement – Swan Estates, revised January 21, 2012 (Recorded as Instrument No. 120002053)

^(b)Plat Showing Dedication of Right of Way and Easements on the Property of HEPTAD LLC (Recorded as Instrument No. 140006130)

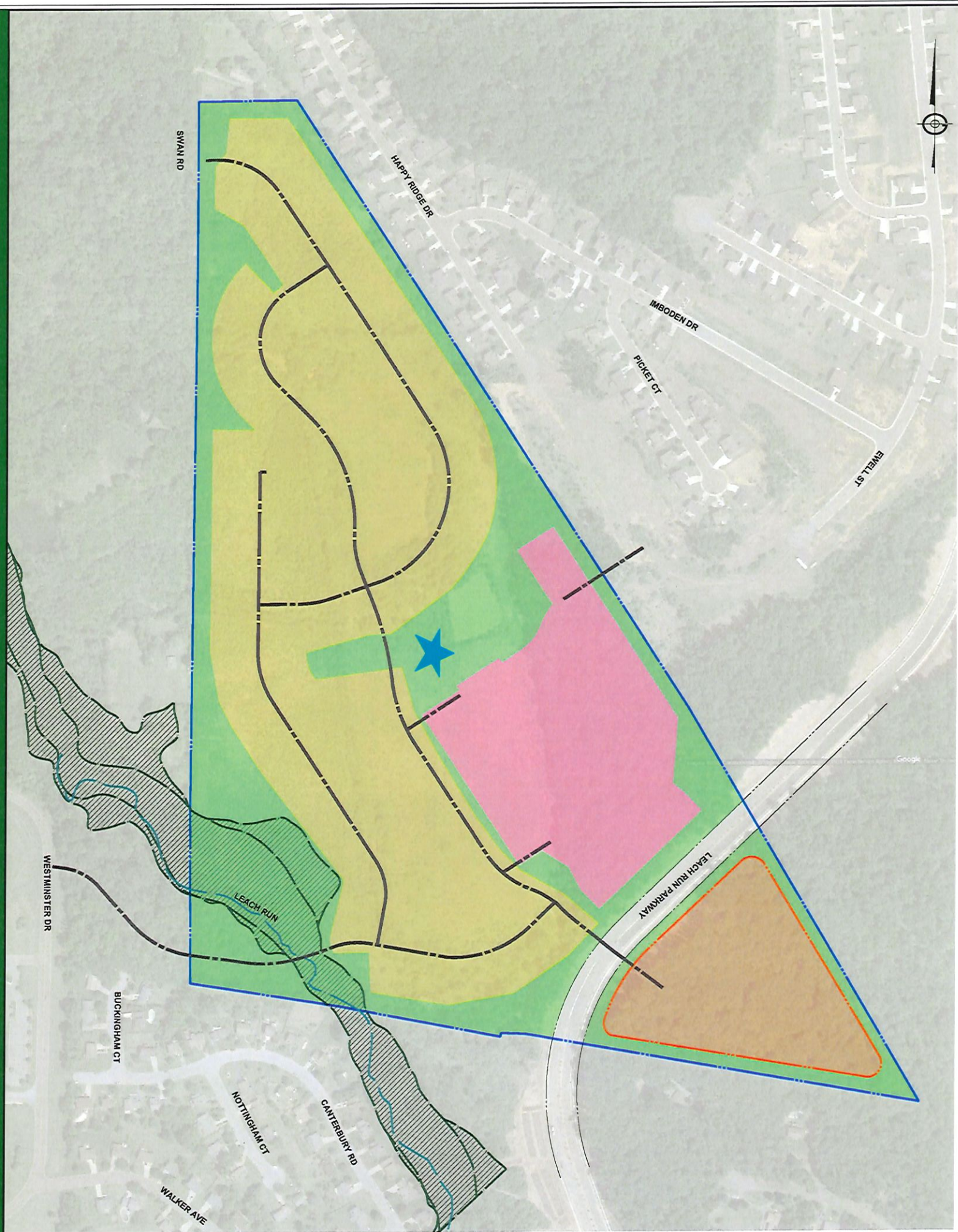
^(c)Based on prevailing land values for residentially zoned acreage

Table 4: Net Proffer Calculation

Unit Type	Cost Per Unit ^(a)	Per Unit Dedication Credit ^(b)	Net Proffer Per Unit (Cost Per Unit LESS Per Unit Dedication Credit)
Single Family Detached	\$7,910.36	\$1,041.33	\$6,869.02
Single Family Attached	\$6,039.72	\$1,041.33	\$4,998.39

^(a)See Table 2

^(b)See Table 3



ALL-STATE LEGAL®
EXHIBIT
A



LEGEND	
	NEIGHBORHOOD PARK
	SITE LIMITS
	ROAD NETWORK/ LAND BAY ACCESS
	SINGLE FAMILY DETACHED HOMES
	SINGLE FAMILY ATTACHED HOMES
	CIVIC/OPEN SPACE AREA
	COMMERCIAL AREA
	STREAM CENTERLINE
	FEMA 100 YR FLOODPLAIN

EXHIBIT A REVISED FUNCTIONAL USE PLAN - LAND BAY LAYOUT

SWAN ESTATES

TOWN OF FRONT ROYAL - WARREN COUNTY, VIRGINIA



151 Windy Hill Lane
 Winchester, Virginia 22602
 Telephone: (540) 662-4185
 Fax: (540) 722-6628
 www.greenwayeng.com

DATE: 08/08/2022
 SCALE: 1"=150'
 DESIGNED BY: DMCM
 FILE NO. 3679V
 SHEET 1 OF 1

AMENDED PROFFER STATEMENT

REZONING: RZ# 05-07-56
Suburban Residential (R-S) District to Planned Neighborhood
Development (PND) District

PROPERTY: 98.25 acres +/-;
Tax Parcel #20-A21-2-1 and Tax Parcel # 20A20-2-11

APPLICANT/
OWNER: HEPTAD, LLC

PROJECT NAME: Swan Estates

ORIGINAL DATE
OF PROFFERS: June 30, 2005
Amended November 2005
Amended March 2006
Amended April 15, 2011
Amended January 31, 2012
Amended February 1, 2012
Amended September 16, 2022

Preliminary Matters

Pursuant to Section 15.2-2296 et. seq. of the Code of Virginia, 1950, as amended, and the provisions of the Town of Front Royal Zoning Ordinance with respect to conditional zoning, the Front Royal Town Council approved the rezoning of approximately 98.25 acres from the Suburban Residential (R-S) District to Planned Neighborhood Development (PND) District (RZ#05-07-56), to be developed in general conformity with the terms and conditions set forth in a certain Proffer Statement dated February 1, 2012 and approved by the Front Royal Town Council as part of the conditional rezoning approval (the "Approved Proffers"). The subject property, identified as the Anna Swan Estate, and more particularly described as the lands owned

by Heptad, LLC, being all of Tax Map Parcels 20-A21-2-1 and 20A20-2-11 by virtue of a deed dated August 14, 2009 and recorded among the land records of the Warren County Circuit Court Clerk's Office as Instrument No. 090004959. More particularly consisting of Tax Map Parcels 20-A21-2-1, containing 97.7395 acres, more or less, as shown by plat of survey dated May 5, 2003, prepared by Mark D. Smith, L.S., of Greenway Engineering, entitled "Boundary Survey of the land of Anna Swan Estate, Town of Front Royal, Warren County, Virginia" and recorded as Instrument number 030007026, and Tax Map Parcel 20-A20-2-11, containing .52 acres, more or less, as shown by plat of survey dated May 3, 1957, prepared by S. M. Boyd, Jr., C.L.S., recorded in Warren County Deed Book 102, page 300.

Pursuant to §15.2-2302 of the Code of Virginia and the applicable provisions of the Town of Front Royal Zoning Ordinance, the Applicant desires to amend the Approved Proffers such that the subject property as described above shall be developed in general conformity with the terms and conditions set forth in this Amended Proffer Statement, the Master Land Use Plan (as defined in Proffer I below, and the Design Guidelines (as defined in Proffer II below).

I. **Master Land Use Plan**

The Applicant hereby proffers to develop the 98.25-acre property in general conformity with a Master Land Use Plan (Master Plan) approved as part of the rezoning application, as amended with the Revised Functional Use Plan – Land Bay Layout (as defined below and attached hereto as Exhibit A), and subject to revisions by the Applicant due to lot layout and road alignment in accordance with final engineering considerations. The Master Land Use Plan is intended to illustrate the systems of

roadways that will provide access to the land bays and serve the single-family residential lots, parking areas and community facilities therein. The Master Land Use Plan consists of the following:

1. Cover Sheet – June 30, 2005, Revised November 2005, March 2006, March 2011
2. Generalized Location Plan – June 30, 2005, Revised November 2005, March 2006, March 2011
3. Boundary Survey – June 30, 2005, Revised November 2005, March 2006, March 2011
4. Slope Analysis – June 30, 2005, Revised November 2005, March 2006, March 2011
5. Topography Map – June 30, 2005, Revised November 2005, March 2006, March 2011
6. Trip Distribution & Road Classification Plan – June 30, 2005, Revised November 2005, March 2006, March 2011
7. Flood Plain and Wetlands Delineation – June 30, 2005, revised November 2005, March 2006, March 2011
8. Leach Run Parkway Layout – June 30, 2005, Revised November 2005, March 2006, March 2011
9. Revised Functional Use Plan- Land Bay Layout – Prepared by Greenway Engineering and dated May 5, 2022

II. **Design Guidelines**

The Applicant hereby proffers the Revised Swan Estates Design Guidelines (“Design Guidelines”) prepared by Greenway Engineering, Inc. and dated September 9, 2022, which are attached hereto as Exhibit B. The Revised Swan Estates Design Guidelines may be revised by the Applicant in accordance with final engineering considerations. The Revised Swan Estates Design Guidelines shall generally have the same force and effect as if incorporated herein. and the Applicant, in developing the Property, shall generally conform to such Design Guidelines; however, modification and alternatives shall be allowed provided such modifications and alternatives achieve the same intent. If any provision of the Revised Swan Estates Design Guidelines shall subsequently be found to be invalid, the remaining provisions shall remain intact. Provided, however, notwithstanding anything in the Revised Swan Estate Design Guidelines to the contrary, the applicant hereby proffers that the foundation of any residential structure shall be faced with brick, natural stone, synthetic stone, colored textured concrete, stamped concrete, or any combination thereof.

III. **Transportation**

3.1 Leach Run Parkway. In the event that the Front Royal Town Council approves these Amendments, such approval will be deemed an acknowledgment by the Front Royal Town Council that (i) Leach Run Parkway (“LRP”) has been completely constructed and (ii) Heptad, LLC complied with any prior approved Proffers pertaining to the dedication of right of way for LRP.

3.2. Off-Site Swan Estates Drive to Existing Westminster Drive.

The Applicant proffers to engineer, design and construct an extension of Swan Estates Drive to connect to existing Westminster Drive to the west of the subject property (Tax Map 20-A21-2-1) across property currently owned by the Warren County School Board (Tax Map 20-A14-2-1) (the “Westminster Connector”) conditioned upon an agreement between the Town and School Board as to the final location and legal status of the property across which the Westminster Connector will be built. The Applicant proffers to make its best efforts to have the School board dedicate the Westminster Connector easement to the Town in fee simple. In the interest of public safety and general welfare, the Westminster Connector will provide an alternate access to the public schools located on Westminster Drive.

3.3 Intentionally Deleted.

3.4 Interparcel Connection. The Applicant’s Revised Functional Use Plan – Land Bay Layout accommodates a future interparcel connection to the Happy Creek Knolls subdivision. The Applicant shall provide the necessary right-of-way dedication upon request by the Town for such interparcel connection, at no cost to the Applicant.

IV. **Residential**

4.1. **Residential Density**

4.1.1 The maximum number of dwelling units to be constructed on the Property shall not exceed three hundred thirty five (335) dwelling units.

4.1.2. In general conformance with the Master Plan as amended, the single-family detached land bays may contain one hundred seventy (170) single family detached dwelling units and the single-family attached land bays may contain one hundred sixty five (165). The Applicant reserves the right to adjust the above mix of housing unit types but in no case shall the total number of units exceed three hundred thirty five (335).

4.2. **Phasing**

The Applicant hereby proffers that residential development shall be phased such that building permits shall not be issued for more than one hundred (100) dwelling units every twelve (12) months. For the purposes of this provision, the first twelve-month period shall be considered the first full twelve (12) months following the beginning of construction on the Swan Estates project. All units not developed within the specified twelve-month period shall be carried forward to the next twelve-month period.

V. Community Design

5.1. Design

The Applicant agrees to provide an overall continuity of design within the community by means of selecting standards for the following elements, which will be uniformly specified and applied over the entire project, excluding areas within the public rights-of-way or public property:

1. Custom mailbox design.
2. Standardized common area fencing styles and color.
3. Standardized private residential fencing styles and color.
4. Community color selections to create neighborhood theme.
5. Uniform site furnishing selection (benches and trash receptacles).
6. Custom designed street signage and stop signage.
7. Landscaping at the entrance monuments along Swan Estates Drive selected to provide for a repetition of the neighborhood flower color scheme and theme trees throughout the community.

5.2. Architectural

- 5.2.1. The Applicant shall develop architectural and design covenants for the overall community. Said covenants will establish an architectural review board for the purpose of review and approval of all architectural elevations, exterior architectural features (including but not limited to fences, railings, walls and decks) for all uses within Swan Estates, as well as any publicly provided

structures located on sites dedicated for public use. These covenants are intended to assure a continuity of overall architectural appearance, quality material selection, and a cohesive color palate for all structure within the entire development.

5.2.2. The Applicant shall construct all homes in conformance with the Revised Swan Estates Design Guidelines referenced in Section II of these proffers.

5.3 Intentionally Deleted.

5.4. Signage

The Applicant shall provide an entrance feature with entry sign on the right and/or left side of Swan Estates Drive. The entrance feature shall be in conformance with Section 175-106 of the Town Zoning Ordinance or applicable successor provision. The sign may be lighted from the front at ground level with a minimal amount of illumination. Landscaping both in front of and behind the signage and wall will be provided. The sign shall have either stone or brick columns and will be compatible with and closely related to the themes and color schemes for the overall community. All signage shall comply with Section 175-106 of the Town Zoning Ordinance or successor provision thereto, except as waived or modified by the Town.

5.5. Lighting

Any exterior lighting of common use recreation areas shall be directed downward and inward to reduce glare on adjacent properties, the public and/or private right-of-way, and upward stray illumination.

5.6. Landscape Adjacent to Adjoining Property

5.6.1. Happy Creek Knolls. The Applicant shall provide a landscape area within the fifty-five foot (55') perimeter buffer and along the common boundary with the Happy Creek Knolls subdivision either through tree preservation and/or installed landscaping. This landscape area will be owned and maintained by the property owners association and will not be part of any private lot. If the Applicant elects to not provide tree preservation in connection with this landscape area, the landscape area will be planted at a rate of one (1) tree per forty (40) linear feet with a minimum of twenty-five percent (25%) deciduous trees within said area.

5.6.2. Williamsburg Estates. The Applicant shall provide a landscape area on the south side of Swan Estates Boulevard and along the common boundary with the Williamsburg Estates subdivision Section 3, Block K, Lots 3-6 either through tree preservation and/or installed landscaping. The installed landscaping will include a double row of evergreen trees adjacent to Swan Estates Boulevard. This landscape area will be owned and maintained by the home owners association and will not be part of any private lot.

5.6.3 Additional Commercial Buffer. In addition to the 55' vegetative buffer surrounding the Commercial portion of the project (as reflected in the Master Land Use Plan), the Applicant hereby proffers an additional 50' vegetative buffer along the

property line of the subject property where the Commercial portion of the project lies adjacent to Green Hills Subdivision (the “Additional Commercial Buffer”); provided, however, that the Applicant shall be under no duty to maintain or add new plantings to the Additional Commercial Buffer.

5.7. Recreational Amenities

5.7.1 Neighborhood Park. Before the seventy sixth (76th) building permit is issued, the Applicant shall design and submit a site plan for a neighborhood park of 3.5 acres minimum in size to applicable government agencies for review (the “Proffered Neighborhood Park”). Once the site plan is approved, the Applicant shall complete the construction of the Proffered Neighborhood Park in accordance with the above-mentioned approved site plan and dedicate the land and improvements for the Proffered Neighborhood Park to Warren County. The location of the Proffered Neighborhood Park and its associated amenities shall be located in the general area shown on the Revised Functional Use Plan – Land Bay Layout . The Neighborhood Park shall be designed pursuant to the guidelines for Neighborhood Parks as set forth within Chapter 5, Community Facilities, of the 2013 Comprehensive Plan adopted by the Warren County. The park will include a field area that will allow multi-purpose sports for children of all ages; a playground for younger children ranging from toddler to 12 years; a picnic area that will include picnic tables and possibly a walking trail. Upon Warren County’s acceptance of

the dedication of the Neighborhood Park, the Applicant shall receive a credit against the Warren County Proffers for the value of the dedicated land as set forth in Proffer 7.5.1 below. In the event that the County declines to accept the aforesaid dedication, the Neighborhood Park shall be dedicated to an HOA created pursuant to Section VI below, and the Applicant shall not receive any credits against the Warren County Proffers.

5.7.2 Passive Recreation Area. Additionally, the Applicant shall provide passive recreation on the Property consisting of a bird habitat preservation area, to be located in the general area shown on the Revised Functional Use Plan – Land Bay Layout . Active development of and use in the bird habitat area will be limited to areas outside of any wetlands or other resource protection areas. Only those activities that are allowed by appropriate regulatory agencies without additional permitting will be allowed inside such areas. No applications for additional use in these areas will be made.

5.8 Schools Sidewalk

The Applicant hereby proffers to construct, on the west side of Westminster Drive, a concrete sidewalk six feet (6') wide beginning approximately at the northern entrance to the Warren County High School and ending approximately at the southern most entrance to the Hilda J. Barbour Elementary School (the "Schools Sidewalk"). The Applicant will construct this portion of the Schools Sidewalk to Town standards after the final approval of the subject rezoning and after the issuance of all applicable permits

necessary for such construction. This obligation is conditional upon the granting of any necessary easements or dedications by the School Board to allow such construction; the Applicant shall then begin construction within sixty (60) days of written notification by the Town of Front Royal requesting such construction. The exact location of the sidewalk is to be determined by the Town of Front Royal, with the approval and agreement of the Applicant and the School Board.

5.9 Commercial Entrance Aesthetic. To the extent possible and commercially reasonable, the aesthetic elements of the entrance corridor for the commercial portion of the project shall be generally consistent with the visual elements of the entrance corridor of the residential portions of the project. Further, the aesthetic of the residential and commercial entrance corridors for the project shall, to the extent possible and commercially reasonable, be generally consistent with the aesthetic of Leach Run Parkway.

VI. Creation of a Homeowner's Association

6.1. A homeowners association ("HOA") shall be created for the residential portions of the Property and shall be made responsible for the maintenance and repair of all common areas, together with such other responsibilities, duties and powers as are customary for such associations or as may be required for such HOA herein.

6.2. In addition to such other responsibilities and duties as may be assigned or as may be set forth herein, the HOA shall have title to and responsibility for all common open space areas not otherwise dedicated to public use and common buffer areas located

outside of residential lots, to include, but not limited to, the entry of feature sign proffered herein.

VII. **Cash Proffers.**

7.1 **Town Proffers.**

7.1.1 The Applicant shall contribute to the Town of Front Royal, Virginia, a one-time cash contribution in the amount of \$7,910.36 for each residential single family detached (SFD) dwelling unit and in the amount of \$6,039.72 for each single family attached (SFA) dwelling unit constructed on the Property, which contribution shall be used by the Town of Front Royal to defray the costs and expenses associated with the design and construction of the Leach Run Parkway Improvements. The above contribution amounts were calculated using the Proffer Analysis dated September 8, 2022 and prepared by Greenway Engineering, Inc. This per-unit contribution shall be calculated at the time of approval of the building permit for construction of each residential dwelling unit on the Property and shall be payable prior to the issuance of the occupancy permit for said dwelling unit.

7.2 **Credits Against Town Proffers.** As per the Proffer Analysis dated September 8, 2022 and prepared by Greenway Engineering, Inc., the fair market value of the land previously dedicated by the Applicant as part of Leach Run Parkway was \$234,300.00. Therefore, notwithstanding the foregoing Proffer 7.1.1, the Applicant shall be entitled to a credit against the proffer amounts specified in Proffer 7.1.1 above equal to \$1,041.33 per residential dwelling unit (whether SFD or SFA).

Proffers 7.3 and 7.4 Intentionally Deleted.

7.5 County Proffers.

7.5.1. The Applicant shall contribute to the Warren County, Virginia, a one-time cash contribution in the amount of \$4,247.00 for each residential dwelling unit (SFA or SFD) constructed on the Property, which contribution shall be used by Warren County to support capital improvements relating to the impacts of the residential development on the Warren County Public Schools. This contribution was calculated using the Proffer Analysis dated September 8, 2022 and prepared by Greenway Engineering, Inc. This per-unit contribution shall be calculated at the time of approval of the building permit for construction of each residential dwelling unit on the Property and shall be payable prior to the issuance of the occupancy permit for said dwelling unit.

7.5.2 Intentionally Deleted.

7.5.3 Intentionally Deleted.

7.5.4 Credits Against County Proffers. Notwithstanding the foregoing Proffer 7.5.1, the audited costs of the engineering, design, and construction of the Neighborhood Park as provided in these Proffers shall be credited against the aforesaid Warren County Proffers, provided further that the Applicant shall be entitled to a credit for the dedication of the land for the Neighborhood Park. As per the Proffer Analysis dated September 8, 2022 and prepared by Greenway Engineering, Inc., the fair market value of the land to

be dedicated by the Applicant for the Neighborhood Park is \$350,000.00.

Therefore, the Applicant shall be entitled to a credit against the proffer amounts specified in Proffer 7.5.1 above equal to \$1,044.78 per residential dwelling unit (whether SFD or SFA).

7.5.5 Intentionally Deleted.

7.6 Intentionally Deleted.

VIII. **Comprehensive Plan Conformity**

Approval of the subject zoning map amendment and its constituent parts, including Proffers, Master Plan, as amended, and Revised Swan Estates Design Guidelines, by the Town Council of Front Royal, Warren County, Virginia, constitutes a finding that the subject zoning map amendment is found to be in substantial conformance with the Town of Front Royal adopted Comprehensive Plan.

IX. **Miscellaneous Provisions**

9.1 Monetary contributions as set forth in this Proffer Statement shall be adjusted on a yearly basis from the base year of 2023 and change effective on January 1, 2024 and each January 1 thereafter, in accordance with changes to the Consumer Price Index for all urban consumers (CPI-U), 1982-1984=100 (not seasonally adjusted), as published by the Bureau of Labor Statistics, U.S. Department of Labor, for the Washington-Arlington-Alexandria, DC-MD-VA-WV Metropolitan Statistical Area (the "CPI"), subject to a cap of 3% per year, non-compounded.

