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SUPREME COURT OF VIRGINIA
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IN THE

Supreme Court of Virginia

AT RICHMOND

RECORD NO. 921599

BOARD OF ZONING APPEALS OF
JAMES CITY COUNTY, VIRGINIA,

Appellant,

v.

UNIVERSITY SQUARE ASSOCIATES,

Appellee.

JOINT APPENDIX

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VIRGINIA: IN THE CIRCUIT COURT FOR THE CITY OF WILLIAMSBURG AND COUNTY OF JAMES CITY

UNIVERSITY SQUARE ASSOCIATES,
a Virginia General Partnership,

Plaintiff,

v. Chancery No. _____

BOARD OF ZONING APPEALS OF JAMES CITY COUNTY, VIRGINIA,

Serve: Bernard M. Farmer, Jr., Secretary
101-E Mounts Bay Road
James City County, Virginia
and

Bernard M. Farmer, Jr., Zoning Administrator
101-E Mounts Bay Road
James City County, Virginia

and

JAMES CITY COUNTY, VIRGINIA,
a Virginia Municipal Corporation

Serve: Frank M. Morton, III, County Attorney
101-C Mounts Bay Road
James City County, Virginia,

Defendants.

PETITION FOR WRIT OF CERTIORARI
TO REVIEW THE DECISION OF THE BOARD OF ZONING APPEALS;
BILL OF COMPLAINT FOR A DECLARATORY JUDGMENT; AND
BILL OF COMPLAINT FOR A TEMPORARY, PERMANENT
AND MANDATORY INJUNCTIONS

To the Honorable Judge of the aforesaid Court:

Plaintiff, University Square Associates, a Virginia General Partnership ("University Square Associates"):

a) petitions this Court pursuant to Section 15.1-497 of the Code of Virginia, 1950, as amended, for a Writ of Certiorari to Review The Decision of the Board of Zoning Appeals ("the BZA") or, in the alternative,

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b) moves this Court pursuant to Section 8.01-184, et seq. of the Code of Virginia, 1950, as amended, for a Declaratory Judgment establishing that the decision of Bernard M. Farmer, Jr., Zoning Administrator ("the Zoning Administrator") sustained by the BZA based upon condition number three of Special Use Permit 49-90 requiring a 50-foot greenbelt free of structures and parking to be measured from a legally undefined "future right-of-way, Route 199" is so vague that it is unenforceable or, in the alternative

c) moves this Court for a Temporary and Permanent Injunction against the enforcement of the aforesaid decision made by the Zoning Administrator and sustained by the BZA until a definite time in "the future" is established by James City County, Virginia ("the County") and the "future right-of-way, Route 199" is legally established with precise engineering certainty and acquisition by the Virginia Department of Transportation and,

d) for such other relief as is appropriate and equitable.

In support of this Petition and these Bills of Complaint, the Plaintiff, by Counsel, represents as follows:

COUNT I

1. The Plaintiff is a Virginia general partnership organized and operated under the laws of the Commonwealth of Virginia, having its principal place of business in James City County, Virginia.

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2. The Plaintiff is the fee simple owner of certain land and buildings commonly known as the Williamsburg Crossing Shopping Center ("Williamsburg Crossing") located partially in James City County, Virginia, and partially in the City of Williamsburg, Virginia, which property was acquired by the Plaintiff by deed recorded in the Clerk's Office of the Circuit Court for the City of Williamsburg and County of James City in James City County Deed Book 357, Page 125, et seq. and Williamsburg Deed Book 80, Page 511, et seq. on August 10, 1987.

3. The land constituting Williamsburg Crossing was formerly owned by the Pilot Life Insurance Company and acquired in separate parcels by it between December 1, 1969 and July 1, 1971, by Deeds recorded in James City County Deed Book 124, Page 673, et seq., Deed Book 126, Page 439, et seq. and Deed Book 132, Page 79, et seq.

4. On September 5, 1972 the currently existing rights-of-way for Route 199 and the intersection for Routes 5 and Route 199 were legally established by the recordation of a deed and plats of survey with metes and bounds descriptions in the Clerk's Office of the Circuit Court for the City of Williamsburg and County of James City in James City County Deed Book 139, Page 45, et seq., Williamsburg Deed Book 49, Page 23, et seq. and Highway Plat Book 4, Pages 257-262 ("Design One").

5. At all pertinent times, Williamsburg Crossing has

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been designated Major Commercial on the County Comprehensive Plan and zoned General Business, B-1, on the County Zoning Map.

6. The Major Commercial designation on the County Comprehensive Plan provides for:

> "Large commercial uses, such as shopping centers, that provide goods and services primarily to local residents. Major Commercial uses require public water and sewer service; large sites; nearby police and fire protection; primary highway access; environmental features such as soils and topography suitable for intense development; and proximity to or easy access to large population centers. The timing of major commercial development at a particular site is controlled by the existence of and adequate market population, availability of public utilities and the capacity of the roads".

7. The statement of intent of the General Business District, B-1, set forth in Section 20-328 of the County Code ("the County Code") provides:

> "Generally the General Business District, B-1, covers that portion of the community intended for the conduct of general businesses to which the public requires direct and frequent access, but which is not characterized either by constant heavy trucking other than stocking and delivery of light retail goods, or by any factors other than occasioned by incidental light and noise of congregation of people and passenger vehicles".

8. On or about December 31, 1987, the County granted final approval of the Plaintiff's initial site plan numbered 62-87 ("the Initial Site Plan"). The Initial Site Plan contemplated phased construction of Williamsburg Crossing and included fully engineered provisions for storm drainage, water lines and sewer lines for the development of the bulk of the 87 acre site, including a 2.5 acre portion of the site at

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issue herein located immediately adjacent to the present intersection of Route 5 and Route 199 ("Site At Issue").

9. Site work commenced immediately and on April 4, 1988, the County issued a building permit for the first phase of building construction.

10. In the Fall of 1988, subsequent to the approval of the Initial Site Plan and the commencement of site and building construction, the Virginia Department of Transportation provided a preliminary engineering sketch showing possible changes in the alignment of Route 199 and the Route 5, Route 199 intersection (Design Two). This sketch was preliminary, not final and not to be used for the acquisition of right-of-way.

11. At the informal request of and as an accommodation to both County and the Virginia Department of Transportation, the Plaintiff moved its partially constructed main entrance in a westerly direction along Route 5 approximately 144 feet at a cost in excess of Seventy Five Thousand and No/100 Dollars ($75,000.00) to accommodate Design Two.

12. In reliance on the various approvals of the County, the Plaintiff constructed and dedicated to the James City Service Authority and the James City Service Authority accepted from the Plaintiff water and sewer lines to serve the bulk of Williamsburg Crossing including, but not limited to, the Site At Issue, all as evidenced by Deeds of Easement dated February 23, 1989 and July 12, 1989, recorded in James City

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County Deed Book 431, Page 133, et seq. and Deed Book 443, Page 697, et seq. respectively.

13. In the Summer of 1989, the Virginia Department of Transportation provided further revised preliminary engineering plans for the alignment of the Route 199 and the Route 5/Route 199 intersection. Those plans provided for three new and different alternatives, namely the Public Hearing Design ("Design Number Three"), Alternate One ("Design Number Four") and Alternates 1A and 1B ("Design Number Five").

14. On December 14, 1989, the City of Williamsburg endorsed the preliminary engineering plans for Alternate 1A.

15. On December 18, 1989, the Board of Supervisors of James City County endorsed the preliminary engineering plans for Alternates 1A and 1B.

16. All preliminary engineering plans for Designs Three, Four and Five bear the following language on the face of the plans:

> "These plans are unfinished and unapproved and are not to be used for any type of construction or the acquisition of right-of-way". (emphasis added)

17. At all pertinent times and continuing until the present time, Design Two, Design Three, Design Four and Design Five are depicted on preliminary engineering plans or sketches only, no right-of-way acquisition plans with metes and bounds descriptions ever having been prepared or approved by the Virginia Department of Transportation and no acquisition of any right-of-way beyond Design One ever having occurred.

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18. On May 21, 1990, the County stopped the planned phased development of Williamsburg Crossing and other similar developments in James City County by adopting a new special use permit requirement, which would be required in addition to the permissible zoning which already existed at Williamsburg Crossing. The new special use permit requirement is set forth in Section 20-104 of the County Code and provides in pertinent part:

> (b)...a special use permit shall be required for a new building, addition or expansion when:
>
> > (1) In combination with the existing structure, it exceeds the thresholds set forth in paragraph (A);
> >
> > (2) It adds five thousand (5,000) square feet or more of commercial floor area...; and
> >
> > (3) It is located on the same property as the existing structure or other parcel which is a logical component of such property.
>
> (c) ...Any building or use and addition or expansion thereto requiring a special use permit under this section, shall comply with the following regulations:
>
> > (i) Any use requiring a special use permit under this section...shall include a binding master plan... The master plan shall depict and bind the approximate boundaries and general location of all principal land uses and their building square footage and height, roads, rights-of-way, accesses, open spaces, public uses and other features to be located on the site for which approval is sought...All final site plans shall be consistent with the master plan...(emphasis added)

19. Pursuant to the aforesaid provisions of the County

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Code, the Plaintiff applied for the newly required special use permit and the required simultaneous approval of a binding master plan ("the Binding Master Plan").

20. On January 8, 1991, in accordance with the previously approved phased out-parcel construction of Williamsburg Crossing, the prior approvals of its Initial Site Plan and subsequent site plans, issuance of its building permits, in accordance with the water and sewer line easements for the Site At Issue dedicated to and accepted by the James City Service Authority, the Plaintiff received from the County Planning Commission an exception to Section 17-40 of the County Code otherwise requiring the Site At Issue to have access to a public street before being subdivided.

21. On January 25, 1991, in accordance the previously approved phased out parcel construction of Williamsburg Crossing, the prior approvals of its Initial Site Plan and subsequent site plans, issuance of its building permits and in accordance with the water and sewer line easements for the Site At Issue dedicated to and accepted by the James City Service Authority, the Plaintiff received preliminary approval of a subdivision plat ("the Subdivision Plat") of the Site At Issue showing a fifty foot (50') setback measured from the existing and known right-of-way of State Route 199 (Design One).

22. The Virginia Department of Transportation approved the Subdivision Plat of the Site At Issue on April 18, 1991

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and the County granted final approval of the Subdivision Plat of the Site At Issue on May 9, 1991. The Subdivision Plat was recorded on June 6, 1991 in James City County Plat Book 54, Page 41 with the same fifty (50) foot setback measured from the existing and known right-of-way of Route 199 (Design One).

23. As of the date of the approval of the Subdivision Plat of the Site At Issue, the County and the Virginia Department of Transportation each knew of and were fully familiar with Designs Two, Three, Four and Five but elected not to require a setback of any type beyond fifty (50) feet measured from the existing and known right-of-way of Route 199 (Design One).

24. On June 17, 1991, pursuant to Section 20-104 of the County Code (quoted in paragraph 18 hereof), the County approved the special use permit for the expansion of Williamsburg Crossing and the County approved the Binding Master Plan for the expansion of Williamsburg Crossing (SUP 49-90). At that time, the Zoning Administrator knew of and was fully familiar with the approved Binding Master Plan. The approved Binding Master Plan specifically provides for, but is not limited to, development of a 20,000 square foot one story building on the Site At Issue which is the identical Site At Issue shown on the approved Subdivision Plat.

25. Section 20-104 of the County Code (quoted in paragraph 18 hereof) requires the Binding Master Plan to show, among other things, "rights-of-way". The Binding Master Plan

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approved by the County shows the existing and known alignment of Routes 199 and the Route 5/Route 199 intersection (Design One) which is the same alignment shown on the Subdivision Plat of the Site At Issue, which Subdivision Plat was previously approved by the County and the Virginia Department of Transportation.

26. As of the date of the approval of the Binding Master Plan, the Zoning Administrator and the County knew of and were fully familiar with Designs Two, Three, Four and Five.

27. On July 24, 1991, in accordance with the previously approved phased out-parcel construction of Williamsburg Crossing, pursuant to the approved Initial Site Plan and subsequent site plans, pursuant to the constructed and dedicated water and sewer lines serving the Site At Issue, in strict accordance with the approved Subdivision Plat of the Site At Issue and in strict acccordance with the approved Binding Master Plan, the Plaintiff, by its agent, Langley and McDonald, submitted a site plan for the continued development of Williamsburg Crossing for the previously approved 20,000 square foot one story building on the Site At Issue shown on the Subdivision Plat. ("Site Plan At Issue").

28. On August 15, 1991, the Zoning Administrator of James City County rejected the Site Plan At Issue because of his decision that the Site Plan At Issue was contrary to condition numbered three of the SUP 49-90, previously approved by the County on June 17, 1991. That condition provides as

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follows:

> "A minimum 50-foot greenbelt, free of structures and paving, shall be provided along the future right-of-way of Route 199 and shall contain enhanced landscaping as approved by the Development Review Committee, with minimum landscaping in accordance with the standards contained in the Zoning Ordinance". (emphasis added)

29. The Zoning Administrator's rejection of the Site Plan At Issue was based upon his decision that the 50-foot greenbelt must be measured now from preliminary engineering plans of a possible future right-of-way of Route 199, namely Design Three, the location of which has not been established by a metes and bounds description and acquisition.

30. The language of the condition upon which the Zoning Administrator's Decision is based does not designate a particular time "in the future" nor does it set a minimum greenbelt from the existing and known right-of-way of Route 199 (Design One) or set a minimum greenbelt of 50 feet from a certain line on a certain plat of survey. That language merely requires a 50-foot greenbelt along the "future right-of-way, Route 199".

31. No plat of survey of any "future right-of-way, Route 199" with a metes and bounds description exists. No future right-of-way for Route 199 has been established by either the preparation of right-of-way acquisition plans with a metes and bounds description or acquisition of right-of-way. Finally, no certain point in time in the future has been designated in the special use permit condition as the time when the "future

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right-of-way" is to be identified.

32. The Zoning Administrator's decision is inconsistent with the previously approved phased out-parcel construction of Williamsburg Crossing, the approved Initial Site Plan and subsequent site plans, inconsistent with construction and dedication of water and sewer lines to the Site At Issue to the James City Service Authority, inconsistent with the approved Subdivision Plat of the Site At Issue, inconsistent with the endorsement of the County of Design Five and inconsistent with that portion of the approved Binding Master Plan depicting particular development on the Site At Issue.

33. Until the unknown point of time in the future is designated and until the unknown location of the future right-of-way of Route 199 is precisely designated, the Zoning Administrator's decision, if sustained, will make it physically and legally impossible to construct any future improvements on any portion of Williamsburg Crossing, including, but not limited to, the 20,000 square foot one story building on the Site At Issue, the general location, area and height of which building was specifically approved by the County's approval of the Binding Master Plan.

34. The Zoning Administrator's decision is based in part upon the County's Greenbelt Policy adopted on July 20, 1987. (Case No. CP-2-87) That Greenbelt Policy does not include as part of its stated purpose the reservation of future or proposed streets or street lines.

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35. Section 15.1-458 of the Code of Virginia, 1950, as amended, allows the County to establish future rights-of-way by an official map. That section provides in pertinent part:

> "In counties...where no official map exists, or where an existing official map is incomplete, the local commission may make, or cause to be made, a map showing the location of any... Future or proposed public street...(however) no future or proposed street or street line...shall be shown on an official map unless and until the center line of such street...has been fixed or determined in relation to known, fixed and permanent monuments by a physical survey or aerial photographic survey thereof."

36. The future right-of-way of Route 199 and the future alignment of the Route 5/Route 199 intersection has not been fixed or determined in relation to known, fixed and permanent monuments by a physical survey or aerial photographic survey as required by Section 15.1-458 of the Code of Virginia, 1950, as amended.

37. The County has <u>not</u> adopted any official map in accordance with Section 15.1-458 of the Code of Virginia, 1950, as amended, and hence may not designate future or proposed public streets by other means such as its Greenbelt Policy.

38. The decision of the Zoning Administrator attempts to reserve a possible future right-of-way of Route 199 through the implementation of the County's Greenbelt Policy.

39. On or about September 10, 1991, the Plaintiff appealed the Zoning Administrator's decision to the BZA.

40. The Zoning Administrator represented to the BZA at

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its hearing that he was "absolutely confident" within one or two feet about the location of "the future right-of-way, Route 199", but identified Design Three on a scaled drawing prepared by him as the location of "the future right-of-way, Route 199". Design Three has never, at any time, been endorsed by the Virginia Department of Transportation, the City of Williamsburg or the County.

41. The Zoning Administrator represented to the BZA at its hearing:

> "...Perhaps it (the future right-of-way, Route 199) will change at some point. Who knows. The Commonwealth Transportation Board is made up of individuals free to choose as they will..."

42. On October 24, 1991, the Board of Zoning Appeals sustained the the Zoning Administrator's decision.

43. The Plaintiff is a person, jointly or severally aggrieved by the decision of the Board as contemplated by Section 15.1-497 of the Code of Virginia, 1950, as amended.

44. The Plaintiff is aggrieved on the following grounds:

A. In reaching its decision, the BZA attempted to legislate or amend the County Code, the common law, the Code of Virginia, 1950, as amended, and applicable case law, but the BZA is without jurisdiction to so legislate or amend.

B. The decision of the BZA violates and is contrary to the express provisions of the County Code, the common law, the Code of Virginia, 1950, as amended, applicable case law and the Constitution of the Commonwealth of Virginia.

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C. The decision of the BZA is plainly wrong.

D. The BZA, in reaching its decision, applied erroneous principals of law.

E. The decision of the BZA violates the purpose and intent of the County Code.

F. On its face, the decision of the BZA violates the County Code, the common law, state statute and applicable case law; was plainly wrong, contrary to law, violative of the purpose and intent of the County Code; was arbitrary, capricious and unreasonable; was contrary to good zoning practices; and does not further any legitimate zoning goals under the County Code, common law or state law.

G. At least two members of the BZA discussed the case at issue with members of the County Planning Commission and members of the County Board of Supervisors before the BZA hearing. These discussions occurred without knowledge of, notice to and participation by the Plaintiff and were utilized by the BZA in making its decision.

45. The Plaintiff has presented to the aforesaid Court this, its Petition, within thirty (30) days after the filing of the BZA's decision in the office of the BZA.

Wherefore, the Plaintiff requests that this Court:

A. Grant a restraining order staying the proceedings upon the decision of the BZA.

B. Allow a Writ of Certiorari To Review The Decision Of The BZA, prescribe therein the time within which a return

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thereto must be made and served upon the relator's attorney.

C. Reverse the decision of the BZA.

D. Order the BZA to rescind its action on such terms as the interest of the Plaintiff may require.

E. Declare that the decision of the BZA violates the County Code, common law, state law, applicable case law and the Constitution of the Commonwealth of Virginia.

F. Declare that the BZA is estopped from applying and enforcing its decision.

G. Enter other appropriate injunctive relief.

H. Award the Plaintiff appropriate monetary damages.

I. Award the Plaintiff its costs and attorneys fees pursuant to any applicable statute or rule.

COUNT II

The Plaintiff incorporates herein paragraphs 1 through 42 of Count I and further requests that this Court enter a Declaratory Judgment establishing that the Zoning Administrator's decision sustained by the BZA based upon condition number three of Special Use Permit 49-90 requiring a 50-foot greenbelt to be measured from an undefined line on the ground called the "future right-of-way, Route 199" is so vague as to be totally void and completely unenforceable and in further support thereof, the Plaintiff alleges as follows:

1. When the time in the future is established for the greenbelt measurement and when the precise location of the right-of-way from which the greenbelt is to be measured is

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precisely established by survey and acquisition, the Plaintiff will honor said requirement.

2. There exists an actual controversy between the Plaintiff on the one hand and the Zoning Administrator and the BZA and the other hand, as to: (i) the time in the future when the greenbelt measurement is to be made and (ii) the precise location of the right-of-way from which the greenbelt is to be measured.

Wherefore, the Plaintiff prays for a Declaratory Judgment pursuant to Section 8.01-184, et seq. of the Code of Virginia, 1950, as amended, establishing that the Zoning Administrator's decision sustained by the BZA based upon condition three of Special Use Permit 49-90 is so vague as to be totally void and completely unenforceable.

COUNT III

The Plaintiff incorporates herein paragraphs 1 through 42 of Count I and hereby moves the Court for a Temporary and Permanent Injunction against the enforcement of the decision made by the Zoning Administrator and sustained by the BZA until a definite time in the future is established by the County and the line called "future right-of-way, Route 199" referenced in said condition is legally established with a precise degree of engineering certainty and acquired by the Virginia Department of Transportation and in further support thereof, the Plaintiff alleges as follows:

1. Establishing any greenbelt measured from "the future

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right-of-way, Route 199" requires measurement at an unknown point of time (i.e. "the future") from an unknown and unlocated line, thereby preventing the Plaintiff from continuing construction at Williamsburg Crossing except at its peril and thereby causing it irreparable harm.

2. The Plaintiff's remedies are inadequate under the circumstances and it will be irreparably damaged if its phased construction is stopped until the unknown time in the future is determined and the line called "the future right-of-way, Route 199" is precisely established by survey and acquisition.

3. The issuance of a temporary restraining order by reason of the facts herein alleged, will not cause any peril whatsoever to life or property.

4. The Plaintiff has no adequate remedy at law.

COUNT IV

The Plaintiff incorporates herein paragraphs 1 through 42 of Count I and hereby moves the Court for a Mandatory Injunction ordering the Zoning Administrator and the County to process and approve the Site Plan At Issue based upon such order as may be entered by this Court in this matter.

UNIVERSITY SQUARE ASSOCIATES

By: _____
Center Development of Williamsburg, Inc., General Partner, By Calvin Davis, President

FRANCK
L. P.C.
AT LAW
DRAWER O
IRGINIA 23187

STATE OF VIRGINIA

COUNTY OF JAMES CITY, to-wit:

Subscribed and sworn to before the undersigned Notary Public by Calvin Davis, President of and acting on behalf of Center Development of Williamsburg, Inc., General Partner of University Square Associates, who states that the foregoing facts are true to the best of his knowledge, information and belief.

Allison H. Etter
NOTARY PUBLIC

My commission expires:

Alvin P. Anderson

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VIRGINIA: IN THE CIRCUIT COURT FOR THE CITY OF WILLIAMSBURG AND COUNTY OF JAMES CITY

UNIVERSITY SQUARE ASSOCIATES,
a Virginia General Partnership,

Plaintiff,

v. Chancery No. 830

BOARD OF ZONING APPEALS OF JAMES CITY COUNTY, VIRGINIA

and

Bernard M. Farmer, Jr., Zoning Administrator

and

JAMES CITY COUNTY, VIRGINIA,
a Virginia Municipal Corporation

WRIT OF CERTIORARI TO REVIEW THE DECISION OF THE BOARD OF ZONING APPEALS

This day came the Plaintiff, University Square Associates, a Virginia General Partnership, by Counsel, and thereupon the Plaintiff requested that the Court allow a Writ Of Certiorari To Review The Decision Of The Board Of Zoning Appeals and prescribe therein the time within which a return thereto must be made and served upon the relator's attorney; and

It appearing proper to do so, the Court doth hereby allow the Writ Of Certiorari To Review The Decision Of The Board Of Zoning Appeals and orders that the Board of Zoning Appeals of James City County, Virginia, within 30 days from the date hereof, return to the Clerk of this Court and serve upon the relator's attorney a certified or sworn copy of the papers

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AVIS, P.C.
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acted upon by it and a verified statement setting forth such other facts as may be pertinent and material to show the grounds of the decision appealed from.

ENTERED THIS 22 DAY OF NOVEMBER, 1991

William L. Person Jr.
Judge

I ask this:

_____ p.q.

ANDERSON, FRANCK & DAVIS, P.C.
Alvin P. Anderson, Esquire
P.O. Drawer Q
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Seen:

_____ p.d.

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A COPY, TESTE:
EDWARD S. WARD, CLERK
BY Claudia A. Barkowitz
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MEETING OF THE
BOARD OF ZONING APPEALS

October 24, 1991

James City County Government Center
101 Mounts Bay Road
Building C
James City County, Virginia

PRESENT: CLAUDE FEIGLEY - Chairman
ROBERT RIPLEY - Vice-Chairman
BAXTER CARR
NANCY JAMES
KENNETH GEIDD

Reported by: Brenda L. Lewis

COPY

MR. FEIGLEY: This case is ZA-12-91, University Square Associates. Mr. Farmer, will you present the case, please.

MR. FARMER: Mr. Chairman, members of the Board, in this case, Mr. Alvin Anderson on behalf of University Square Associates has appealed the decision of the Zoning Administrator. The decision was related to a condition of the special use permit issued for the site in question. The site is located at the corner of John Tyler Highway and Route 199 and is zoned B-1 and is one of the outparcels of Williamsburg Crossing Shopping Center owned by University Square Associates. The parcel in question was subdivided in case S-91-90. Lots 10 and 11 of the remnant land there at that corner were divided out.

After the subdivision was recorded, a special use permit which had been pending for quite some time was approved which had a number of conditions on it. One of the conditions, and I think that the use permit resolution was included in your packet, stated specifically that a green belt free of structures and paving be provided along the future right-of-way of Route 199. There were other conditions related to buffering and improvements on the property needed for part of the permit. In August of 1991, a site plan for development was submitted to do improvements on that property. I think you have that site plan. I'm going to refer now to an overlay.

The site plan that was approved was as you see it here with the only setback and buffer provided immediately adjacent to the existing right-of-way of Route 199. This is Route 199 as it presently exists. It was the determination in reviewing the condition of the special use permit that the intent of that condition was a setback be or green belt, excuse me, setback is probably not the correct term, be provided from the future right-of-way of 199, not the present right-of-way. Future, in our minds, means something to occur at a point yet to come, not something that is presently occurring.

There does exist, and this acetate overlay was taken from the plans that the VDOT has presently, there does exist an adopted corridor for the Route 199 improvements. That corridor was adopted by the Department of Transportation after a very lengthy public hearing process. If you take and extract from those adopted plans, there are scaled drawings, and the center line of the existing Route 199 is a known point, and scale over from them, you will get a line that approximates this black line here.

Then what the Board required was from that black line, an additional green belt of 50 feet be provided free of parking and structures. And you will see that the site plan as submitted has a substantial amount of the parking area contained either within that green belt or in the area that is

even forward of the green belt that will be part of the future right-of-way.

The applicant has appealed that determination and essentially indicated that there were four reasons why his appeal should be upheld and the determination of the Zoning Administrator should be overturned. Those four reasons were that the applicable right-of-way for determining the green belt should be the existing right-of-way; that approval of the subdivision plat which did not show any additional setbacks other than the prescriptive setback required by ordinance was not consistent with the SUP condition, and, hence, the subdivision plat should control; third, that VDOT must complete their acquisition plans and actually acquire right-of-way to establish the future right-of-way; and four, that the SUP restriction effectively prohibits any use and constitutes a taking.

I think that in the staff memorandum, I have addressed each of those items sufficiently, and I'm not going to go into great detail over them right now. What the Board of Zoning Appeals is presently charged with is not trying to determine whether or not a taking has occurred, and you are not charged with trying to determine whether or not the SUP condition is reasonable. You are not charged with determining whether or not other conditions of the SUP ought to be existing or whether or not the site plan is a good site plan or a bad

site plan. You are simply charged with determining whether or not that administrative decision, that the site plan failed to meet the SUP condition, was clearly and plainly wrong. If you find that it was clearly and plainly wrong, then you should uphold the appeal. If, on the other hand, you find that it is not clearly and plainly wrong, you should deny the appeal and uphold the Administrator's decision.

I would be happy to answer any questions that you might have pertaining to the case. I think that the memorandum has pretty succinctly laid out the position of the County.

MR. FEIGLEY: I have several questions.

MR. FARMER: Certainly.

MR. FEIGLEY: One is, is it unusual for you to receive conditions attached to SUP's or projects that have been approved by the governing body?

MR. FARMER: No, sir, not at all unusual. In fact, it would be unusual that a special use permit today would be approved without some conditions attached.

MR. FEIGLEY: On future site plans that are submitted concerning this SUP or project, do you take in consideration the conditions that have been attached to the SUP's in reviewing that site plan.

MR. FARMER: Absolutely. If a plan of development is submitted, and in order for that plan of

development to be approved, it must have been issued a special use permit. As part of the review process of that plan of development, whether it is a subdivision plan or site plan or building permit or whatever the case might be, we review the special use permit conditions and make sure that the plan of development is in accordance with those conditions that the governing body has placed on it.

MR. FEIGLEY: I would assume then the wording of the conditions is very important to you; in other words, you try to interpret this from a semantics standpoint what the condition says and go by that; is that correct?

MR. FARMER: Yes, sir, it is important. Not only do I read the special use permit, I also read the documents relating to the case. And in many instances, I'm present during the case and listen to the deliberations of the governing body when they vote on it. More often than not, I'm also consulted as to particular wording of special use permit conditions so that the planning office is assured that I will interpret the conditions consistent with their intent when they are drafted.

MR. FEIGLEY: But do they come to you or you go to them?

MR. FARMER: We confer. A little of both. I go to them; they come to me whenever there is a special use permit case.

MR. FEIGLEY: Apparently, in this case then, the word future just meant future to you; is that correct?

MR. FARMER: Future meant a time yet to be to come; not here presently but yet to come. So future in relation to an object means something that will occur at some time that hasn't yet passed, so future meant future, yes, sir.

MR. FEIGLEY: I have asked enough questions, but I have several more on my mind. One of them concerns your confidence in the establishment of a future right-of-way from the VDOT documentation that you reviewed. You feel pretty confident about that?

MR. FARMER: Absolutely confident. The existing documentation with VDOT is a scaled drawing. The scaled drawing is accurate and will be the factor used to determine the location of the right-of-way when they do the ultimate design. Route 199 is a project for which I would assume many of you are familiar. It's being constructed really in segments. The final segment of that project going from the existing Route 199 all the way, looping around through the County to Interstate 64 is that segment that would exist between Longhill Road and Route 5. So the designs for that segment haven't been one hundred percent completed, but I've conferred with representatives from VDOT both in the Williamsburg residency, in the Suffolk District and in their central office, Location and Design Division, and have been

assured that the right-of-way in terms of varying from what has been adopted by the Transportation Board should not vary by more than one or two feet; not ten or twenty feet or not five or ten feet, but at the most, one or two feet. And if and only if they went back through the public process for adopting a different corridor would there be any different right-of-way. So I am absolutely certain that the line that is depicted on this acetate overlay is in fact -- as it exists today the future right-of-way of 199.

MR. CARR: Mr. Farmer, would you give us some approximate distances? You didn't tell us how many feet.

MR. GEIDD: You used the word approximates. When you pointed that out, you said that the future setback approximates that black line. I think that's a real issue because "approximates" is catching in a lot of throats. That was your word a minute ago.

MR. FARMER: Yes, sir.

MR. GEIDD: And then you said that's exactly the line, but you said when pointed it out that it approximated the line. How did you arrive at that line?

MR. FARMER: Well, you can't see it. There is a pencil line that is on this site plan underneath, and the acetate is a little scrunched up; it doesn't lay down very plainly. But this pencil line which is underneath this darker line was in fact -- what we did was went to the Williamsburg

residency office, took their scaled drawings and used an engineer's scale, scaled off of that from the center line of existing Route 199 which is known and shown on this plan and determined where the future right-of-way line would exist. So with the accuracy of an engineer's scale and a pencil point, that line is precise.

MR. CARR: What kind of distances are you talking about from the existing right-of-way to the future right-of-way? I see that it varies, but give me some idea.

MR. FARMER: Well, this drawing at this scale at one inch equals 25 feet, at this point, we are probably about 30 feet. As you get over to this point, the distance that you are talking, difference between the existing right-of-way and the future right-of-way, is about four inches plus or minus so that would make it, what, on the order of a hundred feet or so?

MR. CARR: All right.

MR. RIPLEY: There does not exist a scaled dimension drawing with actual survey marks of where it is going to be, though.

MR. FARMER: The VDOT corridor that was adopted is depicted as a scaled drawing, and, yes, it does have known points on it. But if what you are asking, does the future right-of-way, has it been determined by meets and bounds going from a known point or a survey point or has it been

determined by coordinates in relation to coordinates, the answer is no, not yet. That doesn't happen until they get to the design phase. And since that is the final segment of Route 199 to be designed, when they reach the design phase, then they will determine it with absolute accuracy. And I have been told by the transportation engineer from their central office whose present tonight if you would like to speak to him that they do not expect that scaled line that presently exists on the adopted corridor plan to vary more -- on the order of one to two feet from what they determined to be the line based on meets and bounds and precisely surveyed.

MR. CARR: Mr. Farmer, do you or anyone present tonight know what the intent of the Board of Supervisors or the Planning Commission was when they used the word future, future right-of-way? Does anyone know for sure that they were talking about the right-of-way which is to be determined, or did they just use that term not knowing what kind of problem it was going to present for anyone?

MR. FARMER: No, sir. I don't think that that term was used loosely. I have spoken to the planners that drafted that condition. I have reviewed the documents that were presented to both the Planning Commission and the Board of Supervisors in terms of the special use permit case, both of which has explanatory information. The case for the special use permit was in fact deferred for quite some time while VDOT

went through their public hearing process of the various alternatives for Route 199. There was substantial discussion on preservation of the corridor for the preferred alternative of Route 199. So I can -- I can't tell you that I can read clearly the minds of five members of the Board of Supervisors, but I can tell you that I feel absolutely certain that they understood the implications of saying future right-of-way, and it was their intent to preserve encroachment to the corridor, the preferred alternative of the Route 199 design.

MR. RIPLEY: I have one more question in regards to VDOT, preferred location of 199 and future location of it. How long has that been selected as the one and identified as the space? Has that been something that has been fairly recent, or was it something that has been for a right good while now? 199 has been up in the air for years, so it has been in various stages. This subdivision lot has only been in existence for a short period of time; is that correct?

MR. FARMER: That is correct.

MR. RIPLEY: So in order to do that, then 199, the people that purchased this lot have been well aware of 199. Is that true or false, in your opinion?

MR. FARMER: In my opinion, the Applicant or Mr. Davis, the owner of the property, was well aware since he was present at most all if not all the public hearings and adoption of the Route 199 corridor. I guess in regard to your

first question of when did VDOT actually -- the Board of Transportation actually adopt that corridor, I defer to Mr. Mark White.

MR. WHITE: The Board adopted it in February of 1990, February 15th to be exact.

MR. FARMER: February 15th, 1990.

MR. RIPLEY: About a year and a half ago.

MS. JAMES: I thought I would say just for the record, are we correct in assuming that at the June 6, 1991 subdivision hearing, the Board also was aware of all of the transactions with the one involving the 199 and VDOT and those provisions?

MR. FARMER: I'm not sure I understand, Ms. James. The subdivision was an administrative of subdivision and an action handled by Staff. And, yes, Staff was aware of the Route 199 corridor; however, it was -- their action in either approving or disapproving that subdivision was simply a ministerial act. If submitted and it met the criteria stated in the ordinance, they were obligated to grant it approval and sign off on it as they did. At that time, there were no legislative conditions that required anything other than the prescriptive setback placed in the ordinance. And I think I explained that in the memorandum fairly well.

MR. FEIGLEY: Any other questions of Mr. Farmer?

(No audible response.)

MR. FEIGLEY: We reserve the right to ask you future questions.

MR. FARMER: Yes, sir, I will be here.