X. **Signature**

The conditions proffered above shall be binding upon the heirs, executors, administrators, assigns, and successors in the interest of the Applicant and owner. In the

event the Town Council of the Town of Front Royal grants this revision to the previously approved rezoning and accepts these Amended Proffer Statement, such proffers shall apply to the land rezoned in addition to other requirements set forth in the Front Royal Town Code and Virginia law.

XI. **Interpretation**

Upon approval of this Amended Proffer Statement by the Front Royal Town Council, this Amended Proffer Statement supersedes any proffer statements previously submitted and approved in connection with this application and this Property.

THIS SPACE INTENTIONALLY LEFT BLANK.

SIGNATURE PAGE TO FOLLOW.

APPLICANT:

HEPTAD, LLC

By: _____

Ronald Llewellyn, Manager

STATE OF VIRGINIA

CITY/COUNTY OF _____, TO-WIT:

The foregoing instrument was acknowledged before me this ____ day of _____, 2022, by Ronald Llewellyn, in his capacity as Manager of HEPTAD, LLC.

My commission expires: _____.

Notary Registration Number: _____.

NOTARY PUBLIC

AMENDED PROFFER STATEMENT

REZONING: RZ# 05-07-56
Suburban Residential (R-S) District to Planned Neighborhood
Development (PND) District

PROPERTY: 98.25 acres +/-;
Tax Parcel #20-A21-2-1 and Tax Parcel # 20A20-2-11

APPLICANT/
OWNER: HEPTAD, LLC

PROJECT NAME: Swan Estates

ORIGINAL DATE
OF PROFFERS: June 30, 2005
Amended November 2005
Amended March 2006
Amended April 15, 2011
Amended January 31, 2012
Amended February 1, 2012
Amended September 16, 2022, 202

Preliminary Matters

Pursuant to Section 15.2-2296 et. seq. of the Code of Virginia, 1950, as amended, and the provisions of the Town of Front Royal Zoning Ordinance with respect to conditional zoning, the Front Royal Town Council approved the rezoning of approximately 98.25 acres from the Suburban Residential (R-S) District to Planned Neighborhood Development (PND) District (RZ#05-07-56), to be developed in general conformity with the terms and conditions set forth in a certain Proffer Statement dated February 1, 2012 and approved by the Front Royal Town Council as part of the conditional rezoning approval (the “Approved Proffers”). The subject property, identified as the Anna Swan Estate, and more particularly described as the lands owned

by Heptad, LLC, being all of Tax Map Parcels 20-A21-2-1 and 20A20-2-11 by virtue of a deed dated August 14, 2009 and recorded among the land records of the Warren County Circuit Court Clerk's Office as Instrument No. 090004959. More particularly consisting of Tax Map Parcels 20-A21-2-1, containing 97.7395 acres, more or less, as shown by plat of survey dated May 5, 2003, prepared by Mark D. Smith, L.S., of Greenway Engineering, entitled "Boundary Survey of the land of Anna Swan Estate, Town of Front Royal, Warren County, Virginia" and recorded as Instrument number 030007026, and Tax Map Parcel 20-A20-2-11, containing .52 acres, more or less, as shown by plat of survey dated May 3, 1957, prepared by S. M. Boyd, Jr., C.L.S., recorded in Warren County Deed Book 102, page 300.

Pursuant to §15.2-2302 of the Code of Virginia and the applicable provisions of the Town of Front Royal Zoning Ordinance, the Applicant desires to amend the Approved Proffers such that the subject property as described above shall be developed in general conformity with the terms and conditions set forth in this Amended Proffer Statement, [the Mater Land Use Plan, concept plan, and the architectural elevations as prepared by dated July 15, 2022 and July 19, 2022.](#)

I. **Master Land Use Plan**

The Applicant hereby proffers to develop the 98.25-acre property in [general conformity](#) ~~substantial conformance~~ with a Master Land Use Plan (Master Plan) approved as part of the rezoning application, [as amended with the Revised Functional Use Plan – Land Bay Layout attached hereto as Exhibit A, concept plan and architectural](#)

elevations dated July 15, 2022 and July 19, 2022 and subject to revisions by the

Applicant due to lot layout and road alignment in accordance with final engineering considerations. The Master Land Use Plan is intended to illustrate the systems of roadways that will provide access to the land bays and serve the single-family residential lots, parking areas and community facilities therein. The Master Land Use Plan consists of the following:

1. Cover Sheet – June 30, 2005, Revised November 2005, March 2006, March 2011
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7. Flood Plain and Wetlands Delineation – June 30, 2005, revised November 2005, March 2006, March 2011
8. Leach Run Parkway Layout – June 30, 2005, Revised November 2005, March 2006, March 2011

9. Revised Functional Use Plan- Land Bay Layout – ~~June 30, 2005~~Prepared
by Greenway Engineering_____and dated May 5,
2022_____with revisions through_____, Revised
~~November 2005, March 2006, March 2011~~

II. **Design Guidelines**

The Applicant hereby proffers the Revised Swan Estates Design Guidelines (“Design Guidelines”) prepared by Greenway Engineering, Inc._____ and dated September 9, 2022_____, which are attached hereto as Exhibit B. The Revised Swan Estates Design Guidelines may be revised by the Applicant in accordance with final engineering considerations. The Revised Swan Estates Design Guidelines shall generally have the same force and effect as if incorporated herein. and the Applicant, in developing the Property, shall generally conform to such Design Guidelines; however, modification and alternatives shall be allowed provided such modifications and alternatives achieve the same intent. If any provision of the Revised Swan Estates Design Guidelines shall subsequently be found to be invalid, the remaining provisions shall remain intact. Provided, however, notwithstanding anything in the Revised Swan Estate Design Guidelines to the contrary, the applicant hereby proffers that the foundation of any residential structure shall be faced with brick, natural stone, synthetic stone, colored textured concrete, stamped concrete, or any combination thereof.

III. **Transportation**

3.1 Leach Run Parkway. In the event that the Front Royal Town Council approves these Amendments, such approval will be deemed an acknowledgment by the

Front Royal Town Council that (i) Leach Run Parkway (“LRP”) has been completely constructed and (ii) Heptad, LLC complied with any prior approved Proffers pertaining to the dedication of right of way for ~~construction of LRP.~~

3.2. Off-Site Swan Estates Drive to Existing Westminster Drive.

The Applicant proffers to engineer, design and construct an extension of Swan Estates Drive to connect to existing Westminster Drive to the west of the subject property (Tax Map 20-A21-2-1) across property currently owned by the Warren County School Board (Tax Map 20-A14-2-1) (the “Westminster Connector”) conditioned upon an agreement between the Town and School Board as to the final location and legal status of the property across which the Westminster Connector will be built. The Applicant proffers to make its best efforts to have the School board dedicate the Westminster Connector easement to the Town in fee simple. In the interest of public safety and general welfare, the Westminster Connector will provide an alternate access to the public schools located on Westminster Drive. ~~In the event that (i) the School Board does not dedicate the Westminster Connector to the Town in fee simple and (ii) responsibility for the Leach Run Improvements has not been assumed by the Town, Warren County, or any other state or local agency pursuant to Proffer 3.1.3.5, the Applicant agrees to construct the Leach Run~~

~~Improvements first, subject to the terms and conditions set forth in Proffer 3.1.3.~~

3.3 Intentionally Deleted.

3.4 Interparcel Connection. The Applicant's Revised Functional Use Plan – Land Bay Layout accommodates a future interparcel connection to the Happy Creek Knolls subdivision. The Applicant shall provide the necessary right-of-way dedication upon request by the Town for such interparcel connection, at no cost to the Applicant.

IV. **Residential**

4.1. Residential Density

4.1.1 The maximum number of dwelling units to be constructed on the Property shall not exceed ~~three hundred thirty five~~ four hundred and fifty (335450) dwelling units.

4.1.2. In general conformance with the Master Plan ~~,as amended,~~ the single-family detached land bays ~~mayshall~~ contain ~~a maximum of one hundred seventy two hundred fifty~~ (170250) single family detached dwelling units ~~between thirty seven (37) and fifty four (54) dwelling units;~~ the single-family attached land bays ~~mayshall~~ contain ~~between one~~ one hundred sixty five (16500) ~~and one hundred twelve (112) dwelling units;~~ and the multi-family land bays shall contain ~~between two hundred fifty two (252) and three hundred twenty six (326) dwelling units.~~ The Applicant reserves

the right to adjust the above mix of housing unit types but in no case shall the total number of units exceed three hundred thirty five ~~four hundred fifty~~ (335~~450~~).

4.2. Phasing

The Applicant hereby proffers that residential development shall be phased such that building permits shall not be issued for more than one hundred fifty (100~~50~~) dwelling units every twelve (12) months. For the purposes of this provision, the first twelve-month period shall be considered the first full twelve (12) months following the beginning of construction on the Swan Estates project. All units not developed within the specified twelve-month period shall be carried forward to the next twelve-month period.

V. Community Design

5.1. Design

The Applicant agrees to provide an overall continuity of design within the community by means of selecting standards for the following elements, which will be uniformly specified and applied over the entire project, excluding areas within the public rights-of-way or public property:

1. Custom mailbox design.
2. Standardized common area fencing styles and color.
3. Standardized private residential fencing styles and color.
4. Community color selections to create neighborhood theme.
5. Uniform site furnishing selection (benches and trash receptacles).
6. Custom designed street signage and stop signage.

7. Landscaping at the entrance monuments along Swan Estates Drive selected to provide for a repetition of the neighborhood flower color scheme and theme trees throughout the community.

5.2. Architectural

- 5.2.1. The Applicant shall develop architectural and design covenants for the overall community. Said covenants will establish an architectural review board for the purpose of review and approval of all architectural elevations, exterior architectural features (including but not limited to fences, railings, walls and decks) for all uses within Swan Estates, as well as any publicly provided structures located on sites dedicated for public use. These covenants are intended to assure a continuity of overall architectural appearance, quality material selection, and a cohesive color palate for all structure within the entire development.
- 5.2.2. The Applicant shall construct all homes in conformance with the Revised Swan Estates Design Guidelines referenced in Section II of these proffers.

5.4. Signage

The Applicant shall provide an entrance feature with entry sign on the right and/or left side of Swan Estates Drive. The entrance feature shall be in conformance with Section 175-106 of the Town Zoning Ordinance or applicable successor provision. The

sign may be lighted from the front at ground level with a minimal amount of illumination. Landscaping both in front of and behind the signage and wall will be provided. The sign shall have either stone or brick columns and will be compatible with and closely related to the themes and color schemes for the overall community. All signage shall comply with Section 175-106 of the Town Zoning Ordinance or successor provision thereto, except as waived or modified by the Town.

5.5. Lighting

Any exterior lighting of common use recreation areas shall be directed downward and inward to reduce glare on adjacent properties, the public and/or private right-of-way, and upward stray illumination.

5.6. Landscape Adjacent to Adjoining Property

5.6.1. Happy Creek Knolls. The Applicant shall provide a landscape area within the fifty-five foot (55') perimeter buffer and along the common boundary with the Happy Creek Knolls subdivision either through tree preservation and/or installed landscaping. This landscape area will be owned and maintained by the property owners association and will not be part of any private lot. If the Applicant elects to not provide tree preservation in connection with this landscape area, the landscape area will be planted at a rate of one (1) tree per forty (40) linear feet with a minimum of twenty-five percent (25%) deciduous trees within said area.

5.6.2. Williamsburg Estates. The Applicant shall provide a landscape area on the south side of Swan Estates Boulevard and along the common boundary with the Williamsburg Estates subdivision Section 3, Block K, Lots 3-6 either through tree preservation and/or installed landscaping. The installed landscaping will include a double row of evergreen trees adjacent to Swan Estates Boulevard. This landscape area will be owned and maintained by the home owners association and will not be part of any private lot.

5.6.3 Additional Commercial Buffer. In addition to the 55’ vegetative buffer surrounding the Commercial portion of the project (as reflected in the Master Land Use Plan), the Applicant hereby proffers an additional 50’ vegetative buffer along the property line of the subject property where the Commercial portion of the project lies adjacent to Green Hills Subdivision (the “Additional Commercial Buffer”); provided, however, that the Applicant shall be under no duty to maintain or add new plantings to the Additional Commercial Buffer.

5.7. Recreational Amenities

5.7.1 Neighborhood Park. Before the seventy sixth (76th) building permit is issued, the Applicant shall design and submit a site plan for a neighborhood park of 3.5 acres in size, more or less, to applicable government agencies for review (the “Proffered Neighborhood Park”). Once the site plan is approved, the Applicant shall complete the

construction of the Proffered Neighborhood Park in accordance with the above-mentioned approved site plan and dedicate the land and improvements for the Proffered Neighborhood Park to Warren County. The location of the Proffered Neighborhood Park and its associated amenities shall be located in the general area shown on the Revised Functional Use Plan – Land Bay Layout . The Neighborhood Park shall be designed pursuant to the guidelines for Neighborhood Parks as set forth within Chapter 5, Community Facilities, of the 2013 Comprehensive Plan adopted by the Warren County. The park will include a field area that will allow multi-purpose sports for children of all ages; a playground for younger children ranging from toddler to 12 years; a picnic area that will include picnic tables and possibly a walking trail. Upon Warren County’s acceptance of the dedication of the Neighborhood Park, the Applicant shall receive a credit against the Warren County Proffers for the value of the dedicated land as set forth in Proffer 7.5.1 below. In the event that the County declines to accept the aforesaid dedication, the Neighborhood Park shall be dedicated to an HOA created pursuant to Section VI below, and the Applicant shall not receive any credits against the Warren County Proffers.

5.7.2 Passive Recreation Area. Additionally, the Applicant shall provide passive recreation on the Property consisting of a bird habitat preservation area, to be located in the general area shown on the Revised Functional Use Plan – Land Bay Layout . Active development of and use

in the bird habitat area will be limited to areas outside of any wetlands or other resource protection areas. Only those activities that are allowed by appropriate regulatory agencies without additional permitting will be allowed inside such areas. No applications for additional use in these areas will be made.

5.8 Schools Sidewalk

The Applicant hereby proffers to construct, on the west side of Westminster Drive, a concrete sidewalk six feet (6') wide beginning approximately at the northern entrance to the Warren County High School and ending approximately at the southern most entrance to the Hilda J. Barbour Elementary School (the "Schools Sidewalk"). The Applicant will construct this portion of the Schools Sidewalk to Town standards after the final approval of the subject rezoning and after the issuance of all applicable permits necessary for such construction. This obligation is conditional upon the granting of any necessary easements or dedications by the School Board to allow such construction; the Applicant shall then begin construction within sixty (60) days of written notification by the Town of Front Royal requesting such construction. The exact location of the sidewalk is to be determined by the Town of Front Royal, with the approval and agreement of the Applicant and the School Board.

5.9 Commercial Entrance Aesthetic. To the extent possible and commercially reasonable, the aesthetic elements of the entrance corridor for the commercial portion of the project shall be generally consistent with the visual elements of the entrance corridor of the residential portions of the project. Further, the aesthetic of the residential and

commercial entrance corridors for the project shall, to the extent possible and commercially reasonable, be generally consistent with the aesthetic of Leach Run Parkway.

VI. **Creation of a Homeowner's Association**

6.1. A homeowners association ("HOA") shall be created for the residential portions of the Property and shall be made responsible for the maintenance and repair of all common areas, together with such other responsibilities, duties and powers as are customary for such associations or as may be required for such HOA herein.

6.2. In addition to such other responsibilities and duties as may be assigned or as may be set forth herein, the HOA shall have title to and responsibility for all common open space areas not otherwise dedicated to public use and common buffer areas located outside of residential lots, to include, but not limited to, the entry of feature sign proffered herein.

VII. **Cash Proffers.**

7.1 Town Proffers.

7.1.1 The Applicant shall contribute to the Town of Front Royal, Virginia, a one-time cash contribution in the amount of \$7,910.3600.00 for each residential single family detached (SFD) dwelling unit and in the amount of \$6,039.72 for each single family attached (SFA) dwelling unit constructed on the Property, which contribution shall be used by the Town

of Front Royal to defray the costs and expenses associated with the design and construction of the Leach Run Parkway Improvements. The above contribution amounts were calculated using the Proffer Analysis dated September 8, 2022 and prepared by Greenway Engineering, Inc. This per-unit contribution shall be calculated at the time of approval of the building permit for construction of each residential dwelling unit on the Property and shall be payable prior to the issuance of the occupancy permit for said dwelling unit.

7.2 Credits Against Town Proffers. As per the Proffer Analysis dated September 8, 2022 and prepared by Greenway Engineering, Inc., the fair market value of the land previously dedicated by the Applicant as part of Leach Run Parkway was \$234,300.00. Therefore, notwithstanding the foregoing Proffer 7.1.1, the Applicant shall be entitled to a credit against the proffer amounts specified in Proffer 7.1.1 above equal to \$1,041.33 per residential dwelling unit (whether SFD or SFA).

Proffers 7.3 and 7.4 Intentionally Deleted.

7.5 County Proffers.

7.5.1. The Applicant shall contribute to the Warren County, Virginia, a one-time cash contribution in the amount of \$4,247.99 ~~3,300.00~~ for each residential ~~single family detached (SFD)~~ dwelling unit (SFA or SFD) constructed on the Property, which contribution shall be used by Warren County to support capital improvements relating to the impacts of the residential development on the Warren County Public Schools. This

contribution was calculated using the Proffer Analysis dated September 8, 2022 and prepared by Greenway Engineering, Inc. This per-unit contribution shall be calculated at the time of approval of the building permit for construction of each residential dwelling unit on the Property and shall be payable prior to the issuance of the occupancy permit for said dwelling unit.

7.5.2 Intentionally Deleted.

7.5.3 Intentionally Deleted.

7.5.4 Credits Against County Proffers. Notwithstanding the foregoing Proffer 7.5.1, the audited costs of the engineering, design, and construction of the Neighborhood Park as provided in these Proffers shall be credited against the aforesaid Warren County Proffers, provided further that the Applicant shall be entitled to a credit for the dedication of the land for the Neighborhood Park, ~~with such land dedication credit being a maximum of One Hundred Thousand and 0/100 Dollars (\$100,000.00) per acre.~~ As per the Proffer Analysis dated September 8, 2022 and prepared by Greenway Engineering, Inc., the fair market value of the land to be dedicated by the Applicant for the Neighborhood Park is \$350,000.00. Therefore, the Applicant shall be entitled to a credit against the proffer amounts specified in Proffer 7.5.1 above equal to \$1,044.78 per residential dwelling unit (whether SFD or SFA).

7.5.5 Intentionally Deleted.

7.6 Intentionally Deleted Assumption of Leach Run Parkway Improvements by Locality. ~~In the event that the Town, Warren County, and/or any state or local agency (e.g., the EDA) notify the Applicant in writing that it will assume responsibility for the design and construction of the Leach Run Parkway Improvements as provided for in Proffer 3.1.3.5, the Applicant shall remain responsible for the payment of the Town Proffers and the County Proffers. Moreover, the Town Proffers shall be used for the purpose of defraying the costs and expenses associated with the design and construction of the Leach Run Parkway Improvements.~~

VIII. **Comprehensive Plan Conformity**

Approval of the subject zoning map amendment and its constituent parts, including Proffers, Master Plan, as amended, and Revised Swan Estates Design Guidelines, by the Town Council of Front Royal, Warren County, Virginia, constitutes a finding that the subject zoning map amendment is found to be in substantial conformance with the Town of Front Royal adopted Comprehensive Plan.

IX. **Miscellaneous Provisions**

9.1 Monetary contributions as set forth in this Proffer Statement that are paid to the Town of Front Royal after 24 months from the date of rezoning approval shall be adjusted in accordance with the Urban Consumer Price Index (“CPI-U”), as published by the United States Department of Labor. The adjustment shall be calculated from the CPI-U published most nearly to and following January 1st from that date 24

months after rezoning approval and the date the contributions are paid, subject to a cap of 3% per year, non-compounded.

X. **Signature**

The conditions proffered above shall be binding upon the heirs, executors, administrators, assigns, and successors in the interest of the Applicant and owner. In the event the Town Council of the Town of Front Royal grants this revision to the previously approved rezoning and accepts these ~~Amended Proffers~~Amended Proffer Statement, such proffers shall apply to the land rezoned in addition to other requirements set forth in the Front Royal Town Code and Virginia law.

XI. **Interpretation**

Upon approval of these ~~Amended Proffer Statement s~~ by the Front Royal Town Council, in the event of a conflict between these ~~Amended Proffers~~Amended Proffer Statement and the Approved Proffers, the terms of the Amended Proffer Statement s shall govern.

This Amended Proffer Statement supersedes any proffer statements previously submitted in connection with this application and this Property.

THIS SPACE INTENTIONALLY LEFT BLANK.

SIGNATURE PAGE TO FOLLOW.

APPLICANT:

HEPTAD, LLC

By: _____

Ronald Llewellyn, Manager

STATE OF VIRGINIA

CITY/COUNTY OF _____, TO-WIT:

The foregoing instrument was acknowledged before me this ____ day of _____, ~~2022~~²⁰²¹~~12~~, by Ronald Llewellyn, in his capacity as Manager of HEPTAD, LLC.

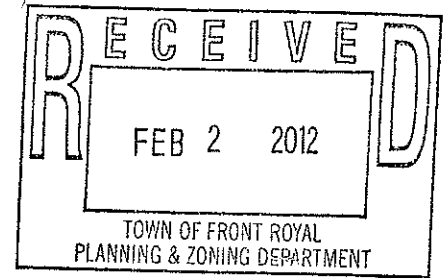
My commission expires: _____.

Notary Registration Number: _____.

NOTARY PUBLIC

000178 APR 13 2012

PROFFER STATEMENT



REZONING: RZ# 05-07-56
Suburban Residential (R-S) District to Planned Neighborhood
Development (PND) District

PROPERTY: 98.25 acres +/-;
Tax Parcel #20-A21-2-1 and Tax Parcel # 20A20-2-11

APPLICANT: HEPTAD, LLC

PROJECT NAME: Swan Estates

**ORIGINAL DATE
OF PROFFERS:** June 30, 2005
Amended November 2005
Amended March 2006
Amended April 15, 2011
Amended January 31, 2012

Preliminary Matters

Pursuant to Section 15.2-2296 et. seq. of the Code of Virginia, 1950, as amended, and the provisions of the Town of Front Royal Zoning Ordinance with respect to conditional zoning, the undersigned Applicant hereby proffers that in the event the Town Council of Front Royal, Warren County, Virginia, shall approve Rezoning Application #05-07-56 for the rezoning of approximately 98.25 acres from the Suburban Residential (R-S) District to Planned Neighborhood Development (PND) District, development of the subject property shall be done in general conformity with the terms and conditions set forth herein, except to the extent that such terms and conditions may be subsequently amended or revised by the Applicant and such be approved by the Front Royal Town Council in accordance with the said Code and Zoning Ordinance. In the event that such rezoning is not granted, then these proffers shall be deemed withdrawn and have no effect

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whatsoever. In the event this application is denied by the Front Royal Town Council (the "Council"), such denial is appealed to a court of competent jurisdiction, and this rezoning application is thereafter remanded to the Council for reconsideration, then the Applicant may elect to readopt all or any portion hereof, in a writing specifically for that purpose; if no such election is made, these proffers shall be withdrawn and shall be invalid.

Dedications and improvements proffered herein shall be provided at the time of development of that portion of the Property that contains or will be served by the dedication or improvement, unless otherwise specified herein. These proffers shall be binding upon the Applicant and its legal successors, heirs, or assigns.

The subject property, identified as the Anna Swan Estate, and more particularly described as the lands owned by Heptad, LLC, being all of Tax Map Parcels 20-A21-2-1 and 20A20-2-11 by virtue of a deed dated August 14, 2009 and recorded among the land records of the Warren County Circuit Court Clerk's Office as Instrument No. 090004959. More particularly consisting of Tax Map Parcels 20-A21-2-1, containing 97.7395 acres, more or less, as shown by plat of survey dated May 5, 2003, prepared by Mark D. Smith, L.S., of Greenway Engineering, entitled "Boundary Survey of the land of Anna Swan Estate, Town of Front Royal, Warren County, Virginia" and recorded as Instrument number 030007026, and Tax Map Parcel 20-A20-2-11, containing .52 acres, more or less, as shown by plat of survey dated May 3, 1957, prepared by S. M. Boyd, Jr., C.L.S., recorded in Warren County Deed Book 102, page 300.

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I. **Master Land Use Plan**

The Applicant hereby proffers to develop the 98.25 acre property in substantial conformance with a Master Land Use Plan (Master Plan) approved as part of the rezoning application, subject to revisions by the Applicant due to lot layout and road alignment in accordance with final engineering considerations. The Master Land Use Plan is intended to illustrate the systems of roadways that will provide access to the land bays and serve the single-family residential lots, parking areas and community facilities therein. The Master Land Use Plan generally identifies the single-family detached residential land bays, the multi-family residential land bays, the single-family attached residential land bays, and the commercial use land bay. The Master Land Use Plan consists of the following:

1. Cover Sheet – June 30, 2005, Revised November 2005, March 2006, March 2011
2. Generalized Location Plan – June 30, 2005, Revised November 2005, March 2006, March 2011
3. Boundary Survey – June 30, 2005, Revised November 2005, March 2006, March 2011
4. Slope Analysis – June 30, 2005, Revised November 2005, March 2006, March 2011
5. Topography Map – June 30, 2005, Revised November 2005, March 2006, March 2011

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6. Trip Distribution & Road Classification Plan – June 30, 2005, Revised November 2005, March 2006, March 2011
7. Flood Plain and Wetlands Delineation – June 30, 2005, revised November 2005, March 2006, March 2011
8. Leach Run Parkway Layout – June 30, 2005, Revised November 2005, March 2006, March 2011
9. Functional Use Plan- Land Bay Layout – June 30, 2005, Revised November 2005, March 2006, March 2011

II. **Design Guidelines**

The Applicant hereby proffers the Swan Estates Design Guidelines prepared by Joe Duggan & Associates, submitted concurrent with, and as an appendix to, this proffer statement. Design Guidelines may be revised by the Applicant in accordance with final engineering considerations. The Swan Estates Design Guidelines shall generally have the same force and effect as if incorporated herein. and the Applicant, in developing the Property, shall generally conform to such Design Guidelines; however, modification and alternatives shall be allowed provided such modifications and alternatives achieve the same intent. If any provision of the Swan Estates Design Guidelines shall subsequently be found to be invalid, the remaining provisions shall remain intact. Provided, however, notwithstanding anything in the Swan Estate Design Guidelines to the contrary, the applicant hereby proffers that the foundation of any residential structure shall be faced with brick, natural stone, synthetic stone, colored textured concrete, stamped concrete, or any combination thereof.

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III. Transportation

3.1 Leach Run Parkway

3.1.1 Right of Way Dedication

3.1.1.1 The final subdivision plat (a "Record Plat") for the first phase of the development of the Property shall include dedication of right-of-way for Leach Run Parkway as it traverses the Property presently as described in the Plan and Profile of Proposed Leach Run Parkway dated July 1, 1991 (the "Leach Run Parkway Dedication"), **provided** that Applicant shall be entitled to a credit for the Leach Run Dedication as provided for in Proffer 7.2.1 below.

3.1.1.2 The horizontal alignment of future Leach Run Parkway shown on Sheet 8 of the Master Plan as it traverses the Property is established and set by the rezoning approval.

3.1.2 Leach Run Parkway Improvements

3.1.2.1 Subject to the terms and conditions set forth as part of Proffer 3.1.3 below, prior to and as a condition of the issuance of the 130th building permit, the Applicant shall design and engineer four (4) lanes of Leach Run Parkway to VDOT standards running from State Route 55 (John Marshall Highway) and across the Property and terminating at the northeast corner of the Property as shown on the Master Land Use Plan. If desired by the Town, Applicant shall include a bicycle lane in its design of the portion of

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Leach Run Parkway running across the Property. In addition, the Applicant shall engineer and construct two (2) lanes of Leach Run Parkway to VDOT standards running from State Route 55 (John Marshall Highway) and across the Property and terminating at the northeast corner of the Property as shown on the Master Land Use Plan. Applicant's obligation is to design, grade, and provide drainage improvements for four (4) lanes of Leach Run Parkway and to engineer and construct two (2) such lanes as set forth herein shall be referred to collectively as the "Leach Run Improvements."

3.1.3 Terms & Conditions to Leach Run Improvements.

3.1.3.1 On or before two (2) years from approval of the rezoning, the Town shall have acquired all right-of-way sufficient to permit construction of the Leach Run Improvements from Route 55 (John Marshall Highway) to the northern boundary of the Property as shown on the Master Land Use Plan.

3.1.3.2 Within two (2) years from approval of the rezoning application for Swan Estates, the Town, on its own application and at its sole expense, shall have obtained all special use permits required pursuant to the Front Royal Town Code necessary to permit construction of two (2) lanes of the Leach Run Improvements.

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3.1.3.3 Within two (2) years from approval of the rezoning application for Swan Estates, the Town and the Applicant have entered into a mutually satisfactory memorandum of understanding which shall, among other things, include provisions delineating the parties' responsibilities with respect to construction of the Leach Run Improvements.

3.1.3.4 Notwithstanding anything in these Proffers or Chapter 175 of the Front Royal Town Code to the contrary, the Applicant shall not be required to submit a Final Development Plan pursuant to Section 175-37.18 of the Front Royal Town Code until after (i) the provisions of Proffer 3.1.3.1 through Proffer 3.1.3.3 have been satisfied or waived or (ii) the date after that the Town, Warren County, or other state or local agency have given written notice of their election to design and construct the Leach Run Improvements pursuant to Proffer 3.1.3.6 below .

3.1.3.5 Failure by the Town to comply with the terms of Proffer 3.1.3.1 through Proffer 3.1.3.3 above shall relieve Applicant of its obligations to make any of the Leach Run Improvements and shall have no impact on the maximum number of units allowed herein. Provided, however, this Proffer 3.1.3.5 shall not be interpreted to

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have any impact on Applicant's obligation to make cash proffers pursuant to the terms and conditions of Article VII herein.

3.1.3.6 In the event that the Town, the County of Warren, Virginia, or other state or local agency (e.g., the Industrial Development Authority of the Town of Front Royal and Warren County, Virginia (the "EDA")) give written notice to the Applicant that it the Town, the County of Warren, Virginia, or other state or local agency will be responsible for the design and/or construction of the Leach Run Improvements, the Applicant shall no longer be responsible for the design and/or construction of the Leach Run Improvements as of the date of such written notice. However, the Applicant shall remain responsible for the payment of the Cash Proffers set forth in Section VII of these Proffers, with the Town Proffers to be used to defray the construction and design costs of the Leach Run Parkway Improvements. The decision by the Town, Warren County or other state or local agency to assume the responsibility of designing and/or constructing the Leach Run Parkway Improvements shall remove the limitation on Applicant's building permits as set forth in Proffer 3.1.2.1.

3.1.3.6.7 In the event that the Applicant and the Council mutual agree to change the deadlines set forth in Proffer 3.1.3.1 through

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Proffer 3.1.3.3 above, such agreement shall be memorialized in a writing signed by the Applicant and the Mayor without the necessity of amending this Proffer Statement.

3.2. Off-Site Swan Estates Drive to Existing Westminster Drive.

The Applicant proffers to engineer, design and construct an extension of Swan Estates Drive to connect to existing Westminster Drive to the west of the subject property (Tax Map 20-A21-2-1) across property currently owned by the Warren County School Board (Tax Map 20-A14-2-1) (the "Westminster Connector") conditioned upon an agreement between the Town and School Board as to the final location and legal status of the property across which the Westminster Connector will be built. The Applicant proffers to make its best efforts to have the School board dedicate the Westminster Connector easement to the Town in fee simple. In the interest of public safety and general welfare, the Westminster Connector will provide an alternate access to the public schools located on Westminster Drive. In the event that (i) the School Board does not dedicate the Westminster Connector to the Town in fee simple and (ii) responsibility for the Leach Run Improvements has not been assumed by the Town, Warren County, or any other state or local agency pursuant to Proffer 3.1.3.5, the Applicant agrees to construct the Leach Run Improvements first, subject to the terms and conditions set forth in Proffer 3.1.3.

- 000187 APR 13 2011
- 3.3 Construction Entrance. Applicant shall construct a temporary construction entrance road from Virginia State Route 55 to the Property within the Leach Run Parkway alignment shown in the 1991 Plan and Profile (the "Construction Entrance"). The purpose of the Construction Entrance shall be to permit access to the Property for construction and development. No construction traffic shall access the Property via Westminster Drive. Provided, however, notwithstanding anything in these Proffers to the contrary, Applicant's obligations in this Proffer 3.3 are conditioned upon the Town having right of way from Route 55 to the southern boundary of the Property sufficient to allow ingress and egress for construction vehicles between the Property and Route 55.
- 3.4 Interparcel Connection. Subject to the terms and conditions set forth in Proffer 3.1.3 above, no interparcel connection to Happy Creek Knolls subdivision shall be constructed until the completion of the connection to State Route 55.

IV. Residential

4.1. Residential Density

- 4.1.1 The maximum number of dwelling units to be constructed on the Property shall not exceed four hundred and fifty (450) dwelling units.
- 4.1.2. In general conformance with the Master Plan the single-family detached land bays shall contain between thirty seven (37) and fifty four (54) dwelling units; the single-family attached land bays

000188 APR 13 20

shall contain between one hundred (100) and one hundred twelve (112) dwelling units; and the multi-family land bays shall contain between two hundred fifty two (252) and three hundred twenty six (326) dwelling units. The Applicant reserves the right to adjust the above mix of housing unit types but in no case shall the total number of units exceed four hundred fifty (450).

4.2. Phasing

The Applicant hereby proffers that residential development shall be phased such that building permits shall not be issued for more than fifty (50) dwelling units every twelve (12) months. For the purposes of this provision, the first twelve-month period shall be considered the first full twelve (12) months following the beginning of construction on the Swan Estates project. All units not developed within the specified twelve-month period shall be carried forward to the next twelve-month period.

V. Community Design

5.1. Design

The Applicant agrees to provide an overall continuity of design within the community by means of selecting standards for the following elements, which will be uniformly specified and applied over the entire project, excluding areas within the public rights-of-way or public property:

1. Custom mailbox design.
2. Standardized common area fencing styles and color.
3. Standardized private residential fencing styles and color.

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4. Community color selections to create neighborhood theme.
5. Uniform site furnishing selection (benches and trash receptacles).
6. Custom designed street signage and stop signage.
7. Landscaping at the entrance monuments along Swan Estates Drive selected to provide for a repetition of the neighborhood flower color scheme and theme trees throughout the community.

5.2. Architectural

5.2.1. The Applicant shall develop architectural and design covenants for the overall community. Said covenants will establish an architectural review board for the purpose of review and approval of all architectural elevations, exterior architectural features (including but not limited to fences, railings, walls and decks) for all uses within Swan Estates, as well as any publicly provided structures located on sites dedicated for public use. These covenants are intended to assure a continuity of overall architectural appearance, quality material selection, and a cohesive color palate for all structure within the entire development.

5.2.2. The Applicant shall construct all homes in conformance with the Design Guidelines referenced in Section II of these proffers. These homes shall utilize brick, stone, masonry and/or stucco on the front elevation facing the addressing street. Siding may be used if a porch extends across a portion of the front of a house. In

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the event siding is utilized, all siding shall be a minimum of six inches (6") wide and shall not be made from aluminum.

5.3. Multi-Family Dwelling Units. The Applicant hereby proffers that all multi-family dwelling units shall be in a condominium form of ownership consistent with Virginia law.

5.4. Signage

The Applicant shall provide an entrance feature with entry sign on the right and/or left side of Swan Estates Drive. The entrance feature shall be in conformance with Section 175-106 of the Town Zoning Ordinance or applicable successor provision. The sign may be lighted from the front at ground level with a minimal amount of illumination. Landscaping both in front of and behind the signage and wall will be provided. The sign shall have either stone or brick columns and will be compatible with and closely related to the themes and color schemes for the overall community. All signage shall comply with Section 175-106 of the Town Zoning Ordinance or successor provision thereto, except as waived or modified by the Town.

5.5. Lighting

Any exterior lighting of common use recreation areas shall be directed downward and inward to reduce glare on adjacent properties, the public and/or private right-of-way, and upward stray illumination.

5.6. Landscape Adjacent to Adjoining Property

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5.6.1. Happy Creek Knolls. The Applicant shall provide a landscape area within the fifty-five foot (55') perimeter buffer and along the common boundary with the Happy Creek Knolls subdivision either through tree preservation and/or installed landscaping. This landscape area will be owned and maintained by the property owners association and will not be part of any private lot. If the Applicant elects to not provide tree preservation in connection with this landscape area, the landscape area will be planted at a rate of one (1) tree per forty (40) linear feet with a minimum of twenty-five percent (25%) deciduous trees within said area.

5.6.2. Williamsburg Estates. The Applicant shall provide a landscape area on the south side of Swan Estates Boulevard and along the common boundary with the Williamsburg Estates subdivision Section 3, Block K, Lots 3-6 either through tree preservation and/or installed landscaping. The installed landscaping will include a double row of evergreen trees adjacent to Swan Estates Boulevard. This landscape area will be owned and maintained by the home owners association and will not be part of any private lot.

5.6.3 Additional Commercial Buffer. In addition to the 55' vegetative buffer surrounding the Commercial portion of the project (as reflected in the Master Land Use Plan), the Applicant hereby proffers an additional 50' vegetative buffer along the property line of the subject property where the Commercial portion

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of the project lies adjacent to Green Hills Subdivision (the "Additional Commercial Buffer"); provided, however, that the Applicant shall be under no duty to maintain or add new plantings to the Additional Commercial Buffer.

5.7. Recreational Amenities

5.7.1 Neighborhood Park. Before the seventy sixth (76th) building permit is issued, the Applicant shall design and submit a site plan for a neighborhood park of 3.5 acres in size, more or less, to applicable government agencies for review (the "Neighborhood Park"). Once the site plan is approved, the Applicant shall complete the construction of the Neighborhood Park in accordance with the above-mentioned approved site plan and dedicate the land and improvements for the Neighborhood Park to Warren County. The location of the Neighborhood Park and its associated amenities shall be located in the general area shown on the Master Plan. The Neighborhood Park shall be designed in accordance with the document titled "Comprehensive Parks and Recreation Facilities Master Plan; Warren County Virginia Parks and Recreation" dated March 2007 and the description of both Mini and Neighborhood Parks on page 36 of that plan. The park will include a field area that will allow multi-purpose sports for children of all ages; a playground for younger children ranging from toddler to 12 years; a picnic area that will include picnic tables and possibly a walking trail. However, if Warren County makes it known that different amenities are desired, they will be substituted as

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needed in place of the amenities offered above. In the event that Warren County accepts the dedication of the Neighborhood Park, the Applicant shall receive a credit against the Warren County Proffers for the value of the dedicated land as set forth in Proffer 7.5.1 below. Alternatively, in the event that the County declines to accept the aforesaid dedication, the Neighborhood Park shall be dedicated to an HOA created pursuant to Section VI below, and the Applicant shall not receive any credits against the Warren County Proffers.

5.7.2 Passive Recreation Area. Additionally, the Applicant shall provide passive recreation on the Property consisting of a bird habitat preservation area, to be located in the general area shown on the Master Plan. Active development of and use in the bird habitat area will be limited to areas outside of any wetlands or other resource protection areas. Only those activities that are allowed by appropriate regulatory agencies without additional permitting will be allowed inside such areas. No applications for additional use in these areas will be made.

5.8 Schools Sidewalk

The Applicant hereby proffers to construct, on the west side of Westminster Drive, a concrete sidewalk six feet (6') wide beginning approximately at the northern entrance to the Warren County High School and ending approximately at the southern most entrance to the Hilda J. Barbour Elementary School (the "Schools Sidewalk"). The Applicant will construct this portion of the Schools Sidewalk to Town standards after the final approval of the subject rezoning and after the issuance of all applicable permits

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necessary for such construction. This obligation is conditional upon the granting of any necessary easements or dedications by the School Board to allow such construction; the Applicant shall then begin construction within sixty (60) days of written notification by the Town of Front Royal requesting such construction. The exact location of the sidewalk is to be determined by the Town of Front Royal, with the approval and agreement of the Applicant and the School Board.

5.9 Commercial Entrance Aesthetic. To the extent possible and commercially reasonable, the aesthetic elements of the entrance corridor for the commercial portion of the project shall be generally consistent with the visual elements of the entrance corridor of the residential portions of the project. Further, the aesthetic of the residential and commercial entrance corridors for the project shall, to the extent possible and commercially reasonable, be generally consistent with the aesthetic of Leach Run Parkway.

VI. **Creation of a Homeowner's Association**

6.1. A homeowners association ("HOA") shall be created for the residential portions of the Property and shall be made responsible for the maintenance and repair of all common areas, together with such other responsibilities, duties and powers as are customary for such associations or as may be required for such HOA herein.

6.2. In addition to such other responsibilities and duties as may be assigned or as may be set forth herein, the HOA shall have title to and responsibility for all common open space areas not otherwise dedicated to public use and common buffer areas located

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outside of residential lots, to include, but not limited to, the entry of feature sign proffered herein.

6.3. The Applicant shall provide to the HOA, at the time of completion of the development, temporary funding for the purpose of maintaining open space areas; the HOA shall assume financial responsibility for its responsibilities at the time it is financially solvent and the Applicant shall have no further obligation to provide supplemental funding to the HOA.

VII. Cash Proffers.

7.1 Town Proffers.

7.1.1 First 335 Dwelling Units. In the event this rezoning is approved, for the first three hundred and thirty five (335) dwelling units, the Applicant will pay to the Town of Front Royal a per unit contribution of \$18,000 for each single-family residential detached dwelling unit (SFD); \$11,000.00 for each single family residential attached dwelling unit (SFA); and \$9,000.00 for each multi-family dwelling units (MDU) which contributions shall be used by the Town solely for the planning, design, engineering, right of way acquisition and/or construction of Leach Run Parkway.

7.1.2 Remaining 115 Dwelling Units. In the event this rezoning is approved, for the remaining one hundred fifteen (115) dwelling units, the Applicant will pay to the Town of Front Royal a per unit contribution of \$9,000.00 for each single family detached residential unit (SFD);

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\$5,500.00 for each single family residential attached dwelling unit (SFA);
and \$4,500.00 for each multi-family dwelling unit (MDU), which
contributions shall be used by the Town solely for the planning, design,
engineering, right of way acquisition and/or construction of Leach Run
Parkway.

7.1.3 Time of payment of Town Proffers. The Applicant shall pay the
applicable amount of Town Proffers at the time that the Applicant receives
an occupancy permit for a residential dwelling unit (whether attached,
detached, or multi-family in nature).

7.2 Credits Against Town Proffers. The Applicant shall receive a dollar-
for-dollar credit against the aforesaid Town Proffers for the following costs actually
incurred by the Applicant:

7.2.1 The fair market value, as mutually determined between the
applicant and the Town, of the land being offered as part of the Leach Run
Land Dedication, shall have a maximum value of One Hundred Thousand
and 0/100 Dollars (\$100,000.00) per acre;

7.2.2 The engineering, design and construction costs associated with
constructing the Leach Run Improvements as provided for in Proffers
3.1.2 & 3.1.3; and

7.2.3 The engineering, design and construction costs associated with
constructing the Construction Entrance as provided for in Proffer 3.4.

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7.3 Accounting of Credits to Town Proffers. An accounting of the credits

accrued by the Applicant shall be undertaken by the Town, in cooperation with the Applicant, and the credits available for the future phases of the development shall be determined.

7.4 Escrow of Town Proffers. In the event the Town elects to have the Applicant construct the Leach Run Improvements as provided in Proffers 3.1.2 & 3.1.3 above, the per unit contribution set out in Proffer 7.1 shall be placed in third party escrow (such third party escrow agent and the escrow agreement to be mutually agreed upon by the Town and the Applicant), and shall be paid over to the Applicant to reimburse it for the actual audited cost of the engineering, design, and construction of Leach Run Parkway. The Town and the Applicant shall enter into a mutually satisfactory agreement that sets out responsibilities of the parties; provided that until such agreement is entered into, the Applicant shall not be obligated to make the Leach Run Improvements, and provided further that the Applicant shall not unreasonably condition or withhold approval of such agreement. Upon the completion of the Leach Run Improvements, and if the actual audited cost of the engineering, design, and construction of the Leach Run Improvements do not exceed the escrowed contribution proffers and projected future proffer payments, the remaining per-unit contributions, if any, shall be made directly to the Town of Front Royal for use in those projects related to (i) trails and/or bike paths as outlined in the Town of Front Royal Capital Improvement Plan and/or (ii) signalization improvements at the intersection of State Route 55 and Leach Run Parkway. Nothing

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7.5.1. For all 450 Dwelling Units. In the event this rezoning application is approved, the Applicant will pay to Warren County, Virginia a per unit sum of \$5,500.00 prior to and as a condition of the issuance of an occupancy permit for each dwelling unit constructed on the Property (SFD, SFA, or MDU).

7.5.2 For the final 115 Dwelling Units. In addition, in the event this rezoning application is approved, for the final 115 dwelling units, the Applicant will pay to Warren County a per unit contribution of \$9,000.00 for each SFD; \$5,500.00 for each SFA; and \$4,500.00 for each MDU.

7.5.3 Proffer Designation. All County Proffers provided for herein shall be designated for Warren County Public Schools.

7.5.4 Credits Against County Proffers. Notwithstanding the foregoing Proffer 7.5, the audited costs of the engineering, design, and construction of the Neighborhood Park as provided in these Proffers shall be credited against the aforesaid Warren County Proffers, provided further that the Applicant shall be entitled to a credit for the dedication of the land for the Neighborhood Park, with such land dedication credit being a maximum of One Hundred Thousand and 0/100 Dollars (\$100,000.00) per acre.

7.5.5 Time of payment of County Proffers. The Applicant shall pay the applicable amount of County Proffers at the time that the Applicant applies for an occupancy permit for a residential dwelling unit (whether attached, detached, or multi-family in nature).