MR. FEIGLEY: I will now open the public hearing.

MR. HORN: I might be able to provide an answer to one other question that you-all had that Mr. Farmer couldn't answer for you.

MR. FEIGLEY: Maybe it would be better if you retained that for the public hearing portion of it.

MR. HORN: Okay. That will be fine.

MR. FEIGLEY: I will open the public hearing at this time, and Mr. Anderson, do you wish to open up for your case?

MR. ANDERSON: Yes, sir. Mr. Chairman, what I would like to do is provide each member of the Board with a listing of the exhibits that will be either shown to you by way of graphic display or provided to you by way of written documents, and it may provide somewhat of a score card to follow the presentation tonight.

I will ask Bill Cashman with the Virginia Beach and Williamsburg or Williamsburg and Virginia Beach engineering firm Langley and McDonald to assist in the presentation of some of the graphic exhibits.

Mr. Chairman and members of the Board of Zoning Appeals, my name is Alvin Anderson of the James City County law firm Anderson, Franck and Davis. Our firm has been retained to represent the interest of University Square Associates, the owners and operators of the Williamsburg Crossing Shopping Center located at the intersection of Route 5 and Route 199 in James City County.

I'm going to ask Bill to put up the photograph, first of all, just on the easel will be fine, and while photographs were taken monthly during the course of construction of this site, we felt that this one was particularly important. It basically shows the entire site which is the cleared area plus some of the wooded area on the right-hand side of the photograph.

At the intersection of Route 199 and 5 outlined in white is the property which is the subject of this discussion here tonight. Please note in the back up against Winston Terrace a clearing that had been done for a storm detention pond and on the subject site clearing which had been done in conjunction with the laying of water lines and sewer lines to serve the future development that would occur at that particular corner.

As Mr. Farmer has indicated to you, this case involves an appeal of his decision as Zoning Administrator in interpreting condition number three of Special Use Permit 49-90

which was approved by the James City County Board of Supervisors on June 17th, 1991. You have in your packet there as Exhibit Number 2 the actual text of the special use permit, and I believe that was included as part of the application also.

Now, an appeal of the Zoning Administrator's decision is viewed in a much different legal light than a request for a variance. I know and you know that you hear requests for variances all the time and there is a requirement that there be a showing of a hardship. There is a requirement that that hardship be shown not to be shared generally by other properties in the same zoning vicinity and same district, and the granting of the variance will not be of substantial detriment to adjacent property or the properties in the general vicinity.

In an appeal of the Zoning Administrator's decision, there is absolutely no requirement that you find any hardship or any of the other findings similar to that which you would find in a variance case. In an appeal of the Zoning Administrator's decision, there is what we call a de novo review; it is a hearing anew. And there is absolutely no weight given to the decision of the Zoning Administrator, and, likewise, there is no weight given to the Applicant's position. The parties come before you on equal footing, but against that equal footing and the background is the proviso that zoning

rules, zoning regulations, special use permit conditions are construed strictly in favor of the free use of the property.

Now, against this backdrop of no presumption in favor of either side, zoning conditions being construed strictly in favor of the free use of the property, the subject condition provides as follows, the one that is the subject of the discussion tonight: "A minimum 50-foot green belt free of structures and paving shall be provided along the future right-of-way of Route 199." Note that this language does not say a minimum green belt of "X" feet from the existing right-of-way which everybody knows where that is by meets and bounds. It doesn't say that. And note also that the language does not say a minimum of 50 feet from a particular line shown on a particular plat. The language merely says a minimum 50-foot green belt provided along the future right-of-way of Route 199.

Now, in your examination of the Zoning Administrator's decision, I would ask that you examine it by asking yourself several questions. Question number one is, what is a right-of-way? Question number two is, where, with a reasonable degree of engineering certainty, is the future right-of-way of Route 199? And thirdly, what is the status of something called a future right-of-way? I would suggest to you my response to these questions, and I would tell to you as a matter of fact that a right-of-way is property which has been,

I underscore those words "has been," acquired by a governing body. And in the case of counties within the Commonwealth of Virginia, it's property which has been acquired by the Virginia Department of Transportation and within that right-of-way. That's where VDOT builds its roads, it's related structures.

I would also tell you that when a right-of-way is acquired, it is acquired with a reasonable degree of engineering certainty. I mean, one of the most frequently requested variances that this or any other Board of Zoning Appeals hears is somebody who has built a building and it is closer to the setback line than they thought because they measured from an erroneous point and they need a variance. And I ask you, where is that right-of-way.

Finally, I tell you as a matter of fact that when a future right-of-way is designated for this particular property with a meets and bounds description, Williamsburg Crossing will observe that right-of-way by keeping paving, parking, buildings, 50 feet away from that right-of-way. But as Mr. Ripley has so very well indicated, 199 has been on the drawing boards for a long time. Now, you might say, Alvin, if Williamsburg Crossing is willing to observe a 50-foot setback from a particular right-of-way when that right-of-way is legally acquired and properly defined, what is the dispute here tonight. And the dispute basically involves the Zoning Administrator's determination that the site plan, the rejected

site plan which is Exhibit 3 right there filed for approval violates the setback requirement of 50 feet from the future right-of-way of Route 199.

I would surmise that this decision is based upon the Zoning Administrator's decision that for purposes of site plan approval, this right-of-way has been established because their preliminary engineering plan is in existence. And those preliminary engineering plans constitute a final definition of the location of that right-of-way with a reasonable degree of engineering certainty plus or minus one or two feet. Well, plus or minus one or two feet can make a big difference in a 20,000 square foot building being constructed and encroaching on a right-of-way line.

I would say to you that the mere preparation of preliminary engineering plans does not automatically operate to take title away from Williamsburg Crossing and give that ownership to the Virginia Department of Transportation. There has to be a process through which VDOT acquires that right-of-way either voluntarily or involuntarily through a condemnation procedure. By analogy, if your property abuts on Route 5, and I as a VDOT employee in the confines of my office on Ironbound Road or in Suffolk or in Richmond take your plot plan and I take a very precise line and I draw it across that plot plan, I don't put any meets and bounds on it, I don't pay you any money for your property, that in and of itself does not

operate to take your property away and give it to me, to VDOT for purposes of widening the road.

The property constituting Williamsburg Crossing was first acquired by the Pilot Life Insurance Company in various pieces from December 1st, '69 to July 1st, 1971. On September 5th, the right-of-way for Route 199, September 5th, 1972, the right-of-way for Route 199 and the intersection of Route 5 and Route 199 was established with a reasonable degree of engineering certainty, meets and bounds description, and it was accomplished by recording documents in the local clerk's office in Deed Book 139, Page 45. These documents legally established what I will call Design Number One. And that location was established with a final degree of engineering certainty. The owner, Pilot Life Insurance Company, was paid for the property that was acquired and VDOT acquired the property within the right-of-way.

Design One, that exhibit that you see right there which is Exhibit 4, that design is and continues to be the only legally established right-of-way for Route 199 and Route 5 intersection. Now, since 1982 and continuing until present, the property has been designated major commercial or its equivalent on the James City County Comprehensive Plan. I would ask Bill to show you just a -- it's a small one, but the James City County Comprehensive Plan has designated this property as major commercial, M/C in a red circle, for a period

since about 1982. Likewise on Exhibit 6, the property has been zoned general business, B-1, since about 1982, once again, the zoning district or zoning designation B-1.

On August 10th, 1987, the property was acquired by the current owner by deed recorded in the local clerk's office, Deed Book 357, Page 125. Now, the next date is very, very important. December 31st, 1987. The concept of construction in phases and the initial site plan for the Food Lion Store was approved and this is the concept plan, December 31st, 1987, showing construction in phases. And Bill, if you would, point out the subject property. And then right behind this plat, Exhibit 8, was the site plan for the Food Lion. I want you to pay particular attention to the Food Lion site plan because included on that site plan are water and sewer lines as part of this initial construction which go to serve this particular site.

This was known as site plan 62-87. Now, the site work commenced almost immediately. And on April 4th, 1988, a building permit was issued for building construction. After this approval of the initial site plan and the commencement of construction in the fall of 1988, the Virginia Department of Transportation provided a preliminary engineering sketch for a new alignment of Route 5 and Route 199. I will call this Design Number Two. And Bill has colored in in yellow there that which the Highway Department was thinking about at

that time. Again, there was no meets and bounds; there was no acquisition. That's just what the Highway Department was thinking about in the fall of 1988.

As an accommodation to the Virginia Department of Transportation and at VDOT's request, the main entrance to Williamsburg Crossing was moved toward the Chickahominy River, and I would ask you to focus back on that first photograph that we looked at earlier letter, Exhibit 1, and you can see the location of the median at that time when this construction was going forward and where the median had been before. The location of that entrance was shifted toward the Richmond direction, I guess that's west, as an accommodation to VDOT.

In reliance on the approvals of James City County, Williamsburg Crossing constructed and dedicated or gave to the James City Service Authority these water and sewer lines to show that it was interested in pursuing its plan and also to provide these utility lines to the site which is the subject of the discussion tonight.

Now, in August 1989, the Virginia Department of Transportation provided further revised preliminary engineering plans for the Route 5/Route 199 intersection. And those plans provided for three different alternatives, one which I will call the public hearing design. We will call that Design Number Three. Another alternate called Alternate 1; we

will call that Design Number Four. And another alternate called Alternates 1-A and 1-B, and we will call that Design Number Five.

Designs Three through Five are basically Exhibits 11 through 13. So basically, what I'm telling you, from the fall of 1988 to the summer of 1989, there were four sets of preliminary engineering plans for four different designs of the intersection at Route 5 and Route 199. Now, on December 14th, 1989, the City of Williamsburg endorsed the preliminary engineering plans for Alternate 1-A which is Design Number Four here tonight, and you have in your package the City Council minutes, Exhibit 14, which says we endorse Design 1-A or Alternate 1-A which is Design Four.

On December 18th, 1989, the James City County Board of Supervisors passed a resolution which is in your package, and that resolution endorsed the preliminary engineering plans for Alternates 1-A and 1-B. That is Exhibit 15, that resolution. Again, these were preliminary engineering plans. And as I speak to you tonight, these continue to be preliminary engineering plans. No right-of-way acquisition plans have been prepared by the Virginia Department of Transportation and no acquisition of the right-of-way has occurred.

If I could just get Bill to read to you the stamped language on these plans, I would read it myself but I

can't read that far.

MR. CASHMAN: "These plans are unfinished and unapproved and are not to be used for any type of construction or the acquisition of right-of-way."

MR. ANDERSON: On May 21st, 1990 in an effort to control commercial development in James City County, the Board of Supervisors halted continued development of this particular site and every other commercial development in James City County by adopting a special use permit requirement. And this is the highlighted page, the single page that I have put up there before each of you tonight.

Now, this was a requirement in addition to the permissible zoning, the B-1 zoning which existed at that time. This special use permit is found in Section 20-104 of the James City County Code. And among other things, it requires the production by any developer and the approval by the James City County Board of Supervisors of a binding master plan; a binding master plan. And I want to just read with you the highlighted language as it relates to this binding master plan.

"The master plan shall depict and bind the approximate boundaries and general location of all principal land uses and their building square footage and height, roads, rights-of-way, accesses, open spaces," whatever. The next page, "All final site plans shall be consistent with the

binding master plan." Now, continuing on this path of stage development which was initially approved by James City County, Williamsburg Crossing applied for this special use permit and applied for the approval of its binding master plan. Meanwhile, chronology-wise, on January 25th, 1991, in accordance with the prior approvals of its stage construction site plans, in accordance with the dedication of the water and sewer lines given to James City County, Williamsburg Crossing received preliminary approval of the subdivision plat which was in your package, Lots 10 and 11 right there at the corner of 199 and Route 5.

And that site plan that received preliminary approval January 25th, 1991, almost a year after this corridor had been approved by preliminary engineering plans, that subdivision plan shows a 50-foot front setback along the legally established right-of-way of State Route 199. You have in your package marked as Exhibit 16 the letter from the James City County Planning Office approving that subdivision on that condition. That subdivision plat received final approval on May the 9th, 1991, and it was recorded on June the 6th, 1991, again with a 50-foot setback from the legally established and finely engineered right-of-way of State Route 199.

Eleven days later after the recordation of that plat, the James City County Board of Supervisors approved the binding master plan for the development of Williamsburg

Crossing. And I don't believe you have seen this binding master plan, but that is the binding master plan. Again, I would ask you to look at that binding master plan in light of the language which is found in the James City County ordinance. "The master plan shall depict and bind the approximate boundaries, general location of all principal land uses, their building square footage..." Bill, what is the building square footage shown there?

MR. CASHMAN: Twenty thousand.

MR. ANDERSON: Twenty thousand. Two story or one story?

MR. CASHMAN: One-story.

MR. ANDERSON: Twenty thousand one story building. "...Rights-of-way, accesses, open spaces." And it says further that "All final site plans shall be consistent with that binding master plan." Now, pursuant to the conceptual plan that was shown to you earlier, pursuant to that initial Food Lion site plan, pursuant to the constructed and dedicated water and sewer lines which were built and donated to James City County, pursuant to the approved subdivision plat, and pursuant to the approved binding master plan, Langley and McDonald submitted a site plan which is Exhibit Number 3 on July the 24th, 1991 for the development of this property. And Bill, will you tell the Board of Zoning Appeals how many square feet is on that building and whether it is one story or two

stories.

MR. CASHMAN: It's one story, 20,010 square feet.

MR. ANDERSON: Okay. The Zoning Administrator of James City County has now taken a position that is inconsistent with that conceptual plan, the initial approved site plan, inconsistent with the construction and dedication of the water and sewer lines to serve this site, inconsistent with the subdivision plat approval, and inconsistent with the approved binding master plan.

Suffice it to say, prior to the Zoning Administrator's decision, all actions taken by James City County in this case were consistent with the position of Williamsburg Crossing. And that is when, as and if a right-of-way different from Design Number One is legally defined in the future by right-of-way engineering plans, meets and bounds description, and it is legally acquired by the Virginia Department of Transportation, the 50-foot setback will be measured from that line at that time. But until such events occur, the only legally established, the only accurately defined right-of-way line is from the setback which can be measured from Design One, the original right-of-way line.

I've got several individuals that I would like to call for purposes of asking a few questions and having them respond to the questions. And then once we get through

with those, we would like to be able to field any questions that any member of the Board of Zoning Appeals has. With that, I would call Mr. Bryant Goodloe.

Please state your name for purposes of the record.

MR. GOODLOE: My name is Bryant Goodloe.

MR. ANDERSON: And Mr. Goodloe, what is your occupation?

MR. GOODLOE: I'm a civil engineer primarily in the transportation field.

MR. ANDERSON: Okay. And what is your educational background?

MR. GOODLOE: Well, I think I furnished a resume. It's on there. I have a bachelor of civil engineering from the University of Virginia and a number of other associated engineering courses. I might add also, I'm a registered professional engineer in the Commonwealth since 1974.

MR. ANDERSON: Okay. And, Mr. Goodloe, would you just in your own words tell the Board of Zoning Appeals about your employment background beginning with your earliest employment coming up to date?

MR. GOODLOE: I have three years with the Army Corps of Engineers, 15 years with the Virginia Department of Transportation, and I believe it's 11 years with Langley and

McDonald, and just about all of this has been in the transportation field.

MR. ANDERSON: Okay. And Mr. Goodloe, are you familiar based on your educational background and your employment background with the engineering and the legal and other steps taken by the Virginia Department of Transportation in the acquisition of any right-of-way?

MR. GOODLOE: I have been exposed to the process for a number of years.

MR. ANDERSON: And are there any published procedures which tell how the Virginia Department of Transportation goes about acquiring right-of-ways?

MR. GOODLOE: One of the things in our firm and over the years that we have used, and this is the same manual used by the Department of Transportation, Virginia Department, it is a road design manual that clearly spells out the processes and the procedures. On this particular chart --

MR. ANDERSON: Maybe, Bryant, if you could get around the other side, the BZA doesn't have to look around you or through you.

MR. GOODLOE: This is taken from I think Chapter 2A. This is a flow chart, and I believe they have a copy in their handout.

MR. ANDERSON: I don't believe they have a copy of the flow chart in their handout.

MR. GOODLOE: What you have is the starting point and all of the steps that you would go through like your preliminary engineering, your administrative decisions, your photos, informational meetings with the public, and this pretty much goes through the preliminary location hearing process. Here is "Board approval for location process," and this is where we are as I understand it on Route 199 at this point, and that was adopted in February of 1990, right, Mark?

MR. WHITE: Right.

MR. GOODLOE: So we are right at this process. What we are talking about here is a public hearing process for design. It's way over here, and you have a considerable distance between a location process of defining the corridor of where you are going versus the final design.

MR. ANDERSON: Would you -- I'm sure the Board can't see the individual letters on that, and we will certainly make that available to them, but would you point to the point on the flow chart where preliminary engineering plans are developed and approved?

MR. GOODLOE: Here is "Board approval for preliminary engineering plans." This is a corridor, hearing plans.

MR. ANDERSON: And would you point to the location on the flow chart where the Department would have in its possession plans describing the right-of-way by meets and

bounds?

MR. GOODLOE: Right here.

MR. ANDERSON: Okay. And, Mr. Goodloe, in your experience, between those two points, are there ever changes in the location of the right-of-way?

MR. GOODLOE: They can be very minor or they can be very substantial.

MR. ANDERSON: And what are the reasons that those changes occur?

MR. GOODLOE: Well, I think a good example and probably one that this Board could relate to, in 1972, when Route 199 was planned, that looked like the best alternative available. As you can look at it in 1991, you can see that that has changed rather substantially based on the growth that has occurred in the community, of the roads, I mean changing needs, developments. Just about anything can change these things; environmental issues. And, certainly, I think everyone here can relate to, you know, the change in federal regulations.

MR. ANDERSON: And did the -- does the position of adjacent property owners such as the College of William and Mary have an effect on where a right-of-way will go?

MR. GOODLOE: In this case, I think that was certainly the case.

MR. ANDERSON: Okay. I would ask Bill Cashman a few questions here. For purposes of the record, would you state your name and your educational background?

MR. CASHMAN: My name is William J. Cashman, Jr. I'm a transportation planner, senior associate with the firm of Langley and McDonald. I have a bachelor of arts from the University of Virginia, a master of urban studies from Old Dominion University, and a master of urban and regional planning from Virginia Tech.

MR. ANDERSON: And Mr. Cashman, what is your employment background?

MR. CASHMAN: I have experienced three years with the Norfolk Redevelopment and Housing Authority as a development specialist, four years with the Federal Highway Administration, five years with the City of Virginia Beach Planning Department, and four years with Langley and McDonald.

MR. ANDERSON: And, Mr. Cashman, did you prepare a resume which has been marked Exhibit 21?

MR. CASHMAN: Yes.

MR. ANDERSON: And is this your resume?

MR. CASHMAN: Yes, it is.

MR. ANDERSON: I apologize for not having additional copies. Mr. Cashman, are you familiar with the various right-of-way designs for the intersection of Route 5 and Route 199 and how those right-of-way designs impact this

particular site?

MR. CASHMAN: Yes, I am.

MR. ANDERSON: And have you done an investigation to become familiar with these designs?

MR. CASHMAN: Yes, I have.

MR. ANDERSON: Would you tell us what you did to investigate, please, sir?

MR. CASHMAN: I went through every one of the designs I have in working with the Applicant, followed along with the process of reviewing the design options. I was a member of the staff that performed the traffic impact study for Williamsburg Crossing. So because I had to keep up with the roadway geometry which indicated turn lanes, which included where the driveway access points would be, I had to follow along to keep up with what kind of impacts the various alternatives would have on Williamsburg Crossing.

The first one was the number -- Design Number Two which was the one that Mr. -- that Mr. Hall gave with the -- this was merely a relatively minor taking. I think you can see the red lines here. This is where Route 199 would be extended beyond where it ends now at Route 5 continuing on a new alignment once it goes west or northwest of Route 5 and then Strawberry Plains which comes in now would have to be relocated. You can see where the Department put in the curb return here for Route 5/199. So the alignment was clearly

headed in this direction.

In the summer of '89, we had the public hearing. And the public hearing design essentially added some more detail to what had already been given. As you can see, and I know this is a very busy drawing, but essentially, the center line for existing 199 follows where my finger is going. You can just about see the existing intersection here with Route 5, and then it comes down in this direction to Strawberry Plains.

The new alignment would take off in a direct line, and essentially this is the new right-of-way lines for Route 199. This was the existing line, and then this broken line here was the proposed new right-of-way for Design Three, what we call Design Three, what the Highway Department called the public hearing design.

After the public hearing, there was some opposition from the City of Williamsburg, some concerns that through traffic would continue on Route 5 direct into the City. And they went on record, I believe it was in November of '89, opposing this design. So did the County of James City. So the Highway Department developed two alternatives. The alternatives essentially relocated the intersection, proposed intersection to the north, and I think this is probably the best drawing we have that shows that.

Here is the existing intersection. This is

the new proposed alignment. This is existing 199; this is new proposed alignment. This is Route 5 coming in so that now you will see there will be no direct line, no direct movement, if you will, from Route 5 directly into the city of Williamsburg. It is no longer a direct move. Strawberry Plains is relocated. It is an indirect move.

Essentially, this moves the intersection approximately 450 to 500 feet from where it is now. In doing the traffic studies, the Department determined that there may be the need for a future interchange at that point so they developed Alternative 1-A for Route 5. It's the same location that shows -- the location shows up better on this exhibit than this one. Again, this is very busy. But essentially what this provides for is sufficient right-of-way for a future interchange at Route 5 and 199. And the right-of-way take proposed with this interchange is much greater, say, than what we had had previously. This was a previous right-of-way, this dark line here proposed; this would be the alternate -- Design Five which is Alternate 1-A, and this was endorsed by the Commonwealth Transportation Board.

I might add that this line is different from that which is on the County's overlay. Because if you look, this line crosses the property that is now occupied by Old Point Bank about 30 feet beyond the Route 5 or inside of the Route 5 right-of-way, and this line did not appear to. It

looks like it goes right to the corner. So this is what the County had endorsed, and the Department is proceeding with the design of this alternative.

MR. ANDERSON: Are any of those designs which you have exhibited for Design Two, Three, Four and Five designs with meets and bounds, courses and distances on the plat?

MR. CASHMAN: No.

MR. ANDERSON: Mr. Cashman, are you familiar with how each of these various and sundry designs impact the site on the photograph and the site plan?

MR. CASHMAN: Yes. Design One, of course, is the existing right-of-way, and you can see the right-of-way line as it exists now.

MR. ANDERSON: And that is the rejected site plan?

MR. CASHMAN: This is the rejected site plan, yes. These are somewhat approximate. Design Two would essentially cut off some of the corner but for the most part follow the existing right-of-way, but some of the corner would be cut off in that proposed right-of-way.

MR. FEIGLEY: Designate that as to Plan Two Three, Four, Five.

MR. CASHMAN: Design Two, the blue. The yellow, Design Three. Design Three is what was shown at the public hearing, the first design proposed by the Highway

Department as a little bit more of an ambitious right-of-way take proposed. But essentially, it follows the same process and that is it is cutting the corner back but again returning to the existing Route 5 and existing Route 199 right-of-way.

Design four which is the -- which the Highway Department called Alternate 1-A -- excuse me, Alternate 1, again, follows similar lines, but as you can see, instead of at this point following the right-of-way for Route 5, goes off in a different direction. And that's because this intersection is being proposed to be relocated, if we could extend the drawing, essentially about where my hand is. So it's all being pushed out. And then again, the Design Five which is Alternate 1-A on the Highway Department, the future interchange, if it should be built, this would accommodate that future interchange, is the orange.

MR. FEIGLEY: Mr. Farmer, did you have a question?

MR. FARMER: Yes, sir, if I may.

MR. FEIGLEY: Yes.

MR. FARMER: Bill, you said that our overlay, what we graphically depicted there was not consistent with the adopted corridor of Route 199.

MR. CASHMAN: It does not appear to be consistent with Alternate 1-A and the right-of-way line proposed for Alternate 1-A.

MR. FARMER: So which way did we err?

MR. CASHMAN: It appears that you erred somewhere in hitting the lines over in this area. I haven't really looked, as you say, in any detail on the line --

MR. FARMER: So what you are saying is we should have drawn the line closer, in fact, to the building that was shown on the site plan as opposed to further away?

MR. CASHMAN: No. What I'm saying is that the line that is shown on this drawing does not look like the same line as that on the alternate which the County has endorsed.

MR. FARMER: Would that orange line that you have depicted there be the one?

MR. CASHMAN: It looks like a closer approximation, yes.

MR. FARMER: So if my line isn't and your line is closer, in fact, my line is further away from the building shown on that site plan. So what you are saying in effect is I should have drawn the line closer to the building than was done.

MR. CASHMAN: If your intention was to draw a line which reflected Alternate 1-A as endorsed by the County --

MR. FARMER: And adopted by the Commonwealth Transportation Board as the corridor.

MR. CASHMAN: Yes.

MR. FARMER: Yes, that was my intention. Thank you.

MR. ANDERSON: Mr. Cashman, based on your investigation, have you determined whether or not the Virginia Department of Transportation has prepared any right-of-way acquisition plans for this project?

MR. CASHMAN: In my discussions with representatives of the Department, the answer to that question is no.

MR. ANDERSON: Is it customary to acquire the right-of-way acquisition plans before the acquisition is taken?

MR. CASHMAN: No, it is not customary.

MR. ANDERSON: To your knowledge, has there been any transfer of ownership of property from University Square Associates to the Virginia Department of Transportation beyond what we call the existing right-of-way or Design One?

MR. CASHMAN: To my knowledge, there has not been.

MR. ANDERSON: Okay. Is it possible with a reasonable degree of engineering certainty to locate the precise location on the ground of Design Five?

MR. CASHMAN: No, sir, it is not.

MR. ANDERSON: Is it possible with a reasonable degree of engineering certainty to locate on the ground Designs Four, Three and Two?

MR. CASHMAN: No, sir, it is not.

MR. ANDERSON: Is Design One the only legally established right-of-way line for Route 199 and Route 5/Route 199 intersection?

MR. CASHMAN: To our knowledge, it is the only legally established right-of-way.

MR. ANDERSON: I call on Mr. Norman Mason. For purposes of the record, would you please state your name?

MR. MASON: Norman Mason.

MR. ANDERSON: And, Mr. Mason, what is your educational background, please, sir?

MR. MASON: Baccalaureate degree from the University of Virginia; graduate work at Old Dominion University.

MR. ANDERSON: What is your employment background?

MR. MASON: I have had my entire professional career of year 21 years with Langley and McDonald.

MR. ANDERSON: Have you provided as an exhibit to the Board of Zoning Appeals a listing of the various projects with which you have been associated over the years?

MR. MASON: Yes.

MR. ANDERSON: Were you employed to prepare a subdivision plat for the site which is the subject of the discussion tonight?

MR. MASON: Yes, I was.

MR. ANDERSON: And when did you receive preliminary approval for that subdivision plat?

MR. MASON: That approval was noted in the County's letter dated January 25th, 1991.

MR. ANDERSON: Okay. And when you received that approval, what setback was required from Route 199?

MR. MASON: Fifty feet.

MR. ANDERSON: And that was 50 feet from what right-of-way?

MR. MASON: The existing right-of-way of 199 which is the only established right-of-way that we are aware of.

MR. ANDERSON: Was that statement setback shown on the original subdivision plat that you filed with your application?

MR. MASON: Yes, it was.

MR. ANDERSON: And was the Route 199 alignment, has that Route 199 alignment changed in any way since you received approval of the subdivision plat?

MR. MASON: No, it has not.

MR. ANDERSON: And when was that plat recorded?

MR. MASON: June 6th of this year, 1991.

MR. ANDERSON: Okay. And is the subdivision

plat that you prepared Exhibit 17 which Mr. Cashman has there?

MR. MASON: Yes, it is.

MR. ANDERSON: Would you show that to the Board of Zoning Appeals?

(Mr. Mason complied.)

MR. ANDERSON: Was that plat approved by the James City County Health Department?

MR. MASON: Yes.

MR. ANDERSON: Was it approved by the Virginia Department of Transportation?

MR. MASON: Yes, it was.

MR. ANDERSON: Who signed off on behalf of the Department of Transportation?

MR. MASON: Mr. Frank Hall.

MR. ANDERSON: Okay. And was the plat approved by a representative agent of James City County?

MR. MASON: Yes, it was.

MR. ANDERSON: And who was that agent?

MR. MASON: It appears that Alan Murphy's signature is on it.

MR. ANDERSON: Mr. Mason, did you participate in the special use permit process for the expansion of the Williamsburg Crossing Shopping Center?

MR. MASON: Yes.

MR. ANDERSON: Over what period of time did

that special use permit process go?

MR. MASON: It occurred from early in 1991 until sometime around June of this year.

MR. ANDERSON: Okay. And are you familiar with the special use permit ordinance for commercial expansion in James City County?

MR. MASON: Yes.

MR. ANDERSON: And does that special use permit ordinance require the preparation of a binding master plan?

MR. MASON: Yes, it does.

MR. ANDERSON: And did your office prepare that binding master plan?

MR. MASON: That is correct.

MR. ANDERSON: And would you take a look at Exhibit 18 and show it to the Board of Zoning Appeals, and I ask you whether or not you can identify that as the binding master plan which you and your office prepared?

MR. MASON: Yes, that is that master plan.

MR. ANDERSON: Does the binding master plan provide for a 20,000 square foot one-story building on the property?

MR. MASON: Yes.

MR. ANDERSON: Between the application of the special use permit and the approval of the special use permit,

did anyone from James City County or anywhere else ever tell you that you could not construct a 20,000 square foot one-story commercial building on that property?

MR. MASON: No.

MR. ANDERSON: Did James City County issue the special use permit?

MR. MASON: Yes, they did.

MR. ANDERSON: And when did they do that?

MR. MASON: I believe that was issued in June of this year, 1991.

MR. ANDERSON: Okay. And as part of the issuance of that special use permit, did James City County approve that binding master plan which is Exhibit 18?

MR. MASON: Yes.

MR. ANDERSON: Mr. Mason, would you take a look at the site plan which has been labeled as Exhibit Number 3, and would you show that to the Board of Zoning Appeals, and is that the site plan that you and your office prepared for the development of this property?

MR. MASON: Yes, it is our site plan.

MR. ANDERSON: Is that site plan consistent with the original concept plan and the original Food Lion site plan?

MR. MASON: Yes, it is consistent.

MR. ANDERSON: Is that site plan consistent

with the prior dedication of water and sewer?

MR. MASON: Yes, it is.

MR. ANDERSON: Is that site plan consistent with the approved subdivision plan?

MR. MASON: Yes, it is.

MR. ANDERSON: Is that site plan consistent with the binding master plan approved by the James City County Board of Supervisors on June 17th, 1991?

MR. MASON: Yes, it is.

MR. ANDERSON: If you were to adopt the Zoning Administrator's decision, the line which he has put on the acetate overlay, would it be possible to construct a 20,000 square foot single-story building on this particular piece of property?

MR. MASON: No.

MR. ANDERSON: Okay. Mr. Chairman, with the exception of questions that we would ask of possibly Mr. Farmer and others, and with the exception of a summation, that would conclude the Applicant's case, but we would like to reserve the right to ask Mr. Farmer some questions as well as sum up our position.

MR. FEIGLEY: Okay. Thank you very much for your case, this presentation. I have a question or two, and I'm sure the committee may have some others. I will restrict mine. Did you ever take any exception to the conditions under

the special use permit?

MR. ANDERSON: I was not representing Mr. Calvin Davis. Mr. Vernon Geddy, III was representing Mr. Davis in the special use permit process.

MR. FARMER: Mr. Davis is here.

MR. FEIGLEY: Did the Applicant ever take exception to it?

MR. ANDERSON: I am not aware that he did.

MR. FEIGLEY: Is Mr. Davis here?

MR. ANDERSON: Mr. Davis is right there.

MR. FEIGLEY: Mr. Davis, did you take any exception to the provisions of the conditions of this special use permit?

MR. FEIGLEY: What is your definition of exceptions?

MR. DAVIS: That you didn't approve of it. For instance, paragraph three, were you concerned about paragraph three at all?

MR. DAVIS: We are interpreting paragraph three the way it is shown on the drawing.

MR. FEIGLEY: How do you interpret the word future?

MR. ANDERSON: Mr. Feigley, again, our position of the case is what does it mean, 50 feet from the future right-of-way. Our position is when the future

right-of-way is established, there will be a 50-foot setback from that.

MR. FEIGLEY: I may agree but the wording is poor.

MR. ANDERSON: To require a setback from an unknown line basically requires someone to build at their own risk.

MR. FEIGLEY: I may agree that the wording is poor. I may have preferred other wording and I do state that you would have preferred other wording. But I think the case before us tonight is what was the Zoning Administrator to do with these conditions? Was he to interpret the wording of that condition differently? What position should he take? Here he is a Zoning Administrator. He is given a list of conditions to abide by. And here it says future right-of-way. Now, whether that is asinine or not, did you expect him to go back to the governing body and say this is all wrong, that we can't do this?

MR. ANDERSON: Well, I think the fact is that it is all wrong and you can't do that for the reasons that we have expressed.

MR. FEIGLEY: That's what I'm saying. Why wouldn't it go back to the governing body and ask them for an amendment?

MR. ANDERSON: We are not asking for an

amendment of the special use permit at all. We are asking for an interpretation of the special use permit condition. Mr. Farmer has interpreted it one way. We asked for that interpretation by virtue of filing the site plan. Mr. Farmer has interpreted one way; we take exception to his interpretation for the reasons that we have expressed.

MR. FARMER: Mr. Feigley, if I could just make one remark in relation to what he just said. You are not charged with interpreting what that condition says. You are charged with determining whether or not the administrative decision was in fact correct.

MR. ANDERSON: I agree with Mr. Farmer.

MR. FARMER: And if in making that determination you must examine the intent of that condition, you certainly should do that, but you aren't interpreting the Board's condition.

MR. FEIGLEY: We are not here to redesign 199.

MR. GEIDD: Does this go from this group down a legal path, or does this go back to the people that made the special use permit? Does this go back to the County?

MR. FARMER: I guess from where it goes from this point after the hearing this evening --

MR. GEIDD: To the administrators or to a court?

MR. FARMER: Well, after the hearing this evening, depending upon the action will probably dictate which direction it goes. If either the Applicant or the County disagrees with the determination of the Board of Zoning Appeals this evening, each of them have the right to appeal that determination to the Circuit Court.

MR. FEIGLEY: You have given us an excellent outline of all of the ramifications of the variations of 199. I will also say this, that in many other cases when these setbacks have been involved with future developments, that the Board has used the word from the center of the existing right-of-way or something. And I think you mentioned that, that you have preferred that language. Possibly we, as the Board, would have preferred that language; possibly some of the supervisors would have preferred that language in retrospect. But here we have the language that is in that special use permit that Mr. Farmer was using for guidance. Now, there may be a different interpretation of what that paragraph three says between you and I and possibly among the Board members and everybody else who was here tonight. Well, I think I have asked you the question. I have one other question of Mr. Norman.

MR. MASON: Yes, sir.

MR. FEIGLEY: What prompted you to prepare the plat for Plots 10 and 11?

MR. MASON: A request of the developer.

MR. FEIGLEY: Was there any time significance of why you did this?

MR. MASON: I think the only significance from the developer's part was the leasing status and the leased status of Williamsburg Crossing at the time and the need to provide additional space.