7.6 Assumption of Leach Run Parkway Improvements by Locality. In the event that the Town, Warren County, and/or any state or local agency (e.g., the EDA)

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occupancy permit for a residential dwelling unit (whether attached, detached, or multi-family in nature).

7.6 Assumption of Leach Run Parkway Improvements by Locality. In the event that the Town, Warren County, and/or any state or local agency (e.g., the EDA) notify the Applicant in writing that it will assume responsibility for the design and construction of the Leach Run Parkway Improvements as provided for in Proffer 3.1.3.5, the Applicant shall remain responsible for the payment of the Town Proffers and the County Proffers. Moreover, the Town Proffers shall be used for the purpose of defraying the costs and expenses associated with the design and construction of the Leach Run Parkway Improvements.

VIII. Comprehensive Plan Conformity

Approval of the subject zoning map amendment and its constituent parts, including Proffers, Master Plan, and Design Guidelines, by the Town Council of Front Royal, Warren County, Virginia, constitutes a finding that the subject zoning map amendment is found to be in substantial conformance with the Town of Front Royal adopted Comprehensive Plan.

IX. Miscellaneous Provisions

9.1 Monetary contributions as set forth in this Proffer Statement that are paid to the Town of Front Royal after 24 months from the date of rezoning approval shall be adjusted in accordance with the Urban Consumer Price Index ("CPI-U"), as published by the United States Department of Labor. The adjustment shall be calculated from the CPI-U published most nearly to and following January 1st from that date 24

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months after rezoning approval and the date the contributions are paid, subject to a cap of 3% per year, non-compounded.

X. **Signature**

The conditions proffered above shall be binding upon the heirs, executors, administrators, assigns, and successors in the interest of the Applicant and owner. In the event the front Royal Town Council grants this rezoning and accepts the conditions, the proffered conditions shall apply to the land rezoned in addition to other requirements set forth in the Front Royal Code.

This Proffer Statement supersedes any proffer statements previously submitted in connection with this application and this Property.

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SIGNATURE PAGE TO FOLLOW.

Design Guidelines

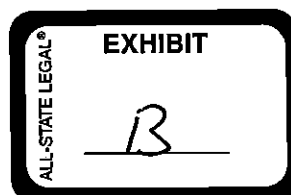
Submitted by:

Joseph F. Silek, Jr., P.C.

For

HEPTAD, LLC

Revised September 9, 2022



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A. Introduction

1. Project Description

The Swan Estates development consists of approximately 98.25 acres of land and is located between the existing Williamsburg Estates and Happy Creek Knolls subdivisions. The property is comprised of two parcels, currently zoned PND. The proposed PND development of the Property is comprised of Single Family Detached units, which are anticipated to have a design aesthetic consistent with surrounding neighborhoods. In addition, a portion of Swan Estates will include acreage for future retail neighborhood commercial development primarily for the benefit of Swan Estates residents. The project entrance on Leach Run Parkway shall be delineated with monumentation and landscaped accordingly. A pedestrian network will link the community together. Open space will be provided in a central location and will contain recreational amenities to serve the community.

2. Purpose of Guidelines

The purpose of this document is to describe the design concepts for Swan Estates and meets the criteria for the Town of Front Royal PND ordinance, in addition to describing the design principles that support the concept, in order to provide a set of guidelines for developing the various components of the proposed plan. These guidelines, while not overly restrictive, will be used to direct the design at the Swan Property.

Either the developer or an Architectural Review Board (ARB) established by the Property Owners Association (POA) will evaluate any amendments, revisions, and waivers to the Design Guidelines to determine if they are appropriate and in keeping with the original intent of the Design Guidelines.

3. Organization of the Guidelines

The guidelines begin with the overall development design criteria that will be utilized to create organization and coherence within the community. The essential design elements of the project are as follows: architecture, streetscape design, open space standards, landscape design, parking, and signage. The design guidelines and standards are intended to explain basic aspects of conformance rather than specific design criteria. The overall layout of the proposed development has not been finalized. An illustrative bubble plan is included as Appendix A. All illustrations shown represent proposed preliminary design intentions and are subject to change based upon final design and construction plans, while continuing to maintain the standards and criteria of the design guidelines and the PND ordinance.

B. Development Design Criteria

1. Design Principles

The Urban Development Area (UDA) calls for increased housing density, and the site itself is varied; going from woods to open fields and includes both steep slopes, floodplain, and the Leach Run riparian corridor. The design for Swan Estates applies the flexibility of the PND ordinance to achieve the intent of the UDA by integrating Single Family Detached units with the site's distinctive natural features. The Single Family Detached units will be located to complement existing site conditions, capitalizing on the natural features, while limiting disturbance to sensitive areas such as steep slopes and floodplain. The proposed road layout respects the site's topography while at the same time connecting the Single Family Detached housing to neighborhood amenities and the surround community. Pedestrian connectivity will be provided through a network of sidewalks and trails that will both follow the road layout and, where appropriate, extend into open spaces.

Swan Estates will also include a commercial section that, although separated by Leach Run Parkway, will be available to pedestrian traffic from the community. This will further reduce vehicular traffic both inside the neighborhood and coming and going from the community itself into town to pick up household 'essentials'.

The end result will be an integrated community that is pedestrian oriented, aesthetically pleasing, and environmentally friendly.

2. Residential Layout

The residential component of the Swan Estates Development, totally roughly 83.84 acres, will consist of a total of 335 single family residential dwelling units (expected to consist of 170 single family detached units and 165 single family attached units), resulting in a gross density of approximately 4 units/acre. As discussed in section A3, this project is in the preliminary phase, any lot layout or bubble plan shown is conceptual and preliminary. Final design may vary based upon final engineering.

3. Residential Elevations

All buildings will be located with respect to the immediate site conditions and user functions, taking advantage of the features of each site while limiting the disturbance to the land. The 'front' of each unit with its best facade, will be oriented accordingly while keeping in mind that each unit is part of the neighborhood as a whole. Material selection for the facades will be integrated throughout the housing types in order to contribute to the overall appearance of the community.

4. Building Height

The building height and massing will vary but will be designated to complement the character of the land and overall design of the neighborhood. In regard to roof lines, there may be a variety of rooflines and projections that will help to improve aesthetics and the architectural fenestration, minimizing the massing of any single building plane.

5. Development Relationship

The natural features of the site will be integrated with the residential development, resulting in maximized open space and resource protection. This approach will allow over 26 acres (over 30%) of the residential component to remain in open space, to include untouched conservation land consisting of the riparian corridor and floodplain of Leach Run. The residential units will have complementary architectural styles. The commercial component although separated by Leach Run parkway will also have a complementary architecture that works with the rest of the community.

This concept of designing the neighborhood to preserve open space will not only benefit the residents, but the community as a whole, as the project will look like it 'fits' the site and has not been imposed on it. In addition to the open space, the project will adhere to the PND required setback ordinance and related buffers to further enhance its outward appearance.

These techniques follow the intent of the PND ordinance while increasing density as called for within the UDA and also respect the environmental features of the site. As a result, Swan Estates will be an environmentally friendly neighborhood that will also be aesthetically pleasing when viewed from Leach Run Parkway and the surrounding community.

C. Architecture

1. General Design Criteria

General Architectural Guidelines - The objective of the architectural design standards is to generate a unified design image for the site but allow individual structures to maintain independent design themes.

General Architectural Massing - The Single Family Detached units shall exhibit a variety in their massing, height, roof configurations, projections, and recesses. Where appropriate, each building design may differ from adjacent structures.

General Building Elevations - All buildings shall be designed to complement the character of the neighborhood's theme and be sensitive to the appropriate materials, color, and scale. The side and rear elevations should complement the design character of the overall architectural theme and all building elevations shall be assembled using quality materials and finishes.

2. Single Family Detached Units (SFD)

Descriptions - SFD units will be two story single family detached homes typically with front loaded garages. They may have attached garages or side loaded attached garages as options where appropriate.

Materials - A variety of architectural materials and textures may be used for each building facade. Acceptable elevation materials shall include but not be limited to brick, stone, wood, cedar shakes, architectural asphalt shingles, or standing seam metal roofing. Additional materials may be substituted by approval of the developer or ARB.

Colors - Colors or tones that are characteristic of the architectural style selected, and which will complement the character of the community and adjacent developments, should be used. Limited accent colors may be used to complement the building design. The use of fluorescent or garish colors shall be prohibited.

Mechanical Equipment - All efforts should be made to screen the mechanical equipment from the view of the streets.

SFD Unit Typical

The following table specifies the minimum standards for the SFD units.

Note: Brick returns, bay windows, downspouts, and roof overhangs are permitted to occur within the minimum setbacks.

Minimum Lot Depth:	60 ft.
Minimum Lot Width:	46 ft.
Minimum Setbacks:	
Minimum Front Yard Setback to Dwelling:	15 ft.
Minimum Rear Yard Setback to Street:	3 ft.
Minimum Side Yard Setback to Dwelling:	
Interior Lot:	7.5 ft.
Corner Lot:	15 ft.

3. Townhome Unit

Description - Townhome housing units are a 3-story attached style of home with a front-loaded garage. The front facades will vary in depth to enhance the streetscape appearance. The front yard setback is at a minimum to accommodate driveway parking.

Materials - A variety of architectural materials and textures may be used for each building facade. Acceptable elevation materials shall include but not be limited to brick, stone, wood, cedar shakes, architectural asphalt shingles, or standing seam metal roofing. Additional materials may be substituted by approval of the developer or ARB.

Colors - Colors or tones that are characteristic of the architectural styled selected, and which will complement the character of the community and adjacent developments, should be used. Limited accent colors may be used to complement the building design. The use of fluorescent or garish colors shall be prohibited.

Mechanical Equipment - All efforts should be made to screen the mechanical equipment from the view of the streets.

TOWNHOME TYPICAL

Townhome housing units are a 3-story attached style of home with a front-loaded garage. The front facades will vary in depth to enhance the streetscape appearance. They are designed to be oriented in close proximity to the street. The siting of the homes in this manner further encourages pedestrian movement. The following table specifies the minimum standards for the Townhouse House type.

Note: Brick returns, bay windows, downspouts, and roof overhangs are permitted to occur within the minimum setbacks.

Townhome Minimum Lot Size:	1,120 sf.
Minimum Lot Depth:	70 ft.
Minimum Lot Width:	16 ft.
Minimum Setbacks:	
Minimum Front Yard Setback to Dwelling:	20 ft.
Minimum Side Yard Setback to Dwelling	
(end unit):	10 ft.
Minimum Rear Yard Setback:	20 ft.
Porches and decks:	5 ft.

4. Recreation

The PND ordinance states that recreation and park facilities are permitted uses. The Swan Estates development will provide residents with both active and passive recreation to satisfy their needs. The PND ordinance promotes the design of a walkable environment for pedestrians. A pedestrian network will be provided throughout the major thoroughfares, allowing the residents to traverse throughout the community without the need of an automobile. Additional passive recreation shall be included with the community center and along the floodplain/conservation land.

Adjacent to Swan Estates are existing school sites, complete with playgrounds, ball fields, football stadium with track, and tennis courts, all within walking distance from Swan Estates. Additional active recreational amenities provided within Swan Estates include but are not limited to the following: a playground, open play areas, path system, and a structured sitting area. The Swan Estates development will meet or exceed the PND ordinance requirement of 335 square feet of recreation area per dwelling unit.

5. Playground Typical

The Swan Estates development will have a central open space area capable of incorporating the playground. The final location of the playground will be determined upon final engineering. The playground area will be at least 2,000 square feet and contain the following minimum components:

- play equipment
- edging and surfacing meeting ASTM and USCPSC standards
- bench
- trash receptacle

D. Streetscape

1. Design criteria

The streetscape will complement the park-like character of the community through the use of canopy trees along the main streets. The selection of any hardscape elements should be of similar materials and should assist in setting the tone for the overall neighborhood design theme.

2. Street Layout

The design and location of streets in Swan Estates will work with the land, especially the existing topography, to minimize its footprint and maximize protection of natural features. The internal street network consists of a series of interconnecting streets that enable multiple points of connection to the surrounding community, with the main vehicular entrance located on Leach Run Parkway. This street layout will slow down the overall speed of cars on the local neighborhood streets. All of this will lend to a more pedestrian friendly community per the PND ordinance.

3. Streetscape

The PND ordinance encourages enhanced streetscapes. The Swan Estates development will provide such enhancements. The landscape treatment for the streetscape may occur either on the private lots or fall within the linear street section of green space. The plantings may occur as a repeated pattern of street trees or may be clustered in more naturalistic groupings.

Streetscape lighting will be a fixture selected to complement the character of the community and will direct light downward to minimize the upward glare. The fixture will match the Town's approved light standard. The fixture will further enhance the overall theme of the community.

Additional site furnishings are to include, but not limited to, mailboxes, benches, street signs and poles. These furnishings will complement the overall theme of the community.

4. Parking

The pedestrian network will provide a means of accessing open space throughout the community that does not require the use of a vehicle; therefore, extensive parking areas will be minimized. Off street parking will be provided on the Single Family Detached lots. The community center will include parking per PND ordinance standards and will be appropriately marked with signage to indicate emergency access and handicap accessibility.

5. Entrance Feature

At the option of the developer, an entrance feature with entry sign will be placed on either the right or left of the entrance on Leach Run Parkway, or both. Another placement option is the center island for monumentation. The entrance feature would have a maximum height of 8 feet, with a maximum sign panel size of 24 square feet for each panel. The sign may be lighted from the front at ground level with a minimal amount of illumination. Landscaping both in front of and behind the signage and wall will be provided. The style of signage and materials will be compatible with and closely related to the themes and color schemes established for the overall neighborhood.

E. Open Spaces

1. Design Criteria

As a result of the project design, public open space is grouped in large parcels, accessed primarily by the pedestrian system. Active recreation will be centrally located and will include at a minimum, a structured sitting area, a playground, and an open play lawn area where many informal activities could take place: football, soccer, baseball, Frisbee, to name a few. The adjacent school site is able to provide additional active recreation and is within walking distance of the Swan Estate development. The Swan Estates

development will adhere to open space guidelines listed in the Town of Front Royal PND ordinance.

2. Conservation Land

The Swan Estates community contains a floodplain area, containing one road crossing, with the balance to be preserved. The floodplain area has the opportunity to be enhanced for passive recreation. A habitat park is a viable option, providing vegetation that will attract birds and other wildlife to the region. The area is accessible by an adjacent neighborhood street and sidewalk running parallel to the floodplain. Visual opportunities for viewing the wildlife habitat area could be provided with overlook points along the proposed sidewalk and neighborhood street.

3. Perimeter Setback

The PND requirement calls for a 55' perimeter setback, which is provided in all areas applicable. In addition, the developer will provide additional screening along the boundary adjacent to Happy Creek Knolls, either through tree preservation or installed landscaping. If tree preservation does not exist, the landscaped area will be planted at a ratio of 1 tree per 40 linear feet. The landscaped area will contain a minimum 25% deciduous trees.

4. Pedestrian Network

The PND ordinance encourages a walkable community. A pedestrian network will be provided throughout, which will link all areas within the community to the recreation areas. Additional path systems will include linking active and passive recreation to the sidewalk system. The pedestrian network system will enhance the theme of the neighborhood by promoting pedestrian movement instead of vehicular movement.

5. Habitat Park

Within the Swan Estates neighborhood, a portion of the floodplain will be allocated for a Habitat Park. Selected areas shall be re-vegetated in an effort to attract and maintain these areas as a habitat for upland wildlife, birds, and butterflies.

6. Additional Public Benefit

The Swan Estates development has several items to be utilized for additional public benefit. These items occur at the developer's expense and are above and beyond the PND ordinance requirement. The following elements will improve aesthetics and increase the quality of life for the residents of the Swan Estates community.

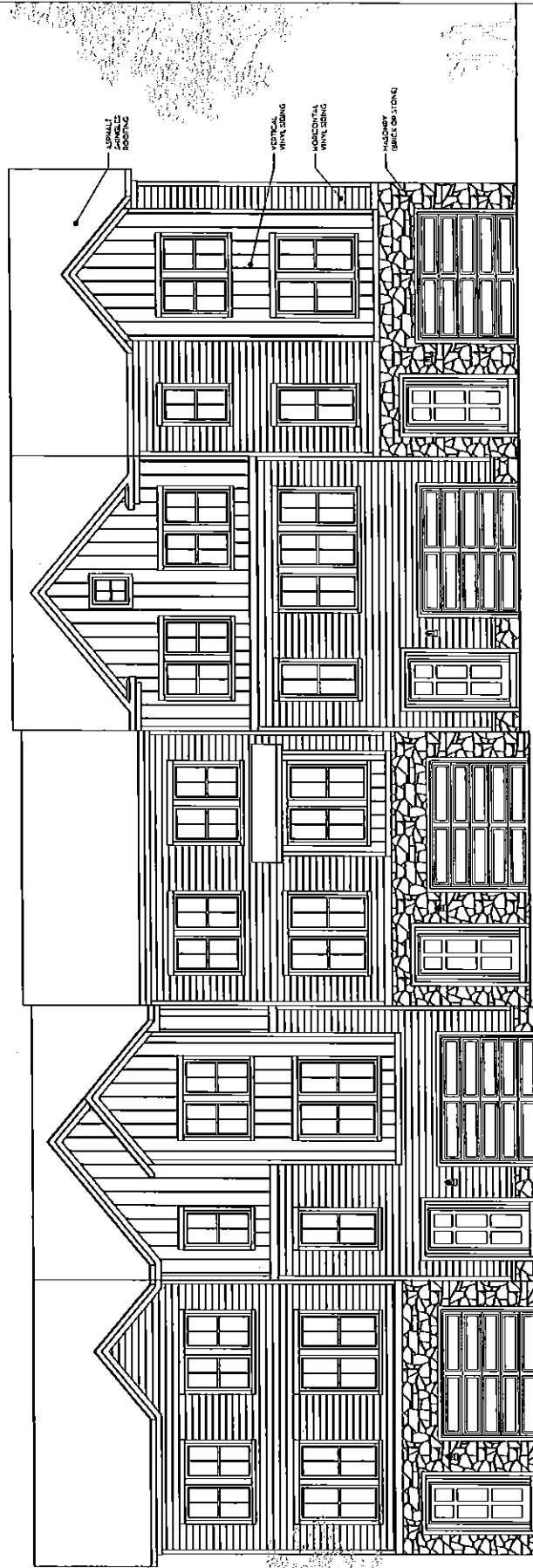
One method is to enhance the streetscape. Swan Estates will provide more than just a typical street tree layout along the internal streets. The developer will utilize a unique street tree spacing to allow the introduction of ornamental trees and potential planting beds in a repeated pattern. This will provide a uniform and attractive streetscape above and beyond what one would consider a normal streetscape.

Another item is providing Swan Estates a Habitat Park within the floodplain. This park is discussed in Section E.5. This facility will provide neighborhood residents with a unique wildlife viewing experience. This proposed park is above and beyond the open space and recreation requirements for this development.

A third item is providing a central park space for the Swan Estates residents. This park will contain a playground with a children's track for bikes and tricycles, a trellised sitting area with formal landscaping adjacent to the space, which will provide the community with a central focus and gathering space. The open lawn space in the center of the park is large enough to host informal football, soccer, baseball, or any other activity the residents of the Swan Estates neighborhood decide to utilize the park for.

A fourth item to qualify for a density bonus is the provision of a landscaped buffer within the 55' perimeter setback. This additional landscaping will enhance the perimeter of the development as well as provide an adequate visual screen from the adjacent uses. This buffer is explained in detail as an example in Section E.3. This landscaped buffer will occur along all applicable perimeter boundaries. Providing this landscape enhancement is above and beyond the perimeter setback requirement in the PND ordinance. The 55' perimeter landscaped buffer is to occur outside of all adjacent lots; it will be contained and maintained by the POA.

The last method for qualifying for a density bonus is achieved by providing additional improvements for the adjacent school site. The developer has proffered to engineer, design, and construct an extension to Swan Estates Drive to connect to existing Westminster Drive across School Board property. The road improvements for Swan Estates will eliminate the school's singular access. This will improve the safety of the children and vehicular traffic to and from school, while also providing a more direct route from outside developments. The Swan Estates community entrance is anticipated to be located in close proximity to the existing school site road crossover. The style and character of the monumentation will tie Swan Estates in with the school sites, providing a cohesive balance between the two uses. This will provide the school with an enhanced front door to the facilities, while improving aesthetics and sense of a school pride for the students and surrounding community.



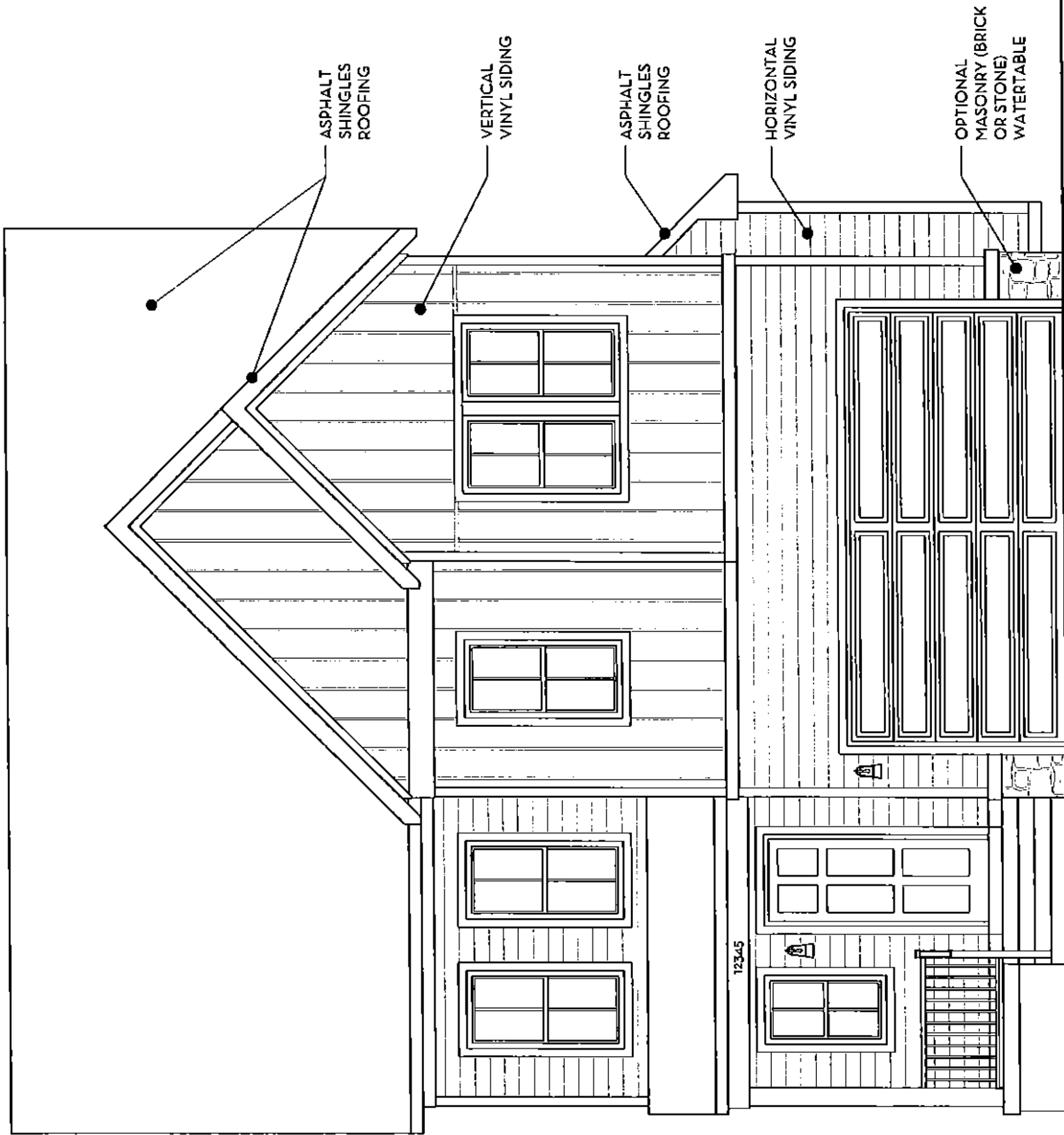
SWAN ESTATES

TOWNHOMES - STRIP

FRONT ELEVATION

SCALE 1/4" = 1'-0"

JULY 11, 2007



SWAN ESTATES

31' (1) WIDE
FRONT ELEVATION
SCALE 1/8" = 1'-0"
JULY 16, 2002

Design Guidelines

Submitted by:

**J. Duggan & Associates, PC
Lawson & Silek, PLC**

For

HEPTAD, LLC

Revised March 17, 2011

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A. Introduction

1. Project Description

The Swan Estates development consists of approximately 98.25 acres of land, and is located in the between existing Williamsburg Estates and Happy Creek Knolls property. The property is comprised of two parcels, currently zoned RS. The current PND ordinance allows many housing types. The proposed PND development of the Property is comprised of a mix of three housing types. The Single Family Detached units are anticipated to have an aesthetic consistent with surrounding neighborhoods. The townhouse units are clustered together and may have front loaded garages. Finally, in recognition of the need for entry-level workforce housing, Swan Estates will include multi-family dwelling units (MDU). In addition, a portion of Swan Estates will include acreage for future retail neighborhood commercial development primarily for the benefit of the Swan Estates residents. The project entrance shall be delineated with monumentation and landscaped accordingly. A pedestrian network will link the community together. Open space will be provided in a central location and will contain recreational amenities to serve the community.

2. Purpose of Guidelines

The purpose of this document is to describe the design concepts for Swan Estates and meets the criteria for the Town of Front Royal PND ordinance, in addition to describing the design principles that support the concept, in order to provide a set of guidelines for developing the various components of the proposed plan. These guidelines, while not overly restrictive, will be used to direct the design at the Swan Property.

Either the developer or an Architectural Review Board (ARB) established by the Property Owners Association (POA) will evaluate any amendments, revisions, and waivers to the Design Guidelines to determine if they are appropriate and in keeping with the original intent of the Design Guidelines.

3. Organization of the Guidelines

The guidelines begin with the overall development design criteria that will be utilized to create organization and coherence within the community. The essential design elements of the project are as follows: architecture, streetscape design, open space standards, landscape design, parking, and signage. The design guidelines and standards are intended to explain basic aspects of conformance rather than specific design criteria. The overall layout of the proposed development has not been finalized. An illustrative bubble plan is located in appendix C. All illustrations shown represent proposed preliminary design intentions and are subject to change based upon final design and construction plans, while continuing to maintain the standards and criteria of the design guidelines and the PND ordinance.

B. Development Design Criteria

1. Design Principles

The PND ordinance calls for innovative combinations of integrated housing types and a network that provides a pedestrian environment. In addition, the Urban Development Area (UDA) requirements call for increased housing density. The site itself is varied; going from woods to open fields and includes both steep slopes and floodplains. The design for Swan Estates addresses all three of these concerns. There will be a mixture of housing types, single family, townhouses, and multi-family units in order to achieve required density while limiting disturbance. Each of the housing types will be located with respect to the existing site conditions, capitalizing on the natural features, while limiting disturbance to sensitive areas such as steep slopes. The proposed road layout has a circular 'spine' done with respect to the site while at the same time connecting the different housing types to each other and all other amenities. Pedestrian connectivity will be provided through a network of sidewalks which when appropriate follow the road layout, or be in the form of trails which run independently of the road network.

Swan Estates will also include a commercial section that, although separated by Leach Run Parkway will be available to pedestrian traffic from the community.

This will further reduce vehicular traffic both inside the community and coming and going from the community itself into town to pick up the 'essentials'.

The end result will be an integrated community that is pedestrian friendly, aesthetically pleasing and environmentally friendly by working with the conditions found on the site.

2. Residential Layout

The Swan Estates development will have an overall project density at approximately 6 units/acre with a total unit number of 450 residential dwelling units. As discussed in section A3, this project is in the preliminary phase, any lot layout or bubble plan shown is conceptual and preliminary. Final design may vary based upon final engineering.

3. Residential Elevations

All buildings will be located with respect to the immediate site conditions and user functions, taking advantage of the features of each site while limiting the disturbance to the land. The 'front' of each unit with its best façade, will be oriented accordingly while keeping in mind that each unit is part of the community as a whole. Material selection for the facades will be integrated throughout the housing types in order to contribute to the overall appearance of the community.

4. Building Height

The building height and massing will vary but will be designated to complement the character of the land and overall design of the community. In regards to roof lines, there may be a variety of rooflines and projections that will help to improve aesthetics and the architectural fenestration, minimizing the massing of any one building plane.

5. Development Relationship

Each housing type will be clustered into neighborhoods framed by the natural surroundings. This consolidation will allow over 43 acres (over 44%) of the site to remain in open space with 34 acres of that being untouched conservation land. The different housing types, although located separately will complement each other with their architectural styles allowing them to have a close proximity to each other when necessary without sacrificing aesthetics. The commercial component although separated by Leach Run parkway will also have a complementary architecture that works with the rest of the community. This concept of consolidating the neighborhoods in order to preserve open space will not only benefit the residents but the community as a whole, the entire project will look like it 'fits' the site and has not been imposed on it. In addition to the open space the project will adhere to the PND required setback ordinance and related buffers to further enhance its outward appearance.

These techniques not only follow the intent of the PND ordinance while increasing density as required by the UDA, they also respect the environmental features of the site. As a result Swan Estates will be an environmentally friendly community that will also be aesthetically pleasing when viewed from Leach Run Parkway and the surrounding developments.

C. Architecture

1. General Design Criteria

General Architectural Guidelines – The objective of the architectural design standards is to generate a unified design image for the site but allow individual structures to maintain independent design themes.

General Architectural Massing – The residential units shall exhibit a variety in their massing, height, roof configurations, projections and recesses. Where appropriate, each building design may differ from adjacent structures.

General Building Elevations – All buildings shall be designed to complement the character of the community theme and be sensitive to the appropriate materials, color and scale. The side and rear elevations should complement the design character of the community architectural theme and all building elevations shall be assembled using quality materials and finishes.

Unit Types –

Single Family Detached
Multi-Family Dwellings
Townhomes

2. Single Family Detached Units

Descriptions – SFD Units will be two story single family detached homes typically with front loaded garages. They may have attached garages or side loaded attached garages as options where appropriate.

Materials – A variety of architectural materials and textures may be used for each building façade. Acceptable elevation materials shall include but not be limited to brick, stone, wood, cedar shakes, architectural asphalt shingles, or standing seam metal roofing. Additional materials may be substituted by approval of the developer or ARB.

Colors – Colors or tones that are characteristic of the architectural style selected, and which will complement the character of the community and adjacent developments, should be used. Limited accent colors may be used to complement the building design. The use of fluorescent or garish colors shall be prohibited.

Mechanical Equipment – All efforts should be made to screen the mechanical equipment from the view of the streets.

SFD Unit Typical

The following table specifies the minimum standards for the SFD Unit type.

Minimum Lot Depth:	60 ft.
Minimum Lot Width:	50 ft.
Minimum Setbacks:	
Minimum Front Yard Setback to Dwelling:	15 ft.
Minimum Rear Yard Setback to Street:	3 ft.
Minimum Side Yard Setback to Dwelling:	
Interior Lot:	7.5 ft.
Corner Lot:	15 ft.

Note: Brick returns, bay windows, downspouts, and roof overhangs are permitted to occur within the minimum setbacks.



Single Family Dwelling-Front Elevation View

Note: the above photograph is for demonstration purposes only and should not be interpreted as the appearance for the final product.

3. Multi-Family Dwelling

Description –Multi-Family housing units will be a 3 story detached building with a footprint of approx. 80'-00"x 150'-00" The front facades will vary in depth to enhance their appearance. The front yard setback is at a minimum to accommodate driveway parking

Materials – A variety of architectural materials and textures may be used for each building façade. Acceptable elevation materials shall include but not be limited to brick, stone, wood, cedar shakes, architectural asphalt shingles, or standing seam metal roofing. Additional materials may be substituted by approval of the developer or ARB.

Colors – Colors or tones that are characteristic of the architectural styled selected, and which will complement the character of the community and adjacent developments, should be used. Limited accent colors may be used to complement the building design. The use of fluorescent or garish colors shall be prohibited.

Mechanical Equipment – All efforts should be made to screen the mechanical equipment from the view of the streets.

MFD Unit Typical

The following table specifies the minimum standards for the MFD Unit type.

Number of multi-family dwelling units per building:	30
Minimum overall space in building	12,000 sf. per floor
Minimum square feet in dwelling unit:	800 sf.
Minimum side setbacks:	35 ft. between buildings
Minimum green space	10 ft. in front and rear of buildings before parking lots*

*Sidewalks permitted within 10' zone between parking lots and buildings to allow for access



Multi Family Unit- Front Elevation View

Note: Photograph shown is for demonstrative purposes only and should not be interpreted as the appearance for the final product.

4. Townhome Unit

Description – Townhome housing units are a 3 story attached style of home with a front loaded garage. The front facades will vary in depth to enhance the streetscape appearance. The front yard setback is at a minimum to accommodate driveway parking.

Materials – A variety of architectural materials and textures may be used for each building façade. Acceptable elevation materials shall include but not be limited to brick, stone, wood, cedar shakes, architectural asphalt shingles, or standing seam metal roofing. Additional materials may be substituted by approval of the developer or ARB.

Colors – Colors or tones that are characteristic of the architectural styled selected, and which will complement the character of the community and adjacent developments, should be used. Limited accent colors may be used to complement the building design. The use of fluorescent or garish colors shall be prohibited.

Mechanical Equipment – All efforts should be made to screen the mechanical equipment from the view of the streets.

TOWNHOME TYPICAL

Townhome housing units are a 3 story attached style of home with a front loaded garage. The front facades will vary in depth to enhance the streetscape appearance. They are designed to be oriented in close proximity to the street. The siting of the homes in this manner further encourages pedestrian movement. The following table specifies the minimum standards for the Townhouse House type.

Townhome	
Minimum Lot Size:	1120 sf.
Minimum Lot Depth:	70 ft.
Minimum Lot Width:	16 ft.
Minimum Setbacks:	
Minimum Front Yard Setback to Dwelling:	20 ft.
Minimum Side Yard Setback to Dwelling (end unit):	10 ft.
Minimum Rear Yard Setback:	20 ft.
Porches and decks:	5 ft.

Note: Brick returns, bay windows, downspouts, and roof overhangs are permitted to occur within the minimum setbacks.



Townhome- Front Elevation View

Note: the above photograph is for demonstration purposes only and should not be interpreted as the appearance for the final product.

5. Recreation

The PND ordinance states that recreation of park facilities are permitted uses. The Swan Property will provide the residents with both active and passive recreation to satisfy their needs. The PND ordinance promotes the design of a walkable environment for pedestrians. A pedestrian network will be provided throughout the major thoroughfares, allowing the residents to traverse throughout the community without the need of an automobile. Additional passive recreation shall be an overlook adjacent to the community center along and within the floodplain/conservation land.

Adjacent to Swan Estates are existing school sites, complete with playgrounds, ball fields, football stadium with track, and tennis courts, all within walking distance from Swan Estates. Additional active recreational amenities provided within Swan Estates include, but are not limited to; a playground, open play areas, path system, and a structured sitting area.

The Swan Estates development will meet or exceed the PND ordinance requirement of 335 square feet of recreation per unit.

6. Playground Typical

The Swan Estates development will have a central open space area capable of incorporating the playground. The final location of the playground will be determined upon final engineering. The playground area will be at least 2000 square feet and contain at a minimum:

- play equipment
- edging and surfacing meeting ASTM and USCPSC standards
- bench
- trash receptacle

D. Streetscape

1. Design criteria

The streetscape will complement the park-like character of the community through the use of canopy tree themes along the main streets. The selection of any hardscape elements should be of similar materials and should assist in setting the tone for the overall community theme.

2. Street Layout

The design and location of streets in Swan Estates will work with the land especially the existing topography to minimize its footprint and resultant land disturbance. The main road or spine of the network is 'circular' in nature beginning and ending at the same point, reducing the opportunity for cut through traffic in the community. Each neighborhood road system will be separate from the others in order to further reduce any form of flow through traffic in these neighborhoods. This will not only minimize traffic, it will slow down the overall speed of cars on the local neighborhood streets. All parking is located away from the main circulation streets, being clustered in the neighborhoods themselves, which will improve pedestrian safety and the overall appearance of the community. All of this will lend to a more pedestrian friendly community per the PND ordinance. In addition, Right -Of-Way shall be dedicated for the future Leach Run Parkway.

3. Streetscape

The PND ordinance encourages enhanced streetscapes. The Swan Estates development will provide such enhancements. The landscape treatment for the streetscape may occur either on the private lots or fall within the linear street section of green space. The plantings may occur as a repeated pattern of street trees or may be clustered in more naturalistic groupings.

Streetscape lighting will be a fixture selected to complement the character of the community and will direct light downward to minimize the upward glare. The fixture will match the Town's approved light standard. The fixture will further enhance the overall theme of the community.

Additional site furnishings are to include, but not limited to, mailboxes, benches, street signs and poles. These furnishings will complement the overall theme of the community.

4. Parking

The pedestrian network will provide a means of accessing open space throughout the community that does not require the use of a vehicle; therefore, extensive parking areas will be minimized. The spaces within the townhome community that are provided will utilize a minimalist approach to reduce the visual effect on the surrounding homes. Where possible, the parking design will be in a linear and efficient fashion to minimize disturbance and grading. Signage will be provided to indicate emergency access and handicap parking. Per the PND ordinance, the parking areas shall have a landscaped island at the end of each row, no more than 15 spaces shall be laid out without an intermediate island. There will be 1 tree per 10 parking spaces.

5. Entrance Feature

At the option of the developer, an entrance feature with entry sign will be placed on either the right or left of the entrance street, or both. Another placement option is the center island for monumentation. The entrance feature would have a maximum height of eight feet, with a sign panel size of 24 square foot maximum for each panel. The sign may be lighted from the front at ground level with a minimal amount of illumination. Landscaping both in front of and behind the signage and wall will be provided. The style of signage and materials will be compatible with and closely related to the themes and color schemes established for the overall community.

E. Open Spaces

1. Design Criteria

As a result of the project design, public open space is grouped in large parcels, accessed by vehicular means or by the pedestrian system. Active recreation will be centrally located and will include at a minimum, a structured sitting area, a playground, and an open play lawn area where many informal activities could take place: football, soccer, baseball, Frisbee, to name a few. The adjacent school site is able to provide additional active recreation, and is within walking distance of the Swan Estate development. The Swan Estates development will adhere to open space guidelines listed in the Town of Front Royal PND ordinance.

2. Conservation Land

The Swan Estates community contains a floodplain area, containing one road crossing, with the balance to be preserved. The floodplain areas have opportunities to be enhanced for passive recreation. A habitat park is a viable option, providing vegetation that will attract birds and other wildlife to the region. The area is accessible by an adjacent neighborhood street and sidewalk running parallel to the floodplain. Visual opportunities for viewing the wildlife habitat area could be provided with overlook points along the proposed sidewalk and neighborhood street.

3. Perimeter Setback

The PND requirement calls for a 55' perimeter setback, which is provided in all areas applicable. In addition, the developer will provide additional screening along the boundary adjacent to Happy Creek Knolls, either through tree preservation or installed landscaping. If tree preservation does not exist, the landscaped area will be planted at a ratio of 1 tree per 40 linear feet. The landscaped area will contain a minimum 25% deciduous trees.

4. Pedestrian Network

The PND ordinance encourages a walkable community. A pedestrian network will be provided throughout, which will link all areas within the community to the recreation areas. Additional path systems will include linking active and passive recreation to the sidewalk system. The pedestrian network system will enhance the theme of the community by promoting pedestrian movement instead of vehicular movement.

5. Habitat Park

Within the Swan Estates community, a portion of the floodplain will be allocated for a Habitat Park. Selected areas shall be re-vegetated in an effort to attract and maintain these areas as a habitat for upland wildlife, birds, and butterflies.

6. Additional Public Benefit

The Swan Estates development has several items to be utilized for additional public benefit. These items occur at the developer's expense, and are above and beyond the PND ordinance requirement. The following elements will improve aesthetics and increase the quality of life for the residents of the Swan Estates community.

One method is to enhance the streetscape. Swan Estates will provide more than just a typical street tree layout along the significant through streets. The developer will utilize a unique street tree spacing to allow the introduction of ornamental trees and potential planting beds in a repeated pattern. This will provide a uniform and attractive streetscape above and beyond what one would consider a normal streetscape.

Another item is providing Swan Estates a Habitat Park within the floodplain. This park is discussed in Section E.5. This facility will provide community residents with a unique wildlife viewing experience. This proposed park is above and beyond the open space and recreation requirements for this development.

A third item is providing a central park space for the Swan Estates residents. This park will contain a playground with a children's track for bikes and tricycles, a trellised sitting area with formal landscaping adjacent to the space, which will provide the community with a central focus and gathering space. The open lawn space in the center of the park is large enough to host informal football, soccer, baseball, or any other activity the residents of the Swan Estates community decide to utilize the park for.

A fourth item to qualify for a density bonus is the provision of a landscaped buffer within the 55' perimeter setback. This additional landscaping will enhance the perimeter of the development as well as provide an adequate visual screen from the adjacent uses. This buffer is explained in detail as an example in Section E.3. This landscaped buffer will occur along all applicable perimeter boundaries. Providing this landscape enhancement is above and beyond the perimeter setback requirement in the PND ordinance. The 55' perimeter landscaped buffer is to occur outside of all adjacent lots; it will be contained and maintained by the POA.

An additional density bonus qualifier is the decision and help facilitating the Leach Run Parkway construction. These road improvements will relieve traffic from Westminster Drive, provide additional school access, and improve the quality of life for all developments around the Swan Estates community.

The last method for qualifying for a density bonus is achieved by providing additional improvements for the adjacent school site. The developer has proffered to engineer, design, and construct an extension to Swan Estates Drive to connect to existing Westminster Drive across School Board property. The road improvements for Swan Estates will eliminate the school's singular access. This will improve the safety of the children and vehicular traffic to and from school, while also providing a more direct route from outside developments. The Swan Estates community entrance is anticipated to be located in close proximity to the existing school site road crossover. The style and character of the monumentation will tie Swan Estates in with the school sites, providing a cohesive balance between the two uses. This will provide the school with an enhanced front door to the facilities, while improving aesthetics and sense of a school pride for the students and surrounding community.

***AMENDMENT TO VOLUNTARY SETTLEMENT AGREEMENT
BETWEEN THE COUNTY OF WARREN, VIRGINIA, AND THE
TOWN OF FRONT ROYAL, VIRGINIA, REGARDING THE
ACCEPTANCE AND THE COLLECTION OF VOLUNTARY
PROFFERS BY THE TOWN OF FRONT ROYAL TO OFFSET
FINANCIAL IMPACTS TO PUBLIC FACILITIES WITHIN THE
COUNTY OF WARREN CAUSED BY REZONINGS
IN THE TOWN OF FRONT ROYAL***

This Amendment to Voluntary Settlement Agreement, entered into pursuant to the authority granted by Sections 15.2-1300 and 15.2-3400 of the Code of Virginia, 1950, as amended, by and between the County of Warren, Virginia, a body politic, by and through its Board of Supervisors, hereinafter the "County", and the Town of Front Royal, Virginia, a municipal corporation, and a body politic, by and through its Town Council, hereinafter the "Town".

WHEREAS, by Final Order Validating and Affirming Voluntary Settlement Agreement Between the Town of Front Royal and the County of Warren, entered by a Special Court sitting in the Circuit Court of the County of Warren, Virginia, on December 13, 1999, the said Special Court affirmed and validated a Voluntary Settlement Agreement executed by the Town and the County as of January 27, 1998, amended on October 6, 1999, and further amended on August 9, 1999, (hereinafter the "Voluntary Settlement Agreements"); attached hereto and made a part hereof as Attachment "A"; and

WHEREAS, the County and the Town have recognized that amending said Voluntary Settlement Agreements as set forth herein will be beneficial to the orderly growth and continued viability of both localities; and

WHEREAS, Virginia Code Sections 15.2-2298, presently applicable to the County and to the Town, and 15.2-2303 allow localities to include in their zoning

ordinances reasonable regulations and provisions for written proffers as part of such localities' conditional zoning process; and

WHEREAS, the County and the Town ~~hasve~~, as part of its their zoning ordinances, reasonable regulations and provisions for written proffers as part of Warren County's and Front Royal's conditional zoning processes; and

WHEREAS, the County, on June 17, 2003, adopted a Resolution establishing the County's proffer policy (hereinafter the "Proffer Policy") for residential use rezoning applications, a copy of which is attached hereto and incorporated by reference herein as Attachment "B" which Proffer Policy allows, inter alia, for the acceptance of cash proffers, land, or in kind improvements for zoning requests for residential uses to compensate for the cost of public facilities and services needed to serve the residents who will move into the County as a result of such residential rezonings; and

WHEREAS, such Proffer Policy by law can, in the absence of an agreement to the contrary between the Town and the County, apply only to residential rezonings in the County outside the corporate limits of the Town; and

WHEREAS, residential rezonings in the Town ~~will cause~~ are likely to result in additional County residents ~~to move~~ moving into the County, who will use the County's public facilities and services such as public schools, social services, law enforcement and corrections services, parks and recreation facilities and services, and emergency services, among other services and facilities, for which in the absence of an agreement to the contrary, the Town cannot accept proffers as part of the Town's residential zoning process, thus adding a disproportionate financial burden on County residents living outside the Town's corporate limits; and

WHEREAS, Virginia Code Section 15.2-3400 allows localities to voluntarily enter into agreements with other localities to settle and resolve matters beneficial to the orderly growth and continued viability of such localities; and

WHEREAS, both the Town and the County recognize and agree that allowing the County to accept appropriate proffers, as part of its rezoning process, to assist the Town in mitigation of the effects of rezonings in the County outside the corporate boundaries of the Town but which could have a significant impact on traffic within the Town or the provision of water or sewer service outside the corporate boundaries of the Town, will be beneficial to the orderly growth and continued viability of both the Town and the County; and

WHEREAS, both the Town and the County recognize and agree that allowing the Town to accept proffers, as part of its residential rezoning process, from residential developers to assist in compensating for the cost of public facilities provided by the County to serve the residents who will move into the Town and County as a result of such residential rezonings, will be beneficial to the orderly growth and continued viability of both the Town and the County because Town residents, being also County residents, use and benefit from such County public facilities and services just as do County residents residing in the County outside the corporate limits of the Town; and

NOW, THEREFORE WITNESSETH, that for and in consideration of the premises, and the mutual benefits flowing to all residents of the County, whether living within or without the Town's corporate limits, the parties hereto agree as follows:

1. The parties agree to amend said Voluntary Settlement Agreements as provided for herein, and to accomplish all steps reasonable and necessary to have the proper approvals to effectuate this Amendment.