MR. FEIGLEY: Thank you very much.

MR. ANDERSON: Mr. Feigley, I would add to that that Lots 10 and 11 are the only remaining unsold outparcels with public water and public sewer available to them. So on the course of development costs, that's the least expensive property at Williamsburg Crossing to develop today.

MR. FEIGLEY: Any other questions of Mr. Anderson?

MR. GEIDD: Do you believe that the binding master plan was in conflict with the special use permit?

MR. ANDERSON: I think that the outline on the binding master plan, if you adopt the interpretation of the Zoning Administrator as being correct, that it does create a conflict. If you adopt the position of the Applicant, it does not create a conflict.

MR. GEIDD: Well, I think the fact that they put future in there and not present indicates to me that they meant -- they tried to say that this road is going to be

realigned and we want -- the use of this land will be in accordance with the way the road is going to be aligned. It seems like a terrible special use permit. I don't know why they did that and why somebody didn't stand up and holler and say you can't do that; you can't make us comply with something that hasn't been put on the ground. And I don't understand why it got this far, why it didn't stop there because it appears to be a tremendous conflict. They give you a piece of property with a binding master plan and then tell you that you had to set halfway back the property and couldn't put the building on it. I don't understand that. That put this gentleman in a terrible predicament of how he was to comply with a special use permit that was in conflict with the master plan. The County approved both of them.

MR. ANDERSON: At the same time.

MR. GEIDD: He didn't approve either one of them.

MR. ANDERSON: It goes with the territory.

MR. GEIDD: We would like to turn the clock back to June or whenever that was and go through that again because that's where the problem is to me. The problem was back from that permit. I talked to one of the planning commissioners today, and his feeling, you know, that in their minds, they knew that this road was going to get realigned and that the setback, the green belt setback is something like 150

or 200 feet and that they were giving up a concession by saying, well, we will make it 50 feet as long as you enhance the landscaping. So they were making a concession by cutting back to 50 feet. But the concession also had to be in accordance with -- don't put 50 feet out and then cut 50 feet off with a future road and then have zero.

So in their minds, I think they were trying to do it right, but when you look at it, the bottom line is that you lose a piece of property. If they realign the road, you lose a piece of property. So the argument seems to be with the Department of Transportation versus the owner of the land whether this land is taken and whether that road is realigned. That has to be satisfied. Could the Transportation people speak to that?

MR. HORN: Before we make too many more statements about the intent of the Board, I would like to make a few statements.

MR. FEIGLEY: Let me finish with Mr. Anderson. I think that's all of the questions at this moment. Thank you very much, Alvin, and we will give you the opportunity to question Mr. Farmer.

MR. ANDERSON: Thank you, Mr. Chairman.

MR. ROGERS: Mr. Chairman, members of the Board, I'm Leo Rogers. I'm with the County Attorney's Office. I will be brief, and I will hit on three points. I would like

to talk about your jurisdiction tonight, the standard of review and interpreting conflicting provisions. First, what you have heard here tonight is not new; it's been going on for a long time. I, unfortunately, have been a part of many meetings in which this has been going on. It's been before the Staff, the Planning Commission, and the Board.

This is another bite at an apple that has already been taken care of through a special use permit with a condition which maybe could have been better worded, but certainly the wording is clear. Mr. Anderson has gone to great lengths to define the word right-of-way, but never has he tried to define the word future. This is a little bit different from the Board of Zoning Appeals. We have an appeal of an administrative officer's decision, the Zoning Administrator in this case, and that authority is found under 15.1-496.1, 15.1-495(a) and James City County Code Section 20-419.

If I could quote those sections in brief. "The administrative appeal is from administration or enforcement of this article or any ordinance adopted pursuant thereto." A special use permit is not an ordinance; it is a condition. The appeal today is whether the Zoning Administrator interpreted the site plan ordinance correctly when he said that this site plan is in violation of a regulation. We are not here today to determine, as Mr. Anderson said, we are asking for an interpretation of an SUP

condition. That's not within this Board's jurisdiction.

Secondly, the standard of review. The Code is silent on the standard of review for a Zoning Administrator's decision, but I would state that it is not de novo. In a case in which an administrative official is charged with enforcing a code or regulation, his decision is entitled to great weight. And Mr. Farmer's decision tonight that the site plan is in conflict with the special use permit is entitled to such great weight.

Lastly, we have heard a great deal of evidence that there is a conflict between the special use permit, between the subdivision plat, between the master plan. First, the subdivision plat. That was adopted before the special use permit, and it's a ministerial act. You cannot take future considerations in mind you adopt. The subdivision plan was the state of the law as it existed prior to SUP, and as such, it is consistent. If an inconsistency exists between the special use permit and the master plan, there is a remedy for that. It is found in the zoning ordinance and that is an appeal back to the Board of Supervisors.

If you have any questions -- I will not question any of the other County officials. They may stand and present their own information.

MR. FEIGLEY: Any questions of Mr. Rogers?

(No audible response.)

MR. FIEGLEY: Thank you very much. Would anyone else like to speak at this time?

MR. HORN: Thank you, Mr. Chairman. I'm John Horn. I'm the Development Manager for James City County. In that capacity, I administer a number of organizations that not only undertakes planning activities, those members of Staff who draft conditions for review by the Planning Commissioner and Board of Supervisors in special use permits, but I also undertake the administration of the Code Compliance Division, the people who are charged ultimately with interpreting those conditions.

In conjunction with this case, I was present at the drafting of the original conditions. I was present at individual discussions with individual Board and Planning Commission members prior to public hearing. I was present at all Planning Commission and all Board of Supervisors meetings where these were discussed. And during that process, I also was present at a number of meetings with the Applicant, Mr. Davis, during that process.

I'm here to tell you there is no question in my mind, though I wouldn't presume to speak directly for members of the Board of Supervisors or Planning Commission members, but there is no question in my mind that the members of the Planning Commission and the members of the Board of Supervisors knew exactly what their intent was when they placed

that condition on the special use permit. That intent is very accurately being reflected by the interpretation of Mr. Farmer in this case. They knew what future meant; they knew the history of where we were in terms of their knowledge and our knowledge of where that right-of-way was going to be, and their intent is exactly as it is being interpreted by Mr. Farmer at this point.

Farther back than that, I was present at all of the discussions held between County Officials, VDOT officials at public meetings to discuss the location of this intersection at 199 and Route 5. During that process, I participated in a number of discussions with Mr. Davis. During that process, the location of the future right-of-way was staked on the ground on Mr. Davis' property. There is no question in my mind, though I wouldn't presume to speak for Mr. Davis, that Mr. Davis and his professional staff knew exactly where that right-of-way was going to be. And that right-of-way as approved by the Commonwealth Transportation Board has not changed from where I believe there was a full understanding of the implications on this tract.

There has been a lot of discussion between a supposed conflict between a master plan and a site plan. I would like to point out very carefully that a master plan is not intended to be as precise as a site plan; it is intended to generally depict the location of improvements on a property and

is not intended by any means to precisely depict all of the arrangement of all of the future property lines or locations of buildings or locations of parking lots. If that was our intent to require that, it would have been required and it should show up on that. It was not our intent to require that in the Code and therefore it doesn't show up on that map.

There has been a lot of discussion that the square footages on there is somehow square footages that are anticipated by the County to be somehow required to be placed on those parcels. Those square footages not only on this SUP but on all SUP's are routinely set at maximum level, and in this case, maximum levels that would achieve a level of service on the adjoining roadway system. So somehow the notion that because 20,000 square feet shows on that corner, we had somehow gone through some site planning process and were actually anticipating that there had to be 20,000 square feet there, or on future detailed review, it was actually going to be allowed, a full 20,000 feet was going on there, is just inaccurate. It is not the case on this master plan; it is not the case on other master plans. And in my opinion, the Applicant and his professional staff knew precisely the difference between a master plan and a site plan.

There are a number of conditions that are placed on a special use permit that do not get reflected on the drawing but still are binding conditions on the master plan,

one of which in this case is the green belt condition. The green belt is not shown on that master plan, but that in no way means that the drawing is the full scope of what was required by the Board of Supervisors and what was anticipated by the Board when this was developed. The drawing of the master plan plus the conditions are the full SUP.

And, again, I was there when it was drafted. I discussed it with individual members of the Board. I was there at all of the public hearings, and I know in my opinion, this is exactly what was intended by the Board of Supervisors. They knew the word future was in there, and they knew what future right-of-way meant in this case, and it did not mean existing right-of-way. If they meant existing right-of-way, they would have said existing right-of-way.

The final thing I would like to say is that there has been a lot of confusion here in this discussion between a VDOT process, a location and design process at VDOT and a legislative special use permit process that is solely the discretion of the Board of Supervisors. It is not the discretion of VDOT. The ability to place a condition on the special use permit is solely the purview of the Board of Supervisors, and it is solely the purview of that Board to interpret and to instruct their staff as to how they want that condition administered.

Again, I'm certain that the Board of

Supervisors knew what they were doing, and I'm certain that Bernie is interpreting this condition precisely as the Board of Supervisors intended it to be applied. And that's a County Board of Supervisors' process; it's not a VDOT process. VDOT may in some cases comply with that or in some cases be consistent with our process, but that is not required; it is not anticipated in all cases that the VDOT process will follow our process. But the SUP is our purview; it's the Board of Supervisors' purview, and is not a VDOT purview.

So I think there's been a lot of confusion. And if we could just focus back on exactly what are we talking about here; we are talking about has the Zoning Administrator faithfully interpreted correctly either the letter, but if the letter is in anyone's mind somewhat unclear, the intent of what the legislative body, the Board of Supervisors intended when they placed that condition.

There is no doubt in my mind, based on my history with viewing this going through a long process, that this is precisely what the Board of Supervisors intended this condition to mean and intended for it to be administered. I would be happy to answer any questions.

MR. FEIGLEY: Any questions?

(No audible response.)

MR. FEIGLEY: Thank you very much. Mr. Anderson, do you have further comment?

MR. ANDERSON: Yes. I would pose some questions, and I think everybody knows the answers to these questions. That is, what document can we go to that shows by meets and bounds where that line is? That document doesn't exist. If that document doesn't exist, how do we measure the 50 feet? If we can't measure the 50 feet, what happens to the development potential of this particular piece of property? I question Mr. Farmer as follows: Mr. Farmer, is the purpose of the green belt policy of James City County to establish green belt, or is it to preserve future right-of-way?

MR. FARMER: If you will bear with me a second, I will pull the document out that I have here. Mr. Anderson, I think that based on the resolution that was adopted by the Board of Supervisors which established their green belt policy which was adopted the 20th of July, 1987, the intent of the Board was to establish green belts measured from future right-of-ways. Let me read from that document. "The preferred width of the green belt buffers shall generally be 150 feet measured from the edge of future road right-of-way as anticipated by the Planning Department and Virginia Department of Transportation." So the intent of it in my mind interpreting that was not to reserve right-of-way but was to require that green belt be established from future road right-of-ways if they were known and they anticipated.

MR. ANDERSON: Mr. Farmer, are you familiar

with the provisions of the Virginia Code 15.1-458 and subsequent sections dealing with an official map of a locality?

MR. FARMER: No, sir, I'm not.

MR. ANDERSON: All right. Do you have any knowledge as to whether or not James City County has any official map?

MR. FEIGLEY: Point of order, please. What are you leading to here that would bear upon this case?

MR. ANDERSON: Yes, sir. Mr. Chairman, there is a provision of the Virginia Code which gives a locality the right to adopt an official map. And basically what it says is "No future or proposed street or street line, waterway nor public area shall be shown on an official map unless and until the center line of such street, course, waterway is fixed." Basically, James City County has the option under the Virginia Code to have an official map and designate on that official map where precisely future rights-of-way are.

MR. FEIGLEY: I will not allow any further questions in this area because I think you are leading us on a path that doesn't really pertain to the matter before the Board.

MR. ANDERSON: No further questions at all of Mr. Farmer?

MR. FEIGLEY: I will allow it, but I may have the opportunity to raise a point of order. Go ahead.

MR. ANDERSON: Am I allowed to ask him any further questions --

MR. FEIGLEY: Yes. I may object, but you may ask the question.

MR. ANDERSON: Mr. Farmer, how mechanically would Williamsburg Crossing determine where the setback line is on the ground today?

MR. FARMER: How mechanically?

MR. ANDERSON: What document would they go to to determine where the setback line is?

MR. FARMER: I think they would use the scaled drawing that exists as the adopted corridor for Route 199.

MR. ANDERSON: Okay. You have an engineering background, do you not?

MR. FARMER: Yes, I do.

MR. ANDERSON: And going to a scaled drawing and putting that line in the field, would not that introduce a chance for error?

MR. FARMER: Some error, yes.

MR. ANDERSON: And I believe you have testified earlier tonight that the VDOT plans in their present form may vary as much as one to two feet between their current state of completeness and their final state of completeness; is that correct?

MR. FARMER: Based on my understanding of how their location and design division works, that degree of error might be expected, yes.

MR. ANDERSON: And if Williamsburg Crossing were to go out there today utilizing your process, that is, taking the line off a scaled drawing, staking it in the field as best they could recognizing that there may be some minor error in that transposition from the paper to the ground, and were to build a parking lot 50 feet from that and then the Virginia Department of Transportation comes along with its final plans and it's two feet wider, would not that brand-new building be a nonconforming use?

MR. FARMER: It may very well be nonconforming. It could well be interpreted to be consistent.

MR. ANDERSON: Did you ever see the binding master plan during the six or seven or eight months that Williamsburg Crossing was processing its special use permit application?

MR. FARMER: Oh, yes, I saw it.

MR. ANDERSON: Did it ever occur to you to object to the binding master plan in its form as approved?

MR. FARMER: Not particularly. I considered it a broad conceptual plan, not a precise drawing.

MR. ANDERSON: Does the binding master plan have any relationship at all to where the alignment is

ultimately going to go?

MR. FARMER: I think it has some relationship, perhaps not a precise one.

MR. ANDERSON: I don't have any further questions for Mr. Farmer. I would like to close, if I could.

MR. FEIGLEY: Yes, sir.

MR. ANDERSON: I would tell each of you that when the Lord put us here on the face of the Earth, he gave us five senses, touch, taste, sight, sound, and hearing. And tonight, I want you to use your sixth sense, and that is your common sense. And I ask you whether or not it makes sense for James City County to approve a concept plan, an initial site plan, a subdivision plan, and a binding master plan all showing one right-of-way and then reject the site plan a matter of days later which is based on a future right-of-way.

I ask you, does it make sense to adhere to one particular right-of-way from June of 1972 until June of 1991 and then adopt by interpretation a different right-of-way? Does it make sense to utilize one interpretation for the right-of-way of Route 199 for all of these other plans and approvals and now use another? Or, does it makes sense to say that when, as and if the future right-of-way is established by right-of-way acquisition plans and by acquisition, the setback will be established from that line?

The Zoning Administrator's interpretation is

for one purpose and one purpose alone, and that is to preserve a potential corridor for what he understands to be the future right-of-way of 199. His position could best be characterized as "Let's take it now and have VDOT pay for it later." I would tell you that our position is that when the future right-of-way is established, when there is a definite line from which to be measured, we will measure from that line. But between now and then, our position is no person shall be deprived of life, liberty or property without due process of law. Private property shall not be taken or damaged for public use without just compensation. No such compensation has been offered; no compensation has been paid. But basically, the position of the County is "Take now; pay later." Thank you.

MR. FEIGLEY: Anybody else like to speak?

MR. MASON: Yes, Mr. Chairman. Again, I am Norman Mason with Langley and McDonald, and with all due respect, I would like to take exception to one of the comments made by Mr. Horn relative to the interpretation of the future right-of-way by one of the professionals involved with Mr. Davis in the preparation of most of these documents.

When we are charged with preparing a site plan, our charge is to comply with the County's ordinances and special use permits, et cetera, as they exist. There was not a question in our mind in preparation of this site plan relative to the status of future or existing rights-of-way. James City

County Zoning Ordinance in Section 20-104 charges that all final site plans shall be consistent with the master plan.

If we were to take the position in the preparation of the site plan for this parcel that Mr. Farmer's interpretation would require, the line that we are talking about would be somewhere over here. And any site plan prepared with a line probably two inches to three inches different on this plan certainly would not have been consistent with the binding master plan. And we are charged with preparing a site plan that is consistent with the master plan. The line that is shown on this master plan is certainly determinable within a couple hundred feet which is perhaps the distance that we are talking about here.

There was no question in our mind relative to the direction of the special use permit. If the special use permit meant a future right-of-way that was something that was nebulous and unestablished, then perhaps those lines should have been shown on the binding master plan. There was no requirement to do that. To make a plan consistent with these lines is certainly within the scalable limits of a plan of this type. It would have been greatly different than the parcel shown on this master plan.

MR. FEIGLEY: May I ask you just one question, please?

MR. MASON: Certainly.

MR. FEIGLEY: As I read the chronological order of things done, your final site plan was submitted after the SUP had been approved?

MR. MASON: I believe that was correct.

MR. FEIGLEY: And you were aware of the conditions in the SUP?

MR. MASON: Yes.

MR. FEIGLEY: And you chose to accept the 50-foot setback from the existing right-of-way as your line, right?

MR. MASON: Yes, sir. And that's because of the requirement of the ordinance that the site plan be consistent with the binding master plan, and it was consistent with that binding master plan. To have been consistent with the Zoning Administrator's interpretation of that line, it would have certainly been a different parcel than is shown on that plan by a matter of two inches or more, certainly within the scalable limits of that plan.

MR. GEIDD: Does the binding master plan bind you to a certain type of zoning? Does it bind you to the limits of the property? When you say binding, what does it bind you to?

MR. MASON: To what is shown on that master plan.

MR. GEIDD: Certainly you could submit

something that is smaller than what it shows. Does it show the maximum sizes or does it show -- what does it bind you to? If you submitted a 15,000 square foot building, would that not have complied?

MR. MASON: I would have to question that.

MR. GEIDD: You have to put a 20,000 --

MR. MASON: No, I do not know that that is the case.

MR. GEIDD: What does it bind you to? I don't understand what it binds you to?

MR. MASON: It binds you to depict and bind the approximate boundaries and general location of all principal land uses and their building square footage and height, roads and rights-of-way, accesses, open spaces, public uses and other features to be located on the site for which approval is sought. If this ordinance is interpreted literally, 20,000 square feet is the size of that building. Now, I would certainly agree that there are perhaps slight variations from that. But we are not talking about a slight variation in the configuration of that site versus what is shown there versus the Zoning Administrator's interpretation of that line. It is not a slight variation.

MR. GEIDD: Is it common for a special use permit to precede a binding master plan? Aren't the master plans issued and then the special use permits come up after

that? Which comes first?

MR. ANDERSON: Simultaneously.

MR. FARMER: Concurrent.

MR. MASON: I would also think that the question and the discussion of a binding master plan and the interpretation or what have you by the County really doesn't have an established precedent as yet as it is a relatively new procedure.

MR. GEIDD: Wonderful.

MR. FEIGLEY: Just for my clarification, when was the master plan submitted, the dates?

MR. ANDERSON: It was in conjunction with the special use permit. You can't get the special use permit without having the binding master plan. It is simultaneous submittal.

MR. FEIGLEY: So they were simultaneously presented?

MR. ANDERSON: Right.

MR. FEIGLEY: And then the special use permit says, hey, these are certain conditions that you are going to have to meet so your master plan may have to be adjusted.

MR. ANDERSON: No. The binding master plan was approved at the very same instant that the special use permit conditions were issued. Simultaneously, the very same instant.

MR. FEIGLEY: Yet they were in conflict.

MR. ANDERSON: Ask Mr. Farmer, ask Mr. Horn, ask Mr. Rogers.

MR. FEIGLEY: Thank you very much.

MR. GEIDD: One more question. Do you agree that a conflict between the special use permit and the master plan, the remedy is found with the Board of Supervisors?

MR. ANDERSON: We are not -- we are addressing his interpretation of that condition. His interpretation is what is before you tonight. His interpretation of the approval of the site plan before you as it relates to everything else is what is before you.

MR. GEIDD: But if he interprets it in your favor, there is no conflict.

MR. ANDERSON: That's correct.

MR. GEIDD: So he's creating a conflict.

MR. ANDERSON: That's correct.

MR. GEIDD: Do you see his creation of a conflict as taking you back to the Board of Supervisors to resolve that?

MR. ANDERSON: No.

MR. FEIGLEY: Anybody else like to speak??

MR. DAVIS: Yes, I would like to say one thing.

MR. FEIGLEY: Would you come forward, please,

and identify yourself for the record?

MR. DAVIS: My name is Calvin Davis, and I'm one of the owners of Williamsburg Crossing. I would like to say one thing about a comment that was made by John Horn that the Board of Supervisors were assured this was going to be the final design. There was a citizenry of neighbors of the cross intersection of Stanley Drive and also of Ferncliff Road that were in such opposition to the, quote, right-of-way that was shown by Mr. Farmer, that several of the Board of the Supervisors indicated at that public hearing that there may be some reconditions here, reconsiderations of that alignment. And they are not talking about minor realignments; they are talking about major realignments. Part of the redesign process that came from the recommendation out of Williamsburg was not only the college but also the people of Walnut Grove --

MR. ANDERSON: Walnut Hills.

MR. DAVIS: -- Walnut Hills that were in the same way in opposition, and take a look at what they did. They moved it like 500 feet and took two acres. So I'm telling you right now as we sit here, don't you think that that line is two foot; it is not. And let's say a hypothetical, that Mr. Farmer is no longer with us -- this is a ten-year project; he is not here five years from now. And that line has been established, and I have dedicated or I have done whatever I was supposed to do, and then there is another right-of-way that comes out of

199. It may not have anything to do with one 199 and Route 5. What does the use permit say at that time? Future right-of-way. When does future stop? When do you finally get to a point that it is inevitable that it goes forever, and it will always be forever. There was never an a intent like that by the Board of Supervisors, and I will take exception with you to the tenth degree, never. It was a last-minute motion made by Ms. Knudson without knowing the facts. And that's where the culprit is.

MR. FEIGLEY: Anybody like to speak on this matter?

MR. FARMER: Mr. Feigley, if I could just say two real quick things, not to belabor any issues. You have presented a whole lot of information regarding processes, of VDOT processes, submittals of plans prior to the adoption of the SUP. A whole lot of activity has gone on related to that property and to plans pertaining to the property and plans pertaining to various versions of VDOT designs. I would have to say that at the point where VDOT -- the Commonwealth Transportation Board adopted the corridor, at that point in my mind, there is but one future corridor of Route 199, and that was the adopted corridor. Perhaps it will change at some point. Who knows. The Commonwealth Transportation Board is made up of individuals free to choose as they will. But at this point in time, as well as I can know in my own mind, there

is but one alternative to consider and that's the 1-A Alternative, the one that I think they indicated is Design Three.

MR. FEIGLEY: 1-A and 1-B.

MR. FARMER: Whichever. Then the second thing is Mr. Anderson characterized my decision as "Let's take it now and let VDOT pay for it later," I think was the quote. That may or may not have been a thought that went through the minds of many people in one form or another throughout all of the deliberations, but I don't think that is the issue that is here before you as the Board of Zoning Appeals.

And if there is dissension about that thought or argument that needs to be made about that thought, that argument rightfully belongs back with the governing body who has effectively made a determination that an SUP condition exists. So I would urge you to determine whether or not the condition as written has in fact been applied properly and the administrative decision that was made should be upheld. That's all. Thank you.

MR. FEIGLEY: Anyone else like to speak?

MR. ROGERS: Mr. Feigley, if I may, I would like to respond to a couple of comments that were made in particular by Mr. Anderson. He mentioned a takings issue, and I would like to emphasize first that a takings issue is not before the Board today, nor is there even an issue of taking

here. There has to be no economic use of the property, and as Mr. Farmer referred to in his memo with some assistance from myself at the time, there is economically viable use of the project as a whole. I equate this to a similarity between, say, a setback line; that would certainly not be a taking, nor would allowing some type of green space between a project and a highway.

Lastly, Mr. Anderson asked you to refer to your senses, and he elucidated a sixth sense. I would like you to use your sense of smell. We have an Applicant here who has spoken to Staff ad nauseum, to the Department of Transportation, to the Planning Commission and to the Board. And the Board has put a condition in the special use permit which meant -- which said future. We are not here to interpret the condition but to interpret Mr. Farmer's decision. And I tell you before that he is here for a second and maybe it is a third or fourth bite at the apple, and I think at this point the apple is becoming rotten. The question for this Board to decide is whether Mr. Farmer's decision is correct in determining that the site plan is inconsistent with the zoning law and the regulations adopted under it, not whether those regulations are correct. And for that, there can only be one answer, and that is yes, he did make a correct decision. Thank you.

MR. FEIGLEY: Anyone else like to speak?

(No audible response.)

MR. FEIGLEY: If not, I will close the public hearing.

Well, Board, we have heard a lot of discussion tonight. Sometimes I think we have lost site of the real issue before us. I think it was stated rather clearly by Mr. Rogers that we are here to determine whether the Zoning Administrator made an incorrect decision regarding refusal of returning the site plan back on the basis of paragraph three of the special use permit. I think we have all heard enough. I don't think I will say anything -- any more at this time, but would anybody else like to say anything before someone proposes a motion?

MS. JAMES: We have heard a lot of presentation. I am reminded when I studied government, I was told that government was supposed to be precise and deal concrete. A lot of what Mr. Anderson has presented tonight is still true in that keeping. As has been pointed out, our task is to decide whether or not Mr. Farmer has interpreted the SUP. I strongly support that the SUP needs looking at but that that is a matter for the governing body. In that light, I would support that. It is unfortunate.

MR. FEIGLEY: Anybody else have anything to say?

MR. RIPLEY: I feel the same way. I feel

that right, wrong or indifferent, the process by which we got from there to here has been done and it is not necessarily -- we may not agree with it. Obviously, Mr. Anderson and his cohorts do not agree with it. But the interpretation, I think the intent has been -- from the Board of Supervisors was to protect that corridor from -- so that they could align the road in a proper direction. Now, whether it takes away from his ability to produce a viable piece of property or not and make a substantial income off of it is not the question. I may agree with him rather than Mr. Farmer. But that's not my decision at this point in time. My decision is to make a decision as to whether Mr. Farmer was right in his interpretation of the SUP. So with what, I would like to make to motion that we support Mr. Farmer's decision.

MR. CARR: I would second that.

MR. FEIGLEY: Would you care to amend your motion to the facts and stating your reasons why you feel Mr. Farmer was correct in his decision? Would you like to make an additional statement that he wasn't following the special use permit, paragraph three condition?

MR. RIPLEY: I think he was following all the conditions of the SUP, and the future development maybe wasn't worded properly and that the Board of Supervisors -- or wasn't defined properly I guess is the terminology because future, as Mr. Davis points out, could be forever, and that's something

that I have a hard time with. That is really the only thing that I really have a hard time with. I think the County needs to get that straight, but that's not necessarily what I'm trying to determine right now.

MR. GEIDD: It's unfortunate that a -- that a vote in favor of Mr. Farmer is a vote against you folks because your point -- you didn't miss a point. The Department of Transportation needs to take your property or leave you alone and let you build on it. They need to get off the pot. But putting the burden on the Zoning Administrator is -- to make that decision as to how to interpret this thing, it is very, very unfair for the County to have done that. And you folks are the ones that are -- you are standing in the gap there and don't know which way to go, and that is very unfortunate. But I don't see how I can vote against the Zoning Administrator for doing what he did because you could be two feet off. I think in his situation, two feet off is probably the best he can do under the present set of circumstances, but it is very unfortunate for the owner of the property to be put in that situation. I think that is terrible to be told future boundary and what is the future boundary and it has not been really established, and you ought to be paid for your property and have them take it or leave you alone. I don't understand how -- I think you have a fight, but I don't see how we can remedy that. That's personally.

MR. RIPLEY: My personal feeling is they need to go back to the Board of Supervisors.

MR. GEIDD: Or to a court of law or wherever you need to go.

MR. FEIGLEY: I think we should state a motion now so that we can vote on this. I want to make sure that everybody understands the motion so they will know how to vote correctly, so will you state your motion again, Mr. Ripley?

MR. RIPLEY: Okay. My motion was that we vote in favor of Mr. Farmer's decision to disallow the site plan as presented without the proper setbacks for future alignment of Route 199.

MR. FEIGLEY: Do we have a second for that?

MR. CARR: I second it, and I base that simply on the fact that I think Mr. Farmer would have been remiss had he not questioned the use of the word future right-of-way which he apparently did with his superiors and with the legal staff of the County. And they together came up with the decision that he reject the plan. Had he not have done that, I don't think he would have been doing his job. It is perfectly clear to me with that word future in there, he was going to have to make a move, and I would support what he did.

MR. FEIGLEY: Okay. Mr. Farmer, would you call the roll, please, and, again, a yes vote will mean that we

END

substantiate or --

MR. FARMER: The decision of the Zoning Administrator is upheld would be a yes vote. A nay vote would be to overturn the decision.

MR. FEIGLEY: That is correct. Call the roll.

MR. FARMER: Mr. Carr?

MR. CARR: Yes.

MR. FARMER: Mr. Geidd?

MR. GEIDD: Yes.

MR. FARMER: Ms. James?

MS. JAMES: Yes.

MR. FARMER: Mr. Ripley?

MR. RIPLEY: Yes.

MR. FARMER: Mr. Feigley?

MR. FEIGLEY: Yes.

MR. FARMER: The decision of the Zoning Administrator is upheld.

MR. FEIGLEY: That concludes our agenda tonight of cases. I want to thank you everybody for coming. I especially want to thank everybody for their presentations. They were well done and very informative to me as a member of this Board.

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(After the proceedings were concluded, there was an agreement between Bernard M. Farmer, Secretary to the Board of Zoning Appeals and Alvin P. Anderson, Attorney for University Square Associates that the record will include the 15 graphic exhibits marked by the court reporter.)

COMMONWEALTH OF VIRGINIA

COUNTY OF JAMES CITY, to-wit:

I, Brenda L. Lewis, do hereby certify that the foregoing pages are a true and accurate transcript of my stenotype notes of the proceedings had at the time and place mentioned.

This_____day of_____, 1991.

COPY

_____

Court Reporter

My commission expires on June 29, 1993.

VIRGINIA: IN THE CIRCUIT COURT FOR THE CITY OF WILLIAMSBURG AND COUNTY OF JAMES CITY

UNIVERSITY SQUARE ASSOCIATES, Plaintiff, v. BOARD OF ZONING APPEALS OF JAMES CITY COUNTY, VIRGINIA, and BERNARD M. FARMER, JR., ZONING ADMINISTRATOR, and THE COUNTY OF JAMES CITY, VIRGINIA, Defendants.	)	CHANCERY NO. 8830

MOTION TO UPHOLD DECISION OF THE BOARD OF ZONING APPEALS AND TO DISMISS WRIT OF CERTIORARI

Defendant, the Board of Zoning Appeals of James City County ("BZA"), by counsel, requests that this Court uphold the decision of the BZA and dismiss the Writ of Certiorari to Review the Decision of the Board of Zoning Appeals because the BZA decision is supported by the evidence, is not contrary to law and does not violate the purpose or intent of the James City County ("County") zoning ordinance. In support thereof, the BZA represents as follows:

1. On February 15, 1990, the Commonwealth Transportation Board ("CTB") and the Virginia Department of Transportation ("VDOT") formally adopted the new corridor for Route 199.

Representatives from University Square Associates ("University Square") actively participated in the process.

2. On October 1, 1990, University Square applied for a special use permit to allow the expansion of Williamsburg Crossing Shopping Center (designated "SUP 49-90"). (Copy of SUP 49-90 submitted as Item 13(C) on the List of Exhibits certified by Mr. Farmer.)

3. On April 9, 1991, the James City County Planning Commission recommended approval of SUP 49-90 by a vote of 9 to 2. The Planning Commission, by unanimous vote (11-0), amended Condition Number 3 to require the 50-foot enhanced landscape strip be provided "along the future right-of-way Route 199".

4. On May 15, 1991, Vernon M. Geddy, III, counsel for University Square, wrote to John T.P. Horne, Development Manager of James City County, to "discuss several issues in the case". Mr. Geddy did not comment on Condition Number 3.

5. On June 17, 1991, after extensive review by County staff and the County Planning Commission, the County Board of Supervisors adopted, by resolution, SUP 49-90 with nine explicit conditions. University Square expressed no objection to Condition Number 3 at or prior to the Board of Supervisor's meeting. Condition Number 3 states:

"A minimum 50-foot greenbelt, free of structures and paving shall be provided along the future right-of-way Route 199 and shall contain enhanced landscaping as approved by the Development Review Committee, with the minimum landscaping in accordance with the standards contained in the Zoning Ordinance." (emphasis added)

6. On July 24, 1991, University Square submitted a site plan which provides a 50-foot greenbelt from the existing rather than future right-of-way of Route 199 ("Site Plan"). (Copy of Site Plan submitted as Item 4 on the List of Exhibits certified by Mr. Farmer.)

7. Pursuant to County Code Section 20-41, Bernard M. Farmer, Jr. ("Mr. Farmer"), Zoning Administrator, rejected the Site Plan because it was inconsistent with SUP 49-90, specifically Condition Number 3. Mr. Farmer's decision is contained in a letter to Norman Mason dated August 15, 1991 (Exhibit A).

8. On October 24, 1991, the BZA held a public hearing, and after viewing the evidence, considering testimony and hearing argument, unanimously (5-0) sustained Mr. Farmer's decision that the Site Plan was inconsistent with Condition Number 3.

9. Claude Feigley, Chairman of the BZA, stated that the issue before the BZA as, "we are here to determine whether the Zoning Administrator made an incorrect decision regarding refusal of returning the site plan back (sic) on the basis of paragraph three of the special use permit." (Page 74 of the Transcript of

the October 24, 1991 meeting of the Board of Zoning Appeals reported by Brenda L. Lewis of Lewis & DeBerry Reporting Service ("Transcript")).

10. Robert Ripley, Vice Chairman of the BZA, stated the motion, seconded by Mr. Baxter Carr, that "we vote in favor of Mr. Farmer's decision to disallow the site plan as presented without the proper setbacks for the future alignment of Route 199." Transcript at Page 77.

11. Each BZA member spoke in favor of sustaining Mr. Farmer's decision, albeit with sympathy for University Square. Mr. Baxter Carr based his support "simply on the fact that I think Mr. Farmer would have been remiss had he not questioned the use of the word future right-of-way which he apparently did with his superiors and with the legal staff of the County. And they together came up with the decision that he reject the plan. Had he not have done that, I don't think he would have been doing his job. It is perfectly clear to me with that word future in there, he was going to have to make a move, and I support what he did." Transcript at Page 77.

12. The record transmitted to the Court clearly reflects the findings underlying the decision of the BZA.

13. Plaintiff's allegation in paragraphs 34 and 38 of the Petition for Writ of Certiorari to Review the Decision of the Board

of Zoning Appeals ("Petition"), that Mr. Farmer's decision is based on the County's Greenbelt Policy or is an attempt to reserve right-of-way is inconsistent with Mr. Farmer's stated reasons in Exhibit A and the evidence, testimony and argument presented to the BZA.

14. There is no evidence to support the allegations stated in paragraph 44A-F of the Petition. The allegation contained in Paragraph 44G of the Petition, if true, is not sufficient to overturn the decision of the BZA.