2. Upon approval of the amendments to the Voluntary Settlements Agreements, and upon receipt of an application for a residential rezoning within the Town, that the Town will promptly forward the application, together with such other information in the possession or control of the Town that the Town can reasonably access and assemble, to the County for the County's staff to be able to (a) calculate the annual net costs (hereinafter the "Cost") of public facilities and services, and (b) calculate the fiscal impact of such rezoning request to the County's fiscal impact model (hereinafter referred to as the "Impact"), all as provided for in the County's Proffer Policy as the same may from time to time be amended. County staff in a timely fashion will calculate such Cost and Impact and forward the same to the Town for the Town's use in determining whether or not to grant such rezoning request, and if such rezoning request is granted, what proffers ought to be accepted by the Town on behalf of the County in suggesting conditions a rezoning applicant may desire to proffer to be considered in a rezoning request. Likewise, upon receipt of any rezoning request by the County that could negatively and significantly impact on traffic within the Town or that would benefit by the provision of public water or sewer to the site and its vicinity, the County will promptly forward the application, together with such other information in the possession or control of the County that the County can reasonably access and assemble, for the Town's staff to review and comment upon and to suggest

appropriate conditions that the rezoning applicant may desire to proffer to be considered in a rezoning request.

3. ~~The Town, to the extent it deems reasonable and practical, will accept and condition such residential rezoning only upon the voluntary proffering, by the applicant for such rezoning, of cash, land, or in-kind improvements sufficient to offset the impact as calculated by County staff pursuant to the County's Proffer Policy.~~ The Town and the County agree to consider such proffered conditions or lack thereof in determining the propriety and reasonableness of the rezoning request. Each locality will use its best efforts not to approve rezoning requests that would be detrimental to the best interests of the other unless the approving locality determines the benefits to it of the rezoning request exceed the potential detriments to the other locality. Such proffers will be administered and, if involving cash or dedication of land, collected by the Town or County and timely paid or conveyed over by the Town to the County other locality upon receipt by the Town locality that granted the rezoning. Each locality will be responsible for all costs incurred by its respective staff in carrying out this Agreement.

4. This Amendment shall be for a term of one (1) year from the date of its execution by the Town and the County, unless extended as hereinafter provided. Unless notice as set forth in paragraph 5 hereafter is given, this Agreement shall be automatically extended for successive terms of one (1) year each immediately upon expiration of the preceding term.

5. Either party may terminate this Agreement prior to the end of any one (1) year term of this Agreement upon the giving of at least ninety (90) days written notice to the other party.

6. The parties agree to present this Agreement to the Commission for Local Government if required as a proposed settlement pursuant to Virginia Code Section 15.2-3400.

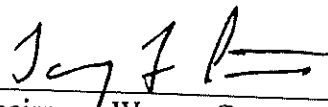
7. The parties agree that should a recommendation of the Commission on Local Government not be needed on this Amendment to Voluntary Settlement Agreement, or should the report of the Commission on Local Government issued pursuant to Virginia Code Section 15.2-3400.4., recommend that this proposed Amendment and settlement is in the present interest of the Commonwealth of Virginia, then it will be recommended to the then sitting Town Council and Board of Supervisors to hold a public hearing on the advisability of passing respective Town and County ordinances to adopt either this original Amendment or a modified Amendment acceptable to all parties, as set forth in Virginia Code Section 15.2-3400.4.; and if such ordinances be approved, to petition the Circuit Court for an Order affirming the proposed settlement as set forth in Virginia Code Section 15.2-3400.5.

8. This Agreement may be amended from time to time by the County of Warren and the Town of Front Royal.

Witness the following signatures on the dates indicated.

COUNTY OF WARREN, VIRGINIA

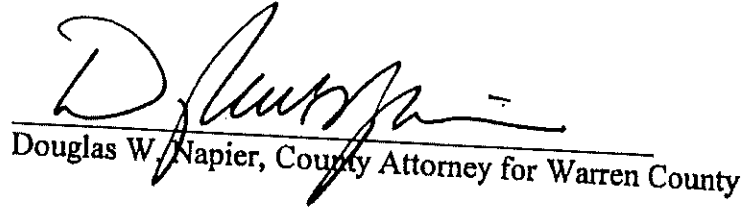
By:


Chairman, Warren County Board of Supervisors

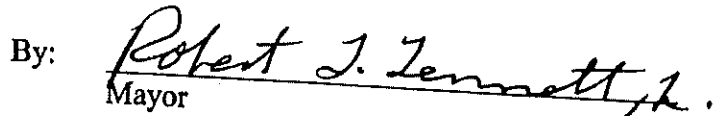
Attest:


Clerk to the Warren County Board of Supervisors

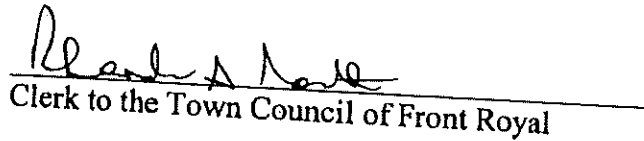
Approved as to form:


Douglas W. Napier, County Attorney for Warren County

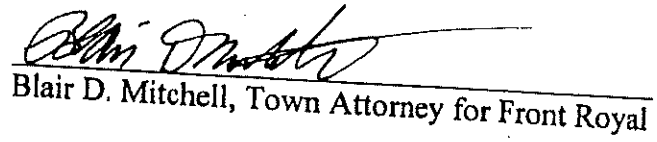
TOWN OF FRONT ROYAL, VIRGINIA

By: 
Mayor

Attest:


Clerk to the Town Council of Front Royal

Approved as to form:


Blair D. Mitchell, Town Attorney for Front Royal

Chapter 11

Conditional Zoning: Proffers

11-100 Introduction

A *proffer* is a condition offered by the owners of property subject to a rezoning, which may be accepted by the locality's governing body in conjunction with its approval of the rezoning. Rezonings with proffers are referred to in Virginia Code § 15.2-2296 as *conditional zoning*. These conditions – proffers – are in addition to, or the modification of, the regulations provided for in a particular zoning district. *Virginia Code § 15.2-2201*; see also *Rowland v. Town Council of Warrenton*, 298 Va. 703, 842 S.E.2d 398 (2020) regarding the ability of proffers to modify the zoning regulations of the property being rezoned. The typical proffer addresses an impact of the development resulting from the rezoning, e.g., a road improvement to address a traffic impact, or a cash proffer to address the impacts of more students attending a public school beyond the school's existing capacity.

Eight Essential Features of Proffers

- Proffers may impose additional requirements and restrictions to address the impacts of a rezoning or may allow modifications from the requirements of the zoning ordinance.
- Proffers must be voluntary, which means that after the locality identifies the impacts arising from the rezoning, it is up to the owner to decide whether it wants to address the impacts through proffers or risk having the rezoning denied by the governing body because impacts were not addressed; it is improper for a locality to deny a rezoning simply because the owner did not proffer something requested by the locality.
- Proffers must be reasonable.
- Once accepted by the governing body, proffers become part of the zoning regulations applicable to the land and they run with the land until it is rezoned (there are exceptions).
- Proffers must be in writing.
- Proffers must be submitted before the public hearing by the governing body and may not be materially amended once the public hearing begins without holding another public hearing, provided that the governing body may waive the requirement for a public hearing if the amendment does not affect conditions of use or density.
- Proffers must be signed by the owner(s) of the land being rezoned.
- Proffers to dedicate substantial land, make substantial cash payments, to construct substantial improvements, or which specify the permitted use or density, may create vested rights in the zoning of the land.

Conditional zoning was enabled to address the inadequacy of traditional zoning methods and procedures when competing and incompatible land uses conflict. *Virginia Code § 15.2-2296*. More specifically, Virginia Code § 15.2-2296 explains the purpose of proffers as follows:

Frequently, where competing and incompatible uses conflict, traditional zoning methods and procedures are inadequate. In these cases, more flexible and adaptable zoning methods are needed to permit differing land uses and the same time to recognize effects of change. It is the purpose of §§ 15.2-2296 through 15.2-2300 to provide a more flexible and adaptable zoning method to cope with situations found in such zones through conditional zoning, whereby a zoning reclassification may be allowed subject to certain conditions proffered by the zoning applicant for the protection of the community that are not generally applicable to land similarly zoned.

The Attorney General has stated that conditional zoning addresses the effects of changing land use patterns within communities, and that it permits differing land uses within those communities while protecting the community as a whole. *1997 Va. Op. Atty. Gen. 66*.

11-200 The primary enabling legislation

This section examines the primary sources of enabling authority for proffers – the fundamental enabling authority found in Virginia Code §§ 15.2-2297, 15.2-2298, and 15.2-2303, and the limitations on proffers that a

locality may accept for residential uses found in Virginia Code § 15.2-2303.4.

11-210 Virginia Code §§ 15.2-2297, 15.2-2298, and 15.2-2303

Each Virginia locality that has adopted a zoning ordinance falls within one of three sources of enabling authority for conditional zoning:

- Old or original conditional zoning: Virginia Code § 15.2-2303 is the enabling authority for conditional zoning in Fairfax County, those localities surrounding it, those counties east of the Chesapeake Bay, and those high growth localities otherwise subject to Virginia Code § 15.2-2298 opting to act under the enabling authority of Virginia Code § 15.2-2303. Proffers accepted pursuant to Virginia Code § 15.2-2303 may include cash contributions. Albemarle County is a high growth locality, otherwise enabled under Virginia Code § 15.2-2298, that has opted to act under Virginia Code § 15.2-2303.
- New conditional zoning (1978): Virginia Code § 15.2-2297 became the enabling authority for conditional zoning in those localities not enabled under Virginia Code § 15.2-2303. Section 15.2-2297's most notable characteristics are that cash contributions and off-site improvements are prohibited, with limited exceptions.
- New conditional zoning for high growth localities (1989): Virginia Code § 15.2-2298 is the newest enabling authority, and it applies to those localities otherwise subject to Virginia Code § 15.2-2297 whose population grew by at least 5% since the next-to-latest to latest decennial census year. Section 15.2-2298 allows both cash contributions and off-site improvements.

Each of these laws has its own requirements and conditions that must be satisfied for a proffer to be lawfully made and accepted. In those localities accepting proffers for rezonings that include residential uses or residential development, Virginia Code § 15.2-2303.4, analyzed in sections 11-220 and 400, limits the scope of certain proffers and imposes an alternative standard for reasonableness.

11-211 Common elements and principles

There are several general elements of proffers that are common regardless of whether the locality falls under Virginia Code §§ 15.2-2297, 15.2-2298, or 15.2-2303. Of course, there are exceptions and they are noted as well.

- Purpose and scope: At least in theory, conditional zoning allows land to be rezoned that might not otherwise be rezoned because the proffers protect the community in which the land is located by imposing additional regulations or conditions on the land being rezoned to address impacts. *Virginia Code § 15.2-2296; Riverview Farm Associates v. Board of Supervisors of Charles City County*, 259 Va. 419, 528 S.E.2d 99 (2000); *Gregory v. Board of Supervisors of Chesterfield County*, 257 Va. 530, 514 S.E.2d 350 (1999). In addition, a locality may accept proffers that modify the requirements of the zoning ordinance for the property being rezoned. *Rowland v. Town Council of Warrenton*, 298 Va. 703, 842 S.E.2d 398 (2020) (upholding proffer reducing minimum industrial use otherwise required by zoning district to which property was rezoned). For rezonings for new residential development or a new residential use, including the residential portion of a mixed-use development, Virginia Code § 15.2-2303.4 limits the scope by which proffers may address impacts – for proffers addressing off-site impacts, including all cash proffers, Virginia Code § 15.2-2303.4 limits the scope of off-site proffers to addressing four areas of impacts from a rezoning: public facility improvements for *transportation, schools, public safety, and parks*. Virginia Code § 15.2-2303.4(F) provides three exemptions. For example, it does not apply within an *approved small area comprehensive plan* in which the delineated area is *designated as a revitalization area* (see Virginia Code § 36-55.30:2), encompasses *mass transit* (see Virginia Code § 33.2-100 for a definition of the term), includes *mixed use development*, and allows a *density of at least 3.0 floor area ratio* in a portion thereof.
- Voluntariness: Proffers must be voluntary. Virginia Code §§ 15.2-2297, 15.2-2298; *Rinker v. City of Fairfax*, 238 Va. 24, 381 S.E.2d 215 (1989). *See section 11-300.*

- Reasonableness: Proffers must be *reasonable* and must have a *reasonable relation* to the rezoning; closely related to these concepts, the rezoning itself must give rise to the need for the proffers. *Virginia Code* §§ 15.2-2297(A), 15.2-2298(A); *reasonable relation* not expressly required by *Virginia Code* § 15.2-2303. Proffers offered in conjunction with rezonings that include residential uses are subject to *Virginia Code* § 15.2-2303.4 and its unique standard to determine reasonableness. *See section 11-400; see also section 6-440 regarding the constitutional standard of reasonableness.*
- Comprehensive plan: Proffers must be consistent with the comprehensive plan. *Virginia Code* §§ 15.2-2297(A), 15.2-2298(A). Proffers in localities subject to *Virginia Code* § 15.2-2303 are not required to be consistent with the comprehensive plan, which may provide developers and localities more flexibility to address a novel situation that may be inconsistent with the comprehensive plan but provides a better solution.
- Phasing: Proffers may provide for the timing or phasing of dedications, payments, or improvements. *Virginia Code* §§ 15.2-2297, 15.2-2298, or 15.2-2303(H). Any proffer related to new residential or commercial development that was valid and outstanding as of July 1, 2020 and requires the owner or developer to incur significant expenses upon an event related to a stage or level of development (*e.g.*, upon the issuance of the building permit for the 100th dwelling unit) is extended until July 1, 2022¹ or later as agreed to by the locality. *Virginia Code* § 15.2-2209.1:1(C). This extension does not apply: (1) to proffered land or right-of-way dedications; (2) if the completion of the event related to the stage or level of development has occurred.
- Cash proffers for off-site road or transportation improvements: Proffers may pertain to the payment of cash for off-site road or off-site transportation improvements must be included in the comprehensive plan and incorporated into the capital improvements program. *Virginia Code* §§ 15.2-2297(A) (limited only to those expressly permitted under *Virginia Code* § 15.2-2241), 15.2-2298(A), 15.2-2303(A) (required only to the extent within the broad scope of “reasonable conditions”).
- Property owners’ associations may not be required to maintain public facilities: Proffers may not require the owner to create a property owners’ association that requires its members to pay an assessment to maintain public facilities owned by a public entity not otherwise provided for in *Virginia Code* § 15.2-2241 (the enabling authority for mandatory subdivision ordinance provisions). Facilities not subject to this prohibition include sidewalks, special street signs or markers, or special street lighting in public rights-of-way not maintained by the Virginia Department of Transportation. *Virginia Code* §§ 15.2-2297(A), 15.2-2298(A), and 15.2-2303(A).
- Proffers run with the land: Proffers run with the land until the property is rezoned; proffers continue if the subsequent rezoning is part of the comprehensive implementation of a new or substantially revised zoning ordinance. *Virginia Code* §§ 15.2-2297(A), 15.2-2298(A), *Virginia Code* § 15.2-2303.
- Proffers must be valid and consistent with state law and local ordinances: When the governing body accepts proffers, and their terms become the terms of the rezoning, they must be valid and consistent with state law and local ordinances. *Sterrett v. Board of Supervisors of Loudoun County*, 26 Va. Cir. 83 (1991). A proffer that creates a violation of a zoning ordinance is *per se* unreasonable. *Clark v. Town of Middleburg*, 26 Va. Cir. 472 (1990). A proffer that is invalid because it is beyond the permissible scope of the enabling authority may invalidate the rezoning, depending on the facts of the particular case and whether the rezoning is otherwise reasonable under the fairly debatable test. *Sterrett v. Board of Supervisors of Loudoun County*, 23 Va. Cir. 153 (1991).
- Proffers may not require the locality to assume any obligations: Proffers may not require the locality to undertake any affirmative obligations it is not otherwise required to do because they may be found to be impermissible contract zoning.
- Proffers may not include a promise not to contest their enforceability: A promise contained in proffers not to contest their enforceability is itself unenforceable. *1989 Va. Op. Atty. Gen. 96.*

¹ The reader should anticipate the General Assembly will extend *Virginia Code* § 15.2-2209.1:1’s sunset provision beyond July 1, 2022.

- Accepting proffers: A governing body is not required to accept all proffers. *Rowland v. Town Council of Warrenton*, 298 Va. 703, 842 S.E.2d 398 (2020) (“It is axiomatic that merely because an applicant makes a proffer, the locality is not bound to accept it”).
- Proffers become part of the zoning ordinance when they are accepted: When proffers are accepted by the locality’s governing body, they become part of the zoning ordinance. *Rowland v. Town Council of Warrenton*, 298 Va. 703, 842 S.E.2d 398 (2020) (“Because the acceptance of proffers by a locality has the force of law, the acceptance of a proffer which alters the rezoning [sic] requirements of a particular property is the functional equivalent of an amendment to the zoning ordinance”); *Jefferson Green Unit Owners Association, Inc. v. Gwinn*, 262 Va. 449, 551 S.E.2d 339 (2001).
- Vested rights: If proffers include the dedication of land of substantial value or substantial cash payments for, or construction of substantial public improvements, certain vested rights may attach. *Virginia Code* §§ 15.2-2297(B) (*not applicable to cash payments*), 15.2-2298(B), *Virginia Code* § 15.2-2303. See Chapter 19 for a discussion of vested rights.

Other equalities of proffers limited to those localities accepting proffers pursuant to Virginia Code § 15.2-2298 are summarized in section 11-213.

11-212 Common procedural requirements

Following are several common procedural requirements applicable to localities under Virginia Code §§ 15.2-2297, 15.2-2298, and 15.2-2303.

- Written and signed: Proffers must be in writing and be signed by all owners. *Virginia Code* §§ 15.2-2297(A), 15.2-2298(A), *Virginia Code* § 15.2-2303(A). If the proffers are not submitted by all of the owners of the land, then the governing body cannot accept them. *Miller and Smith Land, Inc. v. Board of Supervisors of Loudoun County*, 1989 WL 646301 (Va. Cir. Ct. 1989). In the most general sense, the term *owner* includes any person or entity with an interest in the land. However, as applied to proffers, the term *owner* means “one who owns the fee and who has the right to dispose of the property” and includes “one having a possessory right to land.” *Miller and Smith Land, Inc., supra*. Thus, for example, a holder of a fee simple interest or a life estate is an owner for purposes of Virginia Code § 15.2-2298, a secured creditor is not. Of course, an owner must have the authority to submit proffers. Covenants, restrictions imposed by creditors, and other limitations may restrict or eliminate the authority of an owner to submit proffers. Thus, a proffer statement should contain a representation that the owner has the authority to make the proffers.
- Timing of submittal: Proffers must be submitted before the public hearing before the governing body on the rezoning to which the proffers pertain. *Virginia Code* §§ 15.2-2297(A), 15.2-2298(A), *Virginia Code* § 15.2-2303(A).
- Timing of submittal of amended proffers: Amended proffers may be accepted once the public hearing has begun if they do not materially affect the overall proposal (note that material changes may increase or reduce the requirements) (see also section 11-760). *Virginia Code* §§ 15.2-2297(A), 15.2-2298(A), *Virginia Code* § 15.2-2303(A). Localities may accept amended proffers once a public hearing has begun only if the amended proffers do not materially affect the overall proposal. *Virginia Code* §§ 15.2-2297(A), 15.2-2298(A), 15.2-2303(A). If the proposed amendment would materially affect the proposal, either because the amendment would remove or reduce proffered restrictions or commitments or *impose additional restrictions or commitments*, the amended rezoning application must be readvertised under Virginia Code §§ 15.2-2204 and 15.2-2285 and an additional public hearing must be held. However, the governing body may waive the requirement for a public hearing if the amendment does not affect conditions of use or density. *Virginia Code* § 15.2-2302 (not applicable to localities subject to Virginia Code § 15.2-2297).

11-213 Requirements applicable to localities subject to Virginia Code § 15.2-2298

There are three requirements for proffers that apply to localities subject to Virginia Code § 15.2-2298 but do not apply to localities subject to either Virginia Code § 15.2-2297 or 15.2-2303.

- **Capital improvement program**: Proffers may not be accepted unless the locality has adopted a capital improvements program. *Virginia Code § 15.2-2298(A)*.
- **Timing of dedication of land or payment of cash**: If proffers include the dedication of land or the payment of cash, the land may not transfer, and the payment of cash may not be made, until the facilities for which the land is dedicated or the cash is tendered are included in the capital improvements program. This limitation does not prevent high growth localities from accepting proffers related to projects that are not normally included in a capital improvements program. *Virginia Code § 15.2-2298(A)*. See also sections 11-730 to 11-750.
- **Disposition of land or payment of cash if not used for stated purpose**: If proffers include the dedication of land or the payment of cash, the proffers shall provide for the disposition of the land or the cash if it is not used for the purpose for which it was proffered. *Virginia Code § 15.2-2298(A)*.

11-220 Virginia Code § 15.2-2303.4

Effective July 1, 2016, the law applicable to proffers accompanying residential rezonings was significantly revised. Virginia Code § 15.2-2303.4 imposes limitations on the scope of proffers, increases the standard by which proffers must be connected to impacts, and imposed new rules and remedies if a locality violates section 15.2-2303.4. The enactment of Virginia Code § 15.2-2303.4 was controversial; it also was neither opposed by every locality nor supported by every developer. Section 15.2-2303.4 was amended in 2019.

Whether Virginia Code § 15.2-2303.4 applies, and which version of it, depends on the date that the rezoning application for a rezoning, or an application to amend a proffer condition, was filed:

- **Application filed before July 1, 2016**: The applicant may proceed under the pre-July 1, 2016 law in effect, or the applicant may elect to proceed under the 2019 version of Virginia Code § 15.2-2303.4.
- **Application filed on or after July 1, 2016 but before July 1, 2019**: The applicant may proceed under the law as it existed during that period, or the applicant may elect to proceed under the 2019 version of Virginia Code § 15.2-2303.4.
- **Application filed on or after July 1, 2019**: The 2019 version of section 15.2-2303.4 applies to any application filed on or after July 1, 2019.