15. The evidence before this Court is sufficient to dispose of this matter.

WHEREFORE, the Defendant respectfully requests that the Writ of Certiorari be dismissed with prejudice.

James City County
Board of Zoning Appeals

By Leo P. Rogers
Of Counsel

Certificate of Service

I certify that a true copy of the foregoing motion was mailed, postage prepaid, to Alvin P. Anderson, attorney for University Square Associates, P.O. Drawer Q, Williamsburg, Virginia 23187.

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Assistant County Attorney

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JAMES CITY COUNTY

DEPARTMENT OF DEVELOPMENT MANAGEMENT
COUNTY GOVERNMENT CENTER, 101 MOUNTS BAY ROAD

August 15, 1991

Mr. Norman Mason
Langley & McDonald
201 Packets Court
Williamsburg, Virginia 23185

Re: Case No. SP-66-91. Williamsburg Crossing, Phase I

Dear Mr. Mason:

The above referenced site plan application and available materials are being returned because the plan, as submitted, violates condition 3 of Special Use Permit-49-90, approved by the James City County Board of Supervisors on June 17, 1991. Specifically, the submitted plan does not provide for the required 50 foot greenbelt (which must be free of structures or paving) along the future right-of-way of Route 199. The plan cannot be approved as presented because approximately half the parking shown is contained within the greenbelt and future right-of-way area where it is prohibited. The remedies for this situation are as follows:

1. Revise the plan so that it complies with the special use permit conditions and all other requirements and resubmit it; or
2. Make application to amend the special use permit so as to remove this condition; or
3. Appeal my interpretation of the special use permit condition to the Board of Zoning Appeals.

We are processing a refund of the application fees and they will be forwarded to you as soon as they are available.

If there are further questions, please contact me.

Sincerely,

Bernard M. Farmer, Jr.
Zoning Administrator

cc: Mr. Calvin Davis

EXHIBIT A

V I R G I N I A:
IN THE CIRCUIT COURT FOR THE CITY OF WILLIAMSBURG AND COUNTY OF JAMES CITY

UNIVERSITY SQUARE ASSOCIATES,
Plaintiff,

vs.

THE JAMES CITY COUNTY BOARD OF ZONING APPEALS, et als.
Defendants.

BEFORE: The Honorable Russell M. Carneal, Judge
DATE: January 30, 1992

-----o0o-----

APPEARANCES:

ALVIN P. ANDERSON, ESQ.
Anderson, Franck & Davis
1200 Colony Lane
Williamsburg, VA 23185

LEO ROGERS, ESQ.
County Attorney
101-C Mounts Bay Road
Williamsburg, VA 23185
Attorney for the Defendants

Reported by: Brenda L. Lewis

COPY

(The court reporter was sworn.)

THE COURT: All right, gentlemen. This morning's case is University Square Associates versus the James City County Board of Zoning Appeals and others. Is the Complainant ready?

MR. ANDERSON: Yes, sir, Your Honor.

THE COURT: Is the Respondent ready?

MR. ROGERS: Yes, sir. Your Honor, if I may make a request, may I move the podium back?

THE COURT: Sure.

(The court reporter was sworn.)

THE COURT: Before we begin, gentlemen, let me say for the record that I have read the pleadings, the exhibits that were submitted with the pleadings, and I have read the total transcript of the hearing before the Board of Zoning Appeals. So I'm a little bit familiar with what you-all are talking about.

Now, Mr. Rogers?

MR. ROGERS: Good morning, Your Honor. My name is Leo Rogers. I'm the Assistant County Attorney for James City County. I represent the County of James City in this action, Bernard M. Farmer, Jr., the Zoning Administrator, and the James City County Board of Zoning Appeals. This matter came before the Court on petition challenging the unanimous decision of the Board of Zoning Appeals to uphold the Zoning

cut through this thing and get to what I consider to be the meat of the case, and that is the use of this term "future."

MR. ROGERS: Yes, sir.

THE COURT: What does "future" mean?

MR. ROGERS: Your Honor, future --

THE COURT: As it relates to this particular matter?

MR. ROGERS: As it relates to this particular matter. If I may, I will give you the factual basis behind which the Board of Supervisors --

THE COURT: I have read the factual basis. What I want to know is what does it mean?

MR. ROGERS: What does it mean?

THE COURT: Yes, sir.

MR. ROGERS: It means the future alignment of Route 199. As was stated before the Board, the SUP condition could have been more clearly stated. But that is not for the BZA to determine. It is not for the BZA to, as Mr. Alvin Anderson stated in the petition in Paragraph 44, to legislate. The BZA doesn't do that. It interprets decisions of administrative officials. The Board legislates. The Board has, as you can see --

THE COURT: Couldn't a reasonable interpretation have been that after the highway is built in the future, then this establishes it? Couldn't that have been a

approved at that point?

MR. ROGERS: No, sir. The SUP permit was approved on June 17th, 1991 by the Board of Supervisors. That's when it became final. If I could show you on the time line, Your Honor, would that be helpful?

THE COURT: Well, something was done on January '91.

MR. ANDERSON: Subdivision approval.

THE COURT: Subdivision approval. All right.

MR. ROGERS: Your Honor, subdivision approval is a ministerial, non-discretionary administrative act. It was not something for the Planning Commission. This was something that Mr. Farmer himself approved. It is a state-of-the-law decision. If the state of the law at that time had said there had to be a 50-foot setback from future right-of-way, Mr. Farmer could have rejected that subdivision plat, but that was not the state of the law at that time. Had Mr. Farmer not approved --

THE COURT: Are you saying, Mr. Rogers, that the only possible interpretation of the word "future" is the one that Mr. Farmer put on it?

MR. ROGERS: Your Honor, what I'm telling you is that Mr. Farmer --

THE COURT: Answer my question, please.

MR. ROGERS: Your Honor, I am telling you --

no, Your Honor. There is some confusion as to the term.

THE COURT: Absolutely. Go ahead.

MR. ROGERS: But it was interpreted behind the background of facts which I would like to show you on my time line. It is also a decision of the Zoning Administrator who was present, who would participate in the process, and his decision is entitled to great weight. Mr. Anderson in his petition has alleged nothing which would show that that decision was plainly and clearly wrong. He is requesting a second opinion.

THE COURT: In this day and time, that is not unusual, is it?

MR. ROGERS: No, it's not, Your Honor. The question of how the Board of Supervisors reached its decision on July 17th and how Mr. Farmer interpreted that --

THE COURT: Let me ask you. Maybe I'm too much up front on this, but you-all asked me to read this and I did. So I got more knowledge than perhaps I should have at this point in time. Suppose for the sake of discussion that the Highway Department changes what they say they are going to do on Route 199. Then what happens to this 50-foot setback?

MR. ROGERS: Your Honor, an applicant can request an opinion of the Zoning Administrator as to the exact location of where that 50-foot green belt is. The applicant has not done that. The applicant has submitted a site plan.

The decision of the Zoning Administrator, if not appealed, would be binding. The Highway Department may then change its decision as to where the line goes, but at that point in time, the applicant should be vested by filing its own site plan pursuant to the opinion of the Zoning Administrator. We cannot tell you what the Highway Department is going to do.

THE COURT: Yes, sir, you can't. And that's what bothers me, Mr. Rogers. You can't tell me what the Highway Department is going to do.

MR. ROGERS: That's correct.

THE COURT: And yet you are in effect restricting this application on the basis of what the Highway Department may do.

MR. ROGERS: No, sir, I'm not. The decision of Mr. Farmer in Condition Number 3 was to interpret what the Board meant by future right-of-way. Mr. Farmer --

THE COURT: Suppose for the sake of discussion that Mr. Davis -- is that who the person is?

MR. DAVIS: Yes, sir.

THE COURT: -- that Mr. Davis just ignores, just says, "I'm not going to follow what Farmer says. I'm going to go out and do what the thing is without any consideration of the future of Route 199." What are you going to do to him?

MR. ROGERS: That would be a violation of the

special use permit, the conditions imposed by the Board, and we would pull any building plans that he had. We would have to come to this Court for an injunction to prevent such construction.

THE COURT: All because you think that the Highway Department is going to build a highway in accordance with the future?

MR. ROGERS: No, sir.

THE COURT: What is the restriction then, Mr. Rogers?

MR. ROGERS: The restriction is what did the Board of Supervisors --

THE COURT: Don't you have to set a line?

MR. ROGERS: Yes, sir.

THE COURT: Which you determine is going to be the future of 199?

MR. ROGERS: The County does.

THE COURT: All right. Well, you represent the County.

MR. ROGERS: Yes, sir.

THE COURT: When I say you, I'm talking about the County.

MR. ROGERS: Yes, sir.

THE COURT: The County has determined that they know right now where 199 is going and therefore they are

going to issue a special permit based on what they think is going to happen in the future.

MR. ROGERS: Yes, sir, that's correct. And the County can --

THE COURT: And you don't think that violates this man's rights?

MR. ROGERS: No, sir, I do not.

THE COURT: Well, suppose the Highway Department changes his mind in the future. Are you-all willing to put a bond up that if he does change his mind in the future, that he will have some bond to go after as far as his rights are concerned?

MR. ROGERS: No, Your Honor, because the decision of the Highway Department is not the decision of the Board of Supervisors.

THE COURT: That's what bothers me. The Board of Supervisors has no control over where 199 is going, absolutely none.

MR. ROGERS: Your Honor, it was stated in the record by Mr. John Horn, transcripts 45, that during the time of the public hearings, during the time of this time line where we were deciding where the final corridor of 199 which was adopted in February of 1990, Mr. John Horn met with Mr. Calvin Davis, and during this time, he staked the location of the right-of-way on the property.

THE COURT: Mr. Rogers, I represented the Highway Department for 20 years in the practice of law securing or trying suits concerning right-of-ways, all of 64 through James City and New Kent County. The Highway Department, until they actually buy a right-of-way, is always subject to changing their mind. And they changed their mind several times on building Route 64. People bought and sold land on a gamble that certain exits were going to come off and certain entrances were going on which didn't happen, although they were shown on the plat. You went to Richmond and saw the plans; they were all there, but they decided they weren't going to do it. So until they actually put in the -- what amounts to in concrete where it's going to be, they can change it right on up.

And that's what concerns me about your use of the word "future" in this particular case. Very candidly, that's the one thing that bothers me because you have no control over it, and yet the people who own land along this thing are going to be -- have to meet this special use permit's word "future".

MR. ROGERS: Your Honor, I think I can address that concerning the future.

THE COURT: All right. You go on and address it.

MR. ROGERS: Where the term "right-of-way" should not be discussed in a vacuum because what we're talking

about is --

THE COURT: One last question. I have to ask these while I think about them. I'm getting old, Mr. Rogers, and I don't think like I used to maybe, so I have to -- do you know of any other ordinance, County ordinance that requires -- that requires this type of thing anywhere in the Commonwealth of Virginia?

MR. ROGERS: Your Honor, I can't tell you one way or the other on that. I just don't know.

THE COURT: Do you know of any other county that requires special use permits to put in the word "future" development of the highways?

MR. ROGERS: Again, Your Honor, I'm not familiar with what happened in other special-use permits, but this is a valid purpose of the special use permit to plan for future highway approval. It's consistent with the purpose and intent.

THE COURT: I don't have any problem with that, Mr. Rogers, absolutely none, but I come back to the fact that the word "future" could well mean after the highway is built.

MR. ROGERS: Yes, sir, and if you'll please let me address the question of future and how that should not be construed in a vacuum. That is what University Square Associates would like us to do. I will tell you that at the

public hearing, University Square Associates and Mr. Alvin Anderson went to great pains to define the word "right-of-way." Referring you to the transcripts, Page 15, 16, 17, 18, 19, 20 and various and sundry references throughout, but never did address what the Board of Supervisors meant when it used the term "future right-of-way." Because future right-of-way was something that the legislative body knew what they meant at the time and that --

THE COURT: Did they?

MR. ROGERS: Yes, sir.

THE COURT: Where does it say in the minutes that they knew what they meant?

MR. ROGERS: Your Honor, what it shows in the records of the Board of Zoning Appeals is that there was a long, drawn out process in which the Board of Supervisors --

THE COURT: My question, Mr. Rogers, where in the minutes of the Board of Supervisors' meeting does it show they discussed this thing and knew what they meant by the word "future"?

MR. ROGERS: Your Honor, it is not in the minutes of the Board of Supervisors --

THE COURT: There is no intent in there at all, is there?

MR. ROGERS: -- unless you review the entirety of the minutes of the Board of Supervisors. I can

show you minutes from the Board of Supervisors from 1989 where they have a highway consultant come in to prepare studies for the future --

THE COURT: I'm not concerned about that, Mr. Rogers. I am concerned about this one particular case.

MR. ROGERS: Yes, sir.

THE COURT: I'm not the least bit concerned -- I'm concerned only in how the word "future" got into this thing, who put it there --

MR. ROGERS: The Planning Commission, Your Honor.

THE COURT: -- and what it meant when it was put there.

MR. ROGERS: Exactly.

THE COURT: What was the legislative intent, if you please, by the Board of Supervisors putting this word into the --

MR. ROGERS: If I may show you on the time line, I think you will understand.

THE COURT: Go ahead. Who on the Board of Supervisors moved that this be put in? I don't see it in here.

MR. ROGERS: Your Honor, it was part of the recommendation of the Planning Commission and of the planning staff that this approval, this SUP be approved as it read at that time. It was amended by the Planning Commission to

MR. ROGERS: Yes, sir

THE COURT: -- has not, has not put into concrete, granite, or whatever that they are going to build this road in accordance with the plans that you mentioned, have they?

MR. ROGERS: They have adopted a final corridor plan which is as far as they can go --

THE COURT: But they do have the right to change their minds.

MR. ROGERS: Yes, sir. But as of this point --

THE COURT: What happens, again, I repeat, what happens to this word "future" if they change their minds and decide that they are not going to build it where they have indicated that they may build it but have changed it somewhere else?

MR. ROGERS: I will give you a two-part answer to that. First, University Square Associates decides to build today. They can request an opinion of the Zoning Administrator as to where the line is today and show a green belt from that line. Mr. Farmer is prepared to give that decision, but that has never been requested.

Second, University Square Associates does not decide to build today and the Highway Department changes the alignment from 199. That would -- at that point, they could

MR. ROGERS: Yes, sir. A declaratory judgment's purpose is to supplement rather than supersede ordinary courses of action. A declaratory judgment's jurisdiction will not as a rule be exercised where other modes of proceedings are available. Count I is available. A new zoning administrative decision as to the, quote, actual controversy as to the precise location of the green belt is available and an appeal to the BZA is available. And as I stated previously --

THE COURT: How about the interpretation of the word "future"? Is that available?

MR. ROGERS: It would have to be the "future right-of-way." I urge the Court to look at the whole picture and not the pieces of the puzzle. The word "future" in and of itself can be confusing. What does "future" mean? But it is not what does "future" mean; it is what did the Board of Supervisors --

THE COURT: I'm glad we can agree on one thing, Mr. Rogers, and that is that the word "future" can be confusing. I'm glad we agree on that.

MR. ROGERS: Yes, sir. And what did the Board of Supervisors mean when it said "from the future right-of-way of 199"? It is clear before the record that the 199 plans were before the Board or it knew very well about them. It is in the comprehensive plan. There is a Board

MR. ROGERS: Your Honor, that is standard VDOT language. It is put on there because VDOT knows when -- whichever plans they have are going to be adopted.

THE COURT: It is like lawyers getting disclaimers. They always got -- get an out, don't worry.

MR. ROGERS: And again, the University Square has their option to submit their site plan and get a -- or, I'm sorry, get a zoning administrator decision where that line currently is.

MR. ANDERSON: Again, Your Honor, we would object to the introduction of this document. It is not a document --

MR. ROGERS: Then I'll withdraw it.

THE COURT: That's right. Well, based on this particular one which was there, can Mr. Farmer show me which one of these four lines that he thinks is the proposed right-of-way of Route 199?

MR. ROGERS: Your Honor, I'm sorry. I'm going to have to object to that because the decision here is not where the green belt is; it is not where the right-of-way line is. No decision has been made. The appeal before the Board of Zoning Appeals was is the site plan inconsistent with Condition Number 3, not where is the line. If they want to know where the line is, there are procedures to do that.

THE COURT: But Mr. Rogers, you have -- I

is additional right-of-way. What the Transportation Board said we'll do is we'll build the grade intersection without the fly-overs, but as the right-of-way, we'll use the right-of-way for the expansion for fly-overs at some point later. So my recollection is --

THE COURT: I noted in your testimony before the Board of Zoning Appeals, you said that there might be probably a difference of maybe one to two feet.

MR. FARMER: That's correct, and I think that what I showed the Board of Zoning Appeals in the case was Design 4 here which is actually the green line. In fact, the right-of-way with the fly-over that VDOT would more than likely acquire would be closer to approximately Design 5 here. So it would be absolutely somewhere in between these two lines.

THE COURT: Well then basically, again, I guess I'm asking for your opinion, Mr. Farmer, and you can refuse to answer me if you want. What you are saying is that there are two possibles that the Highway Department can do, and you don't really know which one they are going to do.

MR. FARMER: Well, sir, I'm not looking at Highway Department design drawings right now. I am looking at some paste-on lines that have been put on here that I didn't put on.

THE COURT: I understand that.

MR. FARMER: I'm trying to answer that

not the demurrer should be granted.

THE COURT: The motion for the demurrer is denied.

MR. ROGERS: Excuse me?

THE COURT: No problem with that.

MR. ROGERS: Excuse me. The demurrer is on behalf of James City County.

THE COURT: It is denied, yes. Your motion is not sustained. It is denied.

MR. ROGERS: The motion to dismiss?

THE COURT: The motion to dismiss, yes, sir.

MR. ROGERS: Yes, sir. And the demurrer?

THE COURT: Also overruled.

MR. ROGERS: Thank you.

THE COURT: That's the only two things we are here for today.

MR. ANDERSON: We are here on our petition.

THE COURT: Have they filed answers to that? He is entitled to file an answer. He is entitled to his demurrer. And if he is overruled on that, which I have done -- gentlemen, you-all can talk about all of the legal ramifications and all of the red herrings and everything that you want to talk about, but when you boil this thing down, it comes down to the very first question I asked you, Mr. Rogers, the interpretation of the word "future." And it seems to me,

and without ruling, I'm just talking now and sometimes I'm the devil's advocate, it seems to me that to put this type of thing into any ordinance or whatever, then the width and breadth of this Commonwealth is going to create more chaos than Carter has got liver pills. I don't see the future, the vagueness.

You set a case for May 15th. When May 15th comes, that is it. That is going to be tried. It is not going to go over to June the 15th or July the 15th and so on down the line. But when is this highway coming into being, this future highway coming into being? A year from now? A week from now? Ten years from now? And if it is ten years, what happens to this property sitting there? Not only this man's property but other property that may be involved on 199, what happens to it? They can't do anything with it, can they?

MR. ROGERS: Would you like me to respond to that question?

THE COURT: They can come back and as you say get the whole thing -- let Mr. Farmer declare whether or not it is going to be 50 feet from the road.

MR. ROGERS: Your Honor, the Court has ruled, and I'm not sure whether you wish me to respond to the question.

THE COURT: No, sir, I don't want you to respond to it at the moment. The word "future." I haven't done a great deal of development work and so forth in my 34

years of practicing law and being on the bench, but I have done some. And I just never, never, never have encountered -- my Lord even when you-all passed B2 zoning which turned out to be the most ridiculous thing that any County has ever done, even when you did that, you didn't have anything in there about the future. At least you had something in there about the present. Mr. Rogers, that is a long time before your time.

MR. ROGERS: Yes, sir.

THE COURT: You had no part of that and neither did Mr. Farmer. But that is one where the County was going to require the landowner to build the highways on its own land and maintain it on its own land without any compensation whatever. But here, the future. Has the landowner got to sit by and wait for the Highway Department to determine where this road is going to be? Not only this road, but any other road. But once you put it in here, you are certainly going to have to use it. I'm going to take a couple minutes' recess and talk to you and Mr. Anderson, Mr. Rogers.

(Whereupon, there was a brief recess and an off-the-record discussion.)

THE COURT: Mr. Rogers, you want to renew your motion that you made earlier?

MR. ROGERS: Yes, sir. I would request that you sustain the demurrer and that you allow the County -- I'm sorry, the Board of Zoning Appeals 21 days to respond to that

petition. In the interim, we can move that you refer the case back to the Planning Commission and the Board of Supervisors.

THE COURT: Mr. Anderson?

MR. ANDERSON: Your Honor, the sustaining of the demurrer as I understand it would be wholly and solely for the purpose of dismissing Bernie Farmer and the County of James City as parties.

THE COURT: That is correct

MR. ANDERSON: And the 21-day period would give Mr. Rogers an opportunity to file two documents, one, a motion to refer the case back to the Board of Supervisors, and two, an answer to the pleading.

THE COURT: That is correct.

MR. ROGERS: Yes, sir

THE COURT: All right. That's what we will do. I will sustain the demurrer as to Mr. Farmer and as to the Board of Supervisors and dismiss them, in effect, from this suit. I will give you 21 days to file a motion to defer this matter back to the Board of Supervisors.

MR. ROGERS: Your Honor, if I may clarify. Do you wish a motion and an answer, or do you wish the motion to consider the motion and then the answer?

THE COURT: Either one that you want to do.

MR. ROGERS: Thank you.

MR. ANDERSON: Your Honor, we would like both

of them within 21 days.

THE COURT: All right. I can understand their anxiety to get the thing done.

MR. ROGERS: No problem. Thank you.

MR. ANDERSON: And, Your Honor, it is also my understanding that the motion to uphold the decision of the BZA and to dismiss the Writ of Certiorari, that motion has been denied?

THE COURT: At this point in time, yes.

MR. ANDERSON: Thank you.

THE COURT: Anything else, gentlemen?

MR. ROGERS: No, sir.

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VIRGINIA: IN THE CIRCUIT COURT FOR THE CITY OF WILLIAMSBURG AND THE COUNTY OF JAMES CITY

UNIVERSITY SQUARE ASSOCIATES, Petitioner, v. BOARD OF ZONING APPEALS OF JAMES CITY COUNTY, VIRGINIA, Respondent.	)	CHANCERY NO. 8830

ANSWER AND GROUNDS TO UPHOLD DECISION

I. Answer

Respondent, the Board of Zoning Appeals of James City County, in response to the Petition for Writ of Certiorari to Review the Decision of the Board of Zoning Appeals ("Petition"), represents as follows:

1. Respondent is without sufficient information at this time to admit or deny the allegations set forth in paragraphs 1 and 11 of the Petition.

2. Respondent generally admits the allegations set forth in paragraphs 2, 3, 4, 5, 6, 9, 10, 12, 13, 14, 15, 19, 22, 24, 25, 26, 29, 39, 41, 42, 43 and 45 of the Petition.

FILED
HELENE S. WARD
CLERK CIRCUIT COURT
1992 FEB 20 PM 4:00
CITY OF WILLIAMSBURG
& COUNTY OF JAMES CITY
BY:_____DEPUTY CLERK

3. Paragraphs 8, 16, 17, 20, 21, 23, 27, 28, 31, 40 and 44G of the Petition contain multiple allegations, some of which are admitted, some denied and some contain statements of law which are neither admitted nor denied. To these paragraphs, Respondent represent as follows:

a. Paragraph 8 is denied to the extent that it alleges specific design plans were submitted or approved which contemplated phase construction of or included fully engineered provision for the 2.5 acre portion of the Williamsburg Crossing Shopping Center, referred to as Site At Issue. The remainder is admitted.

b. Paragraph 16 is admitted to the extent that some but not all preliminary engineering plans contained the quoted language;

c. Paragraph 17 is denied to the extent that the adopted plans for Route 199 are referred to as preliminary or uncertain. In particular, the Virginia Department of Transportation uses certain standard disclaimer language, for internal reasons, on all roadway plans up to and including the point where a contract to build is put out for bid. Under the progressive design process, the plans for Route 199 are as final as any plans for a partially

designed and aligned roadway can be. The remainder of the paragraph is admitted.

d. Paragraph 20 is admitted to the extent that Petitioner received an exception to James City County Code Section 17-40. The remainder is generally denied. In particular, there was no approved plan of development or phased construction plan for out-parcels;

e. Paragraph 21 is admitted to the extent that Petitioner received preliminary approval of the Subdivision Plat. The remainder is generally denied. In particular, there was no approved plan of development or phased construction plan for out-parcels;

f. Paragraph 23 is admitted to the extent that the County and the Virginia Department of Transportation were aware of Design Two, Three, Four and Five. The remainder is generally denied. In particular, neither the County nor the Virginia Department of Transportation had authority to require additional setback at that time. Approval of the subdivision plat was an administrative, ministerial act and no discretion was exercised;

g. Paragraph 27 is admitted to the extent that Petitioner, by its agent, Langley and McDonald, submitted

the Site Plan At Issue. The remainder is generally denied;

h. Paragraph 28 is admitted to the extent that the Zoning Administrator rejected the Site Plan At Issue for the reason stated. The remainder is a statement of law which is neither admitted nor denied;

i. The first and second sentence of Paragraph 31 are admitted. The third sentence of Paragraph 31 is denied;

j. Paragraph 40 is admitted to the extent that the Zoning Administrator told the Board of Zoning Appeals he knew the approximate location of "the future right-of-way, Route 199". The remainder is generally denied. In particular, the Zoning Administrator did not identify any particular design or prepare a scaled drawing. The Zoning Administrator did prepare an acetate overlay, for purpose of display only, which showed the approximate location of the future right-of-way for Route 199; and

k. Paragraph 44G is admitted to the extent that two members of the Board of Zoning Appeals stated they spoke with members of the Planning Commission and Board of Supervisors. The remainder is generally denied.

4. Respondent generally denies the allegations set forth in paragraphs 32, 33, 34, 36, 37, 38 and 44A-F of the Petition.

5. The allegations set forth in Paragraphs 7, 18, 30 and 35 of the Petition are statements of law and are neither admitted nor denied. To the extent these paragraphs are not statements of law they are denied.

Respondent was not named in Count II, Count III or Count IV of the Petition which were dismissed by this Court on January 30, 1992.

II. Grounds to Uphold Decision

In addition to the record, exhibits, transcripts and argument before this Court, Respondent asserts the following facts as grounds to uphold its decision:

1. Beginning in the Spring of 1988, when the James City County Board of Supervisors hired a consultant to report on design alternatives for Route 199, until February 15, 1990, when the Commonwealth Transportation Board adopted Alternative 1-A as the final corridor, the Board of Supervisors, County Staff, Mr. Calvin Davis, the Petitioner and agents of the Petitioner were actively involved in the public review process for the designing and relocating of Route 199.

2. During the time the Route 199 relocation was under consideration, the future right-of-way under Alternative 1-A was staked off on the Petitioner's property by its agents or employees.

3. In December of 1990, William J. Cashman, Jr., of Langley and McDonald (the same firm which prepared the Site Plan At Issue), submitted a traffic analysis for the expansion of Williamsburg Crossing Shopping Center under the applied for, and now approved, special use permit. Mr. Cashman used Alternative 1-A, the approved design, to calculate traffic flow. Figures 4, 8 and 9 of the Traffic Analysis show Alternative 1-A.

4. On June 3, 1991, the Planning Staff of James City County briefed the Board of Supervisors by memorandum on the traffic flow and access to the Williamsburg Crossing Shopping Center, under consideration for expansion by special use permit, using Alternative 1-A.

5. On June 17, 1991, staff memoranda to the Board of Supervisors dated May 20, 1991 and June 17, 1991, recommending approval of Petitioner's special use permit reference Alternative 1-A as the approved alignment and used Alternative 1-A to calculate traffic flow. Attached to the staff memorandum dated June 17, 1991, is a conceptual drawing of Alternative 1-A for Route 199.

6. Mr. Calvin Davis, principal of Petitioner, and Petitioner's agents or employees attended the various Planning Commission and Board of Supervisor's meetings regarding special use permit 49-90 ("SUP 49-90") and received copies of staff memoranda. From April 9, 1991, the date the Planning Commission recommended approval of SUP 49-90, until June 17, 1991, the date the Board of Supervisors approved SUP 49-90, the Petitioner, its agents or employees did not question, object to or comment on Condition Number 3.

7. The Comprehensive Plan of James City County contains a map of proposed road improvements on page 51 and a thoroughfare plan on page 52 which indicates relocation and improvements to Route 199 in the area of Petitioner's property.

8. The Virginia Department of Transportation prepared or had prepared a map which shows a centerline for the future right-of-way of Route 199 from fixed points. Determination of the right-of-way boundaries from the centerline is a simple engineering exercise.

9. Mr. Calvin Davis, principal of Petitioner, stated that Petitioner does not intend to build a 20,000 square foot building on the property at issue. He explained that the reason the site plan was filed was to increase the cost of right-of-way acquisition and motivate the Virginia Department of Transportation to acquire the right-of-way sooner.

10. Mr. Calvin Davis stated that the acquisition cost of the right-of-way would be greatly increased in the event the site plan was approved.

11. Mr. Calvin Davis requested an expedited administrative approval of his subdivision plat for the property at issue in an effort to increase the cost of the anticipated acquisition by the Virginia Department of Transportation.

WHEREFORE, Respondent requests that this Court: (i) affirm the decision of the James City County Board of Zoning Appeals; (ii) dismiss the Writ of Certiorari; (iii) order University Square Associates pay all costs incurred in this action; and (iv) order such other relief as may be deemed necessary and appropriate.

To the best of my knowledge, information and belief I verify that the foregoing Answer and Grounds to Uphold Decision is true and accurate.

James City County
Board of Zoning Appeals

By _____
Claude E. Feigley, Chairman

Commonwealth of Virginia
County/~~City~~ of James City, to wit:

I, Mary Frances Rieger, a Notary Public for the Commonwealth of Virginia, do hereby certify that Claude E. Feigley whose name is signed to the foregoing Answer and Grounds to Uphold Decision has acknowledged the same before me in the jurisdiction aforesaid.

Given under my hand this 12th day of February, 1992.

Mary Frances Rieger
Notary Public

My Commission expires: March 12, 1993

Certificate of Mailing

I certify that on the 20th day of February, 1992, I mailed a true and accurate copy of the foregoing Answer and Grounds to Uphold Decision to Alvin P. Anderson, Attorney for University Square Associates, P.O. Drawer Q, Williamsburg, Virginia 23187.

Leo P. Rogers
Leo P. Rogers

Leo P. Rogers
Assistant County Attorney
P.O. Box JC
Williamsburg, Virginia 23187
(804) 253-6612

VIRGINIA: IN THE CIRCUIT COURT FOR THE CITY OF WILLIAMSBURG AND COUNTY OF JAMES CITY

UNIVERSITY SQUARE ASSOCIATES,

Plaintiff & Petitioner,

v. CHANCERY NO. 8830

BOARD OF ZONING APPEALS OF JAMES CITY COUNTY, VIRGINIA,

Respondent,

and

BERNARD M. FARMER, JR., Zoning Administrator

and

THE COUNTY OF JAMES CITY, VIRGINIA,

Defendants.

ORDER

THIS MATTER came before the Court on January 30, 1992, on the Motion to Uphold Decision of the Board of Zoning Appeals and to Dismiss Writ of Certiorari, filed on behalf of the James City County Board of Zoning Appeals ("Respondent") and Demurrer and Plea in Bar filed on behalf of Bernard M. Farmer, Jr., Zoning Administrator, ("Mr. Farmer"), and the County of James City, Virginia ("County"), (collectively "Defendants"), in response to the Petition for Writ of Certiorari to Review the Decision of the Board of Zoning Appeals; Bill of Complaint For A Declaratory Judgment; and Bill of Complaint For a Temporary, Permanent and Mandatory Injunctions ("Petition")

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& DAVIS P.C.
ATTORNEYS AT LAW
SUITE 300
SUITE 300
SUITE 300

filed by University Square Associates, and this Court heard argument from each of the parties.

NOW, THEREFORE, it is hereby ADJUDGED, ORDERED AND DECREED that:

1. Defendants' Demurrer and Plea in Bar is sustained to the extent that the actions against Mr. Farmer and the County stated in Count II, Count III and Count IV of the Petition are dismissed, to which ruling Counsel for the Plaintiff excepted.

2. Respondent's Motion to uphold the Decision of the Board of Zoning Appeals and to Dismiss Writ of Certiorari is denied to which ruling Counsel for the Respondent excepted; and

3. Respondent is hereby granted a twenty-one day period, beginning January 30, 1992, in which to file an answer in response to the Petition and such other motion as may be appropriate requesting a clarification of legislative intent from the James City County Board of Supervisors, to which ruling Counsel for the Petitioner excepted.

This matter is continued generally. The Clerk of the court shall mail a certified copy of this Order to the Counsel of record.

ENTERED this 27 day of February, 1992.

Russell M. Carneal
JUDGE Designat—

A COPY TESTE:
HELENE S. WARD, CLERK
BY _____
Deputy Clerk

Seen:

_____, for _____ p.q.
Alyn P. Anderson, Esquire
Attorney for Petitioner and Plaintiff
P.O. Drawer Q
Williamsburg, VA 23187

_____ p.d.
Leo P. Rogers, Esquire
Attorney for Respondent and Defendants
P.O. Box JC
Williamsburg, VA 23187

VIRGINIA: IN THE CIRCUIT COURT FOR THE CITY OF WILLIAMSBURG AND COUNTY OF JAMES CITY

UNIVERSITY SQUARE ASSOCIATES,

Plaintiff & Petitioner,

v. CHANCERY NO. 8830

BOARD OF ZONING APPEALS OF JAMES CITY COUNTY, VIRGINIA,

Respondent

and

BERNARD M. FARMER, JR., Zoning Administrator

and

JAMES CITY COUNTY, VIRGINIA,

Defendants.

MOTION TO STRIKE GROUNDS TO UPHOLD DECISION

Comes now University Square Associates, Plaintiff and Petitioner, by Counsel, ("University Square Associates"), and moves to strike the Grounds To Uphold Decision filed herein by Board of Zoning Appeals of James City County, Virginia, Respondent, ("BZA") and for the basis of this motion states as follows:

1. On November 19, 1991, University Square Associates, filed herein its Petition For Writ Of Certiorari To Review The Decision Of The Board Of Zoning Appeals; Bill Of Complaint For A Declaratory Judgment; and Bill Of Complaint For A Temporary, Permanent And Mandatory Injunctions.

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VIS, P.C.
NEYS AT LAW
ICE DRAWER O
G, VIRGINIA 23187

2. On November 22, 1991, the Circuit Court for the City of Williamsburg and County of James City ("the Court") entered a Writ Of Certiorari To Review The Decision Of The Board Of Zoning Appeals.

3. On December 19, 1991, Bernard M. Farmer, Jr., Zoning Administrator, and the County of James City, Virginia, each, by Counsel, filed herein their Demurrer and Plea In Bar.

4. On December 19, 1991, the BZA filed its Motion To Uphold Decision of the Board of Zoning Appeals and To Dismiss The Writ Of Certiorari.

5. On December 20, 1991, the BZA filed herein a certified or sworn copy of the papers acted upon by it and a verified statement setting forth such other facts as may have been pertinent and material to show the grounds of the decision appealed from all as required by the Writ Of Certiorari To Review The Decision Of The Board Of Zoning Appeals.

6. On January 30, 1992, the Court heard argument on the aforesaid Demurrer and Plea In Bar, as well as the Motion To Uphold Decision Of The Board Of Zoning Appeals and to Dismiss the Writ Of Certiorari.