A table comparing the 2016 and 2019 versions of Virginia Code § 15.2-2303.4 is provided in Appendix K.

11-300 Proffers must be voluntary

Proffers must be voluntary. *Virginia Code §§ 15.2-2297(A), 15.2-2298(A)*; *Rinker v. City of Fairfax*, 238 Va. 24, 381 S.E.2d 215 (1989). Thus, a governing body is not empowered to require a specific proffer as a condition precedent to a rezoning. *Board of Supervisors of Powhatan County v. Reed's Landing Corp.*, 250 Va. 397, 463 S.E.2d 668 (1995).

The requirement that proffers be voluntary does not mean that a locality is powerless to engage the applicant and its representatives in a meaningful dialogue to ensure that the applicant either addresses the identified adverse impacts through proffers or makes a conscious decision not to address those impacts through proffers.

Under Virginia Code § 15.2-2303.4(H), which applies to residential rezonings, the applicant and the locality *may discuss the potential impacts* of the proposed residential development and on public facilities, and *potential voluntary onsite*

or offsite proffers, that might address those impacts. The *verbal* discussions may not be used as the basis that an unreasonable proffer or proffer condition amendment was required by the locality. These provisions in section 15.2-2303.4(H) create a safe harbor for the parties to discuss impacts and the proffers to address them. The 2016 version of Virginia Code § 15.2-2303.4 made these kinds of discussions risky for the locality.

The two cases analyzed in sections 11-310 and 11-320 illustrate the nuances in dealing with the concept of *voluntariness*.

11-310 Board of Supervisors of Powhatan County v. Reed's Landing Corp.

In *Board of Supervisors of Powhatan County v. Reed's Landing Corp.*, 250 Va. 397, 463 S.E.2d 668 (1995), the developer sought to rezone approximately 233 acres from the Agricultural (A-1) district to the Residential (R-1) district. The county's planning staff and planning commission recommended approval of the rezoning. A week after the planning commission's consideration of the rezoning, the board of supervisors adopted proffer guidelines which established a "recommended proffer" of \$2,439 per residential lot "to help defray costs of capital facilities."

When the rezoning was first considered by the board, the applicant proffered a cash payment under protest but the board deferred action for a month. When the rezoning returned to the board for a public hearing, no member of the public spoke in opposition, but "[i]t was apparent, however, that the Board would not approve the rezoning request unless the Developer agreed to pay \$2,439 per lot." The applicant refused to contribute the county's "recommended" cash proffer.

At the trial, the county's director of planning and community development testified that the per lot cash proffer amount was "expected," and that since the board had adopted its proffer guidelines, virtually no R-1 rezonings had been approved without the cash proffer. The trial court ruled that the board unlawfully conditioned approval of the rezoning upon the proffering of the cash payment.

The Virginia Supreme Court affirmed, holding that the county's recommended cash proffer was not voluntary and that the Powhatan board of supervisors imposed an unlawful condition precedent on the developer. In sum, the Virginia Supreme Court saw that Powhatan County required the cash proffer for it to approve a rezoning. This *quid pro quo* for a zoning approval violated the requirement that proffers be voluntary.

11-320 Gregory v. Board of Supervisors of Chesterfield County

Proffer guidelines adopted by a locality do not make proffers involuntary *per se*, however, and *Gregory v. Board of Supervisors of Chesterfield County*, 257 Va. 530, 514 S.E.2d 350 (1999) provides a good example as to why that is so.

In *Gregory*, Chesterfield County had a written policy concerning cash proffers. The policy established a methodology for calculating the cost to the county to provide public facilities for each new residence in a proposed subdivision, including schools, roads, parks, libraries, and fire stations. In 1995, the policy provided that "residential rezoning applicants are being asked to proffer \$5,083 per lot."

The applicant applied to rezone a 30-acre parcel from "Agricultural A" to "Single-Family Residential R-12" which, if approved, would allow for a proposed 81-lot development that would result in approximately 227 new residents. The county's planning staff estimated that this development would add approximately 47 school-age children and would generate approximately 850 vehicle trips per day, primarily on Newbys Bridge Road. The staff concluded that some of the resulting traffic impacts would increase traffic volumes on certain nearby subdivision streets beyond acceptable levels. The staff estimated that the per-lot fiscal impact from the project would be \$5,156 per lot. The applicant originally proffered \$5,043 per lot, but its amended application proffered \$1,500 per lot. The rezoning was otherwise consistent with the comprehensive plan.

The planning commission recommended denial of the rezoning "citing concerns regarding the impact that the rezoning would have on traffic, drainage, schools, and fire and rescue service." At the board public hearing, the planning staff recommended that the board approve the rezoning "only if the Board determined that the County's

‘capital needs’ would be met.” Sixteen citizens spoke in opposition to the rezoning, raising concerns about the road infrastructure and the development’s impact on schools. The board denied the rezoning and the applicant and the owners sued.

At trial, the county’s planning director testified that a rezoning applicant could proffer, in lieu of cash, the construction of road or sidewalk improvements, or other ways to address the impacts of the proposed development on public facilities and infrastructure. There also was evidence that, since Chesterfield County adopted its voluntary proffer policy, about 5,500 new lots had been created through rezoning approvals, and that about 51% of those lots were either approved with no cash proffer or cash proffers of less than the county’s recommended amount.

Despite evidence that the absence of maximum cash proffers played a key factor in the board’s decision to deny the rezoning, and that cash proffers were expected, the trial court found that the evidence of the development’s unaddressed impacts on health, safety, and welfare made the reasonableness of the board’s decision fairly debatable and not arbitrary or capricious.

The Virginia Supreme Court affirmed, finding that the rezoning request was not denied solely because of the owner’s failure to submit cash proffers in a particular amount. The Court found that there was evidence that the rezoning was also denied because the proposed development would adversely impact public health, safety, and welfare in the area of the proposed development – adverse impacts from the proposed rezoning that were not being addressed.

11-330 What Reed’s Landing and Gregory tell us

Board of Supervisors of Powhatan County v. Reed’s Landing Corp., 250 Va. 397, 463 S.E.2d 668 (1995) and *Gregory v. Board of Supervisors of Chesterfield County*, 257 Va. 530, 514 S.E.2d 350 (1999) instruct that rather than making a particular proffer or set of proffers the *quid pro quo* for obtaining a rezoning (*Reed’s Landing*), a locality needs to identify all of the impacts resulting from the proposed rezoning and identify what needs to be done to address those impacts through proffers. *These impacts need to be substantiated and documented in the record before the planning commission and the governing body.* It is then up to the owner to decide whether it wants to provide proffers to address some or all of those impacts. *The owner may elect not to address all of the impacts*, and instead try to persuade the governing body that the impacts need not be addressed or that the proposed project has other public benefits that would justify approving the rezoning, even if some or all of the impacts go unaddressed (*Gregory*).

What Does It Mean That Proffers Must Be “Voluntary”?
• The locality must identify all the impacts that could result from the rezoning so that the owner may decide which impacts it will address through proffers. • It is up to the owner to decide whether to address the impacts that could result from the rezoning through proffers. • If the locality denies the rezoning and the owner did not volunteer proffers to address all of the identified impacts, the decision must be based on sound zoning principles (including unmitigated impacts), and not simply on the fact that the owner did not proffer something. • The voluntary nature of proffers does not mean that the locality is powerless to engage the applicant and its representatives in a meaningful dialogue to ensure that the applicant either addresses the identified adverse impacts through proffers or makes a conscious decision to not address those impacts through proffers.

If the proffers fail to address the impacts and the governing body denies the rezoning, *the governing body’s decision must be based on the impacts of the rezoning and the fact that some or all those impacts are not being sufficiently addressed*, and any other legitimate reasons to deny a rezoning, such as the rezoning’s inconsistency with the comprehensive plan. The decision may not properly be based on the mere failure of the applicant to proffer any particular land or money.

The decision to deny a rezoning application because the owner failed to proffer to contribute the cash proffer amount recommended in a locality’s cash proffer policy, even if unlawful under state law, “does not necessarily yield an Equal Protection violation.” *Sowers v. Powhatan County*, 2009 WL 3359204 (4th Cir. 2009) (unpublished) (board of supervisors could differentiate this application from others where there also was significant citizen opposition, unique traffic concerns, and the applicant was a “tough negotiator” who elected to “skirt typical procedures”).

See Chapter 9 for a discussion of using the comprehensive plan to establish proffer policies to assure that impacts to public facilities are addressed.

11-400 Proffers must be reasonable

Proffers must be reasonable. The generally applicable standard for reasonableness, which is based primarily on longstanding constitutional analyses, is addressed in section 11-410. For proffers for residential uses or residential development subject to Virginia Code § 15.2-2303.4, a different, statutory, standard is addressed in section 11-420.

11-410 The standard of reasonableness for proffers pertaining to non-residential rezonings or residential rezonings exempt from Virginia Code § 15.2-2303.4

Virginia Code §§ 15.2-2297, 15.2-2298, and 15.2-2303 require that proffers be *reasonable conditions*, and sections 15.2-2297 and 15.2-2298 also expressly require that the *rezoning give rise to the need for the conditions*, and that the proffers have a *reasonable relation* to the rezoning. Beyond *Board of Supervisors of Powhatan County v. Reed's Landing Corp.*, 250 Va. 397, 463 S.E.2d 668 (1995) and *Gregory v. Board of Supervisors of Chesterfield County*, 257 Va. 530, 514 S.E.2d 350 (1999), which deal with the issue of whether the proffers in those cases were voluntary, there is little Virginia case law shedding light on what each of these provisions means. However, these provisions have parallels in the body of Takings Clause jurisprudence pertaining to *exactions* which requires that conditions imposed in conjunction with land use approvals: (1) have an *essential nexus* that is related to the impact of the proposed development; and (2) be *roughly proportional* to the extent of the impact. *Nollan v. California Coastal Commission*, 483 U.S. 825, 107 S. Ct. 3141 (1987) (essential nexus); *Dolan v. City of Tigard*, 512 U.S. 374, 114 S. Ct. 2309 (1994) (rough proportionality).

The table below shows the relationship between the statutory requirements for proffers in Virginia Code §§ 15.2-2297, 15.2-2298, and 15.2-2303 and the Takings Clause principles related to exactions.

The Relationship Between State Law Requirements for Proffers and the Takings Clause Principles Related to Exactions	
State Law	Parallel Constitutional Principle
Proffers must be <i>reasonable conditions</i> that are in addition to the applicable zoning regulations	Proffers must be <i>constitutional conditions</i> which, in the context of proffers, means that they cannot condition approval of the rezoning in the absence of an essential nexus and rough proportionality to the impacts they seek to address
The rezoning itself must <i>give rise to the need</i> for the proffers	A proffer must have an <i>essential nexus</i> to the impact it seeks to address
Proffers must have a <i>reasonable relation</i> to the rezoning	A proffer must have <i>rough proportionality</i> to the impact it seeks to address

Although the essential nexus and rough proportionality tests provide a helpful guide for evaluating whether any proffer satisfies state law requirements, whether a proffer is an unconstitutional exaction is primarily limited to proffers that require the applicant to dedicate real property or pay money. *Koontz v. St. Johns River Water Management District*, 570 U.S. 595, 133 S. Ct. 2586 (2013) (extending the principles of *Nollan* and *Dolan* to apply to conditions requiring money payments). There are many other classes of proffers that, but for the condition being imposed in conjunction with a condition of a land use approval, would not otherwise be a taking of property, *e.g.*, proffers in which the applicant offers to phase the development of its project in conjunction with the timing of planned improvements, or proffers in which the applicant offers to satisfy development standards that exceed what is otherwise required by local ordinance, such as enhanced sediment removal from stormwater. The Court also held that the available remedy is a function of state law. Virginia Code § 15.2-2208.1 provides the state remedy.

The constitutional issues and *Koontz* are discussed in depth in section 6-440; see section 10-450 for a discussion of Virginia Code § 15.2-2208.1, which applies to both proffers and special use permit conditions.

11-420 The standard of reasonableness for proffers pertaining to residential rezonings subject to Virginia Code § 15.2-2303.4

The requirement that proffers be reasonable conditions has always been the law. What changed under Virginia Code § 15.2-2303.4 when it was adopted in 2016 was a new standard for *reasonableness* that significantly raised the standard. The 2019 amendments to Virginia Code § 15.2-2303.4 allow an applicant to elect to proceed under the traditional standards for *reasonableness* discussed in section 11-410. If an applicant does not elect to proceed under the traditional standards, then the standards established in Virginia Code § 15.2-2303.4 apply.

Virginia Code § 15.2-2303.4 flips the analysis, and provides that a proffer is *unreasonable unless*:

- The proffer addresses an impact that is *specifically attributable* to the proposed new residential development or other residential use applied for; and
- The proffer addresses an offsite issue or is a cash proffer and it addresses an impact to an offsite *public facility*, such that: (1) the new residential development or new residential use creates a need, or an identifiable portion of a need, for one or more *public facility improvements in excess of existing public facility capacity* at the time of the rezoning or proffer condition amendment; and (2) each such new residential development or new residential use applied for receives a *direct and material benefit* from a proffer made with respect to any of those public facility improvements. A locality may base its assessment of public facility capacity on the projected impacts specifically attributable to the new residential development or new residential use.

Public facilities are defined in Virginia Code § 15.2-2303.4 to mean public transportation facilities, public safety facilities, public school facilities, or public parks. *Public facility improvements* are defined in Virginia Code § 15.2-2303.4 to mean new or expanded eligible public facilities, but do not include operating expenses. The terms *specifically attributable*, *public facility improvements in excess of existing public facility capacity*, and *direct and material benefit* are not defined in Virginia Code § 15.2-2303.4. However, those terms could be interpreted, in what might be considered to be worst-case scenarios, to mean the following:

- **Specifically attributable**: The term *specifically attributable* is not defined and requires a level of certitude that may not be achievable in studies. In the context it is used in Virginia Code § 15.2-2303.4, *specifically attributable* likely means “with exactness and precision.” *Webster’s Third New International Dictionary*. Proffers in which the applicant proffers to do or provide any more, even 1% more, than necessary to address the impact from the rezoning may jeopardize the validity of the proffer. Put another way, the validity of any proffer that may provide *any* benefit to the public that lives outside of the development is jeopardized. Note that a similar standard was rejected by the United States Supreme Court in the constitutional context in *Dolan v. City of Tigard*, 512 U.S. 374, 389-390, 114 S. Ct. 2309, 2319 (1994) (rejecting a standard described as the “specific and uniquely attributable” test adopted by states such as Illinois).
- **In excess of existing public facility capacity**: The term *in excess of existing public facility capacity* prohibits a locality from addressing the incremental impacts of development if there is any existing capacity. For example, if the impact studies show that a rezoning will generate 100 elementary school-age children, and the elementary school that would serve the development has capacity for 99 children, the applicant need only address the impact from that 100th child. Existing capacity in schools may be the easiest to quantify of the four areas for which off-site and cash proffers may be accepted (the others being transportation, public safety, and parks).
- **Direct and material benefit**: The term *direct and material benefit* is not defined and there is no guidance as to how that benefit is to be measured. Like the term *strictly attributable*, it requires a level of certitude that may not be achievable in practical application. This requirement also fails to acknowledge the lag time between the payment of a cash proffer and when the public facility for which the cash was contributed is constructed, thereby exposing the locality to applications to amend proffers if, at some point in time after the development begins to be occupied, the residential development or use is not receiving a direct and material benefit at that particular time.

The uncertainty created by the foregoing terms is significantly ameliorated by Virginia Code § 15.2-2303.4(D)(1), which provides that *signed proffers* submitted by an owner or applicant are *conclusive evidence* that those proffers are reasonable and appropriate.

The 2016 version of Virginia Code § 15.2-2303.4 imposed draconian consequences on localities and their representatives for requesting, or even suggesting an unreasonable proffer in conjunction with a rezoning application. An applicant (the landowner) challenging the denial of its rezoning application could claim that the denial was based on the locality's representative's mere *suggestion* that the applicant submit an unreasonable proffer which the applicant refused to do. That request or suggestion could be made by any representative of the locality such as a staff member, a member of the governing body, the planning commission, or any other representative, regardless of whether the request or suggestion was made to the applicant in a public meeting or in another situation. Of course, until all studies were completed, submitted, and its contents were verified for accuracy, any discussion about proffers with an applicant exposed the locality to risk.

The 2019 amendments relaxed these requirements. The applicant and the locality *may discuss the potential impacts* of the proposed residential development and on public facilities, and *potential voluntary onsite or offsite proffers* that might address those impacts. *Virginia Code § 15.2-2303.4(H)*. The *verbal* discussions may not be used as the basis that an unreasonable proffer or proffer condition amendment was required by the locality. *Virginia Code § 15.2-2303.4(H)*. These amendments create a safe harbor for the parties to discuss impacts and the proffers to address them.

11-500 Suggestions for the style and content of proffers

Proffers should be drafted by the landowner. As a result, the initial style and content of proposed proffers may vary widely. A locality's planning staff and attorney must review and comment on the proffers and suggest revisions to ensure, for example, that the impacts intended to be addressed would be, in fact, addressed, and that the language is clear and enforceable. For residential rezonings subject to the requirements of Virginia Code § 15.2-2303.4 (discussed in sections 11-220 and 11-400), extra caution is advised. Following are some suggestions for writing, reviewing, and revising proposed proffers.

11-510 Develop the language as though it was a zoning regulation

Because proffers have the force and effect of zoning regulations, it is vital that they be written in clear language that is easily understood:

- State each proffer clearly: Each proffer should be a declaratory statement, using clear and concise language as to what must be performed, when it must be performed, when it must be completed, and, if applicable, how it must be performed.
- Write each proffer with the dignity of a zoning regulation: A proffer becomes part of the zoning regulations applicable to the property. Therefore, it should be written with the dignity of a zoning regulation, using terminology found in the zoning ordinance.
- Select words carefully: The words in a proffer must be carefully selected. Insist that the word “must” or “shall” be used when something is mandatory, rather than “should” or “may.” Do not use “etc.” in a proffer.
- Consistently use the same word to refer to the same person, place or thing: A person, place, or thing always should be described or identified by the same word.
- Use complete sentences: Proffers should be written in complete sentences.
- Ensure that each proffer is comprehensive: A proffer should be written in comprehensive language that addresses the reasonably foreseeable issues that may arise from the proffer.

- Ensure that each proffer imposes standards that are enforceable: Every proffer must be reviewed by the zoning administrator's office to ensure that the proffer imposes standards that are enforceable. Part of the issue of enforceability pertains to the clarity of the language used, but the other part pertains to whether the language actually imposes a standard that can be enforced. Because the zoning administrator will have the task of enforcing the proffers, be certain that the opportunity exists to provide comments as to not only the language, but the subject matter (*e.g.*, a proffer that restricts a restaurant use to between the hours of 5:00 a.m. and 1:00 a.m. may require a zoning inspector to be in the field between 1:00 a.m. and 5:00 a.m. if the hours of operation become an enforcement issue).
- Be careful not to make the proffer too specific: In providing clarity, proffers can become too specific so that they become overly restrictive. Examples of being too specific include referring to the owner by name (because proffers run with the land and referring to a specific owner may create confusion to some), providing a specific measurement for height, distance, or something similar in an absolute when you intend to establish a minimum or a maximum.
- Use similar language for similar situations: Language that is similar to language previously approved for a similar type of proffer should be used, if possible.
- Clearly state the time of performance: Be certain that the language clearly states when the owner must do the promised or required acts.
- Ensure that the proffers are well-organized: Ensure that the proffers are well-organized by having proffers that are related to one another located next to one another.
- Be certain that referenced documents are properly identified: References to plats or plans should identify the title, last revision, and the entity preparing the plat or plan. References to ordinances should be identified by section number and include language such as "as the section was in effect on [date of special use permit]." References to letters, memos, staff reports, and similar documents should clearly identify the recipient, the author, and the date.
- Attach copies of referenced regulations: If an owner desires to restrict the uses allowed to only some of those allowed in the zoning district, or to otherwise refer to a specific zoning regulation, the referenced regulation should be attached so that there is no question about the content of the referenced regulation.

11-520 Ensure that unique proffer-related issues are addressed or avoided

Proffers raise some unique issues since they are proposed and submitted by the owner, and are often written by the owner as well:

- Identify the owners of the property: Identify all the owners of the property who will be required to sign the proffers, any peculiar ownership status (*e.g.*, will be signing as a trustee), and obtain required documentation that the person signing on behalf of the owner is authorized to do so (*e.g.*, by one person on behalf of another, or on behalf of a corporation, partnership, or other entity). Consider including a statement that the owner has the authority to make the proffers.
- Encourage owners to either delete or separate from their proffers those statements that do not impose additional regulations or conditions: Owners may seek to include preambles, statements of intent and desire, restatements of what is already required by existing regulations, and other matters that are not proffers. Encourage owners to either delete this unnecessary text or to at least separate it from the proffers themselves. Statements that explain why a particular proffer is being submitted (*i.e.*, to satisfy a provision of the comprehensive plan) may be retained.
- Ensure that the proffers do not impose, or would not be perceived to impose, an obligation on the locality, the

Virginia Department of Transportation (VDOT), or any other public entity: Proffers address impacts resulting from a rezoning and they should be drafted so they do not impose, or be perceived to impose, an obligation on the locality, VDOT, or any other public entity to do something. This problem often arises in the context of establishing the timing for performance. For example, a proffer stating that the “final site plan must be approved by the site plan agent prior to commencing the use” could be read to mean that the site plan agent must approve the site plan. Alternative wording to address this issue would be, for example, “The owner is required to obtain approval of the final site plan by the site plan agent prior to commencing the use.”

- Consider requiring proffers to be satisfied before the application for a needed approval is submitted: When an owner requires additional approvals in the process, such as a site plan, there may be some proffers where it is best to require that a proffer be satisfied before the owner even applies for the site plan rather than some later point in the process, such as prior to issuance of a certificate of occupancy. This suggestion does not apply to proffers requiring the payment of cash tied on a per unit (residential) basis. *See Virginia Code § 15.2-2303.1:1.*
- Avoid conditional proffers: Avoid proffers that arise only under certain circumstances and are speculative in nature (*i.e., if/then* scenarios, such as “if the state widens Jackson Boulevard to 8 lanes within the next 5 years, the owner will pay for the installation of a signal at the intersection of . . .” when Jackson Boulevard’s widening is only speculative at the time). In some cases, if/then scenarios, particularly those pertaining to matters internal to the proposed project, may be an indication that there are important issues that remain unresolved at the rezoning stage – in the example above, the proffered signal may be required as a result of the rezoning, regardless of whether the boulevard is first widened. Unless all of the possible scenarios have been completely evaluated, the governing body may be faced with considering a rezoning application that is a moving target. This issue is different from the proffer that requires the owner to do something when a specific, foreseeable event occurs (*e.g.*, “The owner must construct Pocket Park No. 2 as shown on the Plan before requesting the city to issue the 100th building permit for a dwelling unit within the Project.”).
- Use proffer forms or an acceptable alternative: Proffers should be submitted on a standard proffer form that states the legal prerequisites for granting and accepting proffers. The proffer form need not be used if the proposed proffers include the information contained on the proffer form.