7. On February 27, 1992, the Court entered an Order memorializing its rulings of January 30, 1992, sustaining the Demurrer and Plea In Bar to the extent that the actions against Bernard M. Farmer, Jr., Zoning Administrator and the County of James City, Virginia, stated in Counts II, III and IV of the Petition were dismissed to which ruling Counsel for

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& DAVIS, P.C.
ATTORNEYS AT LAW
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University Square Associates excepted. In addition, the Court by said Order denied the Motion To Uphold Decision Of The Board Of Zoning Appeals and to Dismiss the Writ Of Certiorari to which ruling Counsel for the BZA excepted.

8. The Court by said order further granted the BZA a 21 day period beginning January 30, 1992 in which to file an answer in response to the Petition and such other motion as may be appropriate requesting a clarification of legislative intent from the James City County Board of Supervisors.

9. On February 20, 1992, the BZA filed herein its Answer And Grounds to Uphold Decision.

10. The BZA has elected not to file any motion requesting a clarification of legislative intent from the James City County Board of Supervisors.

11. The aforesaid Answer filed herein is responsive to the Petition; however, the aforesaid Grounds To Uphold Decision contains allegations of fact which were <u>not</u> in evidence before the BZA; <u>not</u> considered by the BZA; <u>not</u> contained in the certified or sworn copy of the papers acted upon by the BZA or the verified statement setting forth such other facts as may have been pertinent and material to show the grounds of the decision appealed from all of which were filed by the BZA pursuant to the Writ of Certiorari.

12. The Grounds To Uphold Decision attempts to introduce new allegations of fact which were not in evidence before the BZA, not considered by the BZA and, accordingly, not part of the decision appealed from.

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P.C.
Drawer O
Virginia 23187

12. An appeal of the BZA decision pursuant to Section 15.1-497 of the Code of Virginia, 1950, as amended, is not de novo.

Wherefore, University Square Associates, by Counsel, moves to strike the Grounds To Uphold Decision and moves this Court to render its decision based upon the record transmitted on appeal and such argument as the Court may deem appropriate.

UNIVERSITY SQUARE ASSOCIATES

By: _____
Of Counsel

ANDERSON, FRANCK & DAVIS, P.C.
Alvin P. Anderson, Esquire
P.O. Drawer Q
Williamsburg, VA 23187
(804) 229-7322

CERTIFICATE OF MAILING

I certify that on April 10, 1992, a copy of the foregoing Motion To Strike Grounds To Uphold Decision was mailed, postage prepaid to Leo P. Rogers, Esquire, James City County, P.O. Box JC, Williamsburg, Virginia 23187.

_____
Alvin P. Anderson

COPY

V I R G I N I A:
IN THE CIRCUIT COURT FOR THE CITY OF WILLIAMSBURG
AND COUNTY OF JAMES CITY

UNIVERSITY SQUARE ASSOCIATES,

Plaintiff and Petitioner

vs. CHANCERY NO. 8830

BOARD OF ZONING APPEALS OF JAMES CITY COUNTY, VIRGINIA,

Respondent,

and

BERNARD M. FARMER, JR., ZONING ADMINISTRATOR, and JAMES CITY COUNTY, VIRGINIA,

Defendants.

BEFORE: The Honorable Russell M. Carneal, Judge
DATE: Thursday, May 21, 1992

APPEARANCES:

ALVIN ANDERSON, ESQ.
Anderson, Franck and Davis, P.C.
1200 Old Colony Road
Williamsburg, Virginia 23185
Counsel on Behalf of the Plaintiff

LEO P. ROGERS, ESQ.
Assistant County Attorney
James City County
101-C Mounts Bay Road
Williamsburg, Virginia 23185
Counsel on Behalf of James City County Virginia

Reported by: Jan M. Baldensperger, RPR

- - -

what you're talking about.

MR. ANDERSON: Yes, sir. Grounds to Uphold the Decision is what they've labeled it. Because these grounds include things that were either, one, not in existence when the zoning administrator made his decision or occurred after the zoning administrator made his decision. And in any event, I challenge Mr. Rogers, I challenge Mr. Farmer to show me where in this transcript these items that are entitled Grounds to Uphold the Decision, where that was ever even considered by the Board of Zoning Appeals.

THE COURT: Just so I'll know exactly where you're talking about, Mr. Anderson, the transcript you're holding in your hand is a transcript of the hearing before the Board of Zoning Appeals?

MR. ANDERSON: Yes, sir.

THE COURT: Not the hearing that we had in court?

MR. ANDERSON: That's right. That's correct.

THE COURT: All right, I want to be sure.

MR. ANDERSON: As the Court knows, the --

THE COURT: It's not de novo. I understand.

MR. ANDERSON: It's not de novo, and I've got a little brief here that tells you that it's not de novo. I read to the Court earlier the testimony of Mr. Farmer before the BZA saying that the line was fixed, wasn't going to vary

more than one or two feet. The Virginia Department of Transportation has now adopted another line since our last hearing. This is April 30th adoption --

MR. ROGERS: Your Honor, this is not -- I mean, Mr. Anderson is going to maintain that we're not allowed to supplement the record, but he's supplementing the record --

THE COURT: What's sauce for the goose is sauce for the gander, Mr. Rogers.

MR. ANDERSON: My only point is they've changed it again. If they've changed it again, it just underscores one more time that measuring from a moving line does not accomplish a definite setback line. All we would like for the Court to do today is to say, "Mr. Rogers, it's going to be a de novo hearing -- it's not going to be a de novo hearing. It's a record appeal. The Court is not going to allow things to come into evidence that were either not in existence or not considered by the BZA, and the Court is going to render a decision on a date certain at some point in the future." And maybe that will give the Department of Transportation some judicial encouragement to go ahead and fish or cut bait. And that's why we're here.

THE COURT: All right, Mr. Rogers.

MR. ROGERS: For the record, my name is Leo Rogers. I'm an assistant county attorney with James City County. And, Your Honor, to address the last point first, we

if you please, after the -- this matter came -- the pleadings in this matter were filed.

MR. ROGERS: Yes, sir, Your Honor. First I would like to say that we are allowed to plead additional facts, but no, we have not done so. I believe a challenge was issued, and I am fully prepared to respond to references within the BZA record, within letters sent from Mr. Davis to the BZA --

THE COURT: Let's take for a minute Mr. Anderson's allegation on page 7.

MR. ROGERS: Sure.

THE COURT: The only one that he really raised in his statement to me. You say in Paragraph 7 on page 7 that "the comprehensive plan of James City County contains a map of proposed road improvements on page 51 and a thoroughfare plan on page 52 which indicates relocation and improvements to Route 199 in the area of petitioner's property."

Now, Mr. Anderson alleges that that comprehensive plan was not adopted until several days after the -- Mr. Farmer appeared before the Board of Zoning Appeals and this matter was heard by the Board of Zoning Appeals. Is that true?

MR. ROGERS: The adoption was after -- was after the Board of Supervisors acting, but it was before the Board of Zoning Appeals acted and before the hearing.

MR. ANDERSON: Your Honor, what I said was

that the comprehensive plan that Mr. Rogers references was adopted after Mr. Farmer made his decision. And his decision, of course, was the subject of the appeal to the Board of Zoning Appeals. And the question to the Board of Zoning Appeals was did he make a correct decision as of the date he made the decision.

THE COURT: But was the board -- had the comprehensive plan been adopted at the time --

MR. ROGERS: Yes, sir.

THE COURT: -- that he appeared before the Board of Zoning Appeals?

MR. ANDERSON: Yes, but there was no reference to the comprehensive plan during the text of the hearing.

THE COURT: I understand that. But it had been adopted by them?

MR. ANDERSON: It had been adopted by them, but not as of the time Mr. Farmer made his decision.

THE COURT: All right, I follow you.

MR. ROGERS: Yes, sir. But you have to understand the comprehensive plan was an 18-month process. It was something that Mr. Farmer was heavily involved in, the Planning Commission, and the Board of Supervisors, which are the entities which adopted the special use permit. The whole crux of this case is what does the phrase "the future right of

THE COURT: Well, when you cut it all away, Mr. Anderson, I have not ruled as yet on whether Mr. Farmer's interpretation of his 199 location in reference to the use permit and so forth and which was adopted by the Board of Zoning Appeals is in fact a valid -- valid matter that they should have heard. Is that correct?

MR. ANDERSON: That's correct. Judge, if we could have two minutes with you off the record.

THE COURT: You can have as long with me off the record as you want.

MR. ROGERS: Your Honor, I would like to do that, but I'd like to finish my defense.

MR. ANDERSON: Sure.

THE COURT: Sure. Certainly, Mr. Rogers.

MR. ROGERS: I'd like to get back now. I had discussed where the Paragraph 7 appeared. It does appear in two places in the petition, Paragraph 31 and 37; 37 is the one I read. It also was in the BZA transcript from Mr. Alvin Anderson at page 60. It was in the transcripts of the record before you, again by Mr. Anderson, at page 59. And I also made reference to that and again offered it into evidence at the last hearing. That's at page 67 of the Circuit Court transcript.

THE COURT: I don't think there is any doubt that Mr. Farmer would have had knowledge of this comprehensive

plan before it was even presented to the Board of Supervisors, much alone adopted by it.

MR. ANDERSON: I agree with that. I'm just saying that you could not have made a decision on August the 15th based on that comprehensive plan if the comprehensive plan had not yet been adopted by the Board of Supervisors.

THE COURT: I follow you. I follow you.

MR. ROGERS: I, of course, would dispute that. If the Board of Supervisors for an 18-month process is going to adopt a comprehensive plan and they say hey, here's where the new right of way is going to be. It's going to be Alternative 1A, and here's how we're going to designate it --

THE COURT: Mr. Rogers, just as an aside. I don't know of any legislative body that can be depended upon to do anything certain in the future. If it is, then please let me know what it is. Whether it be the Board of Supervisors or whoever is going to do a thing certain in the future. The only thing that I know of in this life that are certain are death and taxes. Both of those will happen to you. But beyond that, I don't know of anything that can say a legislative body is going to do so and so.

MR. ROGERS: Your Honor, this is what Mr. Anderson --

THE COURT: That's a new one on me.

MR. ROGERS: Mr. Anderson is contending this

THE COURT: No, sir. Mr. Anderson concludes. But go ahead, I'll stretch -- Mr. Anderson, he's the moving party, and unless they changed the rules on me since yesterday, the moving party concludes the case, Mr. Rogers.

MR. ANDERSON: For purposes of the record, we would object.

MR. ROGERS: If you have any questions, I'd be happy to answer them.

THE COURT: I don't have any questions, Mr. Rogers.

Gentlemen, of course, trying to remember exactly what I said five months ago roughly, four months ago, is kind of difficult. I can hardly remember what I said this morning or yesterday. But it seems to me that my -- what I intended at the end of this hearing was to get Mr. Rogers, number one, after dismissing the County and Mr. Farmer as parties, to file an answer, which he has done.

Now, this business about the new stuff to uphold the decision is something relatively new to me, and it goes beyond that which I asked for. I asked for two things, as I remember. And, of course, you-all have got the transcript to refute what I say if you care to read it. Number one was an answer that you filed. And number two was the legislative intent of the Board of Supervisors in adopting this plan that pertains to the property. I don't recall asking for anything

else. Maybe I did. But I don't remember. Therefore, what you have presented to me is something I didn't ask for.

I still would like to know -- and I don't see anything in here -- I'd like to know what the legislative intent was of the Board of Supervisors in adopting such a plan that says that they're going to rely on something that's going to be built in the future. That's all I wanted, Mr. Rogers, but I didn't get that. Still haven't got it.

I don't know, I haven't been to a Board of Supervisors meeting recently, but don't they take down everything that's said at the Board of Supervisors meeting? They've got a statute in Virginia, you know, when you apply to have a bill drawn you also supply the reason you want it drawn. That's all filed up there so when it comes back later on, if it passes, then you can indicate what the intent was in asking for the bill, and all this kind of mess. I shouldn't say "mess." All this kind of business. Does the same thing happen at the Board of Supervisors meeting? I'm asking you a question now.

MR. ROGERS: Okay, I wasn't sure if you wanted me to address that. What the Board of Supervisors does is they take action minutes. Not detailed minutes but action minutes --

THE COURT: Well, where are the minutes? That's what I want.

MR. ROGERS: I did present a copy of the

action minutes in this case. I think there is some misunderstanding --

THE COURT: I want a copy of the action minutes of the Board of Supervisors when they voted whatever they voted, three to two, five to zero, or whatever, when they finally decided, gentlemen, this is a matter -- and lady -- this is a matter that needs to be addressed, and we're going to pass an ordinance addressing it. And the reason we're going to pass it is a discussion that has just come up, and we're going to vote on it. Isn't that the way it's done, Mr. Rogers?

MR. ROGERS: Yes, sir, it is.

THE COURT: All right. Well, that's what I want.

MR. ROGERS: I believe I presented you with a copy at the last hearing, but I'd be certainly happy to present you with another copy.

THE COURT: Well, if you presented it to me, I don't remember it. I'm not saying you didn't.

MR. ROGERS: I'll give you the Planning Commission minutes, which were done about four or five months earlier, and the -- I'm sorry -- the Board of Supervisors minutes, a copy of those I will send to you and a copy to Mr. Anderson, also.

THE COURT: Well, let me say this, Mr. Rogers. If I permit you to file this Grounds to Uphold the

Decision based on the cases and statute that you've cited that the Court may listen to further testimony, certainly I'm going to permit Mr. Anderson to file whatever he wants to file showing that this highway has been switched 30 feet from where it was, which certainly takes away some of the sting of the argument that when the highway department makes up its mind it's permanent. I don't know, I think maybe the whole thing ought to be considered.

MR. ANDERSON: Judge, if we could go off the record.

THE COURT: Certainly.

(Discussion had off the record.)

THE COURT: Go ahead. Do you want to say something on the record?

MR. ROGERS: No, sir.

THE COURT: I thought you asked to go back on the record.

To get things started, gentlemen, I'm going to deny your motion for the -- to file the Grounds to Uphold the Decision. As far as your Grounds for Defense is concerned, it's filed. I note your exception to my ruling.

MR. ANDERSON: That sustains our motion.

THE COURT: Sustains your motion, yes, sir.

MR. ROGERS: And you've noted the BZA exception to the ruling?

THE COURT: Yes, sir. Now, what else do you want?

MR. ANDERSON: Can we talk?

THE COURT: Yes, sir.

(Discussion had off the record.)

THE COURT: All right. Gentlemen, we will set this matter for a hearing at 2:00 p.m. on June the 3rd, 1992, in chambers of the Judge of the Circuit Court of York County in Yorktown.

In the meantime, Mr. Rogers, you're going to give me a copy of minutes of the meeting of the Board of Supervisors that adopted the plan which we've been discussing.

MR. ROGERS: And the Planning Commission, also.

THE COURT: Yes. Is there anything you want to submit, Mr. Anderson?

MR. ANDERSON: And the Court is incorporating as part of this ruling today not only sustaining our motion to strike Grounds to Uphold the Decision, but also ruling that the report as supplemented by these two minutes will be sufficient for the Court to make a decision in this case?

THE COURT: That is correct. That is correct. All right.

MR. ROGERS: Thank you, sir.

MR. ANDERSON: Thank you, sir.

VIRGINIA: IN THE CIRCUIT COURT FOR THE CITY OF WILLIAMSBURG AND COUNTY OF JAMES CITY

UNIVERSITY SQUARE ASSOCIATES,

Plaintiff & Petitioner,

v. Chancery No. 8830

BOARD OF ZONING APPEALS OF JAMES CITY COUNTY, VIRGINIA,

Respondent,

and

BERNARD M. FARMER, JR.,
Zoning Administrator

and

JAMES CITY COUNTY, VIRGINIA,

Defendants.

ORDER

This matter came before the Court on May 21, 1992 upon the Respondent's Answer And Grounds To Uphold Decision, the Petitioner's Motion To Strike Grounds To Uphold Decision and was argued by Counsel.

Upon consideration of which, the Court doth Adjudge, Order and Decree that the Petitioner's Motion To Strike Grounds To Uphold Decision is sustained to which ruling Counsel for the Respondent excepted. The Court having made an independent evaluation of the record and determined that the evidence is sufficiently complete to decide the case and there are no material facts requisite for a decision which remain genuinely in dispute, the Court doth further Adjudge, Order and Decree that no further testimony is necessary for the

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BG, VIRGINIA 20187

proper disposition of the matter.

This matter is hereby set for final oral argument by Counsel for the parties on June 3, 1992 at 2:00 P.M. before this Court sitting at Yorktown, Virginia.

The Clerk is directed to furnish certified copies of this Order to Counsel of record.

ENTER THIS May 27, 1992

Russell M. Carnes
Judge Designate

I ask this:

Alvin P. Anderson p.q.
ANDERSON, FRANCK & DAVIS, P.C.
Alvin P. Anderson, Esquire
P.O. Drawer Q
Williamsburg, VA 23187

A COPY TESTE:
HELENE S. WARD, CLERK
BY Jewell Carl
Deputy Clerk

Seen:

Leo P. Rogers p.d.
Board of Zoning Appeals of James City County, Virginia
Leo P. Rogers, Esquire
P.O. Box JC
Williamsburg, VA 23187

PRINTER'S PAGE

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V I R G I N I A:
IN THE CIRCUIT COURT FOR THE CITY OF WILLIAMSBURG

UNIVERSITY SQUARE ASSOCIATES,
Plaintiff,

vs.

BOARD OF ZONING APPEALS,
Defendant.

BEFORE: The Honorable Russell M. Carneal, Judge
DATE: June 4, 1992

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APPEARANCES:

ALVIN ANDERSON, ESQ.
Anderson, Franck & Davis
1200 Old Colony Lane
Williamburg, Virginia 23185
Attorney for the Plaintiff

LEO ROGERS, ESQ.
Assistant County Attorney
101 Mounts Bay Road
Williamsburg, Virginia 23185
Attorney for the Board of Zoning Appeals

Reported by: Brenda L. Lewis

BZA's decision is contrary to Section 15.1-458 and the decision appealed from wholly defeats the purpose of that statute's provision.

At the hearing in January, I filed at the conclusion of the hearing a brief which sets forth the argument that I have made from a factual perspective here today. Mr. Rogers has a copy of that brief that I gave to him in January. Unfortunately, this brief is residing now in Richmond, but we would like to refile this brief with the Court today.

THE COURT: I will mark that Plaintiff's 1 as of this date.

(Whereupon, Plaintiff's Exhibit Number 1 was marked and introduced into evidence.)

THE COURT: All right. Mr. Rogers?

MR. ROGERS: Good afternoon. I am Leo Rogers, the Assistant County Attorney for James City County. I am representing the Board of Zoning Appeals in this matter. I would like to start with an issue that was addressed at the last hearing, was that we are not going to be taking additional evidence. And as such, if I didn't object to it at the time, I would object right now, that introduced at the last hearing was a map or a presentation or maybe some creative art work which

does not have any justification, foundation, authentication. It is irrelevant. And I have a letter from the Department of Transportation which indicates that the foundation --

THE COURT: Excuse me. I didn't --

MR. ANDERSON: You ruled that it was inadmissible and it was not admitted into evidence.

THE COURT: I don't think I -- I didn't remember that being admitted into evidence, Mr. Rogers.

MR. ROGERS: It was presented to this Court, and I would like to make sure that if this Court is basing any decision on the fact that that right-of-way which the Department of Transportation has approved is not final, then I would like to have an opportunity --

THE COURT: Mr. Rogers, if you hadn't brought it to my attention, I wouldn't even have known about it.

MR. ROGERS: Thank you, sir. Anyway, we would like an opportunity to contradict that in the event that comes into play.

THE COURT: Let me say that I will put it out of my mind as much as is humanly possible to put it out of my mind.

MR. ROGERS: Thank you, sir. I would like to sort of cut through some of the verbiage that we have heard because a lot of it is in dispute. Taking a look at the Answer that was presented before the Court, we conflict the fact that

what the standard of review is. Before the Board of Zoning Appeals, the Zoning Administrator's decision is entitled to great weight. In other words, as Mr. Farmer stated, was his decision to reject a site plan which showed setbacks from an existing right-of-way, rather than the Board-required future right-of-way, was that unreasonable. And before this Court, the issue you should be deciding that the Board of Zoning Appeals' decision is presumed to be correct. The appealing party has the burden. They must show that erroneous principles of law were used. Or, the second test, and it is a two-part test, that the decision is both plainly and clearly wrong and violative of the purposes intended of zoning.

I would like to briefly review the petition and those items on Paragraph 44 which is alleged to be the grounds for relief. 44A is; "The BZA attempted to legislate," and we heard that again here today, "or amend existing law." The BZA was not attempting to legislate. It did not change the terms of the condition. It merely sustained the Zoning Administrator's decision. The BZA decided the Zoning Administrator's decision was correct. If the BZA decided to rewrite the decision as was suggested by counsel for University Square, then it would have legislated.

Mr. Feigley on Page 46 and 47 said, "That is what I am saying. Why wouldn't it go back to the governing body and ask them for an amendment?" Mr. Anderson, "We are not

intent was when they placed that condition on the special use permit. That intent is very accurately being reflected by the interpretation of Mr. Farmer in this case. They knew what "future" meant. They knew the history of where we were in terms of the knowledge and our knowledge of where the right-of-way was going to be, and their intent is exactly as being interpreted by Mr. Farmer at this point."

Your Honor, at the last hearing, you requested that we get the Planning Commission minutes and Board of Supervisors' minutes and --

THE COURT: Yeah, I read them.

MR. ROGERS: You did read through them.

THE COURT: You sent them to me and I read them.

MR. ROGERS: In particular, I should point out that there were specific references to the traffic issues regarding the Route 199 and Route 5 intersection. Mr. Frank Hall, who at the time was the local engineer for VDOT, talked about the 1997 completion date for the Route 199-Route 5 realignment. And I should point out again that it was again before the Planning Commission, and Mr. George Wright who is the President of the Historic Route 5 talked about the effect of the construction of the relocation of Route 199 on Area 10 of the conceptual plan. That is essentially what we are talking about today. Both of those

went on to say, "But has it been determined by a metes and bounds description going from a known point or a surveyed point or has it been determined by coordinates in relationship to coordinates, the answer is no, not yet." That doesn't happen until they get to the design phase. And since that is the final segment of 199 to be designed, when they reach the design phase, then they will determine it with absolute accuracy."

Mrs. James, one of the members of the Board of Zoning Appeals who is an educator in this community said it and said it best, and she said something to the effect that one must be able to rely on government for certainty. And in this case, it is total uncertainty. Thank you.

THE COURT: Are you-all finished?

MR. ANDERSON: Yes, sir.

THE COURT: Well, let me raise a couple of questions and maybe make a couple of statements. I have listened to you-all for about an hour. Now you will listen to me for a little while.

As I understand it, this is an ordinance. While we are here primarily on this ordinance as it affects the property of University Square Associates, and while we are here primarily talking about Route 199, this is an ordinance, is it not, a general ordinance that applies to all future right-of-ways that may come into the County. Is that right or wrong?

MR. ROGERS: That is not correct, Your Honor. It is a resolution of the Board of Supervisors which is placed on a particular property. So it is not a general ordinance or a law of the County. It is a resolution of the special use permit which allows a specialty --

THE COURT: Well, let me raise one question.

MR. ROGERS: Sure.

THE COURT: To both of you. Do we agree that the Highway Department has a right to change its mind about where this right-of-way is going?

MR. ANDERSON: Yes, sir.

THE COURT: I know you do. Mr. Rogers?

MR. ROGERS: Your Honor, I would really like to tell you --

THE COURT: Answer my question, Mr. Rogers. Do we agree or don't we agree?

MR. ROGERS: No, sir. No, sir, they cannot change what the Board of Supervisors' intent was when they --

THE COURT: I don't care what the intent of the Board of Supervisors was. I am talking about the Highway Department itself, Mr. Rogers. Don't they have the right to meet tomorrow morning, if they so desire, and change the entire design, route and everything out there of 199 without any interference from the Board of Supervisors, any input from the Board of Supervisors or whatever?

MR. ROGERS: No, sir, I don't believe so. I believe --

THE COURT: You don't believe the Highway Commission has the right -- you don't believe the Commission of Highways has the right to do that?

MR. ROGERS: I believe they need to go through a process in order to do that.

THE COURT: What process?

MR. ROGERS: They have gone through the process of public hearings to design the original Route 199. I believe, and I don't know for a fact, that they'd have to go through the same --

THE COURT: You-all are going to make it easy on me. I can see that. You didn't make any comment on the fact that while the Zoning Commission -- Zoning Board is sitting there to interpret what Mr. Farmer is applying to them, that they consulted with outsiders to get their views on it.

MR. ROGERS: Yes, sir, I did. I commented at the last hearing. I didn't feel that it was necessary to repeat myself. I believe that you correctly concluded that was not legally improper, but to use your own words, "It is not quite kosher." I think that the Board of Zoning Appeals, and as I presented the last time, had the ability to subpoena and ability to do an independent investigation, reviewing the records. They could have done the exact same review that

Mr. Farmer did. If there is an action that ought to be taken in this case, it would then be to refer it back. I believe the Board of Zoning Appeals acted properly.

THE COURT: All right. You want my decision?

MR. ANDERSON: Yes, sir.

THE COURT: All right. I hold that the use of the term "future right-of-way" is vague and unenforceable.

MR. ANDERSON: Do you reverse the decision?

THE COURT: I reverse the decision of the Board of Zoning Appeals. I believe they have misinterpreted the use of the term "future" because I am convinced that the Highway Department can change its plans and specifications even once they are there until they have actually acquired the right-of-way. And even then, I think they can change it if they so desire. But the use of the word "future" seems to me to be completely vague and interpretation thereof would come awful hard. Anything else you want me to rule on?

MR. ROGERS: Yes, sir. We would request a stay of the effectiveness of this decision for 30 days or until a final order is received.

THE COURT: And what is the purpose of that?

MR. ROGERS: We don't wish to have a site plan on this property approved until there is a final order. If the Applicant comes back in with the same site plan, we would like to have an opportunity to appeal the decision before

it becomes final.

THE COURT: Oh, yeah. You certainly will have that opportunity.

MR. ROGERS: So we would like to have an effective date of the order when this order would become final.

THE COURT: Well, it will become final 30 days after I enter it unless you appeal to the Supreme Court of Appeals.

MR. ANDERSON: Twenty-one days.

THE COURT: Twenty-one days. I'm sorry.

MR. ROGERS: What we are requesting is a stay in the interim.

THE COURT: I don't mind giving you a stay, Mr. Rogers. But in the meantime, this property is sitting out there. It is up in the air as to what the owner can do with it and can't do with it as pointed out I think by several members of the Board of Zoning Appeals. But I think he ought to be finally -- somewhere along the line, he ought to be told that he can or he can't. Either fish or cut bait, one of the two. This thing has been hanging around it seems to me for a considerable period of time. But I certainly will consider giving you a stay, but I don't want one that is going to delay it ad infinitum one way or the other of what they can do out there.

MR. ROGERS: My request is only that is a

stay until the order becomes final or there is a final decision on appeal.

THE COURT: I will grant you a right until the order becomes final, assuming Mr. Anderson is going to get me an order in the next couple of days.

MR. ANDERSON: Yes, sir, Your Honor.

MR. ROGERS: All right. I would like to introduce into the Court record the minutes of the Board of Supervisors -- not the minutes, the memos that were presented by Staff of public document and they are certified by the --

THE COURT: Mr. Rogers, you can put them in there. I don't care about that. You can put them in the record if you want to. My decision isn't based on what Staff thinks. My decision isn't based on what the Board of Zoning Appeals thinks. My decision is based on what I think after hearing all of the evidence in this case as to the use of the words "future right-of-way." And that's -- you can argue one way. Mr. Anderson can certainly argue another. This gentleman can argue another. He can argue another. Ms. Lewis can argue another. It boils down to the fact that the buck temporarily stops here. And in my judgment, the use of the word "future" is vague when you are talking about developing property 50-feet from a future right-of-way. What is a future right-of-way? Does a landowner have to sit there for 40 years and determine whether or not the Highway Department is going to actually

build this thing or not build this thing. In the meantime, his property is sitting there. He can't do a thing with it. It seems to me that he ought to have the right to know one way or the other whether he can't or he can use this property. And he ought to -- it seems to me again that he ought to have that knowledge within a reasonable period of time. The whole thing boils down to that.

Now, what Staff thinks, what the Attorney General thinks, I can care less about it. This is what I think based on what I believe the use of the word "future" is going to lead to. When you start talking about future, because Lord knows this flyover, beg your pardon, bridge across the railroad in the City of Williamsburg certainly showed you that the Highway Department doesn't control everything. The City of Williamsburg, it is true, has a little different approach to highways than the County does. I'm aware of that. But that flyover, it seems to me, the City goes out and spends $750,000, gets the Highway Department to design it -- as a matter of fact, I was informed that the contract was supposed to be let during the month of June. They ain't going to build any flyover. Politics. The same way with highways. I have seen more highways moved because of politics than Carter has got liver pills. So enough about future.

MR. ROGERS: Yes, sir. Then I would present these to you for introduction in the record.

THE COURT: All right, sir. They will go into the record as Defendant's Exhibits 1 and 2 as of today.

(Whereupon, Defendant's Exhibit Numbers 1 and 2 were marked and introduced into evidence.)

(The hearing was concluded.)

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VIRGINIA: IN THE CIRCUIT COURT FOR THE CITY OF WILLIAMSBURG AND COUNTY OF JAMES CITY

UNIVERSITY SQUARE ASSOCIATES,
a Virginia General Partnership,

Plaintiff,

v. Chancery No. 8830

BOARD OF ZONING APPEALS OF JAMES CITY COUNTY, VIRGINIA,

Respondent,

and

BERNARD M. FARMER, JR., Zoning Administrator

and

JAMES CITY COUNTY, VIRGINIA, a Virginia Municipal Corporation,

Defendants.

FINAL ORDER

This matter came before the Court on June 4, 1992 upon the Petition For Writ Of Certiorari To Review The Decision Of The Board Of Zoning Appeals; the Writ of Certiorari To Review The Decision Of The Board of Zoning Appeals; the certified or sworn copy of the papers acted upon by the Board of Zoning Appeals; the verified statement setting forth such other facts as may have been pertinent and material to show the grounds of the decision appealed from, all as required by the Writ of Certiorari to Review the Decision Of The Board of Zoning Appeals; the Answer filed herein by the Board of Zoning

FRANCK
P.C.
AT LAW
DRAWER O
ROINIA 23187

Appeals; and was argued by Counsel.

Upon consideration of which, the Court finds that the decision of the Board of Zoning Appeals is based upon condition numbered three of Special Use Permit 49-90 (requiring a 50-foot green belt free of structures and parking to be measured from the "future right-of-way, Route 199"); that said condition is so vague and uncertain that it is totally unenforceable; and that the attempted enforcement of said condition is contrary to law. Accordingly,

It is ADJUDGED, ORDERED AND DECREED that the decision of the Board of Zoning Appeals rendered on October 24, 1991 be and is hereby reversed for the reasons aforesaid and the reasons set forth in the transcript of these proceedings, to which counsel for the Respondent excepted.

The Court doth further, ADJUDGE, ORDER AND DECREE that the Plaintiff be and is hereby restrained from filing its site plan until the expiration of thirty days from the date of the entry of this Order to which ruling counsel for the Plaintiff excepted.

The Clerk shall mail a certified copy of this Order to each Counsel of record.

ENTER THIS 7/17/92

Russell M. Carneal
Judge Designate

A COPY TESTE:
HELENE S. WARD, CLERK
BY Jewell Carter
Deputy Clerk

173

DERSON, FRANCK
& DAVIS, P.C.
ATTORNEYS AT LAW
POST OFFICE DRAWER O
AMNBURG, VIRGINIA 22187

I ask this:

_____ p.q.

ANDERSON, FRANCK & DAVIS, P.C.
Alvin P. Anderson, Esquire
P.O. Drawer Q
Williamsburg, VA 23187
(804) 229-7322

Seen and Objected to:

_____ p.d.

Board of Zoning Appeals of James City County, Virginia
Leo P. Rogers, Esquire
P.O. Box JC
Williamsburg, VA 23187
(804) 253-6612

ANDERSON, FRANCK & DAVIS, P.C.
ATTORNEYS AT LAW
POST OFFICE DRAWER Q
WILLIAMSBURG, VIRGINIA 23187

ASSIGNMENTS OF ERROR

1. The Circuit Court did not have jurisdiction to consider the constitutionality of SUP condition number 3 when the matter before the Circuit Court was a writ of certiorari to review the BZA's decision to sustain Mr. Farmer's rejection of the Site Plan.

2. The Circuit Court erred by declaring SUP condition number 3 unconstitutionally vague given the history of the case before the Planning Commission and Board of Supervisors, the documentation provided by the Virginia Department of Transportation and University Square and the administrative interpretation of Mr. Farmer.

3. The Circuit Court erred by overruling the BZA based on its conclusion that SUP condition number 3 was invalid because if the condition is unconstitutionally vague then the Circuit Court should have invalidated the entire SUP and sustained the BZA decision to uphold Mr. Farmer's rejection of the Site Plan.

4. The Circuit Court erred by refusing to allow the BZA to justify its decision, supplement the record and contradict assertions of University Square.

5. The Circuit Court erred by failing to grant the BZA's motion to uphold its decision and deny the writ of certiorari because the BZA decision neither applied erroneous principles of law nor was plainly wrong and in violation of the purpose and intent of zoning.

to serve more than one thousand (1,000) vehicles per day based on the method listed above.

(b) Upon a favorable recommendation of the development review committee, the planning commission may modify the requirements listed in item (4) above; provided, that equivalent pedestrian facilities have been provided which adequately provide for pedestrian access within the development and to abutting property. (Ord. No. 31A-118, 2-5-90)

Sec. 20-104. Special use permit requirements for certain commercial and office uses; exemptions.

(a) *General requirements.* A special use permit issued by the board of supervisors shall be required for:

(1) Any convenience store;

(2) Any commercial building which exceeds ten thousand (10,000) square feet of floor area;

(3) Any office building which exceeds twenty thousand (20,000) square feet of floor area; or

(4) Any commercial or office building which generates, or would be expected to generate, one hundred fifty (150) or more additional trips to and from the site during the peak hour of the operation, based on the application of the Institute of Transportation Engineers (ITE) traffic generation rates contained in the latest edition of their book entitled *Trip Generation.* The applicable trip generation rate shall be determined by the planning director. The planning director may permit other traffic generation rates to be used if an individual or firm qualified to conduct traffic engineering studies documents that the use would not reasonably be expected to generate the amount of peak hour traffic projected by application of ITE traffic generation rates, provided the documentation is acceptable to the planning director.

(b) *New buildings, additions or expansions.* A special use permit shall be required for a new building, addition or expansion when:

(1) In combination with the existing structure, it exceeds the thresholds set forth in paragraph (a);

(2) It adds five thousand (5,000) square feet or more of commercial floor area or ten thousand (10,000) square feet or more of office floor area or, in combination with other new buildings, additions or expansions, generates seventy-five (75) or more peak-hour trips than generated by the existing or approved use on May 21, 1990, or than approved in a special use permit, whichever is greater; and

(3) It is located on the same property as the existing structure or other parcel which is a logical component of such property. Factors to determine whether a parcel is a logical component include:

a. Common ownership or control of the parcels under consideration by the same person(s) or entity(ies), or similar or related entities;
b. Regardless of factor a. above, shared access to public roads, shared parking arrangements, shared traffic circulation or shared service areas; and
c. Proximity. For the purpose of this paragraph, "proximity" means adjacent parcels; parcels separated by property under common ownership or control by the same person(s) or entity(ies) or similar or related entities, or parcel separated by a public or private right-of-way.

(c) *Design and submittal requirements.* Any building or use and addition or expansion thereto requiring a special use permit under this section shall comply with the following regulations:

(1) Any use requiring a special use permit under this section for which the existing and proposed use is five (5) acres or more in area shall include a binding master plan prepared in accordance with Section 20-468(b)(1)–(5). The master plan shall depict and bind the approximate boundaries and general location of all principal land uses and their building square footage and height, roads, rights-of-way, accesses, open spaces, public uses and other features to be located on the site for which approval is sought. The planning director may require other features, including general location and approximate boundaries of buildings, structures or parking areas, to be incorporated into the master plan where deemed

necessary due to the size of the development, access to or location of public roads, distance from residential areas, presence of environmentally sensitive areas or availability of public utilities. The master plan shall be reviewed and approved and thereafter become binding upon approval of the special use permit by the board of supervisors. Thereafter, all amendments to the master plan shall be in accordance with Section 20-15 of this chapter. Final site plans may be approved after approval of a master plan by the board of supervisors. All final site plans shall be consistent with the master plan, but may deviate from the master plan if the zoning administrator concludes, after reviewing written comments from the planning director, the site plan does not alter the basic concept or character of the development or conflict with any conditions placed on the special use permit. If the zoning administrator determines that a proposed change would deviate from the approved master plan, the amendment shall be submitted and approved in accordance with Section 20-15.

(2) A traffic impact study shall be submitted with any such special use permit application prepared by an individual or firm qualified to conduct traffic engineering studies in a manner and form acceptable to the planning director. Such study shall address projected traffic generation, internal and external traffic, turning movements and distribution at each access point, traffic distribution, capacity of surrounding roads, and road and access improvements.

(3) Vehicular access points and drives shall be designed to encourage smooth traffic flow, with controlled turning movements and minimum hazards to vehicular and pedestrian traffic. Buildings, parking areas and drives shall be arranged in a manner that encourages pedestrian access and minimizes traffic movement. No more than one (1) access point on each abutting public street shall be permitted unless specifically approved by the board of supervisors after reviewing the applicant's traffic impact study.

(d) *Exemptions.* The following shall be exempt from the requirements of this section:

(1) Any use or building and expansion or addition thereto with preliminary site plan approval prior to May 21, 1990;

(2) Any use or building and expansion or addition thereto for which the start of construction began prior to May 21, 1990, in accordance with a site plan approved prior to that date;

(3) Any use or building and expansion or addition thereto shown on a proffered binding master plan that binds the general location of all of the features on the plan as required under this section;

(4) Any building located in a residential planned community district or planned unit development district; or

(5) Any building predominantly used as a warehouse, distribution center, or for other industrial or manufacturing purposes.

(Ord. No. 31A-121, 5-21-90)

Secs. 20-105—20-108. Reserved.

DIVISION 2. GENERAL AGRICULTURAL DISTRICT, A-1

Sec. 20-109. Statement of intent.

The General Agricultural District, A-1, is intended for application to the rural areas of the county generally outside of the primary service area and where utilities and urban services generally do not exist and are not planned for the near future. The purpose of the district is to maintain a rural environment suitable for farming, forestry, and low-density rural residence and at the same time to provide for certain recreational and public or semipublic and institutional uses which may require a spacious site and which, with proper conditions imposed, are compatible with rural surroundings. The district also serves to limit the scattering of commercial, industrial and urban residential uses into rural areas where such uses are not planned. The area regulations of the district are intended to provide a measure of flexibility in lot size and arrangement if coupled with a design review to ensure more careful use of the land. (Ord. No. 31A-88, § 20-28, 4-8-88; Ord. No. 31A-114, 5-1-89)

more principal zoning districts so as to impose special requirements in addition to the requirements of the principal zoning district.

Zoning district, principal. Any section of James City County, Virginia, for which regulations governing the use of buildings and land, the height of buildings, the size of yards, and the intensity of use are uniform. Wherever used in this chapter the term "district" or "zoning district" shall mean the same as the term "principal zoning district" as if the latter term were fully set out. (Ord. No. 31A-88, § 20-2, 4-8-85; Ord. No. 31A-94, 2-3-86; Ord. No. 31A-109, 8-22-88; Ord. No. 31A-110, 9-12-88; Ord. No. 31A-113, 4-3-89; Ord. No. 31A-114, 5-1-89; Ord. No. 31A-119, 3-5-90; Ord. No. 31A-123, 7-2-90; Ord. No. 31A-126, 10-1-90; Ord. No. 31A-131, 6-3-91)

Sec. 20-3. Purpose of chapter; zoning map.

(a) The board of supervisors hereby enacts this chapter, together with the zoning map and all accompanying data thereon or affixed thereto and which is and shall remain on file in the office of the county administrator, and which is hereby incorporated in and made a part of this chapter, for the purpose of promoting the health, safety, and general welfare of the public and for the further purpose of accomplishing the objectives of Sections 15.1-427, 15.1-486 and 15.1-489 of the Code of Virginia.

(b) This chapter is designed so as to give reasonable consideration to each of the following purposes, where applicable:

(1) To provide for adequate light, air, convenience of access, and safety from fire, flood and other dangers;

(2) To reduce or prevent congestion in the public streets;

(3) To facilitate the creation of a convenient, attractive and harmonious community;

(4) To facilitate the provision of adequate police and fire protection, disaster evacuation, civil defense, transportation, water, sewerage, flood protection, schools, parks, forests, playgrounds, recreational facilities, airports and other public requirements;

(5) To protect against destruction of or encroachment upon historic areas;

(6) To protect against one or more of the following: Overcrowding of land; undue density of population in relation to the community facilities existing or available; obstruction of light and air; danger and congestion in travel and transportation, or loss of life, health, or property from fire, flood, panic or other dangers;

(7) To encourage economic development activities that provide desirable employment and enlarge the tax base;

(8) To provide for the preservation of agricultural and forestal lands.

(Ord. No. 31A-88, § 20-3, 4-8-85)

Sec. 20-4. Zoning administrator; administration and enforcement of chapter.

This chapter shall be administered and enforced by the zoning administrator who shall be appointed by the governing body. The zoning administrator shall serve at the pleasure of that body. Compensation for such shall be fixed by resolution of the governing body. (Ord. No. 31A-88, § 20-5, 4-8-85)

Sec. 20-5. Duty of those authorized to issue licenses and permits to conform to chapter.

All departments, officials and public employees of this jurisdiction who or which are vested with the duty of authority to issue permits or licenses shall conform to the provisions of this chapter. They shall issue permits for uses, buildings or purposes only when they are in harmony with the provisions of this chapter. Any such permit, if issued in conflict with the provisions of this chapter, shall be null and void. (Ord. No. 31A-88, § 20-6, 4-8-85)

Sec. 20-6. Administrative fees.

Fees shall be charged at the time of application to offset the cost of making inspections, issuing permits, advertising notices and other expenses incident to the administration of this chapter or to

AT A REGULAR MEETING OF THE BOARD OF SUPERVISORS OF THE COUNTY OF JAMES CITY, VIRGINIA, HELD ON THE 17TH DAY OF JUNE, NINETEEN HUNDRED NINETY-ONE, AT 1:09 P.M. IN THE COUNTY GOVERNMENT CENTER BOARD ROOM, 101 MOUNTS BAY ROAD, JAMES CITY COUNTY, VIRGINIA.

A. ROLL CALL

Thomas K. Norment, Jr., Chairman, Roberts District
Judith N. Knudson, Vice Chairman, Jamestown District

Perry M. DePue, Powhatan District (absent)
Jack D. Edwards, Berkeley District
Stewart U. Taylor, Stonehouse District
Sanford B. Wanner, Assistant County Administrator
Frank M. Morton, III, County Attorney

B. MINUTES - June 3, 1991

Mr. Norment asked if there were corrections or additions to the minutes.

Mr. Taylor made a motion to approve the minutes.

On a roll call, the vote was AYE: Taylor, Edwards, Knudson, Norment (4). NAY: (0). ABSENT: DePue.

C. HIGHWAY MATTERS

Mr. Frank N. Hall, Resident Engineer, reported on the completion of the left-turn lane into Colony Square Shopping Center on Jamestown Road, the July 1, 1991, scheduled completion of Route 611 into the Landfill, and the overlay of road between Lightfoot and Williamsburg and between the Anheuser-Busch Brewery and Route 199.

Ms. Knudson asked that the yellow traffic lines near Whitehall Gallery be monitored for travel safety; that consideration of a left-turn lane for the entrance to Lakewood, a speed study to lower the speed limit for that road and consideration of installing a blinking light to warn of the hidden intersection; and noted that there are no street signs for Lake and Ware Roads, located in the back of the subdivision.

Mr. Norment asked on behalf of Mr. DePue that a no-passing lane on Route 5 be lengthened and that VDOT work with Larry Foster to investigate the drainage problem in James Terrace.

Mr. Taylor asked for an investigation of the possibility of double yellow lines ("no passing") for Route 5 between Heritage Landing and Governor's Land.

Mr. Norment opened the public hearing. There being no comment, Mr. Norment closed the public hearing.

Mr. DePue made a motion to approve all three resolutions.

On a roll call, the vote was AYE: DePue, Taylor, Edwards, Knudson, Norment (5). Nay: (0).

R E S O L U T I O N

VIRGINIA PUBLIC SCHOOL AUTHORITY SCHOOL BONDS

WHEREAS, the Board of Supervisors has authorized school bonds in the amount of $2,730,000 for the purposes of financing needed school improvements.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, hereby appropriates the proceeds of the Spring, 1991 VPSA Bond Sale, as follows:

School Maintenance/Operations Center	$1,585,000
Clara Byrd Baker Elementary School Addition	
Phase I	830,000
Phase II	315,000
	$2,730,000

BE IT FURTHER RESOLVED that an appropriation of $811,292 for the Maintenance/Operations Center, made from the General Fund Contribution to the Capital Projects Budget, be eliminated.

F. BOARD CONSIDERATIONS

1. Case No. SUP-49-90. Williamsburg Crossing

Mr. R. Patrick Friel, Senior Planner, stated that this case had been postponed at the June 3, 1991, meeting to allow staff to review traffic issues with access alternatives to the shopping center and the intersection of Route 199/Route 5. He stated that the new plans showed a cul-de-sac at the end of Kings Way and that the Route 199/Route 5 interchange offered several options to access this interchange project. Mr. Friel outlined the buffer requirements in response to Mr. DePue's inquiry.

Mr. Frank Hall, responded to Mr. Edwards that a 1997 completion date for the Route 199/Route 5 realignment is accurate.

Mr. Friel responded to Mr. Edwards that staff projected 45 additional cars would travel through Canterbury Hills during the peak hours.

Mr. Taylor suggested that additional studies be done to develop a clearer path of action since realignment could be at least 10 years away.

7

Mr. Bill Cashman, Transportation Planner, Langley and MacDonald, concurred with Ms. Knudson's request for a dedicated right-turn lane, to be put in at the time of signalization, to handle peak hour traffic.

Mr. DePue made a motion to approve the special use permit with amendments to Condition No. 2 (buffer requirements) and Condition No. 7 (addition of a dedicated right-turn lane at time of signalization).

On a roll call, the vote was AYE: DePue (1). NAY: Taylor, Edwards, Knudson, Norment (4).

Mr. Norment stated that he would support the special use permit with amendments to Condition No. 5 (Certificate of Occupancy upon completion of Route 199/Route 5 intersection), Condition No. 7 as described by Mr. DePue, and retention of Condition No. 2 (buffer requirements) as originally presented.

Mr. Edwards made a motion to approve the special use permit with an amendment to Condition No. 6 (relocation of the main entrance to Kings Way, deleting the 567,390-square foot development boundary).

On a roll call, the vote was AYE: Edwards, Knudson (2). NAY: DePue, Taylor, Norment (3).

Mr. Norment made a motion to approve the special use permit with amendments to Condition No. 5 (Certificate of Occupancy), Condition No. 6 (relocation of the main entrance), and Condition No. 7 (addition of a dedicated right-turn lane).

On a roll call, the vote was AYE: DePue, Taylor, Edwards, Knudson, Norment (5). NAY: (0).

R E S O L U T I O N

CASE NO. SUP-49-90. WILLIAMSBURG CROSSING

WHEREAS, the Board of Supervisors of James City County has adopted by ordinance specific land uses that shall be subjected to a special use permit process; and

WHEREAS, the Planning Commission of James City County, following its public hearing on April 6, 1991, voted 9-2 and recommended approval of Case No. SUP-49-90 to permit 657,390 square feet of commercial uses in the B-1, General Business district on property identified as Parcel (1-1) on James City County Real Estate Tax Map No. (48-1) and Parcels (15-2) and (15-3) on James City County Real Estate Tax Map No. (47-2).

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, does hereby approve the issuance of Special Use Permit No. SUP-49-90 as described herein with the following conditions:

AT A REGULAR MEETING OF THE PLANNING COMMISSION OF THE COUNTY OF JAMES CITY, VIRGINIA, HELD ON THE NINTH DAY OF APRIL, NINETEEN HUNDRED AND NINETY ONE AT 7:30 P.M. IN THE COUNTY GOVERNMENT CENTER BOARDROOM, 101C MOUNTS BAY ROAD, JAMES CITY COUNTY, VIRGINIA.

1. ROLL CALL

Mr. Alexander C. Kuras, Chairman
Mr. Raymond L. Betzner
Mr. A. G. Bradshaw
Mr. Wallace Davis, Jr.
Mr. Martin Garrett
Ms. Victoria Gussman
Mr. John F. Hagee
Mr. Donald C. Hunt
Ms. Judith Knudson
Ms. Carolyn Lowe
Ms. Willafay McKenna

ALSO PRESENT

Mr. O. Marvin Sowers, Jr., Director of Planning
Mr. John T. P. Horne, Manager of Development Management
Mr. Leo P. Rogers, Assistant County Attorney
Mr. Allen J. Murphy, Jr., Principal Planner
Mr. R. Patrick Friel, Senior Planner
Mr. Michael A. Freda, Planner
Mr. Donald E. Davis, Principal Planner
Mr. Jeffrey J. Mihelich, Planner
Mr. Wayland N. Bass, County Engineer

Mr. Davis introduced Jeff Mihelich as the new long range planner in the Comprehensive Planning Section.

2. MINUTES

Mr. Kuras stated that item 13, Six Year Secondary Road Improvements, second paragraph, should read: "Mr. Kuras stated his concerns about removing Greensprings Road from the Plan because it is a direct link from the Colonial Parkway to Route 5. He stated that some improvement will be needed in order to safely handle the increased traffic and a bikeway, and to reduce maintenance problems with the shoulders. This need not wipe out its intended purpose as a greenway, and recommended it stay in the plan."

Upon a motion by Mr. Betzner, seconded by Mr. Hunt, the March 13, 1991 Minutes were accepted with the stated amendment.

3. COMMITTEE REPORTS

a. Development Review Committee - No meeting was held.

b. Policy Committee - Ms. McKenna reported that the committee met only to consider the nominations for the Award for Excellence. Among the nominees were Norge Medical Center, Powhatan Plantation and the Woodside Drive area. The committee selected Norge Medical Center as the recipient of the award with letters of commendation to the others.

Upon a motion by Ms. McKenna, seconded by Ms. Lowe, the report was accepted by unanimous voice vote.

4. CASE NO. SUP-49-90. WILLIAMSBURG CROSSING (Mr. Vernon Geddy, III, on behalf of University Square Associates).

Mr. Friel presented the staff report (appended) for a special use permit to allow the construction of approximately 446,213 square feet of commercial/office development located at the intersection of Route 5 and Route 199. Mr. Friel stated that staff recommended approval of Case No. SUP-49-90 with the conditions detailed in the staff report.

Ms. Knudson questioned the 50' buffer along the border of Winston Terrace and the 50' greenbelt along Rt. 199. Mr. Friel responded that the landscape ordinance required only a 35' buffer. Ms. Knudson felt that while a smaller commercial property could be harmed by a deeper buffer and greenbelt, a large commercial property such as Williamsburg Crossing would not be harmed by a deeper buffer or greenbelt.

Ms. Lowe agreed with Ms. Knudson and further stated that this property was located in the midst of a primarily residential area.

Mr. Sowers stated that because this was an SUP the Commission could recommend a required width for the buffer or greenbelt.

Mr. Kuras opened the public hearing.

Mr. Vernon Geddy, representing University Square Associates, stated that Mr. Calvin Davis, the developer, and Mr. Bill Cashman, traffic engineer with Langley & McDonald, were present to respond to questions. Mr. Geddy made a brief presentation stating the project's commercial benefits, its continued growth, tax benefits, etc., and that the Winston Terrace adjacent property owners had no objections to the proposal. Mr. Geddy further stated agreement with the staff recommendation and the conditions and requested approval of the proposal.

In response to Ms. Lowe's inquiry, Mr. Geddy responded that a fiscal impact study had not been performed.

In response to Ms. Gussman's inquiry, Mr. Geddy responded that an archaeological study had been performed.

Mr. George Wright, President of the Historic Route 5 Association, thanked staff and Mr. Calvin Davis for their cooperation. Mr. Wright voiced concerns regarding the proposed road improvements to King's Way and the effect of the construction of the relocation of Route 199 on area 10 on the conceptual plan. He recommended that alternative access locations be considered. Mr. Wright stated that 27 large trees would be in the portion taken for construction and asked that fringe trees along Route 199 be protected. He also stated that a 50' greenbelt was inadequate.

Mr. Grant Olson, 105 Holman Road, representing the Board of Directors of the Coalition for Quality Growth, stated that at a recent meeting of the CQG it was questioned whether this expansion was needed. Mr. Olson reported on vacant commercial buildings in 1990-1991 and asked that this request be denied or deferred based on the absence of demonstrated need for additional commercial property, the impending adoption of the update of the Comprehensive Plan, citizens concerns regarding traffic, archaeology, aesthetics, etc. The CQG suggested the developer be required to submit a financial impact analysis.

Mr. Wallace Davis reminded the Commission that Ewell Station Shopping Center had a 25' buffer which he felt caused some residents to move away. Mr. Davis also questioned the type of traffic study performed and how long the study was conducted.

Mr. Cashman, Langley & McDonald, responded that there were two traffic counts performed, one by Langley & McDonald (hourly turning movements) and the other by the Highway Department.

Mr. Calvin Davis stated that adjacent property owners had informed him that they did not want footpaths because they could become thoroughfares. He further stated that Phase I of the shopping center is 85% occupied and 95% leased with five new merchants moving in.

There being no further speakers the public hearing was closed.

Mr. Hagee asked about saving the trees in the greenbelt. Mr. Sowers responded that the trees would be protected by the Landscape Ordinance if they fell within the required 35' average width front landscape area. He also explained the difference between the landscape ordinance requirements and the greenbelt policy, and stated that commercial greenbelts had varied between 35' and 50'.

Ms. Gussman felt the shopping center was in a good location for commercial use and that it was possible to resolve the problems such as traffic conditions and buffer areas.

Mr. Garrett stated it was unfair to change the rules of the game in midstream in regard to the greenbelt.

Mr. Bradshaw made a motion, seconded by Ms. Gussman, to accept the staff recommendation.

Mr. Kuras made an amendment to the motion, seconded by Mr. Betzner, to amend condition #3 to read ..."along Route 199 and the future right-of-way of Route 199 ..." The amendment passed by unanimous voice vote.

Ms. Gussman made an amendment to the motion, seconded by Mr. Garrett, to amend condition #3 to state that a minimum 65 foot (instead of 50 foot buffer) shall be provided along the southern and western boundaries of the site, that utilities and drainage structures may be placed within the buffer if approved by the Development Review Committee, and that this buffer may be reduced to a width of 50 feet (instead of 35) if enhanced landscaping approved by the Development Review Committee is provided. The amendment passed by unanimous voice vote.

Ms. Lowe stated that she planned to vote against the proposal because of the traffic and because there was no economic impact analysis.

The motion to accept the staff recommendation passed: AYE: Bradshaw, Garrett, Gussman, McKenna, Davis, Hagee, Betzner, Hunt, Kuras (9). NAY: Knudson, Lowe (2).

5. CASE NO. SUP-6-91. WESSEX HUNDRED DEVELOPMENT, INC.

Mr. Friel presented the staff report (appended) for a special use permit for development of a residential cluster subdivision consisting of 46 single family residential units on 24 acres on Lake Powell Road. Mr. Friel stated that staff recommended approval of Case No. SUP-6-91 with the conditions detailed in the staff report.

MEMORANDUM

DATE: June 3, 1991

TO: The Board of Supervisors

FROM: R. Patrick Friel, Senior Planner

SUBJECT: Case No. SUP-49-90. Williamsburg Crossing

This case was deferred by the Board of Supervisors at their May 20, 1991, meeting. The Board directed staff to look at issues associated with the Route 199/Route 5 intersection and access alternatives for the above-mentioned proposal. The following summarizes our findings:

Alternate 1-A

Alternate 1-A (and the larger Alternate 1-B) was the second proposal for the Route 199/Route 5 intersection. The original Public Hearing Design option (Attachment 1) was met by much opposition from the residents of the Berkeley Hills and Walnut Hills residential communities located within the City of Williamsburg. Residents of these communities were very concerned with additional traffic both in and around their communities and any destruction of College Woods. In August of 1989, the City Council of the City of Williamsburg passed a resolution which officially stated their opposition to the Public Hearing Design of the Route 199/Route 5. Some City staff and residents were at that time proposing a cul-de-sac off John Tyler Highway near its intersection with Jamestown Road. County Staff then contacted VDOT and requested that James City County be involved in any proposed redesign of the Route 199/Route 5 intersection.

VDOT reconsidered its design and offered 3 alternatives: Alternate 1 (Attachment 2) in which Route 199 is left in its original alignment, and Alternate 1-A (Attachment 3) and Alternate 1-B (Attachment 4) which show Route 199 shifted to the west and leaving its original alignment. Alternate 1-B is a full grade separated interchange. It was determined that the relocated section of Route 5 in Alternate 1 did not have the proper storage length between Route 199 and Strawberry Plains Road to accommodate future traffic. Alternate 1-A provided this adequate storage and also provided the additional right-of-way for Alternate 1-B. The City of Williamsburg passed a resolution in favor of Alternate 1-A as they felt this alignment adequately addressed their concern raised in the review of the original alignment. It should be noted that all three proposals necessitated King's Way becoming the main entrance to the Williamsburg Crossing Shopping Center.

Several meetings were held by a committee composed of members of the Board of Supervisors, with staff, VDOT and the owners of the Williamsburg Crossing Shopping Center. In December of 1989, the Board of Supervisors approved Alternate 1-A and 1-B as recommended to them by staff. At the time this was proposed strong objections from representatives of the Williamsburg Crossing Shopping Center were received. The wording in the attached Board resolution (Attachment 5) states that "the Committee further agreed to consider additional alternatives offered by the owners of the Williamsburg Crossing Shopping Center at a later date."

Entrance options to Williamsburg Crossing

Under Alternative 1-A, the current main entrance to the Williamsburg Crossing Shopping Center would be left open. However, the crossover would be closed and the entrance would become a right-in/right-out facility. The Williamsburg Crossing Shopping Center would require a full left-turn lane at its main entrance. Based on the magnitude of the commercial development, this lane needs to be a minimum of 400 feet (200 feet of storage and 200 feet of taper). The distance between the realigned Route 199/Route 5 intersection and existing main entrance is 300 feet. VDOT typically requires an 800-foot spacing between crossovers. Ideally, entrances requiring left-turn lanes should be placed even further than 400 feet apart as turn lanes (especially within this portion of the County) tend to stack up beyond their capacity.

There are currently 3 out parcels subdivided along Route 5 between the current main entrance to Williamsburg Crossing and King's Way. The middle parcel is currently being developed as the Virginia Employment Commission's new Williamsburg Office. This parcel would be accessed internally through the shopping center. Since this out parcel has been sold and construction on this project has commenced, the applicant could not move the shopping center entrance to this site. If an entrance was placed on the main entrance side of the VEC, the minimum spacing of 800 feet between crossovers would not be met and there would still be the potential for overflow traffic extending onto Route 199. If an entrance was placed on the King's Way side of the VEC, the minimum spacing of 800 feet between crossovers would still not be met, but the potential for overflow into Route 199 would be less. However, the difficult left-turn movement now being focused on at Stanley Drive would now appear at Ferncliff Drive.

Carolina Boulevard which is located west of King's Way has site distance problems as it is situated along a curve on Route 5. It also encounters several topographical constraints on the site, if it is pushed through to the loop road.

Staff feels that the entrance as proposed on the master plan (King's Way) is a workable entrance situation. Staff projects that the majority of difficult lefts would take place during the peak hour and estimate the additional traffic through Canterburry Hills at approximately 45 additional trips in the peak hour. Numbers in excess of 1,200 trips on these roads, as suggested at the public hearing, are unrealistic. The concept of a "super signal" in this area has been reviewed conceptually by VDOT. This type of facility is unrealistic due to the low volumes of traffic on Stanley Drive. The overall level of service on Route 5 would decrease due to additional stop time to accommodate the minor movement from Stanley Drive. This type of facility would inconvenience many and benefit relatively few.

RECOMMENDATION

Staff continues to recommend approval of Case No. SUP-49-90 for reasons detailed in the attached staff report (Attachment 6).

R. Patrick Friel

R. Patrick Friel

CONCUR:

O. Marvin Sowers, Jr.

OMS/RPF/tlp
6668a

Attachments

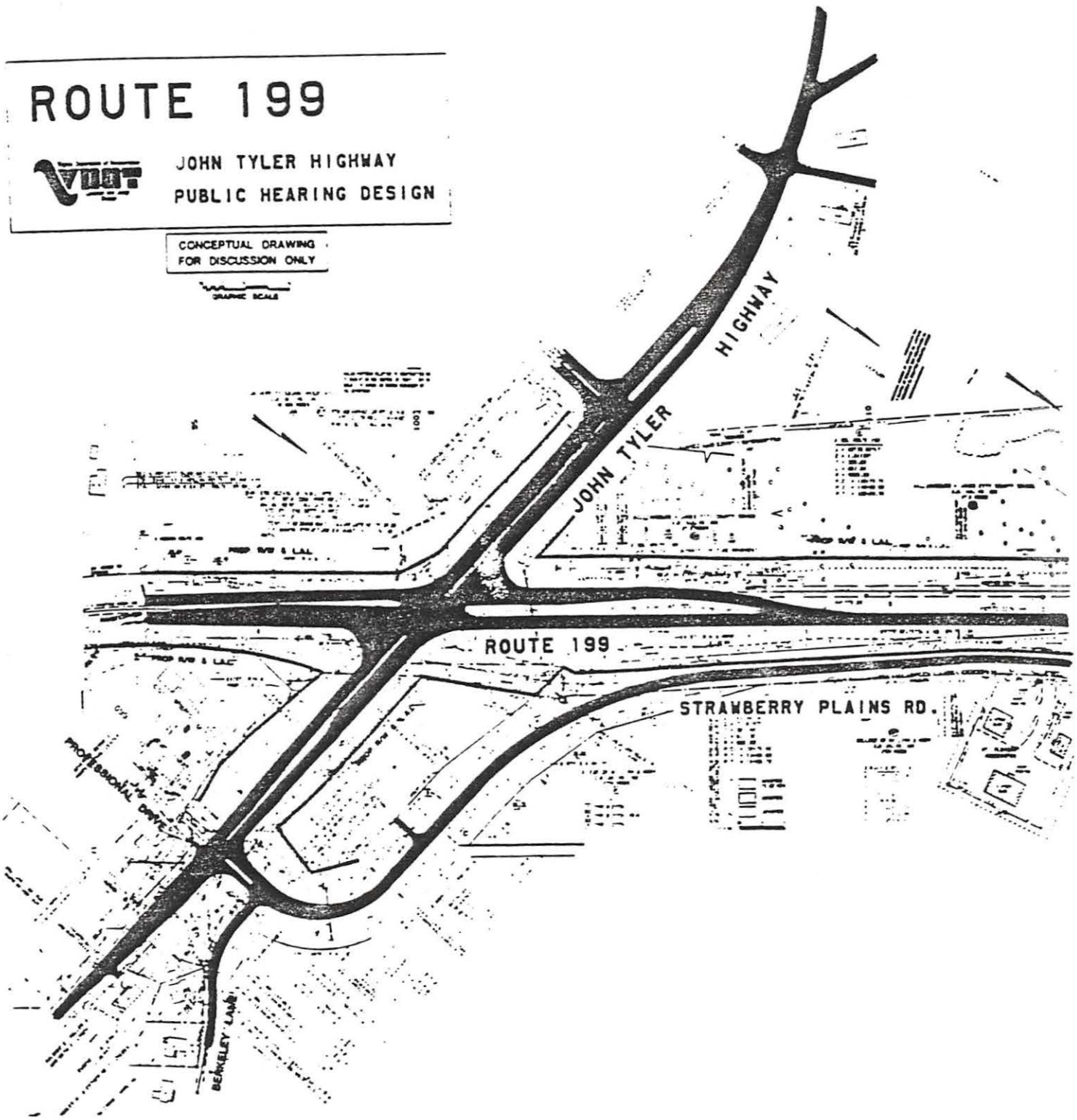
1. Route 199 Public Hearing Design
2. Alternate 1
3. Alternate 1-A
4. Alternate 1-B
5. Resolution dated December 18, 1989
6. Staff report dated May 20, 1991