11-530 Ensure the language makes sense

Once a proffer has been put to writing, the locality’s staff and attorney must make certain that it is understandable, unambiguous, and enforceable:

- Review draft proffers with a critical eye: The locality’s planning staff must ignore its insider’s understanding of the application and put itself in the position of a reader who knows nothing about the project and: (1) ask whether the proposed proffers are clear, concise, and comprehensive in a way that a future reader will easily understand; (2) drop all assumptions and preconceived notions and be critical; (3) identify the ambiguities and eliminate them; (4) identify all superfluous text and eliminate it; and (5) ask whether each proffer would make sense to somebody ten years from now.
- Have a peer review the proffers: The planning staff should consider asking others not directly involved with the application to review the proffers. It is important to have persons without an insider’s knowledge of the application to see if they can understand the proffers and identify ambiguities.
- All appropriate departments review the proffers: The planning staff must ensure that all departments that will have an interest in the proffers as well as the locality’s attorney, review and comment on the proffers. For example, if land for a public park, library, or school is proffered to be dedicated, ensure that the locality’s parks and recreation, library, or schools officials have an opportunity to review and comment on the proffers that may pertain to them.

11-600 The rules and remedies if the governing body's decision on the rezoning is challenged

Whether a rezoning is approved or disapproved by the governing body, and whether the rezoning application included proffers or not, the decision of the governing body may be challenged in court. This section examines challenges to the proffers themselves.

11-610 Unconstitutional proffers

As explained in sections 6-440 and 11-400, proffers must be reasonable conditions and, if they are not, they may be unconstitutional under the United States or Virginia constitutions and subject to challenge under Virginia Code §§ 15.2-2208.1 and 15.2-2285(F). Section 15.2-2208.1(A) allows an applicant to bring a challenge if the approved rezoning included an allegedly unconstitutional proffer, or if the disapproval was based on an unconstitutional proffer, *i.e.*, the applicant was unwilling to proffer something the governing body wanted so the governing body disapproved the rezoning. *Virginia Code § 15.2-2208.1(A)*.

If the applicant proves that the proffer is unconstitutional, it will be presumed that the applicant's offer, or refusal to offer, the unconstitutional proffer was the controlling basis for the governing body's decision absent clear and convincing evidence to the contrary. *Virginia Code § 15.2-2208.1(B)*. This presumption applies, however, only if the applicant objected to the proffer in writing before the governing body's decision. *Virginia Code § 15.2-2208.1(B)*.

If the applicant prevails in court, it is entitled to not only an order directing the governing body to approve the rezoning without the unconstitutional proffer, but also to an award of compensatory damages. *Virginia Code § 15.2-2208.1(A)*. The court has discretion to also award reasonable attorney fees and court costs. *Virginia Code § 15.2-2208.1(A)*.

11-620 Proffers that violate Virginia Code § 15.2-2303.4

As explained in section 11-420, the standards for a proffer to be reasonable under Virginia Code § 15.2-2303.4 are very high. A proffer that satisfies the constitutional standard of reasonableness as explained in section 11-610 and the other sections cross-referenced therein may nonetheless violate the statutory standard in Virginia Code § 15.2-2303.4.

An action against the locality's governing body alleging a violation of Virginia Code § 15.2-2303.4 must be brought within 30 days, provided that the applicant must have objected in writing to the governing body regarding a proposed proffer prior to the governing body acting on the rezoning application. *Virginia Code § 15.2-2303.4(E)(1)*.

If the applicant prevails in court, the successful applicant may be entitled to an award of reasonable attorney fees and costs and to an order remanding the matter to the governing body with a direction to approve the rezoning or proffer amendment without the inclusion of any unreasonable proffer or to amend the proffer to bring it into compliance with Virginia Code § 15.2-2303.4. *Virginia Code § 15.2-2303.4(E)(3)*.

11-700 Requirements and rules after proffers are accepted

There are a number of requirements and rules that apply to proffers after they are accepted by the governing body, ranging from who and how proffers are administered, enforced, and tracked, to various rules that apply to cash proffers, to how proffers are amended after they are first accepted.

11-710 Administering and enforcing proffers

The zoning administrator is vested with all necessary authority to administer and enforce proffers. *Virginia Code § 15.2-2299*. This authority includes issuing written orders and initiating legal actions to require compliance and

requiring a guarantee to assure that all proffered physical improvements are constructed. *Virginia Code* § 15.2-2299. It also includes interpreting proffers to ensure they are being properly implemented.

If enforcement is necessary, the violation of a proffer is equivalent to the violation of a zoning ordinance and is enforced as such. *Barton v. Town of Middleburg*, 27 Va. Cir. 20 (1992). The zoning administrator may bring actions in injunction, abatement, or other appropriate actions (such as actions for civil penalties). *Virginia Code* § 15.2-2299. Perhaps the most effective and efficient enforcement tool is found in the last sentence of *Virginia Code* § 15.2-2299, which provides that the failure to comply with all proffers is cause to deny the issuance of any required use, occupancy, or building permits, as may be appropriate.

Any person aggrieved by a decision of the zoning administrator made under *Virginia Code* § 15.2-2299 may petition the governing body – *not the board of zoning appeals* – to review the zoning administrator’s decision. *Virginia Code* § 15.2-2301. The petition must be filed with the zoning administrator and the clerk of the governing body within 30 days after the date of the zoning administrator’s decision. *Virginia Code* § 15.2-2301. The petition must specify the grounds upon which the petitioner is aggrieved. *Virginia Code* § 15.2-2301. The governing body’s decision may be appealed to the circuit court. *Virginia Code* § 15.2-2301.

If the governing body, rather than the zoning administrator, determines that an approved final subdivision plat or site plan complies with the applicable proffers, the recorded final subdivision plat or the approved final site plan controls, even if the plat or plan actually conflicts with the proffers. *Virginia Code* § 15.2-2261.1. To the extent that such a determination by the governing body effectively amends the proffers, *Virginia Code* § 15.2-2261.1 provides that the notice requirements for a zoning map amendment under *Virginia Code* § 15.2-2204 are deemed to have been satisfied.

11-720 Tracking proffers

Virginia Code § 15.2-2300 requires that proffered rezonings be identified on a locality’s zoning map by an appropriate symbol. It also requires that the zoning administrator maintain for public inspection a conditional zoning index that provides the ordinance creating the proffers and the regulations provided for in the particular zoning district or zone. The index also must provide ready access to all proffered cash payments and expenditures disclosure reports prepared under *Virginia Code* § 15.2-2303.2. The index must be updated each year, no later than November 30. *Virginia Code* § 15.2-2300.

In addition, a locality must include proffered cash payments in its capital improvements program and include in its annual capital budget the amount of proffered cash payments projected to be used for expenditures or appropriated for capital improvements in the ensuing year. *Virginia Code* § 15.2-2303.2.

11-730 Demanding payment of a cash proffer

Virginia Code § 15.2-2303.3 prohibits localities from requiring the payment of a cash proffer before issuance of a building permit; however, an owner may voluntarily agree to an earlier payment. Also, no locality may either request or accept a cash proffer whose amount is scheduled to increase annually, from the time of the proffer was accepted until tender of payment, by a percentage greater than the annual rate of inflation, as calculated by referring to the Consumer Price Index published by the United States Department of Labor, Bureau of Labor Statistics or the Marshall and Swift Building Cost Index.

Virginia Code § 15.2-2303.1:1(A) delays the collection of cash proffers for residential construction that are on a per-dwelling unit or per-home basis until completion of the final inspection and prior to the issuance of a certificate of occupancy for the subject property. For various reasons, collecting cash proffers at that point in the development process can create a number of problems for the locality, the home builder, and the home buyer. It is suggested that the home builder be put on notice of the cash proffer when the building permit is issued. In addition, localities must be certain that the cash proffers are collected “prior to the time of the issuance of any certificate of occupancy” because after that point, the locality arguably no longer is authorized by section 15.2-2303.1:1 to collect the cash proffer. *Board of Supervisors of James City County v. Windmill Meadows, LLC*, 287 Va. 170, 752 S.E.2d 837 (2014) (in

ruling that Virginia Code § 15.2-2303.1:1 is plain and unambiguous and that the Court was bound by the plain meaning of that statute).

Virginia Code § 15.2-2303.1:1(A) applies to proffers accepted before and after July 1, 2010, when the statute became effective. *Windmill Meadows, supra*. Virginia Code § 15.2-2303.1:1(B) provides that a developer's assertion of a right to delayed payment of cash proffers is not cause for an enforcement action under Virginia Code § 15.2-2299. Virginia Code § 15.2-2303.1:1(B) also allows the court to award reasonable attorneys' fees, expenses, and court costs to any party successfully challenging a locality's improper application of the statute.

Virginia Code § 15.2-2303.3 prohibits a locality from requesting or accepting a proffer in which the profferrer purports to waive future legal rights against the locality and voids any such proffer accepted on or after January 1, 2012 without affecting the validity of the rezoning or any other proffers.

11-740 Expending cash received from proffers

Virginia Code § 15.2-2303.2(A) requires that each locality accepting a cash proffer on or after July 1, 2005 pursuant to Virginia Code §§ 15.2-2298, 15.2-2303, or 15.2-2303.1 (the last of which pertains to New Kent County) must, within 12 years after receiving full payment, begin construction or other improvements for which the cash payment was proffered. A locality that does not timely begin construction of the improvements, or make other authorized alternative improvements, must pay the amount of that proffered cash payment to the Commonwealth Transportation Board for allocation to the appropriate construction program.

Localities may award contracts to entities willing to construct a more extensive road improvements using the cash proffers of others as well as other available locally-generated funds, upon a written determination by the governing body stating the basis for awarding the construction contract to extend the limits of the road improvement. *Virginia Code § 15.2-2303.2*.

11-750 Applying cash payments for capital improvements for purposes other than the purpose proffered

Virginia Code § 15.2-2303.2 provides some flexibility to localities in applying cash payments received for capital improvements.

If cash payments were received for road or transportation improvements that are incorporated into the locality's capital improvements program, Virginia Code § 15.2-2303.2(C)¶1 allows the locality to use the cash payments as its matching contribution under Virginia Code § 33.2-357. For the purposes of Virginia Code § 15.2-2303.2, *road improvement* includes the construction of new roads or the improvement or expansion of existing roads to meet increased demand attributable to new development. A *transportation improvement* means any real or personal property acquired, constructed, improved, or used for constructing, improving, or operating any: (1) public mass transit system; or (2) highway, or portion or interchange thereof, including parking facilities located within a district created under Title 15.2 of the Virginia Code. The improvements include, but are not limited to, public mass transit systems, public highways, and all buildings, structures, approaches, and facilities thereof and appurtenances thereto, rights-of-way, bridges, tunnels, stations, terminals, and all related equipment and fixtures.

If cash payments were received for capital improvements, Virginia Code § 15.2-2303.2(C)¶2 allows the locality to use the cash payments for "alternative improvements of the same category" within the locality "in the vicinity of the improvements for which the cash payments were originally made." This authority applies to proffers accepted under Virginia Code §§ 15.2-2298 or 15.2-2303, regardless of the date of the rezoning. Before using the cash payments for alternative improvements, the locality's governing body must give 30 days' notice to the party that made the cash payment or the owner, hold a public hearing, and then make the following findings: (1) the improvements for which the cash payments were proffered cannot occur in a timely manner or the functional purpose for which the cash payment was made no longer exists; (2) the alternative improvements are within the vicinity of the proposed improvements for which the cash payments were

proffered; and (3) the alternative improvements are in the public interest.

There are two exceptions to how cash payments for capital improvements may be applied. First, Virginia Code § 15.2-2303.2(C)¶¶ 1 and 2 provide that these provisions do not apply if the proffer statement expressly prohibits the cash payment from being used for any other purpose. Merely designating the purpose for which the cash payment is to be applied does not prohibit it from being applied to other purposes in compliance with Virginia Code § 15.2-2303.2(C)¶¶ 1 and 2. Second, Virginia Code § 15.2-2303.2(D) provides that a cash payment may be used for a capital improvement to an existing facility, such as a renovation or a technology upgrade, only if it expands the capacity of the facility, and the cash payment may not be used for any operating expense of any existing facility such as ordinary maintenance or repair.

Lastly, Virginia Code § 15.2-975 enables localities authorized to accept proffers to also issue bonds under the provisions of the Public Finance Act (Virginia Code § 15.2-2600 *et seq.*) and other applicable law to finance improvements contained in the construction improvement program, to the extent that the costs of those improvements have been pledged by landowners as voluntary cash proffers.

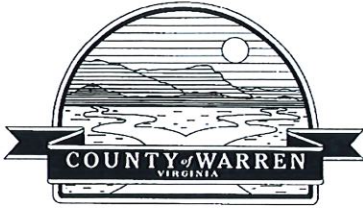
11-760 Subsequent amendments to proffers

The proposed amendment to a proffer is, in effect, a rezoning of the property and so, ordinarily it is processed as such, subject to noticed public hearings before the planning commission and the governing body before it is acted upon. *See generally Virginia Code §§ 15.2-2204, 15.2-2285, and 15.2-2286; see also Chapter 10.* However, if the proposed proffer amendment does not affect conditions of use or density, the governing body may waive any otherwise applicable requirement for a public hearing. *Virginia Code § 15.2-2302(B).* Under Virginia Code § 15.2-2302(E), the governing body may also waive the written notice requirement to reduce, suspend, or eliminate outstanding cash proffer payments for residential construction calculated on a per-dwelling-unit or per-home basis that have been agreed to, but unpaid, by any landowner.

Another issue arises when the owner of one portion of the property that was the subject of a prior rezoning seeks to amend the proffers applicable only to that portion. In *Town of Leesburg v. Long Lane Associates*, 284 Va. 127, 726 S.E.2d 27 (2012), the Virginia Supreme Court held that a locality does not need to obtain the consent of a neighboring property owner to rezone a parcel that was originally part of an undivided property that was previously rezoned and subject to a single set of proffers. The Court concluded that the owner of the neighboring property had no vested right in its expectation that the neighboring property would continue to develop in accordance with the prior proffered zoning, which existed at the time the landowner purchased its property and developed it in accordance with the prior proffers. The Court also concluded that Virginia Code § 15.2-2303(A) does not require that all successors in title agree or consent to any portion of the subdivided land being thereafter rezoned.

Special notice of a proposed amendment to proffers is not required to be given to the owners of other parcels subject to the same existing proffers. Instead, Virginia Code § 15.2-2302(A) requires only the notice required by Virginia Code § 15.2-2204(B). The prior law required written notice of the application to the other owners within 10 days after receipt of the application.

COUNTY OF WARREN



County Administrator's Office
Warren County Government Center
220 North Commerce Avenue, Suite 100
Front Royal, Virginia 22630

Phone: (540) 636-4600

FAX: (540) 636-6066

Email: tlogan@warrencountyva.net

Taryn G. Logan
Deputy County Administrator

November 9, 2022

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County Administrator

Lauren Kopishke, Planning Director
Town of Front Royal
P.O. Box 1560
Front Royal, VA 22630

RE: **HEPTAD, LLC Proposed Proffer Amendment**

Dear Lauren:

Thank you for forwarding the proposed proffer amendment submitted by HEPTAD, LLC for the Swan Estates development to the County for review and comment. The amended application decreases the total number of units from the previously approved 450 to now 335 units, which will consist of 170 single family detached (SFD) units and 165 single family attached (SFA) units.

The current recorded proffer statement for this property provides \$5,500 for all 450 units and an additional \$9,000 per SFD, \$5,500 per SFA and \$4,500 per multi-family units for the last 115 units to be proffered for the Warren County public school system (page 21).

At this time, the applicant is proposing the proffer statement be amended to pay \$4,247 for each residential unit (both single-family detached and attached) with a deduction of \$1,044.78 per unit for the 3.5-acre community park dedication, for a total of **\$3,202.22** per unit to go to the public school system.

We have run the County's fiscal impact model, which was revised in 2018 following the new proffer legislation. For the single-family detached units, our model shows a capital cost per unit of \$4,735 for schools and a \$4,035 cost per unit for parks to equal a one-time cost per unit of \$8,770. For the attached single-family units, our model shows a capital cost of \$6,978 per unit for schools and a \$4,035 cost per unit for parks to equal a one-time cost per unit of **\$11,013**. Our model also shows that this development will generate an additional 63 elementary students at Leslie Fox Keyser Elementary School, an additional 33 students at Warren County Middle School, and an additional 45 students at Warren County High School. Leslie Fox Keyser is already over capacity according to our model. The secondary schools currently have capacity for the proposed student generation from this development.

We also have concerns about the impact of the development on our public safety system. Our fiscal impact model calculates the cost to our public safety system of \$1,019 per unit. There is a 3.5-acre site proffered to the County for a community park on the property. We would feel more comfortable with the property dedicated to be for a park facility or, at the option of the County, for a fire station. We are currently evaluating data for a possible new fire station in this area, and this could leave the option available to the County.

*Front Royal-Warren County
Rivers of Opportunity-Mountains of Success*

We would also like to point out that the original proffer statement offered phasing the homes in at no more than 50 units to be built per year. The new proffer statement increases that rate to no more than 100 units to be built per year. This allows the County less time to prepare services for the school children that will be generated from the development, among other services.

We thank the Town and its staff for using its best efforts in consideration of the rezoning application to address the fiscal impact that this project will have on Warren County Public Schools and other County services.

If you have any questions regarding these comments, please give me a call. Thank you for the opportunity to review the request and provide comments to the Planning Commission and Town Council.

Sincerely,

A handwritten signature in black ink that reads "Taryn Logan". The script is cursive and fluid.

Taryn Logan, AICP
Deputy County Administrator

TGL

cc: Edwin Daley, County Administrator

Connie Potter

From: Arthur Boyce <bobby.boyce@vdot.virginia.gov>
Sent: Monday, November 28, 2022 10:02 AM
To: Connie Potter
Cc: Rhonda Funkhouser; Joseph Johnson
Subject: Town of Front Royal- Leach Run Parkway-HEPTAD Proffer Amendments
Attachments: RZ05-07-56_Application Letter to Amend Proffers_9-16-2022_HEPTAD, LLC.pdf

Hey Connie,
Sorry for the delayed review of the above subject revised proffers for this subdivision. As you know, we reviewed the Traffic Impact Analysis for this development as required by Chapter 527 in 2015. We have no additional comments on the amended proffers for this application.

If you have any questions, please give me a call.

Sincerely,

Bobby Boyce

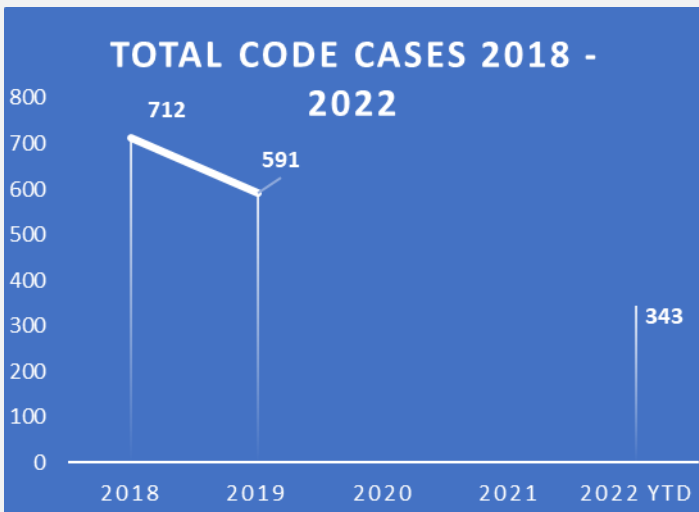
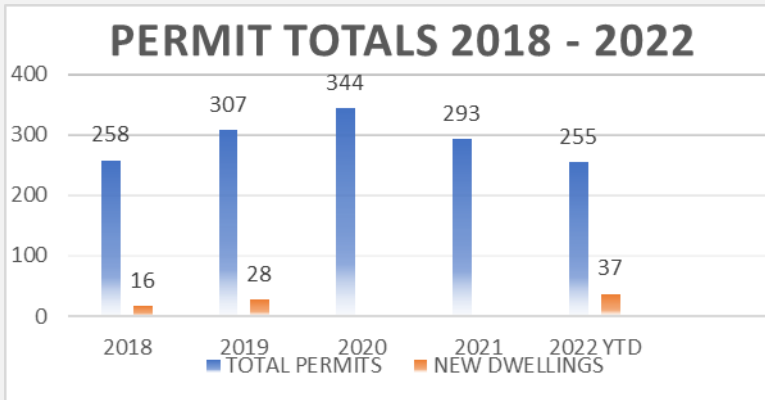
VDOT- Land Development Engineer
Shenandoah, Frederick, Clarke, & Warren Counties
14031 Old Valley Pike
Edinburg, VA 22824
(540) 534-3211

AGENDA ITEM – 11

PLANNING/ZONING DEPARTMENT - NOVEMBER 2022

● GENERAL INDICATORS

	2018	2019	2020	2021	2022 YTD	October
Zoning Permits	258	307	344	293	255	23
Code Enforcement Cases	712	591	-	-	343	28
Land Use Applications	25	19	26	29	55	3
Code Amendments	3	1	1	7	0	0
Sign Permits	44	52	39	47	32	3
Business Licenses	151	186	151	172	150	7



SPECIAL PROJECTS UPDATES/NEWS

- **Comprehensive Plan Rewrite:** Summit Engineering, Inc. presented an update on the Comprehensive Plan rewrite to the Town Council and Planning Commission at a joint work session on August 16, 2022. Summit provided a Final Version of the Comprehensive Plan on November 30, 2022.
- **FRZORDAM-003111-2022:** Data Center Text Amendment is currently on hold.
- **Chapter 175 and 148 Rewrite:** Discussion held with summit regarding the rewrite.

Assistant Town Manager, Kathleen Leidick gave a progress update of the Capital Improvement Project (CIP) at the PC November 16, 2022, regular meeting.

- **BAR –** The Board of Architectural Review met for a regular meeting in November and approved one (1) Certificate of Appropriateness for exterior renovations at 301 E. Main Street.
- **BZA -** The Board of Zoning Appeals met for a regular meeting in November and postponed a variance application at 225 E 7th Street and 631 Kibler Street for the applicant to provide additional information and denied a variance request for the required front setback to construct a front porch at 1015 Wine Street.

- **PC –** In November the Planning Commission (PC) held one regular meeting, one special meeting, two work sessions and one joint work session. At the regular meeting the PC postponed a decision for a Short-Term Rental application asking the applicant to provide additional information and address violations at the property. In addition, the PC approved six (6) agenda items to be advertised for public hearing in December. At the special meeting the PC postponed a decision for a Rezoning Application for Randolph Macon Academy. At the joint work session with the Town and County Planning Commission's they held a discussion on the Comprehensive Plan process regarding transportation issues and planning at the boundaries. Discussion at the additional two work sessions was for a Rezoning Application, a Special Use Permit for a Short-Term Rental and a Variance Request that was before the Board of Zoning Appeals for review.