ROUTE 199

JOHN TYLER HIGHWAY
PUBLIC HEARING DESIGN

CONCEPTUAL DRAWING
FOR DISCUSSION ONLY

GRAPHIC SCALE



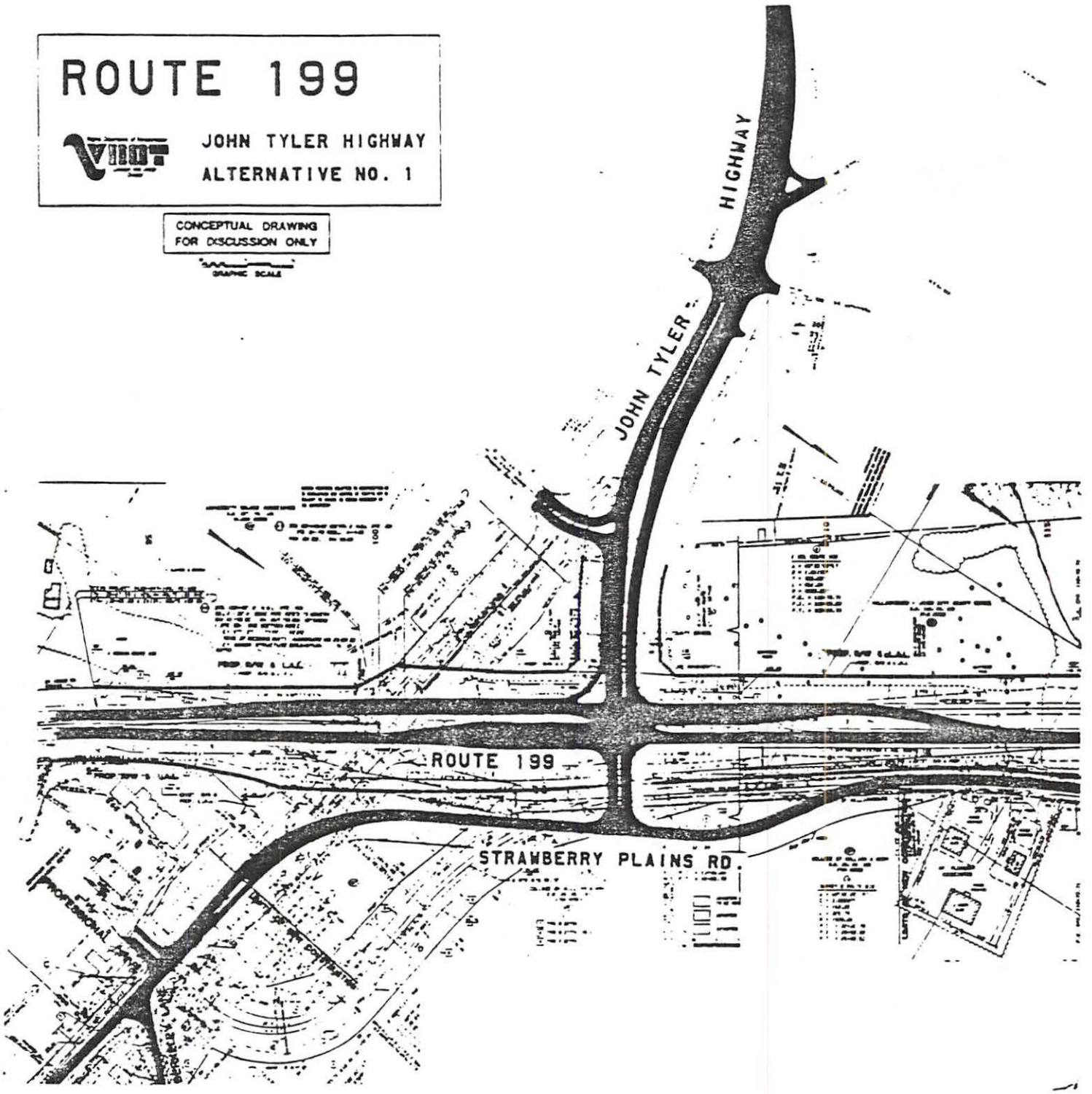
Attachment #1

ROUTE 199

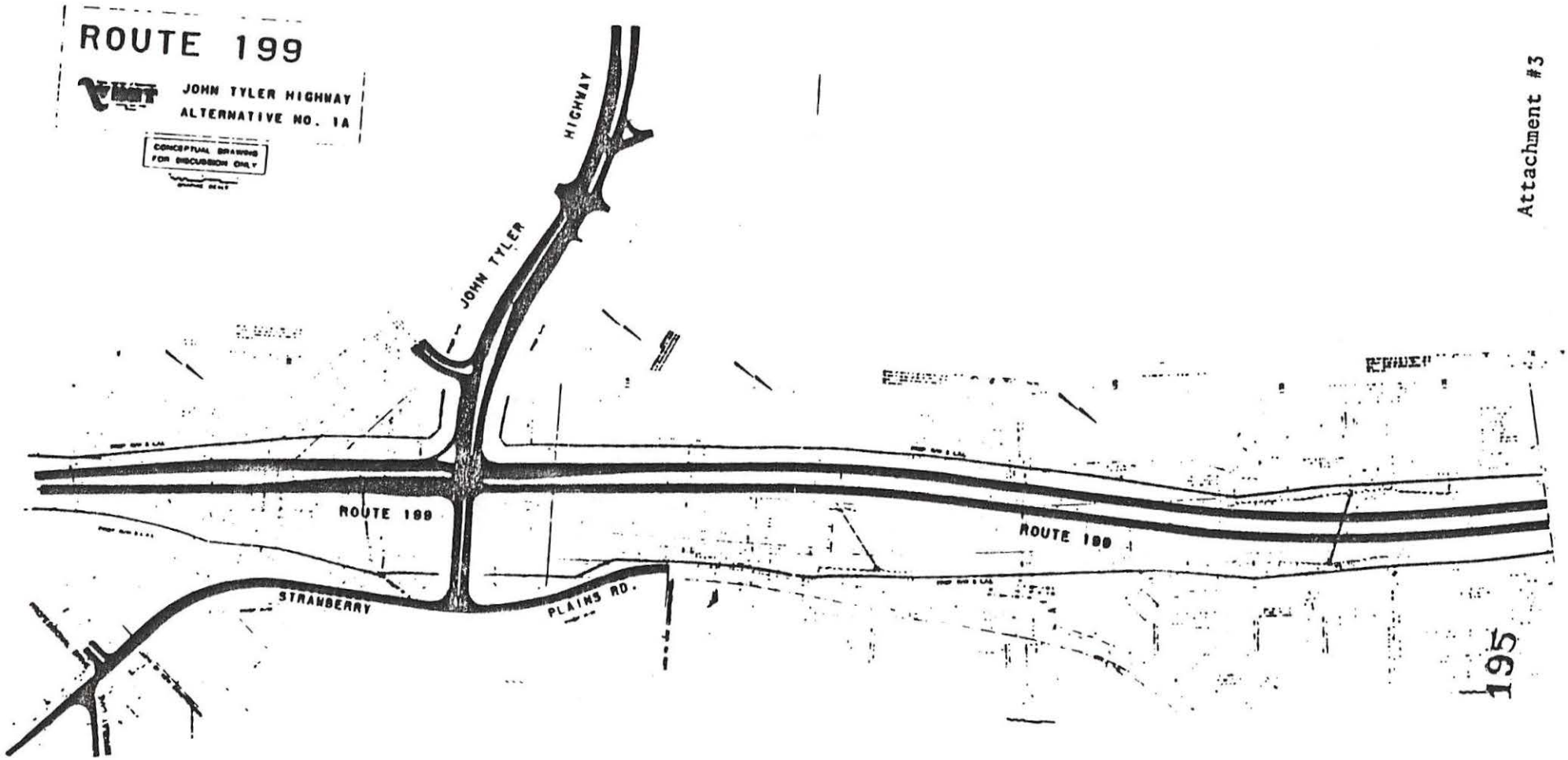
JOHN TYLER HIGHWAY
ALTERNATIVE NO. 1

CONCEPTUAL DRAWING
FOR DISCUSSION ONLY

GRAPHIC SCALE



Attachment #2
1

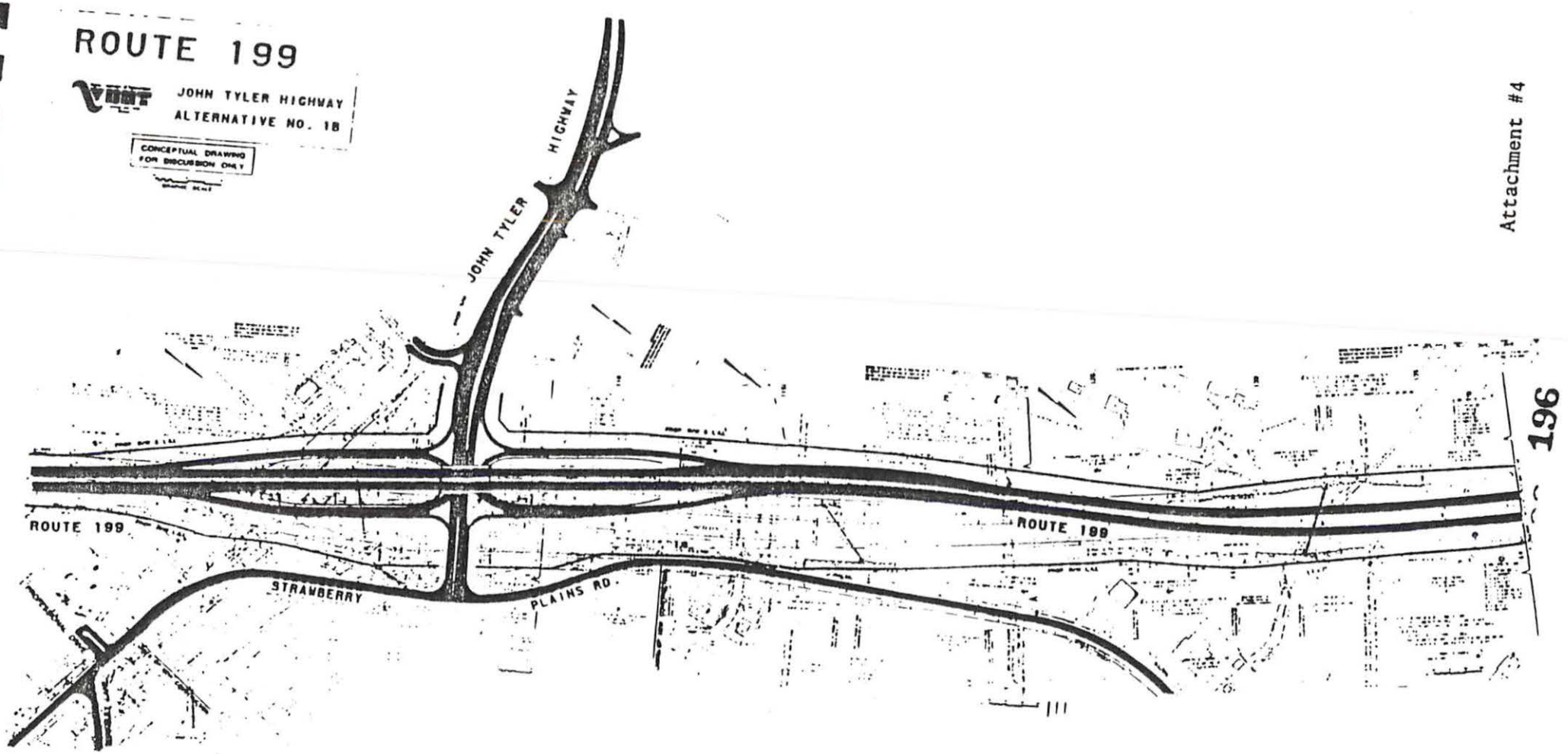


Attachment #3

ROUTE 199

JOHN TYLER HIGHWAY
ALTERNATIVE NO. 18

CONCEPTUAL DRAWING FOR DISCUSSION ONLY



RESOLUTION

ROUTE 199 DESIGN

WHEREAS, VDOT is receiving public comment on the design of Route 199; and

WHEREAS, a Committee of the Board of Supervisors of James City County met with representatives of staff. VDOT and citizens to discuss the design of Route 199 at its intersection of Route 5; and

WHEREAS the Committee agreed to recommend that the Board of Supervisors endorse Alternate 1A as an initial design with Alternate 1B (grade separated interchange) being installed at a later date. The Committee further agreed to consider additional alternatives offered by the owners of the Williamsburg Crossing Shopping Center at a later date; and

WHEREAS, a Committee of the Board of Supervisors reviewed the design of the intersection of Olde Towne Road and Route 199 and agreed to recommend that the Board endorse Alternate 2 with a slight modification to include the addition of on ramps onto Route 199. The group further recommended that the Board request VDOT to consider the following additions or revisions to the proposed design:

1. Minor movement of the Route 199 Corridor to the east to improve access to the Richardson property if the relocation is possible without significant impacts on adjacent residences.

2. Consider other locations for access to the Richardson property; possibly through Parcel (27A) to the south of the Fire Station.

3. Provision of at least an emergency access for the Fire Department if permanent ramps cannot be provided.

4. Straightening of the curve on Olde Towne Road to the north of Route 199, if such straightening does not have major impacts on adjacent residences.

WHEREAS, the Committee further recommends the first phase of construction of Route 199 include a connection to Longhill Road instead of Olde Towne Road. Should funding preclude this phasing, the Committee supports an at-grade connection to Olde Towne Road and a grade separation at a later date.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, supports the recommendation made by the Committee and expresses its desire for the Virginia Department of Transportation to consider these recommendations in the final design of Route 199.

Attachment #5

Thomas D. Mahone
Chairman, Board of Supervisors

SUPERVISOR	VOTE
NORMENT	AYE
TAYLOR	AYE
EDWARDS	AYE
DEPUE	AYE
MAHONE	AYE

ATTEST:

David B. Norman
Clerk to the Board

Adopted by the Board of Supervisors of James City County, Virginia, this 18th day of December, 1989.

1194w

MEMORANDUM

DATE: May 20, 1991

TO: The Board of Supervisors

FROM: R. Patrick Friel, Senior Planner

SUBJECT: Case No. SUP-49-90. Williamsburg Crossing

Mr. Vernon Geddy, III, has applied on behalf of University Square Associates for a special use permit to allow the construction of approximately 446,213 square feet of commercial/office development on approximately 57.7 acres zoned B-1, General Business. The property is located immediately southwest of the intersection of Route 5 and Route 199 and can further be identified as Parcel (1-1) on James City County Real Estate Tax Map No. (48-1) and Parcels (15-2) and (15-3) on James City County Real Estate Tax Map No. (47-2).

Description of the Project

The Williamsburg Crossing Shopping Center currently consists of 211,177 square feet of retail shopping on 25.8 acres. The applicant has submitted the attached master plan which shows the development of the remainder of the property in 6 phases ranging in size from 10,728 square feet to 213,840 square feet. The remainder of the site, if developed in accordance with the master plan, would include 264,568 square feet of commercial development and 181,645 square feet of office/commercial development. Total square footage of the existing development and the proposed development would be 657,390 square feet.

Topography and Physical Features

The portion of the property which is located west of Kings Way is gently rolling and wooded. The remainder of the property is open and gently rolling. Generally, the property slopes towards the west to an existing drainage basin.

Access

The site is currently accessed by 2 entrances on John Tyler Highway (Route 5). Kings Way (across from Ferncliff Drive) serves as an entrance to the site and an additional entrance is located approximately 650 feet east of Kings Way. This latter entrance now serves as the main entrance to the property.

The applicant has submitted a traffic study which details the access plans for the remainder of the site. The applicant has applied only to build up to 657,390 square feet. Any development beyond this point would require a new special use permit and is not under consideration at this time. The traffic study examines the effects of each phase of development on the surrounding road network. The study projects adequate levels of service at the intersections of Kings Way/Route 5 and Route 199/Route 5 at 657,390 square feet of development with improvements and signalization.

The Virginia Department of Transportation and the James City County Board of Supervisors have selected Alternate 1-A for the Route 199 alignment which relocates the Route 5/Route 199 intersection approximately 490 feet north of its current location. This would necessitate making the existing main entrance a right in/right out only facility. The closing of this entrance drives down the level of service at Kings Way/Route 5 as more traffic would then utilize that access point because it would become the main entrance. Improvements would be necessary to correct this.

The applicant has consulted with VDOT and it has been determined that before any additional development can take place on site, a full right-turn lane shall be installed on southbound Strawberry Plains Road at its intersection with Route 5. Staff has added a condition to this effect and the applicant has agreed to provide the above-mentioned improvement. Construction of this improvement would then allow the applicant to build to 477,390 square feet while permitting an acceptable level of service to be maintained. There is concern that if Route 199 is not constructed, or its construction is delayed, that future development of the remainder of the site may degrade the level of service at the Route 199/Route 5 intersection. Staff has added a condition which would limit the development on the site to 477,390 square feet until the start of construction of this segment of the Route 199 project. Development of the site could then proceed to build out totalling 657,390 square feet. Staff has added a condition which would require additional improvements to be made at certain points in the development of the site.

The level of service at the intersection of Route 5 and Stanley Drive, which is located to the west of Kings Way, would deteriorate as the traffic in the area increases. This study does not address the resulting level of service on Stanley Drive. Staff would expect this intersection to function as a right in/right out facility. Eastbound traffic would be rerouted over to Ferncliff and would need to utilize the Ferncliff/Route 5 intersection.

Grading, tree clearing and frontage improvements will be necessary to achieve adequate site distance at the intersection of Kings' Way and Route 5.

Public Utilities

The site would be served by public water and sewer. There is currently adequate capacity to serve this development.

Comprehensive Plan

The Comprehensive Plan designates this site Major Commercial. The Comprehensive Plan states that the timing of such development is controlled by the existence of an adequate market population, availability of public utilities and the capacity of the roads to handle the increased traffic generated by the site.

When this application was received by staff, the applicant had originally proposed an access point to the site on Route 199. After meeting with staff the applicant revised the application and as part of this special use permit application is not requesting an access point on Route 199 at this time. Staff is not supportive of an additional access on Route 199. The Comprehensive Plan states that the timing of development in an area designated Major Commercial is controlled, in part, by the capacity of the surrounding road system. Route 199 has been a limited access highway since the adoption of the Comprehensive Plan in 1982. The Major Commercial designation of the Comprehensive Plan was not intended, nor should it be implied, to be supportive of additional access points on a limited access roadway.

Route 199 is designated a greenbelt by the Comprehensive Plan. The adopted greenbelt policy states that a greenbelt with a width of 150 feet be provided along each road frontage measured from the future right-of-way of the road. The policy also states that the width of the greenbelt may be decreased when a site is used for commercial purposes. Staff recommends the provision of a greenbelt of 50 feet in width which would contain enhanced landscaping to be approved by the Development Review Committee.

Surrounding Development and Zoning

Property to the east of the site is located within the City of Williamsburg and contains the Berkeley Professional Center. Property to the south of the site is zoned R-2, Limited Residential, and contains the Winston Terrace subdivision. Property to the west of the site is zoned R-1, Limited Residential, and contains the Druid Hills subdivision and a large tract of undeveloped property. Property northwest of the site is zoned B-1, General Business, and contains the James City County Law Enforcement Center. Property north of the site is zoned R-1 and contains the Indigo Park, Jamestown Farms, and Canterbury Hills subdivisions. There is also a tract of property zoned R-8, Rural Residential, on the north side of Route 5. This property contains a residence. Route 199 would be located on a large parcel of B-1 zoned land located to the northeast of the subject site.

The full development of this site would be located adjacent to several surrounding residential subdivisions and a large parcel of undeveloped land zoned R-1. Staff has added a condition which would require an undisturbed buffer to be located along the southern and western property lines of the site. This buffer could be reduced by 15 feet in width if enhanced landscaping is provided and such landscaping and reduction in buffer width is approved by the Development Review Committee. This special use permit does not include any property along Route 5.

Staff feels that all lighting on the site shall be similar to existing lighting at the Williamsburg Crossing Shopping Center. This lighting, which is sodium vapor lighting, produces an orange glow and impacts surrounding properties much less than the mercury vapor fixtures which have been used on an outparcel. Staff has added a condition to this effect.

In an effort to promote alternative access to the shopping center, staff has added a condition which would require the applicant to provide for pedestrian access to the vacant parcel of land zoned R-1 located to the west of the site. Footpaths have developed through this parcel which indicate a strong need for future connection to adjoining neighborhoods.

Other

This special use permit requires the submittal of a binding master plan and projects site buildout over a period of years. Staff does not feel it appropriate to set a time limit on the start of construction of this project.

RECOMMENDATION

Staff recommends approval of the special use permit to the point an acceptable level of service can be achieved on the roadway network affected by the site. The traffic study submitted with the application states that this point is 657,390 square feet of development.

The Planning Commission voted 9-2 to recommend approval of Case No. SUP-49-90 with the conditions listed below. The Planning Commission increased the staff suggested buffer width by 15 feet in Condition 2. The Planning Commission also clarified Condition 3 requiring the greenbelt to be established from the future right-of-way of Route 199.

1. No more than 657,390 square feet total, including existing development shall be constructed on the site.

2. A minimum 65-foot buffer shall be provided along the southern and western boundaries of the site. The buffer shall be landscaped at a minimum, in accordance with the landscaping requirements of the Zoning Ordinance and such landscaping shall be approved by the Development Review Committee. Utilities and drainage structures may be placed within the buffer if approved by the Development Review Committee. This buffer may be reduced to a width of 50 feet if enhanced landscaping approved by the Development Review Committee is provided. Such enhanced landscaping shall be far in excess of what is required by the Zoning Ordinance and shall effectively screen the adjacent property.

3. A minimum 50-foot greenbelt, free of structures and paving shall be provided along the future right-of-way Route 199 and shall contain enhanced landscaping as approved by the Development Review Committee, with the minimum landscaping in accordance with the standards contained in the Zoning Ordinance.

4. A right-turn lane, acceptable to the Virginia Department of Transportation, shall be provided on southbound Strawberry Plains Road (Route 616) at its intersection with Route 5 and Route 199. This turn lane shall be installed prior to final site plan approval for any project on the site which causes the total floor area of the Williamsburg Crossing Shopping Center (including outparcels and office development) to go beyond 211,177 square feet.

5. Final site plan approval shall not be issued for any project on the site which causes the total area of the Williamsburg Crossing Shopping Center (including outparcels and office development) to go beyond 477,390 square feet until the construction of the future Route 199/Route 5 intersection has commenced.

6. The following road improvements identified by the applicant's traffic impact analysis shall be made to the Route 5/Kings Way intersection prior to issuance of any Certificate of Occupancy for any development beyond 567,390 square feet including existing development or earlier if requested by the Virginia Department of Transportation:

   Northbound Kings Way shall have the following configuration:

   1 through/left-turn lane
   1 right-turn lane

   Southbound Kings Way (Ferncliff Drive) shall have the following configuration:

   1 lane (current configuration)

Eastbound Route 5 shall have the following configuration:

1 left-turn lane
1 through lane
1 through/right-turn lane

Westbound Route 5 shall have the following configuration:

1 left-turn lane
1 through/right-turn lane

Improvements which become the developer's responsibility shall be built to dimensions and specifications as determined by VDOT at development plan submittal. VDOT may, at the time of development plan review, substitute the above improvements with equivalent improvements or not require certain improvements if deemed unnecessary. The applicant shall be responsible for any other road improvements, related to the development, if determined necessary by VDOT.

7. Signalization of Kings Way and Route 5 shall be provided by the applicant when signal warrants require signalization.

8. Lighting on the site shall be of the sodium vapor type and shall be consistent in nature and illumination characteristics with the lighting currently utilized in the Williamsburg Crossing Shopping Center.

9. A pedestrian access shall be provided to the vacant R-1, zoned parcel located to the west of the site. The location of such access shall be approved by the Development Review Committee.

R. Patrick Friel

R. Patrick Friel

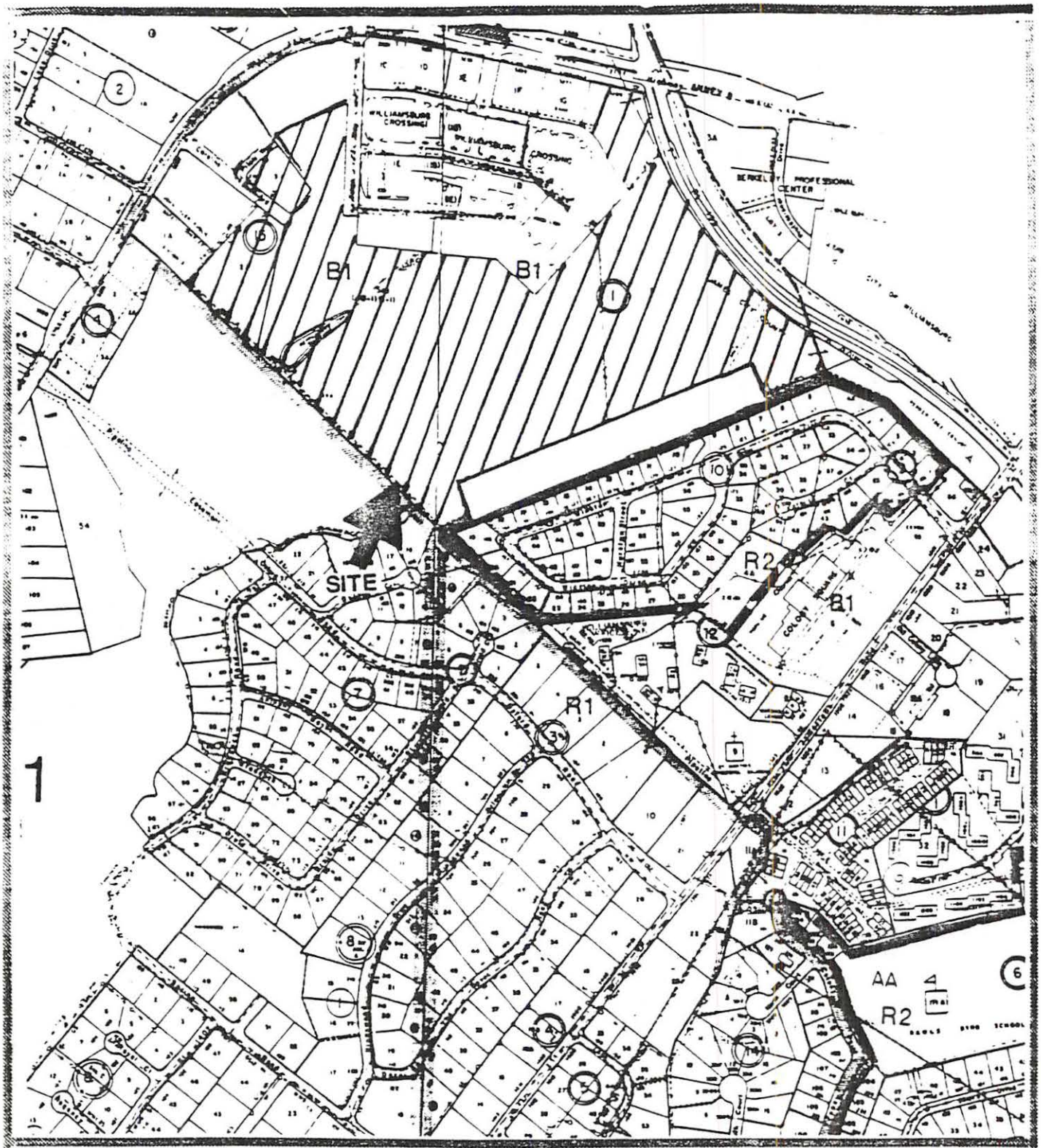
CONCUR:

O. Marvin Sowers, Jr.

OMS/dlh
6641a

Attachments

1. Map
2. Resolution
3. Conceptual Plan (Attached separately)



JAMES CITY COUNTY

Case No: SUP-49-90

Name : Williamsburg Crossing

N

PLANNING DIVISION

RESOLUTION

CASE NO. SUP-49-90. WILLIAMSBURG CROSSING

WHEREAS, the Board of Supervisors of James City County has adopted by ordinance specific land uses that shall be subjected to a special use permit process; and

WHEREAS, the Planning Commission of James City County, following its public hearing on April 6, 1991, voted 9-2 and recommended approval of Case No. SUP-49-90 to permit 657,390 square feet of commercial uses in the B-1, General Business district on property identified as Parcel (1-1) on James City County Real Estate Tax Map No. (48-1) and Parcels (15-2) and (15-3) on James City County Real Estate Tax Map No. (47-2).

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, does hereby approve the issuance of Special Use Permit No. SUP-49-90 as described herein with the following conditions:

1. No more than 657,390 square feet total, including existing development shall be constructed on the site.

2. A minimum 65-foot buffer shall be provided along the southern and western boundaries of the site. The buffer shall be landscaped at a minimum, in accordance with the landscaping requirements of the Zoning Ordinance and such landscaping shall be approved by the Development Review Committee. Utilities and drainage structures may be placed within the buffer if approved by the Development Review Committee. This buffer may be reduced to a width of 50 feet if enhanced landscaping approved by the Development Review Committee is provided. Such enhanced landscaping shall be far in excess of what is required by the Zoning Ordinance and shall effectively screen the adjacent property.

3. A minimum 50-foot greenbelt, free of structures and paving shall be provided along the future right-of-way Route 199 and shall contain enhanced landscaping as approved by the Development Review Committee, with the minimum landscaping in accordance with the standards contained in the Zoning Ordinance.

4. A right-turn lane, acceptable to the Virginia Department of Transportation, shall be provided on southbound Strawberry Plains Road (Route 616) at its intersection with Route 5 and Route 199. This turn lane shall be installed prior to final site plan approval for any project on the site which causes the total floor area of the Williamsburg Crossing Shopping Center (including out parcels and office development) to go beyond 211,177 square feet.

5. No Certificate of Occupancy shall be issued for any project on the site which causes the total area of the Williamsburg Crossing Shopping Center (including out parcels and office development) to go beyond 477,390 square feet until the construction of the future Route 199/Route 5 intersection has been completed.

6. The following road improvements identified by the applicant's traffic impact analysis shall be made to the Route 5/Kings Way intersection prior to issuance of any Certificate of Occupancy for any development after relocation of the main entrance to Kings Way or earlier if requested by the Virginia Department of Transportation:

   Northbound Kings Way shall have the following configuration:

   1 through/left-turn lane
   1 right-turn lane

   Southbound Kings Way (Ferncliff Drive) shall have the following configuration:

   1 lane (current configuration)

   Eastbound Route 5 shall have the following configuration:

   1 left-turn lane
   1 through lane
   1 through/right-turn lane

   Westbound Route 5 shall have the following configuration:

   1 left-turn lane
   1 through/right-turn lane

   Improvements which become the developer's responsibility shall be built to dimensions and specifications as determined by VDOT at development plan submittal. VDOT may, at the time of development plan review, substitute the above improvements with equivalent improvements or not require certain improvements if deemed unnecessary. The applicant shall be responsible for any other road improvements, related to the development, if determined necessary by VDOT.

7. Signalization of Kings Way and Route 5 shall be provided by the applicant when signal warrants require signalization. Additionally, the applicant shall construct a dedicated right-turn lane at the time of signalization.

8. Lighting on the site shall be of the sodium vapor type and shall be consistent in nature and illumination characteristics with the lighting currently utilized in the Williamsburg Crossing Shopping Center.

9. A pedestrian access shall be provided to the vacant R-1, zoned parcel located to the west of the site. The location of such access shall be approved by the Development Review Committee.

Thomas K. Norment, Jr.
Chairman, Board of Supervisors

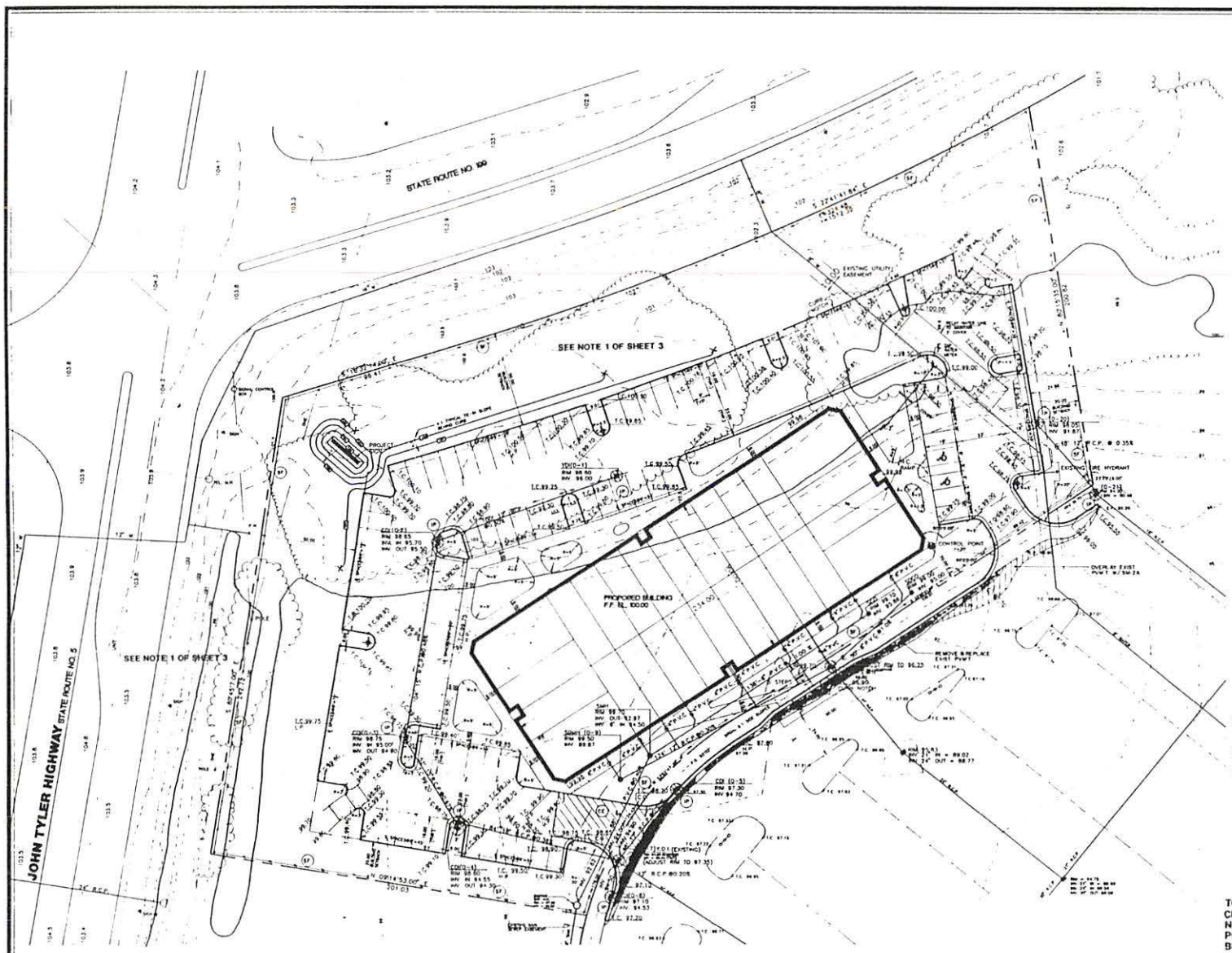
SUPERVISOR	VOTE
DEPUE	AYE
TAYLOR	AYE
EDWARDS	AYE
KNUDSON	AYE
NORMENT	AYE

ATTEST:

Sanford B. Wanner
Deputy Clerk to the Board

Adopted by the Board of Supervisors of James City County, Virginia, this 17th day of June, 1991.

1743w



SITE DEVELOPMENT PLAN

LAND USE SUMMARY TABLE

A. ZONING OF SITE: R-1 COMMERCIAL

B. CALCULATION FOR PARKING REQUIREMENTS

USE CATAGORY:	MERCHANTILE
NUMBER OF SPACES REQUIRED:	84 SPACES
REQUIRED HANDICAPED SPACES:	2
LOADING SPACES REQUIRED:	1
NUMBER OF SPACES PROVIDED:	103 SPACES
	2 HANDICAPED SPACES
	1 LOADING SPACE
	106 SPACES TOTAL

C. OPEN SPACE DATA

TOTAL SITE AREA:	116,442,024 S.F.
TOTAL AREA COVERED BY PARKING:	33,84[illegible] S.F.
TOTAL AREA COVERED BY BUILDING:	20,01[illegible] S.F.
PERCENT OF SITE COVERED BY BUILDING AND PARKING: (EXCLUDES WALKS)	19%
TOTAL SITE COVERED BY OPEN SPACE: (EXCLUDES WALKS)	14%

D. BUILDING DATA

TOTAL FLOOR AREA:	20,0[illegible] S.F.
HEIGHT OF BUILDING:	22 FT. MAX
NUMBER OF FLOORS:	1
TYPE:	MERCHANTILE TYPE 2B

STORMWATER MANAGEMENT PLAN
SECTION 19B-10, D,E,F,G.
CHESAPEAKE BAY ORDINANCE COMPLIANCE

1. a. See on site erosion and sediment control devices, this sheet. Existing bonded, stormwater management basin handles this site, as part of overall Williamsburg Crossing plan. Proposed 12" orifice on low level outlet to be changed to 8" orifice to provide 6 hour plus detention.
   b. See sheet 2, Erosion and Sediment Control Notes 1 through 18 for procedures implementing non structural stormwater control practices.
2. Maintenance of existing stormwater management basin assured under current bond for these facilities.

E. See this sheet for erosion and sediment control devices for on site facilities. Site drains to existing, bonded, stormwater management basin, still acting as sediment basin.

F. See sheets 3 and 4 for landscaping plan.

G. 1. There are no RPA wetlands involved in this site plan.
2. With no RPA wetlands, there are no required buffer areas.
3. There are no RMA wetlands involved in this site plan.
4. There are no wetland permits required.
5. There are no 25% + slopes.
6. Existing stormwater management pond serving this area of Williamsburg Crossing is still under bond.

TOPOGRAPHY FROM "WILLIAMSBURG CROSSING SHOPPING CENTER" CONSTRUCTION DRAWINGS BY "SMITH DEMER NORMAN", 1987. ALL EXISTING INFORMATION AND TIE-IN POINTS SHALL BE FIELD VERIFIED BY THE CONTRACTOR BEFORE CONSTRUCTION

COMMONWEALTH OF VIRGINIA

Langley and McDonald
A PROFESSIONAL CORPORATION
ENGINEERS · PLANNERS · SURVEYORS
VIRGINIA BEACH – WILLIAMSBURG, VIRGINIA

DES	W.E.H.
DWN	J.A.M.
CHK	
DATE	7-3-91

SITE DEVELOPMENT PLAN FOR
WILLIAMSBURG CROSSING PHASE III,
LOTS 10 & 11
FOR
UNIVERSITY SQUARE ASSOCIATES
JAMES CITY COUNTY, VIRGINIA

PROJ NO	90044-0251
SCALE	1"=25'
SHEET	1 OF 4
DWG	

208

Mailing Address:
P.O. Box JC
Williamsburg, Va.
23187-3627

Development Manager
(804) 253-6671
Code Compliance
253-6626
County Engineer
253-6678
Planning
253-6685

DEPARTMENT OF DEVELOPMENT MANAGEMENT
COUNTY GOVERNMENT CENTER, 101 MOUNTS BAY ROAD

August 15, 1991

Mr. Norman Mason
Langley & McDonald
201 Packets Court
Williamsburg, Virginia 23185

Re: Case No. SP-66-91. Williamsburg Crossing, Phase I

Dear Mr. Mason:

The above referenced site plan application and available materials are being returned because the plan, as submitted, violates condition 3 of Special Use Permit-49-90, approved by the James City County Board of Supervisors on June 17, 1991. Specifically, the submitted plan does not provide for the required 50 foot greenbelt (which must be free of structures or paving) along the future right-of-way of Route 199. The plan cannot be approved as presented because approximately half the parking shown is contained within the greenbelt and future right-of-way area where it is prohibited. The remedies for this situation are as follows:

1. Revise the plan so that it complies with the special use permit conditions and all other requirements and resubmit it; or
2. Make application to amend the special use permit so as to remove this condition; or
3. Appeal my interpretation of the special use permit condition to the Board of Zoning Appeals.

We are processing a refund of the application fees and they will be forwarded to you as soon as they are available.

If there are further questions, please contact me.

Sincerely,

Bernard M. Farmer, Jr.
Zoning Administrator

cc: Mr. Calvin Davis

APPLICATION FOR APPEAL TO THE
JAMES CITY COUNTY BOARD OF ZONING APPEALS

I, Calvin Davis, President of and acting on behalf of Center Development of Williamsburg, Inc., General Partner of University Square Associates, respectfully request that the Board of Zoning Appeals hear and decide an appeal from the decision of the Zoning Administrator, pursuant to Section 15.1-495(3) of the Code of Virginia, 1950, as amended, and Section 20-419(c) of the James City County Zoning Ordinance and all other applicable sections of said Code and said Zoning Ordinance.

The specific appeal requested is of the decision of the Zoning Administrator, Bernard M. Farmer, Jr., set forth in his letter dated August 15, 1991 to Mr. Norman Mason interpreting condition numbered 3 of the Resolution for Case No. SUP 49-90, Williamsburg Crossing, adopted June 17, 1991 by the James City County Board of Supervisors.

REASONS FOR APPEAL

The appeal is requested for the following reasons:

By letter dated January 25, 1991, James City County granted preliminary approval of the subdivision plat of Lots 10 and 11 of Williamsburg Crossing; that plat provided for a "50' Front Setback" along the right-of-way of State Route 199.

On May 9, 1991, James City County, by its duly authorized agent, granted final approval of the aforesaid subdivision of Lots 10 and 11 of Williamsburg Crossing; the approved subdivision plat was recorded June 6, 1991 in Plat Book 54, Page 41, in the Clerk's Office of the Circuit Court for the City of Williamsburg and County of James City. That plat provides for the same "50' Front Setback" along the right-of-way of State Route 199.

On June 17, 1991, the James City County Board of Supervisors approved a Resolution for Case No. SUP 49-90, Williamsburg Crossing. That Resolution contained a condition the interpretation of which is the basis of this appeal. The condition interpreted is condition numbered 3 of the Resolution for Case No. SUP 49-90, Williamsburg Crossing which states as follows:

> A minimum 50-foot greenbelt, free of structures and paving shall be provided along the future right-of-way Route 199 and shall contain enhanced landscaping as

approved by the Development Review Committee, with the minimum landscaping in accordance with the standards contained in the Zoning Ordinance.

Langley and McDonald, in reliance upon the previously approved subdivision plat, prepared a site plan for the development of Lots 10 and 11 honoring the "50' Front Setback" shown on the subdivision plat.

The Zoning Administrator by his letter dated August 15, 1991 has refused to approve the site plan because he has interpreted the above quoted condition as requiring an additional set-back greater than that shown on the approved subdivision plat recorded on June 6, 1991. Implicit in any interpretation of the subject condition is the requirement that the setback be measured from a definite point on the ground. Otherwise the precise location of the setback cannot be determined with the degree of reasonable engineering certainty which would be required for loan surveys, etc.

The line which the Zoning Administrator uses as the "future right-of-way" of Route 199 is a line based only upon preliminary engineering plans which plans by their very nature are subject to change. These preliminary engineering plans were in existence prior to the approvals of the subdivision plat but James City County did not require any additional setback line on the subdivision plat based upon the preliminary engineering plans.

As of the date of the decision appealed from and as of the date of this application, the only established right-of-way for State Route 199 is that which is shown on the subdivision plat approved by James City County referenced above.

Establishment of future right-of-way for State Route 199 or any other public road requires the preparation and approval of Final Right-of-Way Acquisition Plans and the acquisition of the right-of-way by the applicable authority. As of the date of the decision appealed from and the date of this application, no Right-Of-Way Acquisition Plans have been prepared or approved for this site and no right-of-way has been acquired from this site beyond that shown on the subdivision plat previously approved by James City County.

If James City County intended an additional set-back from a particular line other than that shown on the previously approved subdivision plat, it could have described the line in the applicable condition of the Resolution by reference to monuments, metes and bounds. As of the date of the decision appealed from and the date of this application, however, the precise location of any future right-of-way has not been established by Right-of-Way Acquisition Plans and acquisition. At such time as the precise location of the Route 199 right-of-way is established by Right-of-Way Acquisition Plans and by acquisition by the Virginia Department of Transportation, University Square Associates will be able to precisely measure and observe the appropriate setback. To require

University Square Associates to honor a setback which is measured from an unknown future point has the effect of nullifying the permitted use until the right-of-way is ultimately established. Further, such a reading delegates to the Virginia Department of Transportation the local government's responsibility of establishing land use limits. To require University Square Associates to honor a set back before the right-of-way is established by acquisition is a taking without compensation in violation of the Constitution of the United States and the Commonwealth of Virginia.

SPECIFIC RESULT REQUESTED

For the reasons stated above and for such other reasons as may be advanced at the hearing of this appeal, the undersigned requests that the Board of Zoning Appeals hear and decide this appeal in favor of the undersigned.

ADDRESS & APPLICANT'S INTEREST

Address of property: Routes 5 and 199 in the B-1 Zoning District and further identified as Parcel 1-2 on Tax Map 48-1.

Applicant's interest in the property is as an owner.

EXHIBITS

Provided herewith as part of this application is the following information in support:

1. Letter dated January 25, 1991 from Elizabeth R. Sullivan, Planner to Mr. Norman Mason.

2. Subdivision plat entitled "PLAT OF LOTS 10 AND 11, WILLIAMSBURG CROSSING, BEING A SUBDIVISION OF THE RESIDUAL PARCEL, JAMES CITY COUNTY, VIRGINIA", dated 11-21-90, prepared by Langley and McDonald, P.C., approved by James City County on May 9, 1991 and recorded June 6, 1991 in Plat book 54, Page 41 in the Clerk's Office of the Circuit Court for the City of Williamsburg and County of James City.

3. Resolution, Case No. SUP 49-90, Williamsburg Crossing, adopted by the James City County Board of Supervisors on June 17, 1991.

4. A plat of the property drawn to scale showing dimensions and locations of all proposed structures and easements associated with the property. (included in no. 6)

5. A location sketch of the property showing all adjacent roads or right-of-ways and showing the nearest road intersection. (included in no. 6)

6. Site plan entitled "SITE DEVELOPMENT PLAN FOR WILLIAMSBURG CROSSING PHASE III, LOTS 10 & 11 FOR UNIVERSITY SQUARE ASSOCIATES, JAMES CITY COUNTY, VIRGINIA", dated 7-3-91, prepared by Langley and McDonald, consisting of four (4) sheets.

7. Letter dated August 15, 1991 from Bernard M. Farmer, Jr., Zoning Administrator, to Mr. Norman Mason.

ADJACENT PROPERTY OWNERS

List of names and addresses of all adjacent property or property across a road, highway or railroad right-of-way:

Name	Mailing Address
University Square Associates	c/o Goodman, Segar, Hogan Work Trade Center Norfolk, VA 23510
James City County	P.O. Box JC Williamsburg, VA 23187
William E. & Lorr Mount	100 Ferncliff Drive Williamsburg, VA 23185
Robert Frank Spangler	101 Ferncliff Drive Williamsburg, VA 23185
Donald R. Thomas, Committee	128 Mill Neck Road Williamsburg, VA 23185

The undersigned declares that the above statements and those contained in any exhibits transmitted to the Board of Zoning Appeals are true.

UNIVERSITY SQUARE ASSOCIATES

Date: 9/11/91 By: _____

Center Development of Williamsburg, Inc.,
General Partner
Calvin Davis
c/o Anderson, Franck & Davis, P.C.
Alvin P. Anderson, Esquire
P.O. Drawer Q
Williamsburg, VA 23187
Telephone (804) 229-7322

M E M O R A N D U M

DATE: October 21, 1991

TO: The Board of Zoning Appeals

FROM: Bernard M. Farmer, Jr.

SUBJECT: ZA-12-91, University Square Associates

Facts

Mr. Alvin Anderson on behalf of University Square Associates has appealed a decision of the Zoning Administrator that a site development plan which was submitted for approval failed to meet a Special Use Permit condition. The property is identified as 5289 John Tyler Highway and is parcel (1-1H) found on James City County Real Estate Tax Map Number (48-1). The property is zoned B-1, General Business Zoning District.

Findings

The parcel in question is one of the outparcels of Williamsburg Crossing Shopping Center and was divided from the remaining land with Subdivision Case S-91-90. This subdivision created parcels 10 and 11 out of the remnant of the land at the junction of Rt. 199 and John Tyler Highway. The Subdivision was approved and put to record on June 6, 1991 showing the prescriptive setback of 50 feet from the existing Rt. 199 right of way.

After recordation of the subdivision, on June 17, 1991, the Board of Supervisors approved a Special Use Permit under Case SUP-49-90 which allowed further development of the shopping center and outparcels including the parcel in question, Lot 11. As a condition of the Special Use Permit the Board required a greenbelt "free of structures and paving" be provided along the "future right-of-way Route 199". Other conditions related to buffering and needed improvements were also part of the permit.

In August of 1991 a site plan of development was submitted for approval which only provided a greenbelt along the existing right-of-way of Rt. 199. No accommodation was made for the planned realignment and expansion of Rt. 199. The plan was returned to the applicant based on a determination that it failed to meet the SUP condition. Subsequently the applicant appealed this administrative decision to the Board of Zoning Appeals. In hearing this appeal the BZA is charged with determining if this administrative decision is plainly and clearly wrong. In making this determination the BZA may examine the intent of the SUP condition, but the BZA has no lattitude to change the condition or apply it in any way other than was intended by the Board of Supervisors. If the applicant or the

BZA disagrees with the condition, then the remedy is to apply to the Board of Supervisors for an amendment since the condition was established by the governing body and amounts to a legislative action on their part.

The applicant has provided four reasons to support his appeal. to briefly summarize them they are:

1) The applicable right-of-way for determining the greenbelt should be the existing right-of-way.

2) Approval of the subdivision plat, not showing additional restrictions, was not consistent with the SUP condition and hence the subdivision plat controls.

3) VDOT must complete acquisition plans and actually acquire right-of-way to establish a "future" right-of-way.

4) The SUP restriction effectively prohibits any use and constitutes a taking.

We will address each of these reasons to show that they do not prove that the administrative determination regarding the SUP condition was incorrect.

The letter of appeal indicates that the existing right-of-way should be the point from which the greenbelt is measured. There is no disagreement that the SUP condition specifically states that the greenbelt is to be provided along the <u>future</u> right-of-way. When the SUP case was heard before the Planning Commission and the Board of Supervisors this matter was addressed each time in the staff memorandum. Route 199 is designated as a greenbelt under the Comprehensive Plan. The adopted policy pertaining to greenbelts states that the greenbelts shall generally be measured "from the edge of the future road right-of-way; as anticipated by the Planning Department and the Virginia Department of Transportation". The words "future" and "anticipated" indicate something which will happen in time to come, not something which presently exists. These words are the official adopted policy of the Board of Supervisors. Their use of "future" in the SUP condition is consistent with this policy. Measurement of the greenbelt from the existing road right-of-way would not be consistent with the policy, the stated condition, and would be contrary to the intent of the Board of Supervisors.

For his second reason the applicant has cited the approval of the subdivision plat establishing a setback of 50 feet from the existing right-of way (as shown on the plat), and has noted that the plans existed at time of approval of this plat for the realignment of Route 199. He further reasons that the failure of the county to establish additional setbacks (or reserve area for greenbelts) upon approval of the subdivision plat justified their reliance on this document, rather than measure the greenbelt from the future right-of-way line. This reasoning does not support the

applicant. The subdivision plat was approved prior to the SUP condition. In approving the plat, staff had no legal authority to require any setback other than the prescriptive one contained in the ordinance. Approval of the plat was a ministerial act which allowed no discretion on the part of staff. On the contrary, approval of the SUP condition requiring a greater greenbelt was a discretionary legislative action on the part of the Board of Supervisors and occurred after approval of the subdivision plat. Authority allowing for a greenbelt to be measured from the future right-of-way came eleven days after recordation of the plat. Further, setback lines shown on record plats have no legal validity. They are required on the plat for review purposes at the time of approval, and if the ordinance changes the setback in effect at the time of permit application is the one that governs.

As a third reason the applicant has indicated that VDOT must have prepared final right-of-way acquisition plans and actually acquired right-of-way to establish the future right-of-way. It would be possible to argue semantics, since we could say that once the land is acquired it becomes present. However, the most persuasive facts contrary to the applicants claim are found in examining the lengthy and involved public process VDOT has followed to establish the Route 199 plans. Since the 1970's VDOT has held numerous public hearings on the proposed layout and design. They have adopted the final Environmental Impact Statement, after revising the corridor based on testimony during the public process. VDOT has received comment from the adjoining jurisdictions and gained consensus as to the preferred design alternative. Finally, the full Commonwealth Transportation Board has approved the location, and has the approved design drawings and corridor location information available for public inspection. The location plans for the future Route 199 right-of-way in this area were discussed at length with the applicant during the VDOT public comment period. Given the lengthy process followed to this point, there is no evidence that the adopted and approved corridor will change. Acquisition, as the applicant claims is necessary, would not make this approved plan any more certain.

Finally, the applicant has claimed that a taking has occurred since he has been denied use of the greenbelt. The SUP condition requires that a buffer be provided. This buffer may be used for purposes such as open space, non-impervious cover (to meet Chesapeake Bay Preservation Regulations), landscaping, erosion control, and other purposes which enhance the economically viable use of the remainder of the property. To constitute a taking, the Board must deny <u>all</u> uses of the property, which they have not. Further, application for and use of the SUP is voluntary. If the applicant feels the condition is not appropriate, then his recourse is to either develop without the SUP or to request that the Board of Supervisors amend the condition. No taking has occurred. At any rate, whether a taking occurred through the SUP is not a matter to be resolved by the BZA.

Staff has provided reasoning to counter each of the arguments

raised by the applicant in appeal of the administrative decision. The Board must determine if the Zoning Administrator's decision in applying the SUP condition was clearly and plainly wrong. The BZA can interpret the meaning of the SUP condition, and should determine if that meaning has been properly executed through the Zoning Administrator's decision.

Recommendations

It is the staff recommendation that the decision of the Zoning Administrator be upheld, and the applicant be required to comply with the conditions of the Special Use Permit.

BOARD OF ZONING APPEALS
CASE DECISION

CASE NO. ZA- 12-91

Applicant: University Associates / Calvin Davis

Variance/Interpretation Requested: appeal the decision of Zoning Administrator regarding site plan approval

Resolution of BZA: Mr Ripley moved that we support Mr. Farmer's decision. Mr. Carr seconded.

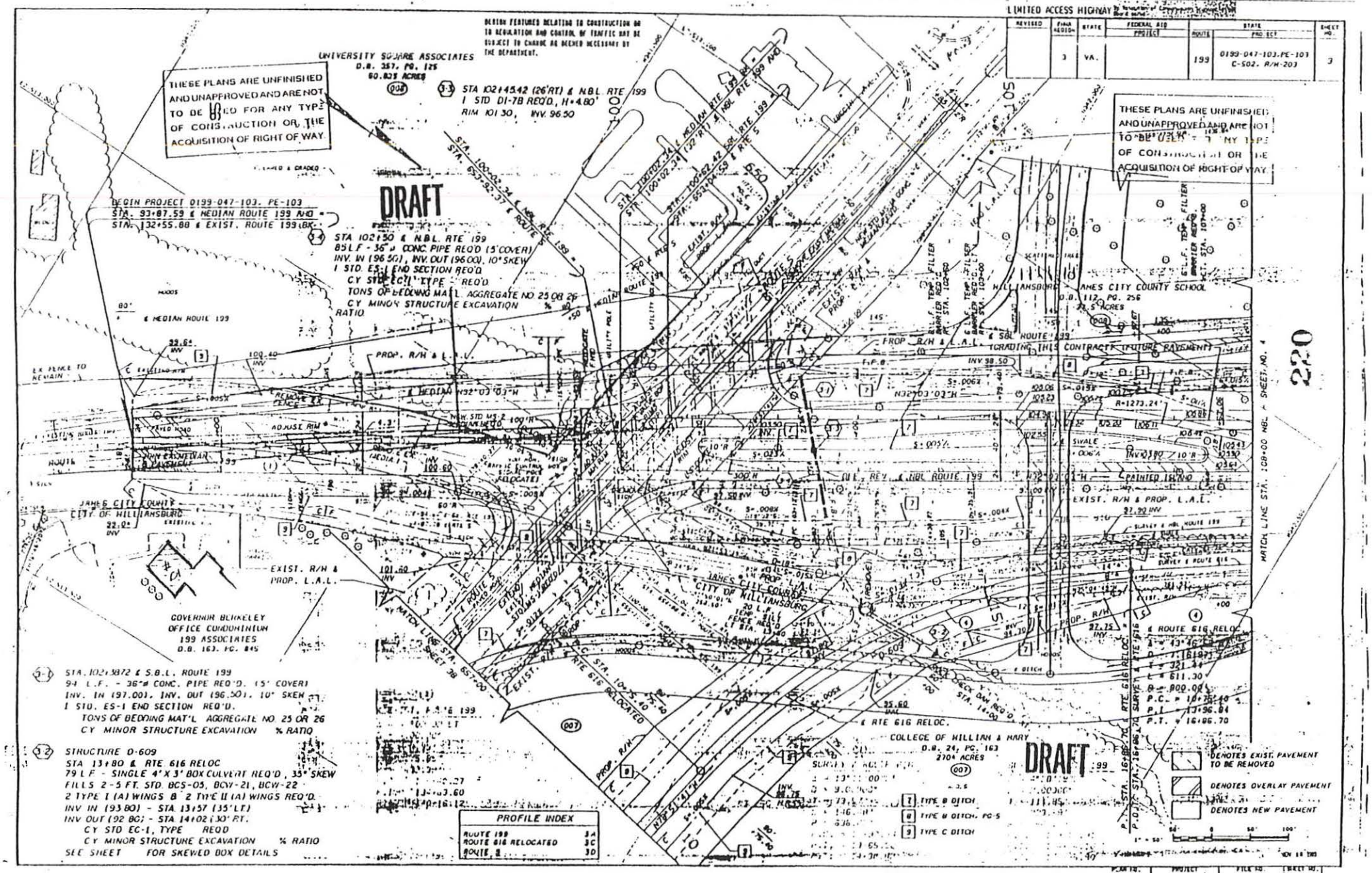
Conditions: None

VOTE:	AYE	NAY	ABSTAIN	ABSENT
Carr	✓			
James	✓			
Geidd	✓			
Feigley	✓			
Ripley	✓			

Date of Decision: 10/24/91

Date Filed in Office of BZA: 10/24

Signature of Secretary: Bernard M Farmer Jr



ROUTE 5 - ALTERNATIVE I-A 1.

ROUTE	PROJECT	FILE NO.	SHEET NO.
	0199-047-103		3

RESOLUTION

ROUTE 199 DESIGN

WHEREAS, VDOT is receiving public comment on the design of Route 199; and

WHEREAS, a Committee of the Board of Supervisors of James City County met with representatives of staff, VDOT and citizens to discuss the design of Route 199 at its intersection of Route 5; and

WHEREAS, the Committee agreed to recommend that the Board of Supervisors endorse Alternate 1A as an initial design with Alternate 1B (grade separated interchange) being installed at a later date. The Committee further agreed to consider additional alternatives offered by the owners of the Williamsburg Crossing Shopping Center at a later date; and

WHEREAS, a Committee of the Board of Supervisors reviewed the design of the intersection of Olde Towne Road and Route 199 and agreed to recommend that the Board endorse Alternate 2 with a slight modification to include the addition of on ramps onto Route 199. The group further recommended that the Board request VDOT to consider the following additions or revisions to the proposed design:

1. Minor movement of the Route 199 Corridor to the east to improve access to the Richardson property if the relocation is possible without significant impacts on adjacent residences.

2. Consider other locations for access to the Richardson property; possibly through Parcel (27A) to the south of the Fire Station.

3. Provision of at least an emergency access for the Fire Department if permanent ramps cannot be provided.

4. Straightening of the curve on Olde Towne Road to the north of Route 199, if such straightening does not have major impacts on adjacent residences.

WHEREAS, the Committee further recommends the first phase of construction of Route 199 include a connection to Longhill Road instead of Olde Towne Road. Should funding preclude this phasing, the Committee supports an at-grade connection to Olde Towne Road and a grade separation at a later date.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, supports the recommendation made by the Committee and expresses its desire for the Virginia Department of Transportation to consider these recommendations in the final design of Route 199.

Thomas D. Mahone
Chairman, Board of Supervisors

SUPERVISOR	VOTE
NORMENT	AYE
TAYLOR	AYE
EDWARDS	AYE
DEPUE	AYE
MAHONE	AYE

ATTEST:

David B. Norman
Clerk to the Board

Adopted by the Board of Supervisors of James City County, Virginia, this 18th day of December, 1989.

1194w

Mailing Address:
P.O. Box JC
Williamsburg, Va.
23187-3627

JAMES CITY COUNTY

DEPARTMENT OF DEVELOPMENT MANAGEMENT

COUNTY GOVERNMENT CENTER, 101 MOUNTS BAY ROAD

January 25, 1991

Development Manager
(804) 253-6671
Code Compliance
253-6626
County Engineer
253-6678
Planning
253-6685

Mr. Norman Mason
Langley and McDonald
201 Packets Court
Williamsburg, VA 23185

RE: Case No. S-91-90 Williamsburg Crossing, Lots 10 and 11

Dear Mr. Mason:

This is to confirm that preliminary approval has been granted to the above-referenced subdivision conditioned upon the following comments:

1. All certificates shall be completed in accordance with Section 17-29 of the James City County Subdivision Ordinance.

2. New property lines and setback lines shall be indicated on the final plat.

3. A no access easement shall be placed on the site's frontage on Route 5 and Route 199.

4. The original and five paper copies shall be resubmitted for final review.

Preliminary approval will expire one year from the preliminary approval date. During that time the subdivider must receive approval of and record the final plat and plans in accordance with Section 17-30 of the Subdivision Ordinance. Failure to do so shall make preliminary approval null and void; however, the subdivision agent may grant an extension of this time limit if the subdivider provides a written request, including the reasons for seeking an extension, prior to the expiration date.

In order to ensure efficient emergency response by Fire, Police, and EMS personnel, it is essential that the Fire Chief be notified immediately if the name of the project changes from that shown on the plan.

If there are further questions, please contact me.

Sincerely,

Elizabeth R. Sullivan

Elizabeth R. Sullivan
Planner

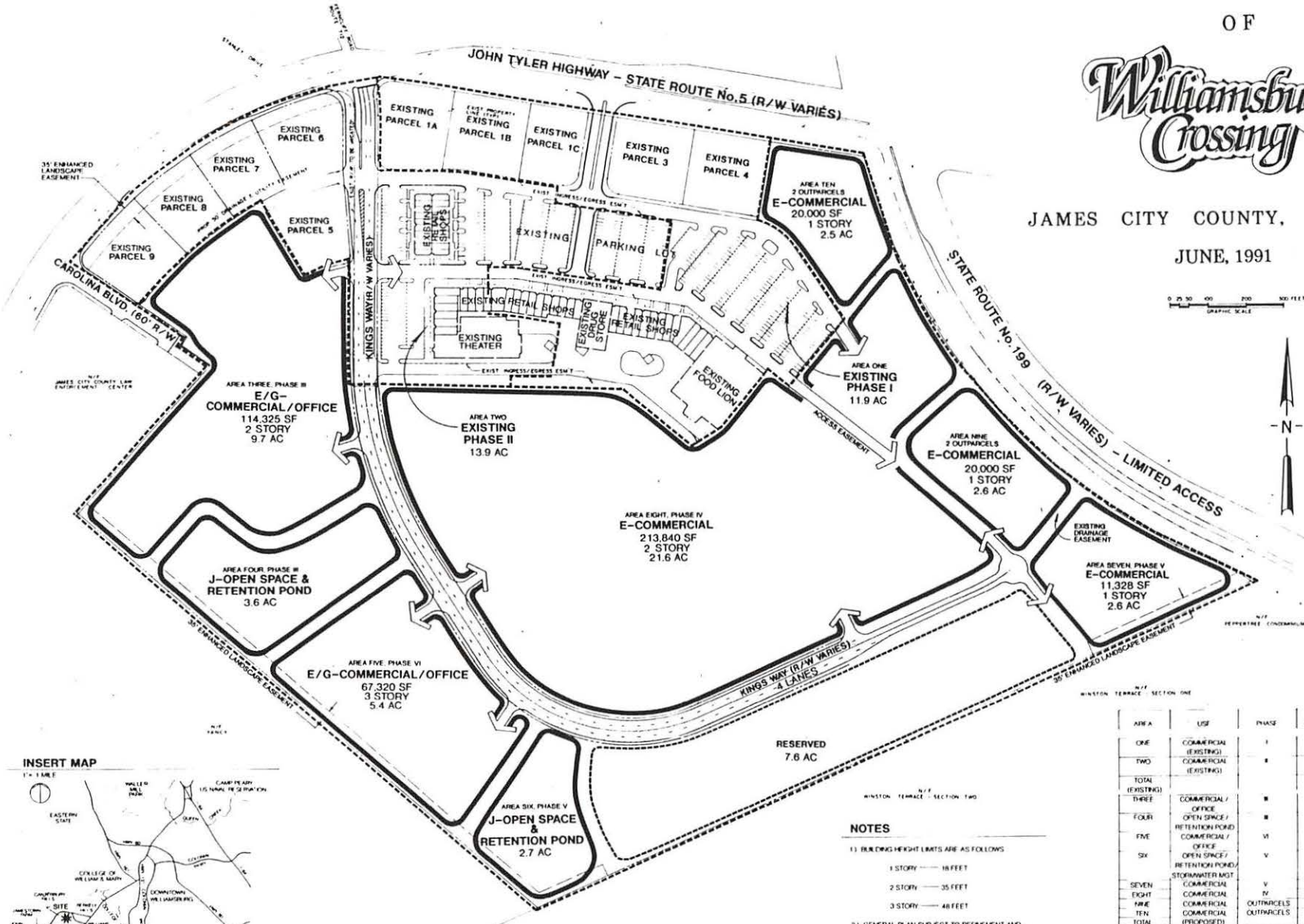
cc: Calvin Davis

S09190.LAP/ERS

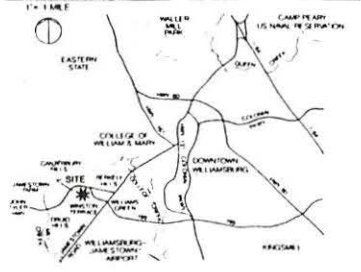
MASTER PLAN OF Williamsburg Crossing

JAMES CITY COUNTY, VIRGINIA

JUNE, 1991



INSERT MAP



NOTES

1) BUILDING HEIGHT LIMITS ARE AS FOLLOWS

1 STORY — 18 FEET

2 STORY — 35 FEET

3 STORY — 48 FEET

2) GENERAL PLAN SUBJECT TO REFINEMENT AND CHANGES AS REQUIRED BY REVIEWING AGENCIES

3) PHASE LINES DO NOT DESIGNATE LEASE OR PROPERTY LINES

AREA	USE	PHASE	BUILDING SQUARE FOOTAGE	AREA (ACRES)
ONE	COMMERCIAL (EXISTING)	I	118,947	11.9
TWO	COMMERCIAL (EXISTING)	II	92,230	13.9
TOTAL (EXISTING)			211,177	25.8
THREE	COMMERCIAL / OFFICE	III	114,325	9.7
FOUR	OPEN SPACE / RETENTION POND	III	—	3.6
FIVE	COMMERCIAL / OFFICE	VI	67,320	5.4
SIX	OPEN SPACE / RETENTION POND/ STORMWATER MGT	V	—	2.7
SEVEN	COMMERCIAL	V	10,728	2.6
EIGHT	COMMERCIAL	IV	213,840	21.6
NINE	COMMERCIAL	OUTPARCELS	20,000	2.6
TEN	COMMERCIAL	OUTPARCELS	20,000	2.5
TOTAL	(PROPOSED)		446,213	57.7
RESERVED			—	7.6
KINGS WAY	PUBLIC R.O.W.		—	3.4
TOTAL SITE			657,390 SF	87.5 AC

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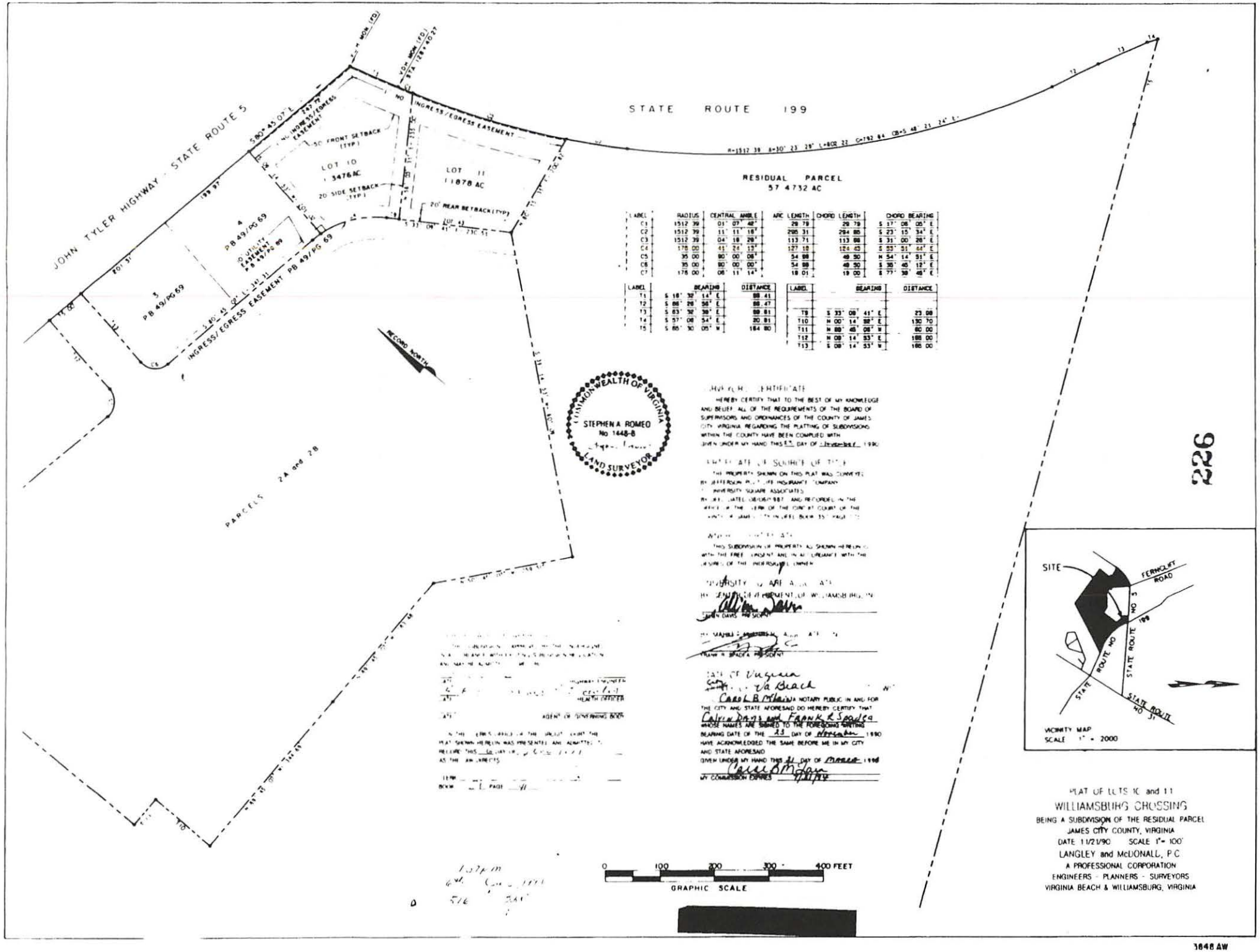
20472



LABEL	RADIUS	CENTRAL ANGLE	ARC LENGTH	CHORD LENGTH	CHORD BEARING
C1	1512 39	01° 07' 42"	29 79	29 79	S 17° 08' 05" E
C2	1512 39	11° 11' 18"	295 31	294 86	S 23° 15' 34" E
C3	1512 39	04° 18' 29"	113 71	113 66	S 31° 00' 28" E
C4	178 00	41° 24' 13"	127 10	124 43	S 53° 51' 44" E
C5	35 00	90° 00' 00"	54 98	49 50	N 54° 14' 51" E
C6	35 00	90° 00' 00"	54 98	49 50	S 35° 45' 12" E
C7	178 00	06° 11' 14"	19 01	19 00	S 77° 38' 49" E

LABEL	BEARING	DISTANCE
T1	S 18° 32' 14" E	88 41
T2	S 86° 28' 56" E	86 47
T3	S 63° 32' 38" E	88 81
T4	S 57° 08' 54" E	20 81
T5	S 86° 30' 05" W	184 80

LABEL	BEARING	DISTANCE
T9	S 33° 08' 41" E	23 08
T10	N 00° 14' 33" E	130 70
T11	N 89° 45' 06" W	80 00
T12	N 08° 14' 33" E	186 00
T13	S 08° 14' 33" W	186 00

CERTIFICATE

HEREBY CERTIFY THAT TO THE BEST OF MY KNOWLEDGE AND BELIEF ALL OF THE REQUIREMENTS OF THE BOARD OF SUPERVISORS AND ORDINANCES OF THE COUNTY OF JAMES CITY VIRGINIA REGARDING THE PLATTING OF SUBDIVISIONS WITHIN THE COUNTY HAVE BEEN COMPLIED WITH GIVEN UNDER MY HAND THIS 5th DAY OF December 1990

CERTIFICATE OF SOURCE OF TITLE

THE PROPERTY SHOWN ON THIS PLAT WAS CONVEYED BY JEFFERSON PILOT LIFE INSURANCE COMPANY TO UNIVERSITY SQUARE ASSOCIATES BY DEED DATED OCTOBER 1987 AND RECORDED IN THE OFFICE OF THE CLERK OF THE CIRCUIT COURT OF THE CITY OF JAMES CITY IN DEED BOOK 35 PAGE

APPROVAL AS TO USE

THIS SUBDIVISION OF PROPERTY AS SHOWN HEREON IS WITH THE FREE CONSENT AND IN ACCORDANCE WITH THE DESIRES OF THE INDEBTED OWNER

UNIVERSITY SQUARE ASSOCIATES
BY ENGLISH DEVELOPMENT OF WILLIAMSBURG, INC

JOHN DAVIS PRESIDENT

BY MANUFACTURERS ASSOCIATES

FRANK R BROOKS PRESIDENT

STATE OF Virginia
CITY/COUNTY OF Va Beach

I Carol B Mlein A NOTARY PUBLIC IN AND FOR THE CITY AND STATE AFORESAID DO HEREBY CERTIFY THAT Calvin Davis and Frank R Brooks WHOSE NAMES ARE SIGNED TO THE FOREGOING WRITING BEARING DATE OF THE 23 DAY OF November 1990 HAVE ACKNOWLEDGED THE SAME BEFORE ME IN MY CITY AND STATE AFORESAID
GIVEN UNDER MY HAND THIS 21 DAY OF March 1991
NOTARY PUBLIC
MY COMMISSION EXPIRES 11/31/92

AGENT OF GOVERNING BODY

IN THE CLERK'S OFFICE OF THE CIRCUIT COURT THE PLAT SHOWN HEREON WAS PRESENTED AND ADMITTED TO RECORD THIS 5th DAY OF December 1990 AT 10:37 AM AS THE LAW DIRECTS

TESTE
BOOK 51 PAGE 31

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PLAT OF LOTS 10 and 11
WILLIAMSBURG CROSSING
BEING A SUBDIVISION OF THE RESIDUAL PARCEL
JAMES CITY COUNTY, VIRGINIA
DATE 11/21/90 SCALE 1" = 100'
LANGLEY and McDONALL, P.C.
A PROFESSIONAL CORPORATION
ENGINEERS - PLANNERS - SURVEYORS
VIRGINIA BEACH & WILLIAMSBURG, VIRGINIA

3648 AW